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# FORM 8-K

## SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

### CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): **January 22, 2004**

### **AVI BioPharma, Inc.**

(Exact name of registrant as specified in its charter)

**Oregon**  
(State or other jurisdiction of  
incorporation or organization)

**0-22613**  
(Commission  
File Number)

**93-0797222**  
(IRS Employer  
Identification Number)

**One S.W. Columbia, Suite 1105**  
**Portland, OR 97258**  
(Address of principal executive offices)

**(503) 227-0554**  
Registrant's telephone number, including area code

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#### Item 5. Other Events.

##### Exercise of Warrants; Private Placement of Securities

AVI BioPharma, Inc. (Nasdaq: AVII), on January 27, 2004 announced that the Additional Investment Rights Warrants issued in a December 8, 2004 financing pursuant to the company's effective shelf registration covering 1,623,377 shares of common stock at an exercise price of \$4.62 per were exercised generating gross proceeds to the Company of approximately \$7.5 million.

AVI will issue to those institutional investors new five-year warrants to purchase 389,611 shares of AVI common stock at an exercise price of \$5.50 per share ("2004 Purchase Warrants"). The 2004 Purchase Warrants will not be exercisable prior to July 24, 2004. The additional securities will be issued pursuant to the company's effective shelf registration statement.

A copy of the press release dated January 27, 2004, issued by the Company regarding these financings is attached hereto as Exhibit No. 99.1.

##### Item 7. Financial Statements, Pro Forma Financial Information and Exhibits.

###### Exhibits

1. Press release dated January 27, 2004 issued by the Company.
2. Form of 2004 Purchase Warrant to be issued by the Company to certain purchasers.

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#### SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Portland, State of Oregon, on January 29, 2004

AVI BioPharma, Inc.

By: /s/ ALAN P. TIMMINS  
Alan P. Timmins  
*President and Chief Operating Officer*  
*(Principal Operating Officer)*

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## EXHIBIT INDEX

<b>Exhibit No.</b>	<b>Document Description</b>
10.51	Form of 2004 Purchase Warrant issued by the Company
99.1	Press release dated January 27, 2004 issued by AVI BioPharma, Inc.

## Form of 2004 Purchase Warrant

## AVI BIOPHARMA, INC.

WARRANT

Warrant No. 2004-1 PW

Date of Original Issuance: January , 2004

AVI BioPharma, Inc., an Oregon corporation (the “**Company**”), hereby certifies that, for value received, or its registered assigns (the “**Holder**”), is entitled to purchase from the Company up to a total of shares of common stock, \$.0001 par value per share (the “**Common Stock**”), of the Company (as adjusted from time to time as provided in Section 9, each such share, a “**Warrant Share**” and all such shares, the “**Warrant Shares**”) at an exercise price (as adjusted from time to time as provided in Section 9, the “**Exercise Price**”) per Warrant Share equal to \$5.50 at any time after July 23, 2004 and from time to time thereafter through and including December 8, 2008 (the “**Expiration Date**”), and subject to the following terms and conditions:

1. Definitions. In addition to the terms defined elsewhere in this Warrant, the following terms shall have the meanings shown in this Section 1:

1.1 “**Business Day**” means a day in which both the New York Stock Exchange and major banks in New York, New York are open.

1.2 “**Person**” means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

1.3 “**Principal Market**” means the Nasdaq National Market or, if the Common Stock is traded or quoted on a different market in the future, such other market.

1.4 “**Registration Statement**” means the Form S-3 Registration Statement filed with the SEC as Registration No. 333-109105.

1.5 “**Subsidiary**” means a subsidiary of the Company.

1.6 “**Trading day(s)**” means a day in which trading or quotations occur on the Principal Market.

1.7 “**Transfer Agent**” means the Company’s transfer agent, currently Mellon Investor Services, LLC

2. Registration of Warrant. The Company shall register this Warrant, upon records to be maintained by the Company for that purpose (the “**Warrant Register**”), in the name of the record Holder hereof from time to time. The Company may deem and treat the registered Holder of this Warrant as the absolute owner hereof for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary.

3. Registration of Transfers. The Company shall register the transfer of any portion of this Warrant in the Warrant Register, upon surrender of this Warrant, with the Form of Assignment attached hereto duly completed and signed, to the **Transfer Agent** or to the Company at its address specified herein. Upon any such registration or transfer, a new warrant to purchase Common Stock, in substantially the form of this Warrant (any such new warrant, a “**New Warrant**”), evidencing the portion of this Warrant so transferred shall be issued to the transferee and a New Warrant evidencing the remaining portion of this Warrant not so transferred, if any, shall be issued to the transferring Holder. The acceptance of the New Warrant by the transferee thereof shall be deemed the acceptance by such transferee of all of the rights and obligations of a holder of a Warrant.

4. Exercise and Duration. This Warrant shall be exercisable by the registered Holder at any time and from time to time on or after the date hereof to and including the Expiration Date. At 6:30 p.m., New York City time, on the Expiration Date, the portion of this Warrant available for exercise and not exercised prior thereto shall be and become void and of no value.

5. Delivery of Warrant Shares.

(a) Upon delivery of the Form of Election to Purchase (in the form of Exhibit A) (the “**Exercise Notice**”) to the Company (with the Warrant Shares Exercise Log in the form of Exhibit B hereto) at its address for notice set forth in Section 13 and (i) upon payment of the Exercise Price multiplied by the number of Warrant Shares that the Holder intends to purchase hereunder or (ii) upon notifying the Company that this Warrant is being exercised pursuant to a Cashless Exercise (as defined in Section 5(e)), the Company shall promptly (but in no event later than three (3) **trading days** after the Date of Exercise (as defined herein)) issue and deliver to the Holder electronically through the Depository Trust Corporation, or if unable to do, deliver certificates for, the Warrant Shares issuable upon such exercise, which Warrant Shares shall be issued under the **Registration Statement** and shall be freely tradable on the **Principal Market**.

A “**Date of Exercise**” means the date on which the Holder shall have delivered to the Company (i) the Form of Election to Purchase (with the Warrant Exercise Log attached to it), appropriately completed and duly signed and (ii) (A) payment of the Exercise Price for the number of Warrant Shares so indicated by the Holder to be purchased or (B) notification to the Company that this Warrant is being exercised pursuant to a Cashless Exercise.

(b) If by the fifth **Trading day** after a Date of Exercise the Company fails to deliver the required number of Warrant Shares in the manner required pursuant to Section 5(a), then the Holder will have the right to rescind such exercise.

(c) If by the third **Trading day** after a Date of Exercise the Company fails to deliver the required number of Warrant Shares in the manner required pursuant to Section 5(a), and if after such fifth **Trading day** the Holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of the Warrant Shares which the Holder anticipated receiving upon such exercise (a “**Buy-In**”), then the Company shall (1) pay in cash to the Holder the amount by which (x) the Holder’s total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased

exceeds (y) the amount obtained by multiplying (A) the number of Warrant Shares that the Company was required to deliver to the Holder in connection with the exercise at issue by (B) the closing price of the Common Stock at the time of the obligation giving rise to such purchase obligation and (2) at the option of the Holder, either reinstate the portion of the Warrant and equivalent number of Warrant Shares for which such exercise was not honored or deliver to the Holder the number of shares of Common Stock that would have been issued had the Company timely complied with its exercise and delivery obligations hereunder. For example, if the Holder purchases Common Stock having a total purchase price of \$11,000 to cover a Buy-In with respect to an attempted exercise of shares of Common Stock with a market price on the date of exercise totaled \$10,000, under clause (1) of the immediately preceding sentence the Company shall be required to pay the Holder \$1,000. The Holder shall provide the Company written notice, which notice shall include such supporting documentation as reasonably necessary to substantiate the amounts payable, indicating the amounts payable to the Holder in respect of the Buy-In.

(d) The Company’s obligations to issue and deliver Warrant Shares in accordance with the terms hereof are absolute and unconditional, irrespective of any action or inaction by the Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any **Person** or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by the Holder or any other **Person** of any obligation to the Company or any violation or alleged violation of law by the Holder or any other **Person**, and irrespective of any other circumstance which might otherwise limit such obligation of the Company to the Holder in connection with the issuance of Warrant Shares. Nothing herein shall limit a Holder’s right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company’s failure to timely deliver certificates representing shares of Common Stock upon exercise of the Warrant as required pursuant to the terms hereof.

(e) If the Warrant Shares to be issued are not registered and available for issuance pursuant to an effective **registration statement**, then, notwithstanding anything contained herein to the contrary, the Holder of this Warrant may, at its election exercised in its sole discretion, exercise this Warrant in whole or in part and, in lieu of paying the Exercise Price in cash, elect instead to receive upon such exercise the “**Net Number**” of shares of Common Stock determined according to the following formula (a “**Cashless Exercise**”):

$$\text{Net Number} = \frac{(A \times B) - (A \times C)}{B}$$

For purposes of the foregoing formula:

A= the total number of shares with respect to which this Warrant is then being exercised;

B= the greater of the (i) closing price per share of the Common Stock (as reported by Bloomberg) on the **Trading day** immediately preceding the date of the Exercise Notice or (ii) the

average of the closing prices per share of Common Stock (as reported by Bloomberg) for the ten (10) **Trading days** immediately preceding the date of the Exercise Notice ; and

C= the Exercise Price then in effect for the applicable Warrant Shares at the time of such exercise.

6. **Charges, Taxes and Expenses.** Issuance and delivery of the shares of Common Stock upon exercise of this Warrant shall be made without charge to the Holder for any issue or transfer tax, withholding tax, transfer agent fee or other incidental tax or expense in respect of the issuance of such shares, all of which taxes and expenses shall be paid by the Company; provided, however, that the Company shall not be required to pay any tax which may be payable in respect of any transfer involved in the registration of any Warrant Shares or Warrants in a name other than that of the Holder. The Holder shall be responsible for all other tax liability that may arise as a result of holding or transferring this Warrant or receiving Warrant Shares upon exercise hereof.

7. **Replacement of Warrant.** If this Warrant is mutilated, lost, stolen or destroyed, the Company shall issue or cause to be issued in exchange and substitution for and upon cancellation hereof, or in lieu of and substitution for this Warrant, a New Warrant, but only upon receipt of evidence reasonably satisfactory to the Company of such loss, theft or destruction and customary and reasonable indemnity, if requested. Applicants for a New Warrant under such circumstances shall also comply with such other reasonable regulations and procedures and pay such other reasonable third-party costs as the Company may prescribe.

8. **Reservation of Warrant Shares.** The Company covenants that it will at all times reserve and keep available out of the aggregate of its authorized but unissued and otherwise unreserved Common Stock, solely for the purpose of enabling it to issue Warrant Shares upon exercise of this Warrant as herein provided, the number of Warrant Shares which are then issuable and deliverable upon the exercise of this entire Warrant. The Company covenants that all Warrant Shares so issuable and deliverable shall, upon issuance and the payment of the applicable Exercise Price in accordance with the terms hereof, be duly and validly authorized, issued and fully paid and nonassessable.

9. **Certain Adjustments.** The Exercise Price and number of Warrant Shares issuable upon exercise of this Warrant are subject to adjustment from time to time as set forth in this Section 9.

(a) **Stock Dividends and Splits.** If the Company, at any time while this Warrant is outstanding, (i) pays a stock dividend on its Common Stock or otherwise makes a distribution on any class of capital stock that is payable in shares of Common Stock, (ii) subdivides outstanding shares of Common Stock into a larger number of shares, or (iii) combines outstanding shares of Common Stock into a smaller number of shares, then in each such case

the Exercise Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event.

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(b) Pro Rata Distributions. If the Company, at any time while this Warrant is outstanding, distributes to all holders of Common Stock (i) evidences of its indebtedness, (ii) any security (other than a distribution of Common Stock covered by the preceding paragraph), (iii) rights or warrants to subscribe for or purchase any security, or (iv) any other asset (in each case, “**Distributed Property**”), then, at the request of any Holder delivered before the 90th day after the record date fixed for determination of stockholders entitled to receive such distribution, the Company will deliver to such Holder, within five (5) **Trading days** after such request (or, if later, on the effective date of such distribution), the Distributed Property that such Holder would have been entitled to receive in respect of the Warrant Shares for which such Holder’s Warrant could have been exercised immediately prior to such record date. If such Distributed Property is not delivered to a Holder pursuant to the preceding sentence, then upon any exercise of the Warrant that occurs after such record date, such Holder shall be entitled to receive, in addition to the Warrant Shares otherwise issuable upon such conversion, the Distributed Property that such Holder would have been entitled to receive in respect of such number of Warrant Shares had the Holder been the record holder of such Warrant Shares immediately prior to such record date.

(c) Fundamental Transactions. If, at any time while this Warrant is outstanding: (i) the Company effects any merger or consolidation of the Company with or into another **Person**, (ii) the Company effects any sale of all or substantially all of its assets in one or a series of related transactions, (iii) any tender offer or exchange offer (whether by the Company or another **Person**) is completed pursuant to which holders of Common Stock are permitted to tender or exchange their shares for other securities, cash or property, or (iv) the Company effects any reclassification of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property (in any such case, a “**Fundamental Transaction**”), then the Holder shall have the right thereafter to receive, upon exercise of this Warrant, the same amount and kind of securities, cash or property as it would have been entitled to receive upon the occurrence of such Fundamental Transaction if it had been, immediately prior to such Fundamental Transaction, the holder of the number of Warrant Shares then issuable upon exercise in full of this Warrant (without taking into account any limitations on exercise) (the “**Alternate Consideration**”). For purposes of any such exercise, the determination of the Exercise Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one (1) share of Common Stock in such Fundamental Transaction, and the Company shall apportion the Exercise Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any exercise of this Warrant following such Fundamental Transaction. At the Holder’s option and request, any successor to the Company or surviving entity in such Fundamental Transaction shall issue to the Holder a new warrant substantially in the form of this Warrant and consistent with the foregoing provisions and evidencing the Holder’s right to purchase the Alternate Consideration for the aggregate Exercise Price upon exercise thereof. The terms of any agreement pursuant to which a Fundamental Transaction is effected shall include terms requiring any such successor or surviving entity to comply with the provisions of this paragraph (c) and insuring that the Warrant (or any such replacement security) will be similarly adjusted upon any subsequent transaction analogous to a Fundamental Transaction.

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(d) Number of Warrant Shares. Simultaneously with any adjustment to the Exercise Price pursuant to paragraphs (a) or (b) of this Section, the number of Warrant Shares that may be purchased upon exercise of this Warrant shall be increased or decreased proportionately, so that after such adjustment the aggregate Exercise Price payable hereunder for the adjusted number of Warrant Shares shall be the same as the aggregate Exercise Price in effect immediately prior to such adjustment.

(e) Calculations. All calculations under this Section 9 shall be made to the nearest cent or the nearest 1/100th of a share, as applicable. The number of shares of Common Stock outstanding at any given time shall not include shares owned or held by or for the account of the Company, and the disposition of any such shares shall be considered an issue or sale of Common Stock.

(f) Notice of Adjustments. Upon the occurrence of each adjustment pursuant to this Section 9, the Company at its expense will promptly compute such adjustment in accordance with the terms of this Warrant and prepare a certificate setting forth such adjustment, including a statement of the adjusted Exercise Price and adjusted number or type of Warrant Shares or other securities issuable upon exercise of this Warrant (as applicable), describing the transactions giving rise to such adjustments and showing in detail the facts upon which such adjustment is based. Upon written request, the Company will promptly deliver a copy of each such certificate to the Holder and to the Company’s **Transfer Agent**.

(g) Notice of Corporate Events. If the Company (i) declares a dividend or any other distribution of cash, securities or other property in respect of its Common Stock, including without limitation any granting of rights or warrants to subscribe for or purchase any capital stock of the Company or any **Subsidiary**, (ii) authorizes or approves, enters into any agreement contemplating or solicits stockholder approval for any Fundamental Transaction or (iii) authorizes the voluntary dissolution, liquidation or winding up of the affairs of the Company, then the Company shall deliver to the Holder a notice describing the material terms and conditions of such transaction, at least twenty (20) calendar days prior to the applicable record or effective date on which a **Person** would need to hold Common Stock in order to participate in or vote with respect to such transaction, and the Company will take all steps reasonably necessary in order to insure that the Holder is given the practical opportunity to exercise this Warrant prior to such time so as to participate in or vote with respect to such transaction; provided, however, that the failure to deliver such notice or any defect therein shall not affect the validity of the corporate action required to be described in such notice and provided that such information shall be publicly disclosed pursuant to Regulation FD prior to or in conjunction with such notice being provided to the Holder.

10. Payment of Exercise Price. The Holder shall pay the Exercise Price in cash by delivering immediately available funds or, if permitted by Section 5(e), through a Cashless Exercise.

11. Limitation on Exercise. The Company shall not effect the exercise of this Warrant, and the Holder shall not have the right to exercise this Warrant, to the extent that after giving effect to such exercise, such **Person** (together with such **Person’s** affiliates) would beneficially own in excess of 4.99% of the shares of Common Stock outstanding immediately

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after giving effect to such exercise. For purposes of the foregoing sentence, the aggregate number of shares of Common Stock beneficially owned by such Person and its affiliates shall include the number of shares of Common Stock issuable upon exercise of this Warrant with respect to which the determination of such sentence is being made, but shall exclude shares of Common Stock which would be issuable upon (i) exercise of the remaining, unexercised portion of this Warrant beneficially owned by such Person and its affiliates and (ii) exercise or conversion of the unexercised or unconverted portion of any other securities of the Company or exercisable for securities of the Company beneficially owned by such Person and its affiliates (including, without limitation, any convertible notes or convertible preferred stock or warrants) subject to a limitation on conversion or exercise analogous to the limitation contained herein. Except as set forth in the preceding sentence, for purposes of this paragraph, beneficial ownership shall be calculated in accordance with Section 13(d) of the Securities Exchange Act of 1934, as amended. For purposes of this Warrant, in determining the number of outstanding shares of Common Stock, the Holder may rely on the number of outstanding shares of Common Stock as reflected in (1) the Company's most recent Form 10-K, Form 10-Q or other public filing with the Securities and Exchange Commission, as the case may be, (2) a more recent public announcement by the Company or (3) any other notice by the Company or the **Transfer Agent** of the Company setting forth the number of shares of Common Stock outstanding. For any reason at any time, upon the written or oral request of the Holder, the Company shall within one **Business Day** confirm orally and in writing to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including the Warrants, by the Holder and its affiliates since the date as of which such number of outstanding shares of Common Stock was reported.

12. No Fractional Shares. No fractional shares of Warrant Shares will be issued in connection with any exercise of this Warrant. In lieu of any fractional shares which would, otherwise be issuable, the Company shall pay cash equal to the product of such fraction multiplied by the closing price of one Warrant Share as reported on the **Principal Market** on the date of exercise.

13. Notices. Any and all notices or other communications or deliveries hereunder (including without limitation any Exercise Notice) shall be in writing and shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number specified in this Section prior to 6:30 p.m. (New York City time) on a **Trading day**, (ii) the next **Trading day** after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number specified in this Section on a day that is not a **Trading day** or later than 6:30 p.m. (New York City time) on any **Trading day**, (iii) the **Trading day** following the date of mailing, if sent by nationally recognized overnight courier service, or (iv) upon actual receipt by the party to whom such notice is required to be given. The addresses for such communications shall be: (i) if to the Company, to AVI BioPharma, Inc., One S.W. Columbia, Suite 1105, Portland, Oregon 97258, Attention: Alan P. Timmins (facsimile: 503-227-0751) with a copy to Hurley, Lynch & Re, P.C., 747 SW Mill View Way, Bend, OR 97702, Attention: Robert A. Stout, Esq. (facsimile: 541-317-5507) or (ii) if to the Holder, to the address or facsimile number appearing on the Warrant Register or such other address or facsimile number as the Holder may provide to the Company in

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accordance with this Section with a copy to Schulte Roth & Zabel LLP, 919 Third Avenue, New York, New York 10022, Attention: Eleazer Klein, Esq. (facsimile: 212-593-5955).

14. Warrant Agent. The Company shall serve as warrant agent under this Warrant. Upon thirty (30) days' notice to the Holder, the Company may appoint a new warrant agent. Any corporation into which the Company or any new warrant agent may be merged or any corporation resulting from any consolidation to which the Company or any new warrant agent shall be a party or any corporation to which the Company or any new warrant agent transfers substantially all of its corporate trust or shareholders services business shall be a successor warrant agent under this Warrant without any further act. Any such successor warrant agent shall promptly cause notice of its succession as warrant agent to be mailed (by first class mail, postage prepaid) to the Holder at the Holder's last address as shown on the Warrant Register.

15. Miscellaneous.

(a) This Warrant shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns. Subject to the preceding sentence, nothing in this Warrant shall be construed to give to any Person other than the Company and the Holder any legal or equitable right, remedy or cause of action under this Warrant. This Warrant may be amended only in writing signed by the Company and the Holder and their successors and assigns.

(b) All questions concerning the construction, validity, enforcement and interpretation of this Warrant shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof. Each party agrees that all legal proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Warrant (whether brought against a party hereto or its respective affiliates, directors, officers, shareholders, employees or agents) shall be commenced in the state and federal courts sitting in the City of New York, Borough of Manhattan. Each party hereto hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of this Warrant), and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is improper. Each party hereto hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Warrant and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Each party hereto (including its affiliates, agents, officers, directors and employees) hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Warrant or the transactions contemplated hereby. If either party shall commence an action or proceeding to enforce any provisions of this Warrant, then the prevailing party in such action or proceeding shall be reimbursed by the other party for its reasonable attorneys fees and other costs and

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expenses incurred with the investigation, preparation and prosecution of such action or proceeding.

(c) The headings herein are for convenience only, do not constitute a part of this Warrant and shall not be deemed to limit or affect any of the provisions hereof.

(d) In case any one or more of the provisions of this Warrant shall be invalid or unenforceable in any respect, the validity and enforceability of the remaining terms and provisions of this Warrant shall not in any way be affected or impaired thereby and the parties will attempt in good faith to agree upon a valid and enforceable provision which shall be a commercially reasonable substitute therefor, and upon so agreeing, shall incorporate such substitute provision in this Warrant.

IN WITNESS WHEREOF, the Company has caused this Warrant to be duly executed by its authorized officer as of the date first indicated above.

**AVI BIOPHARMA, INC.**

By: \_\_\_\_\_  
Name: Alan P. Timmins  
Title: President and Chief Operating Officer

**Exhibit A**

**FORM OF ELECTION TO PURCHASE**

To AVI BioPharma, Inc.:

In accordance with Warrant No. [ ] issued to the undersigned, the undersigned hereby elects to purchase \_\_\_\_\_ shares of common stock ("**Common Stock**"), \$0.0001 par value per share, of AVI BioPharma, Inc.

1. Form of Warrant Exercise Price. The Holder intends that payment of the Exercise Price shall be made as:

"Cash Exercise" with respect to \_\_\_\_\_ Warrant Shares; and/or

"Cashless Exercise" with respect to \_\_\_\_\_ Warrant Shares (to the extent permitted by the terms of the Warrant).

2. Payment of Exercise Price. In the event that the holder has elected a Cash Exercise with respect to some or all of the Warrant Shares to be issued pursuant hereto, the holder shall pay the sum of \$ \_\_\_\_\_ to the Company in accordance with the terms of the Warrant.

By its delivery of this Form of Election To Purchase, the Holder represents and warrants to the Company that in giving effect to the exercise evidenced hereby the Holder will not beneficially own in excess of the number of shares of Common Stock (determined in accordance with Section 13(d) of the Securities Exchange Act of 1934) permitted to be owned under Section 11 of this Warrant to which this notice relates.

The undersigned requests that the shares of Common Stock issuable upon this exercise be issued in the name of

PLEASE INSERT SOCIAL SECURITY  
OR TAX IDENTIFICATION NUMBER:

Facsimile Number:

Authorization:

Account Number:  
(if electronic book entry transfer)

Transaction Code Number: \_\_\_\_\_ (if electronic book entry transfer)

Please print name and address

**Exhibit B**

**Warrant Shares Exercise Log**

<b>Date</b>	<b>Number of Warrant Shares Available to be Exercised</b>	<b>Number of Warrant Shares Exercised</b>	<b>Number of Warrant Shares Remaining to be Exercised</b>

**Exhibit C**

**FORM OF ASSIGNMENT**

[To be completed and signed only upon transfer of Warrant]

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ the right represented by the within Warrant to purchase \_\_\_\_\_ shares of Common Stock of AVI BioPharma, Inc. to which the within Warrant relates and appoints attorney to transfer said right on the books of AVI BioPharma, Inc. with full power of substitution in the premises.

Dated: \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
(Signature must conform in all respects to name of holder as specified on the face of the Warrant)

\_\_\_\_\_  
Address of Transferee

In the presence of:

\_\_\_\_\_

\_\_\_\_\_



AVI Contact:

AVI BioPharma, Inc.  
 Michael Hubbard (hubbard@avibio.com)  
 (503) 227-0554

Investor Contacts:

Lippert/Heilshorn & Associates Inc.  
 Bruce Voss (bvoss@lhai.com)  
 Jody Cain (jcain@lhai.com)  
 (310) 691-7100

Press Contact:

Waggener Edstrom Bioscience  
**Wendy Carhart (wendyc@wagged.com)**  
 (503) 443-7000

For Release 3:45 a.m. PST  
**Jan. 27, 2004**

### AVI BioPharma Announces Exercise of Warrants

**PORTLAND, Ore. — Jan. 27, 2004** — AVI BioPharma, Inc. (Nasdaq: AVII), today announced that several institutional investors had exercised warrants for the purchase of 1,623,377 shares of its common stock at \$4.62 per share for gross proceeds to the company of \$7.5 million. The warrants had been issued pursuant to a direct equity placement of the Company's common stock in December 2003 under the Company's effective shelf registration. The proceeds of the warrant exercise will be used to fund AVI's operations and ongoing clinical programs.

The investors will receive new five-year warrants to purchase 389,611 shares of common stock at an exercise price of \$5.50 per share. Rodman & Renshaw, Inc., acted as the exclusive placement agent on the transaction.

This press release shall not constitute an offer to sell or a solicitation of an offer to buy, nor shall there be any sale of these securities in any state in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state.

#### About AVI BioPharma

AVI BioPharma develops therapeutic products for the treatment of life-threatening diseases using two technology platforms: third-generation NEUGENE<sup>®</sup> antisense drugs and cancer immunotherapy. AVI's lead NEUGENE antisense compound is designed to target cell proliferation disorders, including cardiovascular restenosis, cancer and polycystic kidney disease. In addition to targeting specific genes in the body, AVI's antiviral program uses NEUGENE antisense compounds to target single-stranded RNA viruses, including West Nile virus, SARS coronavirus, calicivirus and hepatitis C. AVI's second technology, AVICINE<sup>®</sup>, is a therapeutic cancer vaccine with late-stage trials

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planned for the treatment of pancreatic cancer. More information about AVI is available on the company's Web site at <http://www.avibio.com/>.

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*"Safe Harbor" Statement under the Private Securities Litigation Reform Act of 1995: The statements that are not historical facts contained in this release are forward-looking statements that involve risks and uncertainties, including, but not limited to, the results of research and development efforts, the results of preclinical and clinical testing, the effect of regulation by the FDA and other agencies, the impact of competitive products, product development, commercialization and technological difficulties, and other risks detailed in the company's Securities and Exchange Commission filings.*

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