

BioCardia, Inc.
Form SC 13D/A
January 11, 2019
UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 13D

(Rule 13d-101)

**INFORMATION TO BE INCLUDED IN STATEMENTS FILED PURSUANT TO
§ 240.13d-1(a) AND AMENDMENTS THERETO FILED PURSUANT TO
§240.13d-2(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934**

(Amendment No. 6)*

BioCardia, Inc.

(Name of Issuer)

Common Stock, \$0.001 par value

(Title of Class of Securities)

09060U408

(CUSIP Number)

Peter Altman

President and Chief Executive Officer

BioCardia, Inc.

125 Shoreway Road, Suite B

San Carlos, CA 94070

(650) 226-0120

(Name, Address and Telephone Number of Person Authorized to Receive Notices and Communications)

December 24, 2018

(Date of Event which Requires Filing of This Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of §§240.13d-1(e), 240.13d-1(f) or 240.13d-1(g), check the following box .

Note. Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. *See* §240.13d-7 for other parties to whom copies are to be sent.

*The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

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NAMES OF
REPORTING

1. PERSONS

Phillip Frost, M.D.

CHECK

THE

APPROPRIATE

BOX IF

A (a)

2. MEMBER

OF A (b)

GROUP

(see
instructions)

SEC USE ONLY

3.

SOURCE OF
FUNDS (see
instructions)

4.

WC

5. CHECK

IF

DISCLOSURE

OF

LEGAL

PROCEEDINGS

IS

REQUIRED

PURSUANT

TO

ITEMS

2(d) OR
 2(e)
 CITIZENSHIP OR
 PLACE OF
 ORGANIZATION
 6.

United States

| | | |
|--|---------------------------------|-------------------------------------|
| NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH | 7. SOLE VOTING POWER | 0 shares |
| | 8. SHARED VOTING POWER | 13,875,318 ⁽¹⁾⁽²⁾ shares |
| | 9. SOLE DISPOSITIVE POWER | 0 shares |
| | 10. SHARED DISPOSITIVE POWER | 13,875,318 ⁽¹⁾⁽²⁾ shares |

11. AGGREGATE
 AMOUNT
 BENEFICIALLY
 OWNED BY
 EACH
 REPORTING
 PERSON

13,875,318⁽¹⁾⁽²⁾
 shares

CHECK
 IF THE
 AGGREGATE
 AMOUNT
 IN ROW
 (11)

12. EXCLUDES
 CERTAIN
 SHARES

(see
 instructions)
 PERCENT OF
 CLASS
 REPRESENTED
 13. BY AMOUNT IN
 ROW (11)

31.1%

14.

TYPE OF
REPORTING
PERSON (see
instructions)

IN

⁽¹⁾ Consists of 12,875,318 shares of Common Stock and a warrant exercisable for 1,000,000 shares of Common Stock held by Frost Gamma Investments Trust. Dr. Phillip Frost is the trustee and Frost Gamma Limited Partnership is the sole and exclusive beneficiary of Frost Gamma Investments Trust. Dr. Frost is one of two limited partners of Frost Gamma Limited Partnership. The general partner of Frost Gamma Limited Partnership is Frost Gamma, Inc. and the sole shareholder of Frost Gamma, Inc. is Frost-Nevada Corporation. Dr. Frost is also the sole shareholder of Frost-Nevada Corporation.

⁽²⁾ On November 2, 2017, the Issuer effected a 1-12 reverse stock split of its common stock (the "Reverse Stock Split"). The amount of securities reported on this Schedule 13D/A has been adjusted to reflect the Reverse Stock Split.

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NAMES OF
REPORTING
PERSONS

1. Frost Gamma
Investments
Trust 46-0464745

CHECK
THE
APPROPRIATE
BOX IF A
MEMBER^(a)

2. OF A
GROUP ^(b)

(see
instructions)
SEC USE ONLY

- 3.

SOURCE OF
FUNDS (see
instructions)

- 4.

- WC
5. CHECK
IF
DISCLOSURE
OF
LEGAL
PROCEEDINGS
IS
REQUIRED
PURSUANT
TO

ITEMS
 2(d) OR
 2(e)
 CITIZENSHIP OR
 PLACE OF
 ORGANIZATION

6.

Florida

| | | |
|--|---------------------------------|-------------------------------------|
| NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH | 7. SOLE VOTING POWER | 0 shares |
| | 8. SHARED VOTING POWER | 13,875,318 ⁽¹⁾⁽²⁾ shares |
| | 9. SOLE DISPOSITIVE POWER | 0 shares |
| | 10. SHARED DISPOSITIVE POWER | 13,875,318 ⁽¹⁾⁽²⁾ shares |

11. AGGREGATE
 AMOUNT
 BENEFICIALLY
 OWNED BY
 EACH
 REPORTING
 PERSON

13,875,318 ⁽¹⁾⁽²⁾
 shares

CHECK
 IF THE
 AGGREGATE
 AMOUNT
 IN ROW
 (11)

12. EXCLUDES
 CERTAIN
 SHARES

(see
 instructions)
 PERCENT OF
 CLASS
 REPRESENTED
 13. BY AMOUNT IN
 ROW (11)

31.1%

14. TYPE OF
REPORTING
PERSON (see
instructions)

OO

⁽¹⁾ Frost Gamma Investments Trust holds 12,875,318 shares of Common Stock and a warrant exercisable for 1,000,000 shares of Common Stock. Dr. Phillip Frost is the trustee and Frost Gamma Limited Partnership is the sole and exclusive beneficiary of Frost Gamma Investments Trust. Dr. Frost is one of two limited partners of Frost Gamma Limited Partnership. The general partner of Frost Gamma Limited Partnership is Frost Gamma, Inc. and the sole shareholder of Frost Gamma, Inc. is Frost-Nevada Corporation. Dr. Frost is also the sole shareholder of Frost-Nevada Corporation.

⁽²⁾ On November 2, 2017, the Issuer effected a 1-12 reverse stock split of its common stock (the "Reverse Stock Split"). The amount of securities reported on this Schedule 13D/A has been adjusted to reflect the Reverse Stock Split.

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AMENDMENT NO. 6 TO SCHEDULE 13D

This Amendment No. 6, dated January 10, 2019, (the “Amendment”) amends and supplements the statement on Schedule 13D filed on March 18, 2008, as amended by Amendment No. 1 to the Schedule 13D filed on September 9, 2008, as amended by Amendment No. 2 to the Schedule 13D filed on December 9, 2009, as amended by Amendment No. 3 to the Schedule 13D filed on May 17, 2016, as amended by Amendment No. 4 to the Schedule 13D filed on November 10, 2016, as amended by Amendment No. 5 to the Schedule 13D filed on December 29, 2016 (together the “Original Schedule 13D”), by Phillip Frost, M.D. and Frost Gamma Investments Trust (“Gamma Trust”) (collectively, the “Reporting Persons”). This Amendment relates to the common stock, par value \$0.001 per share, of BioCardia, Inc. (formerly known as Tiger X Medical, Inc., Cardo Medical, Inc. and clickNsettle.com, Inc.), a Delaware corporation (the “Issuer”), and amends the Original Schedule 13D as set forth below. Capitalized terms not defined in this Amendment will have the meanings from the Original Schedule 13D. This Amendment is filed by the Reporting Persons pursuant to the Joint Filing Agreement, dated December 29, 2016 as executed by the reporting persons listed on the cover pages to this Amendment (Exhibit 99.1 to this Amendment).

Item 2. Identity and Background.

Item 2 of the Original Schedule 13D is hereby amended and supplemented to delete Item 2(e) its entirety and replace Item 2(e) with the following text:

On December 27, 2018, Dr. Frost and Gamma Trust entered into a settlement agreement with the Commission, subject to court approval, to resolve an action brought by the Commission against Dr. Frost, Gamma Trust, and others, in *SEC v. Honig et al.*, 18 Civ. 08175 (S.D.N.Y.). Without admitting or denying the Commission’s allegations, Dr. Frost agreed to injunctions from violations of the Sections 5(a), 5(c), and 17(a)(2) of the Securities Act of 1933 and Section 13(d) of the Securities Exchange Act of 1934 and Rule 13d-1(a) thereunder; approximately \$5.5 million in penalty, disgorgement, and prejudgment interest; and a prohibition, with certain exceptions, from trading in penny stocks. Without admitting or denying the Commission’s allegations, Gamma Trust agreed to injunctions from violations of Section 17(a)(2) of the Securities Act of 1933; and a prohibition, with certain exceptions, from trading in penny stocks.

Item 3. Source and Amount of Funds or Other Consideration.

Item 3 of the Original Schedule 13D is hereby amended and supplemented by adding the following at the end thereof:

Pursuant to a Securities Purchase Agreement dated December 24, 2018 (the "Purchase Agreement"), Frost Gamma Investments Trust purchased 2,000,000 shares of the Issuer's common stock (the "Shares") in a private placement at a purchase price \$0.75 per share. The shares were issued with a warrant (the "Warrant") to purchase 1,000,000 shares of the Issuer's common stock at an exercise price of \$0.75 per share. A total of \$1,500,000 was paid to acquire the Shares and the Warrant. The source of the funds for acquisition by Frost Gamma Investments Trust was working capital. No part of the purchase price was borrowed by Frost Gamma Investments Trust.

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Item 4. Purpose of Transaction.

Item 4 of the Original Schedule 13D is hereby amended and supplemented by incorporating the response to Item 3 above at the end of this Item 4.

The descriptions and summaries of the Purchase Agreement and the Warrant set forth in Item 3 above and incorporated by reference herein are not complete and are qualified in their entirety by reference to the full text of the Purchase Agreement and the Form of Warrant which are included as Exhibits 99.2 and 99.3, respectively, and are incorporated herein by reference.

Item 5. Interest in Securities of the Issuer.

Item 5 is deleted in its entirety and replaced with the following text:

(a)

| Name and Title of Beneficial Owner | Number of Outstanding Shares Beneficially Owned | Percentage of Outstanding Shares of Common Stock ⁽¹⁾ |
|---|--|--|
| Phillip Frost, M.D. | 13,875,318 ⁽²⁾⁽³⁾ | 31.1% |
| Frost Gamma Investments Trust | 13,875,318 ⁽²⁾⁽³⁾ | 31.1% |

⁽¹⁾ The percentage of beneficial ownership is based upon 38,277,908 shares of the Issuer's common stock outstanding as of November 2, 2018, as reported in the Issuer's Form 10-Q filed November 8, 2018 plus the number of shares sold pursuant to the Purchase Agreement, which number of shares is taken from disclosures made by BioCardia, Inc. in its Form 8-K, as filed December 27, 2018.

⁽²⁾

Frost Gamma Investments Trust holds 12,875,318 shares of the Issuer's common stock and a warrant exercisable for 1,000,000 shares of Common Stock. Dr. Phillip Frost is the trustee and Frost Gamma Limited Partnership is the sole and exclusive beneficiary of Frost Gamma Investments Trust. Dr. Frost is one of two limited partners of Frost Gamma Limited Partnership. The general partner of Frost Gamma Limited Partnership is Frost Gamma, Inc. and the sole shareholder of Frost Gamma, Inc. is Frost-Nevada Corporation. Dr. Frost is also the sole shareholder of Frost-Nevada Corporation.

(3) On November 2, 2017, the Issuer effected a 1-12 reverse stock split of its common stock (the "Reverse Stock Split"). The amount of securities reported on this Amendment has been adjusted to reflect the Reverse Stock Split.

(b) The Reporting Persons' responses to cover page Items 7 through 10 of this Amendment to Original Schedule 13D, including the footnotes thereto, if any, are hereby incorporated by reference in this Item 5.

(c) Transactions in the Issuer's securities effected by the Reporting Persons:

The information set forth above in Item 4 is incorporated herein by reference. There were no additional transactions effected since the filing by the Reporting Persons of Amendment No. 5 to the Schedule 13D filed on December 29, 2016.

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(d) – (e) Not applicable.

Item 7. Material to be Filed as Exhibits.

| Exhibit Number | Description |
|-----------------------|--|
| 99.1 | Joint Filing Agreement, dated as of January 10, 2019, by and between the Reporting Persons. |
| 99.2 | Securities Purchase Agreement, dated December 24, 2018 (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K filed by the Issuer on December 27, 2018). |
| 99.3 | Form of Warrant (incorporated by reference to Exhibit 4.1 to the Current Report on Form 8-K filed by the Issuer on December 27, 2018). |

Signatures

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Dated: January 10, 2019 /s/ Phillip Frost, M.D.
Phillip Frost, M.D., Individually

**FROST GAMMA
INVESTMENTS TRUST**

Dated: January 10, 2019
By: /s/ Phillip Frost, M.D.
Phillip Frost, M.D., Trustee