

CLEVELAND BIOLABS INC  
Form S-3/A  
June 15, 2010

As filed with the Securities and Exchange Commission on June 15, 2010

Registration Number 333-167258

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

AMENDMENT NO. 1  
to  
FORM S-3

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

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CLEVELAND BIOLABS, INC.  
(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction of  
incorporation or organization)

20-0077155  
(I.R.S. Employer  
Identification No.)

73 High Street  
Buffalo, New York 14203  
(716) 849-6810

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

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Dr. Michael Fonstein  
Chief Executive Officer & President  
Cleveland BioLabs, Inc.  
73 High Street  
Buffalo, New York 14203  
(716) 849-6810

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

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Copy to:

Robert J. Wild, Esq.  
Katten Muchin Rosenman LLP  
525 West Monroe Street

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Chicago, Illinois 60661  
(312) 902-5200 / (312) 902-1061 (Telecopy)

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Approximate date of commencement of proposed sale to the public: From time to time after the effective date of this Registration Statement.

If the only securities being registered on this form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

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, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.

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.

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.

If this form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

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 definition of “large accelerated filer,” “accelerated filer” and “smaller reporting company” in Rule 12b-2 of the Securities Exchange Act.

Large accelerated filer   
Non-accelerated filer

Accelerated filer   
Smaller reporting company

#### CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Amount to be Registered	Proposed Maximum Offering Price Per Unit	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
<b>Primary Offering:</b>				
Common Stock, par value \$0.005 per share	(1)	(1)	(1)	(1)
Warrants	(1)	(1)	(1)	(1)
Units	(1)	(1)	(1)	(1)
			\$ 90,000,000.00	6,417.00
<b>Secondary Offering:</b>				
Common Stock, par value \$0.005 per share	462,654(3)	\$ 3.29(4)	\$ 1,522,131.66	\$ 108.53

Secondary Offering:					
Common Stock, par value					
\$0.005 per share	170,000(5)	\$	3.29(4)	\$	559,300.00 \$ 39.88
Total:	-		-	\$	92,081,431.66 \$ 6,565.41 (6)

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- (1) With respect to the primary offering, an indeterminate number of shares of common stock and warrants, which may be sold separately or as units, are registered for issuance by the registrant from time to time at indeterminate prices. The aggregate offering price of common stock and warrants offered by the registrant will not exceed \$90,000,000.
- (2) Calculated pursuant to Rule 457(o) under the Securities Act of 1933, as amended (the "Securities Act").
- (3) Represents 462,654 shares of common stock issuable upon exercise of Series C Warrants (which number of shares is calculated based on the current exercise price of \$6.35 per share).
- (4) Computed in accordance with Rule 457(c) of the Securities Act of 1933, as amended. The offering price of \$3.29 represents the average of the high and low prices, as reported on the Nasdaq Capital Market, for Cleveland BioLabs, Inc.'s common stock on May 27, 2010.
- (5) Represents 170,000 shares of common stock issuable upon exercise of warrants issued to designees of the underwriters in our initial public offering, which warrants have an exercise price of \$8.70 per share.
- (6) A registration fee of \$6,565.41 was previously paid on June 2, 2010 in connection with the initial filing of this registration statement.

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 contained in this prospectus is not complete and may be changed. These securities may not be sold until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and we are not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

PROSPECTUS

SUBJECT TO COMPLETION, DATED JUNE 15, 2010

CLEVELAND BIOLABS, INC.

\$90,000,000

Common Stock  
Warrants  
Units

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632,654 Shares of Common Stock  
Offered by the Selling Stockholders

We may, from time to time, offer and sell shares of our common stock, par value \$0.005 per share, or warrants to purchase common stock, either separately or in units, to or through one or more underwriters, dealers and agents, or directly to purchasers, on a continuous or delayed basis, at prices and on terms to be determined at the time of the offering, up to a total aggregate dollar amount of \$90,000,000. See “Plan of Distribution” beginning on page 8 in this prospectus. We may also describe the plan of distribution for any particular offering of these securities in any applicable prospectus supplement. If any agents, underwriters or dealers are involved in the sale of any securities in respect of which this prospectus is being delivered, we will disclose their names and the nature of our arrangements with them in a prospectus supplement. The net proceeds we expect to receive from any such sale will also be included in a prospectus supplement.

In addition, the selling stockholders identified in this prospectus may offer and sell up to 632,654 shares of our common stock from time to time under this prospectus and any prospectus supplement, which number represents (i) 462,654 shares of common stock issuable upon the exercise of Series C Warrants (calculated based on the current exercise price of \$6.35 per share), which were issued in our private placement that closed on March 16, 2007, and (ii) 170,000 shares of common stock issuable upon the exercise of warrants issued to designees of the underwriters in our initial public offering, which warrants have an exercise price of \$8.70 per share (the “\$8.70 Warrants”). All of these shares of common stock may be sold by the selling stockholders named in this prospectus, or their respective transferees, pledgees, donees or successors-in-interest. The selling stockholders will receive all proceeds from the sale of the shares of our common stock being offered by the selling stockholders in this prospectus. We will only receive the exercise price of the Series C Warrants or the \$8.70 Warrants upon the exercise in cash of the Series C Warrants or the \$8.70 warrants by the selling stockholders. We are registering the offer and sale of the shares of common stock to satisfy registration rights that we have granted. The shares of common stock to which this prospectus relates may be offered and sold from time to time directly by the selling stockholders or alternatively through ordinary brokerage transactions directly to market makers of our shares or through any other means described in “Plan of Distribution” beginning on page 8 in this prospectus. The shares of common stock may be sold in one or more transactions, at fixed prices, at prevailing market prices at the time of sale or at negotiated prices.



Our common stock is listed on the Nasdaq Capital Market under the symbol "CBLI." The last reported sales price of our common stock on the Nasdaq Capital Market on June 14, 2010 was \$3.17 per share.

Investing in our securities involves a high degree of risk. See "Risk Factors" beginning on page 2 in this prospectus and other information included and incorporated by reference in this prospectus for a discussion of the factors you should carefully consider before deciding to buy shares of our common stock or warrants.

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 date of this prospectus is \_\_\_\_\_, 2010.

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## PROSPECTUS SUMMARY

This summary does not contain all of the information you should consider before buying shares of our common stock or warrants. We urge you to read carefully this entire prospectus, the documents incorporated by reference in this prospectus and all applicable prospectus supplements before making an investment decision. In this prospectus, unless the context otherwise requires, the terms “CBLI”, “company”, “we”, “us”, and “our” refer to Cleveland BioLabs, Inc., a Delaware corporation, and, unless the context otherwise requires, “common stock” refers to the common stock, par value \$0.005 per share, of Cleveland BioLabs, Inc.

### About this Prospectus

This prospectus is part of a registration statement that we filed with the U.S. Securities and Exchange Commission (the “SEC”) using a “shelf” registration process. Under this shelf process, we may sell shares of our common stock or warrants to purchase common stock, either separately or in units, in one or more offerings up to a total dollar amount of \$90,000,000, and the selling stockholders may from time to time sell up to 632,654 shares of common stock issuable upon exercise of outstanding warrants in one or more offerings. This prospectus provides you with a general description of the securities we or the selling stockholders may offer. Each time we sell shares of our common stock or warrants, we will provide a prospectus supplement that will contain specific information about the securities being offered and the terms of that offering. The prospectus supplement may also add to, update or change information contained in this prospectus. You should read both this prospectus and any prospectus supplement together with the additional information described under the heading “Where You Can Find More Information” carefully before making an investment decision.

### Our Company

We are a biotechnology, or biotech, company focused on developing biodefense, tissue protection and cancer treatment drugs based on the concept of modulation of cell death for therapeutic benefit. Our goal is to identify and develop new types of drugs for protection of normal tissues from exposure to radiation and other stresses, such as toxic chemicals and for cancer treatment. Our initial target, and most promising opportunity, is to develop a drug to protect humans from the effects of exposure to radiation, whether as a result of military or terrorist acts or as a result of a nuclear accident. Recent acts of terrorism and the proliferation of nuclear weapons programs in rogue states have created a more immediate demand for further research and development, or R&D, in this area. Other potential applications of our drug candidates include reducing the side effects of cancer treatment, destroying tumor cells and generating adult stem cells.

Our development efforts are based on discoveries made in connection with the investigation of the cell-level process known as apoptosis. Apoptosis is a highly specific and tightly regulated form of cell death that can occur in response to external events such as exposure to radiation or toxic chemicals or to internal stresses. Apoptosis is a major determinant of tissue damage caused by a variety of medical conditions including cerebral stroke, heart attack or acute renal failure. Conversely, however, apoptosis also is an important protective mechanism that allows the body to shed itself of defective cells, which otherwise can cause cancerous growth.

Research has demonstrated that apoptosis is sometimes suppressed naturally. For example, most cancer cells develop resistance to apoptotic death caused by drugs or natural defenses of the human body. Our research is geared towards identifying the means by which apoptosis can be affected and manipulated depending on the need.

If the need is to protect healthy tissues against an external event such as exposure to nuclear radiation, we attempt to suppress apoptosis in those healthy tissues, thereby imitating the apoptotic-resistant tendencies displayed by cancer cells. A drug with this effect would also be useful in ameliorating the often severe side effects of anticancer drugs and radiation that cause collateral damage to healthy tissues during cancer treatment. Because the severe side effects of

anticancer drugs and radiation often limit their dosage in cancer patients, an apoptosis suppressant drug may enable a more aggressive treatment regimen using anticancer drugs and radiation and thereby increase their effectiveness.

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On the other hand, if the need is to kill cancerous cells, we focus our research efforts on restoring apoptotic mechanisms that are suppressed in tumors so that those cancerous cells will once again become vulnerable to apoptotic death. In this regard, we believe that our drug candidates could have significant potential for improving and becoming vital to the treatment of cancer patients.

### Our Products and Technology

Through our R&D, and our strategic partnerships, we have established a technological foundation for the development of new pharmaceuticals and their rapid preclinical evaluation. We have acquired rights to develop and commercialize the following prospective drugs:

- Protectans are modified proteins of microbes and tumors that protect cells from apoptosis, and which therefore have a broad spectrum of potential applications. These potential applications include both non-medical applications such as protection from exposure to radiation, whether as a result of military or terrorist action or as a result of a nuclear accident, as well as medical applications such as reducing cancer treatment toxicities.
- Curaxins are small molecules designed to kill tumor cells by simultaneously targeting two regulators of apoptosis. Initial test results indicate that curaxins can be effective against a number of malignancies, including hormone-refractory prostate cancer, renal cell carcinoma, or RCC (a highly fatal form of kidney cancer), and soft-tissue sarcoma.

In the area of radiation protection, we have achieved high levels of protection in animal models. With respect to cancer treatment, the biology of cancer is such that there is no single drug that can be successfully used to treat 100% or even 50% of all cancer patients. This means that there likely will be a need for additional anticancer drugs for each type of cancer.

These drug candidates demonstrate the value of our scientific foundation. Based on the expedited approval process currently available for non-medical applications such as protection from exposure to radiation, our most advanced drug candidate, Protectan CBLB502, may be approved for such applications within 18-24 months. Another drug candidate, Curaxin CBLC102, demonstrated activity and safety in a Phase IIa clinical trial concluded in late 2008.

### RISK FACTORS

An investment in our securities is highly speculative, involves a high degree of risk, and should be made only by investors who can afford a complete loss. You should carefully consider and evaluate all of the information included and incorporated by reference in this prospectus and any applicable prospectus supplement, including the risk factors incorporated by reference from our most recent Annual Report on Form 10-K for the fiscal year ended December 31, 2009, filed with the SEC on March 22, 2010, as updated by our Quarterly Reports on Form 10-Q and our other filings with the SEC pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), filed after such Annual Report. Any of the risks we have described could materially adversely affect our business, financial condition or operating results and could result in a partial or complete loss of your investment. Further, the risks and uncertainties we have described are not the only ones we face. Additional risks and uncertainties not currently known to us, or that we currently believe are not material, could also materially adversely affect our business, financial condition or operating results.

## SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus and the documents incorporated by reference in this prospectus contain forward-looking statements. These forward-looking statements include information about possible or assumed future results of our business, financial condition, liquidity, results of operations, plans and objectives. The words “may,” “should,” “expect,” “anticipate,” “intend,” “plan,” “continue,” “believe,” “seek,” “project,” “estimate” and similar expressions used in this prospectus incorporated in this prospectus by reference that do not relate to historical facts are intended to identify forward-looking statements. These statements are only predictions. You should not place undue reliance on these forward-looking statements. By way of example, statements regarding the following subjects are forward-looking by their nature:

- statements as to the anticipated timing of clinical tests and other business developments;
- statements as to the development of new products and the commercialization of products;
- expectations as to the adequacy of our cash balances to support our operations for specified periods of time and as to the nature and level of cash expenditures; and
- expectations as to the market opportunities for our drug candidates as well as our ability to take advantage of those opportunities.

The forward-looking statements are based on management’s beliefs, plans, expectations and assumptions and on information available to us as of the time such statements were made. These beliefs, plans, expectations and assumptions can change as a result of many possible events or factors, not all of which are known to us. Neither we nor any other person assumes responsibility for the accuracy or completeness of these statements. If a change occurs, our business, financial condition, liquidity and results of operations may vary materially from those expressed in our forward-looking statements.

The forward-looking statements in this prospectus or incorporated in this prospectus by reference are not representations or guarantees of future performance and involve certain risks, uncertainties and assumptions. Such risks, uncertainties and assumptions include, but are not limited to, any risk factors set forth in our other filings with the SEC pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act or in any supplement to this prospectus. Many of such factors are beyond our control and are difficult to predict. As a result, our future actions, financial position and results of operations could differ materially from those expressed in any forward-looking statements made by us. Readers are therefore cautioned not to place undue reliance on forward-looking statements. We also do not intend to publicly update any forward-looking statements that may be made from time to time by us or on our behalf, whether as a result of new information, future events or otherwise.

## USE OF PROCEEDS

We currently intend to use the net proceeds from the sale of the shares of our common stock and warrants and the exercise of our warrants for working capital and general corporate purposes. We will not receive any of the proceeds from the sale of our common stock by the selling stockholders. We will, however, receive the exercise price of the Series C Warrants and the \$8.70 Warrants upon the exercise in cash of the Series C Warrants and the \$8.70 Warrants by the selling stockholders. Any proceeds received by us from the exercise of the Series C Warrants or \$8.70 Warrants will be used for working capital and general corporate purposes.

## SELLING STOCKHOLDERS

The shares of common stock being offered by the selling stockholders are issuable upon exercise of the Series C Warrants and the \$8.70 Warrants. We are registering the shares of common stock to satisfy registration rights that we have granted to the selling stockholders, and in order to permit the selling stockholders to offer the shares for resale from time to time.

The Series C Warrants were issued on March 16, 2007 to Sunrise Securities Corp. (“SSC”) and its designees as partial compensation for SSC’s services as lead placement agent in connection with our private placement of Series B Convertible Preferred Stock and Series B Warrants for an aggregate purchase price of approximately \$30,000,000. The Series C Warrants, which had an initial exercise price of \$11.00 per share and were originally exercisable for 267,074 shares of common stock, now have a current exercise price of \$6.35 per share and are exercisable for 462,654 shares of common stock as a result of adjustments required by the antidilution provisions of the Series C Warrants. The Series C Warrants were issued pursuant to the exemption from the registration requirements of the Securities Act of 1933, as amended (the “Securities Act”), available pursuant to Rule 506 under the Securities Act.

The \$8.70 Warrants were issued on July 26, 2006 upon the consummation of our initial public offering for an aggregate purchase price of \$100 to designees of SSC and Roth Capital Partners, the underwriters in our initial public offering. The number of shares underlying the \$8.70 Warrants was calculated to equal an aggregate of 10% of the number of shares sold in our initial public offering, excluding the over-allotment option. The \$8.70 Warrants do not have antidilution provisions. The \$8.70 Warrants were issued pursuant to the Section 4(2) exemption from the registration requirements of the Securities Act.

The table below lists the selling stockholders and other information regarding the beneficial ownership of the shares of common stock by each of the selling stockholders. The column titled “Shares of Common Stock Owned Before the Offering” lists the number of shares of common stock owned by each selling stockholder as of June 14, 2010, assuming conversion of all preferred stock and exercise of all warrants and options, including exercise of all Series C Warrants and \$8.70 Warrants held by the selling stockholders on that date, without regard to any limitations on conversions or exercise. The column titled “Shares of Common Stock Being Offered” lists the shares of common stock being offered pursuant to this prospectus by the selling stockholders (i.e., the shares of common stock underlying their Series C Warrants and \$8.70 Warrants). The column titled “Shares of Common Stock Owned Upon Completion of the Offering” lists the shares of common stock owned by each selling stockholder, assuming the shares of common stock underlying the Series C Warrants and the \$8.70 Warrants have been sold, and the column titled “Percentage of Common Stock Outstanding Upon Completion of the Offering” provides the percentage owned by each selling stockholder of all shares of common stock outstanding, assuming the same.

This prospectus covers the resale of 462,654 shares of common stock issuable upon exercise of Series C Warrants (at the current exercise price of \$6.35 per share) and 170,000 shares of common stock issuable upon exercise of \$8.70 Warrants. Because the number of shares underlying the Series C Warrants is subject to adjustment for dilutive issuances, and because the number of shares underlying the Series C Warrants and \$8.70 Warrants is subject to adjustment for stock splits, stock dividends, reclassifications or similar events, the number of shares of common stock that will actually be issued upon exercise of the Series C Warrants and \$8.70 Warrants may be more or less than the number of shares being offered by this prospectus.

Under the terms of the Series C Warrants and the \$8.70 Warrants, a selling stockholder may not exercise the Series C Warrants or the \$8.70 Warrants to the extent such exercise would cause such selling stockholder, together with its affiliates, to beneficially own a number of shares of common stock that exceeds 9.99% of our then outstanding shares of common stock following such exercise. The entries in the table below do not reflect this limitation. The selling stockholders may sell all, some or none of their shares in this offering. See “Plan of Distribution.”

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Name and Address of Selling Stockholder	Shares of Common Stock Owned Before the Offering	Shares of Common Stock Being Offered	Shares of Common Stock Owned Upon Completion of the Offering (1)	Percentage of Common Stock Outstanding Upon Completion of the Offering (2)
Sunrise Securities Corp. (3) 641 Lexington Avenue, 25th Floor New York, New York 10022	647,134	83,150	563,984	2.06%
Amnon Mandelbaum (4) c/o Sunrise Securities Corp. 641 Lexington Avenue, 25th Floor New York, New York 10022	378,624	130,675	247,949	*
David Goodfriend (5) c/o Sunrise Securities Corp. 641 Lexington Avenue, 25th Floor New York, New York 10022	21,513	14,520	6,993	*
Eric Abitbol (6) 201 E. 69 St. #6-O New York, New York 10021	3,773	671	3,102	*
Jeffrey Meyerson (7) c/o Sunrise Securities Corp. 641 Lexington Avenue, 25th Floor New York, New York 10022	43,282	6,248	37,034	*
Lucy DaRita (8) c/o Sunrise Securities Corp. 641 Lexington Avenue, 25th Floor New York, New York 10022	1,733	1,733	0	-
Marcia Kucher (9) c/o Sunrise Securities Corp. 641 Lexington Avenue, 25th Floor New York, New York 10022	5,450	3,950	1,500	*
Nathan Low (10) c/o Sunrise Securities Corp. 641 Lexington Avenue, 25th Floor New York, New York 10022	352,839	251,762	101,077	*
Paul Scharfer (11) 1364 Biscaya Drive Surfside, FL 33154	35,307	23,402	11,905	*



Peter Weprin (12) 225 5th Ave. Apt. 11K New York, New York 10010	420	278	142	*
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Robert Fuchs (13) c/o Sunrise Securities Corp. 641 Lexington Avenue, 25th Floor New York, New York 10022	335	222	113	*
Sam Berger (14) c/o Sunrise Securities Corp. 641 Lexington Avenue, 25th Floor New York, New York 10022	38,021	25,218	12,803	*
Roth Capital Partners, LLC (15) 24 Corporate Plaza Newport Beach, California 92660	82,250	82,250	0	-
Richard B. Stone (16) 44 W. 77th Street New York, NY 10024	1,794	1,794	0	-
Serge Moyal (17) 532 Spring Gate Blvd. Thornhill, Ontario L4J5B7 Canada	3,876	1,281	2,595	*
David Filer (18) 165 East 32nd St., #2F New York, New York 10016	4,400			