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**SECURITIES AND EXCHANGE COMMISSION**  
WASHINGTON, D.C. 20549

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**FORM 8-K**

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**CURRENT REPORT**

**PURSUANT TO SECTION 13 OR 15(d) of the  
SECURITIES EXCHANGE ACT OF 1934**

**Date of Report (Date of earliest event reported): October 27, 2008**

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**ATRICURE, INC.**

(Exact name of registrant as specified in charter)

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**Delaware**  
(State or other jurisdiction  
of incorporation)

**000-51470**  
(Commission File Number)

**34-1940305**  
(IRS Employer  
Identification No.)

**6033 Schumacher Park Drive**  
**West Chester, OH**  
(Address of principal executive offices)

**45069**  
(Zip Code)

**Registrant's telephone number, including area code: (513) 755-4100**

**Not Applicable**  
(Former name or former address, if changed since last report)

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Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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**Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers**

On October 28, 2008, the Compensation Committee of the Board of Directors of AtriCure, Inc. (the "Company") approved grants of performance-based equity awards ("Performance Share Awards") to certain executive officers of the Company. Under the grants, up to 90,000 shares of the Company's common stock, \$0.001 par value per share (the "Common Stock"), may be issued. The awards are subject to the terms of Performance Share Agreements (the "Grant Agreements") and the provisions of the Company's 2005 Equity Incentive Plan (the "Plan") and are subject to certain performance goals being achieved by the Company.

Under the Plan, awards of performance shares may be made subject to the attainment of personal or Company performance goals. Company performance goals can relate to one or more business criteria including, but not limited to, cash flow; cost; ratio of debt to debt plus equity; earnings before interest and taxes; earnings before interest, taxes, depreciation and amortization; earnings per share; operating earnings; net profit; total revenue; sales growth; price of the Common Stock; return on net assets, equity or stockholders' equity; market share; or total return to stockholders.

The number of shares of Common Stock payable under each award is dependent upon the Company's achievement of net income (excluding non-cash compensation) of at least \$0 for the year ending December 31, 2009 (the "2009 Goal") and the achievement of a total revenue growth of 20% for the year ending December 31, 2010 over the year ending December 31, 2009 (the "2010 Goal").

Under the Plan, the following grants were made to the named executive officers and in the amounts identified in the table below:

| <u>Name</u>       | <u>Performance Shares for Achievement of 2009 Goal</u> | <u>Performance Shares for Achievement of 2010 Goal</u> |
|-------------------|--|--|
| David J. Drachman | 20,000   | 10,000   |
| James L. Lucky    | 13,000   | 7,000  |
| Julie A. Piton    | 13,000   | 7,000  |
| Stewart W. Strong | 13,000   | 7,000  |

Under the terms of the grants, within 90 days after the conclusion of the year ending December 31, 2009, the Compensation Committee shall make a determination of the achievement of the 2009 Goal, and within 90 days after the conclusion of the year ending

December 31, 2010, the Compensation Committee shall make a determination of the achievement of the 2010 Goal. Subject to continuous employment requirements, the Company shall issue to each recipient stock certificates evidencing shares earned by virtue of the satisfaction of the 2009 Goal and/or 2010 Goal on the date on which the Compensation Committee makes the determinations regarding the 2010 Goal (the "Determination Date").

Upon a Change of Control (as defined in the Plan) or the death of a grantee, all Performance Shares granted shall be distributed to the grantee (or the grantee's estate in the case of death) except that if such Change of Control or death occurs after December 31, 2009 and the Company failed to meet the 2009 Goal, the grantee (or the grantee's estate in the case of death) shall receive only those Performance Shares subject to the 2010 Goal.

The awards do not entitle a recipient to any rights of a stockholder of the Company, unless and until the shares of Common Stock that may be acquired have been issued.

The Performance Share Awards are intended to qualify as performance-based compensation under Section 162(m) of the Internal Revenue Code of 1986, as amended. In order to so qualify, the Performance Share Awards must be approved by the Company's stockholders.

The foregoing description of the terms of the awards is qualified in its entirety by reference to the Equity Compensation Plan and the Performance Share Agreements, which are attached as Exhibits 10.1 and 10.2 to this Current Report on Form 8-K.

**Item 8.01. Other Events.**

On October 31, 2008, the Company issued a press release which is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

**Item 9.01. Financial Statements and Exhibits**

(a) Exhibits

10.1 2005 Equity Incentive Plan (incorporated by reference to Amendment No. 2 to the Company's Registration Statement on Form S-1 (Registration No. 333-124197) filed July 7, 2005)

10.2 Form of Performance Share Agreement

99.1 Press Release Issued by AtriCure, Inc. on October 31, 2008

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

ATRICURE, INC.

Date: October 31, 2008

By: /s/ Julie A. Piton  
Julie A. Piton  
Vice President, Finance and  
Administration and Chief Financial Officer

**ATRICURE, INC.  
2005 EQUITY INCENTIVE PLAN**

**PERFORMANCE SHARE AGREEMENT**

Summary of Performance Share Grant

AtriCure, Inc., a Delaware corporation (the "Company"), grants to the Grantee named below, in accordance with the terms of the 2005 Equity Incentive Plan (the "Plan") and this Performance Share Agreement (the "Agreement"), Performance Shares as follows:

|                                       |                                  |
|---------------------------------------|----------------------------------|
| Name of Grantee:                      | _____                            |
| Maximum Number of Performance Shares: | _____                            |
| Grant Date:                           | _____                            |
| Performance Goals:                    | As set forth on <u>Exhibit A</u> |
| Performance Period:                   | As set forth on <u>Exhibit A</u> |

Terms of Agreement

**1. Grant of Performance Shares.** Subject to and upon the terms, conditions, and restrictions set forth in this Agreement and in the Plan, the Company grants to the Grantee as of the Grant Date, Performance Shares upon the terms and conditions of this Agreement. Each Performance Share shall represent one hypothetical Share and shall at all times be equal in value to one Share.

**2. Earning of Performance Shares.**

(a) Except as provided in Section 3, Performance Shares shall be earned as set forth on Exhibit A, provided that the Grantee has remained continuously employed by the Company or any Subsidiary from the Grant Date through the end of the Performance Period.

(b) Prior to the payment of any Performance Shares as provided in this Agreement, the Committee shall determine in writing the extent, if any, that the Performance Goals have been satisfied and shall determine the number, if any, of Performance Shares that shall have become earned under this Agreement. The Committee may in its sole discretion modify the Performance Goals, in whole or in part, as the Committee deems appropriate and equitable to reflect a change in the business, operations, corporate structure or capital structure of the Company or its Subsidiaries, the manner in which it conducts its business, or other events or circumstances.

**3. Payment of Performance Shares.**

(a) Except as otherwise provided in this Section 3, if and to the extent earned pursuant to Section 2 above, the Company shall deliver to the Grantee the Shares underlying the earned Performance Shares in one installment to be delivered within 90 days of December 31, 2010. Except as otherwise provided in Section 3(b) or 3(c) or as otherwise provided by the

Committee, the Grantee must be employed by the Company or a Subsidiary on December 31, 2010 in order to be entitled to payment of any such Shares.

(b) If the Grantee's continuous employment with the Company and its Subsidiaries terminates due to a permanent and total disability (a "Permanent Disability") within the meaning of Section 22(e)(3) of the Code, the Grantee's employment with the Company and its Subsidiaries shall, for all purposes under this Agreement, be deemed to continue. If Grantee dies while suffering a Permanent Disability, Grantee's estate shall have the rights to Shares underlying Performance Shares on the terms set forth in Section 3(c).

(c) If a "Change of Control" (as defined in the Plan) described in Section 13(c) of the Plan occurs while the Grantee is employed by the Company or any Subsidiary or if the Grantee dies, in either case at any time prior to December 31, 2010, then the Grantee shall be deemed to have earned 100% of the Maximum Number of Performance Shares, and the Company shall, upon such Change of Control, deliver to Grantee (or Grantee's estate in the case of death) the Shares underlying all earned Performance Shares, *provided, however*, that if such Change of Control or death occurs after December 31, 2009 and before December 31, 2010 and Grantee is not entitled to an award of Performance Shares for the Performance Period of the year ending December 31, 2009, Grantee shall be deemed only to have earned the Performance Shares that Grantee can earn based on the Performance Period of the year ending December 31, 2010, and the Company shall deliver to Grantee (or Grantee's estate in the case of death) the Shares underlying such earned Performance Shares.

(d) Notwithstanding anything contained in this Agreement to the contrary, the Committee may, in its sole discretion, accelerate the time at which the Performance Shares become vested and nonforfeitable on such terms and conditions as it deems appropriate.

**4. Transferability.** The Performance Shares may not be Transferred and shall not be subject in any manner to assignment, alienation, pledge, encumbrance or charge, unless otherwise provided under the Plan. Any purported Transfer or encumbrance in violation of the provisions of this Section 4 shall be void, and the other party to any such purported transaction shall not obtain any rights to or interest in such Performance Shares.

**5. Dividend, Voting and Other Rights.** The Grantee shall not possess any incidents of ownership (including, without limitation, dividend and voting rights) in the Shares underlying the Performance Shares until such Shares have been delivered to the Grantee in accordance with Section 3 of this Agreement. The obligations of the Company under this Agreement will be merely that of an unfunded and unsecured promise of the Company to deliver Shares in the future, and the rights of the Grantee will be no greater than that of an unsecured general creditor. No assets of the Company will be held or set aside as security for the obligations of the Company under this Agreement.

**6. Continuous Employment.** For purposes of this Agreement, the continuous employment of the Grantee with the Company and its Subsidiaries shall not be deemed to have been interrupted, and the Grantee shall not be deemed to have ceased to be an employee of the Company and its Subsidiaries, by reason of the transfer of his employment among the Company and its Subsidiaries.

**7. No Employment Contract.** Nothing contained in this Agreement shall confer upon the Grantee any right with respect to continuance of employment by the Company and its Subsidiaries, nor limit or affect in any manner the right of the Company and its Subsidiaries to terminate the employment or adjust the compensation of the Grantee.

**8. Relation to Other Benefits.** Any economic or other benefit to the Grantee under this Agreement or the Plan shall not be taken into account in determining any benefits to which the Grantee may be entitled under any profit-sharing, retirement or other benefit or compensation plan maintained by the Company or a Subsidiary and shall not affect the amount of any life insurance coverage available to any beneficiary under any life insurance plan covering employees of the Company or a Subsidiary.

**9. Taxes and Withholding.** To the extent that the Company or any Subsidiary is required to withhold any federal, state, local, foreign or other tax in connection with the Performance Shares pursuant to this Agreement, it shall be a condition to earning the award that the Grantee make arrangements satisfactory to the Company or such Subsidiary for payment of such taxes required to be withheld. The Committee may, in its sole discretion, require the Grantee to satisfy such required withholding obligation by surrendering to the Company a portion of the Shares earned by the Grantee under this Agreement, and the Shares so surrendered by the Grantee shall be credited against any such withholding obligation at the Fair Market Value of such Shares on the date of surrender. In no event shall the Fair Market Value of the Shares to be surrendered pursuant to this section to satisfy applicable withholding taxes exceed the minimum amount of taxes required to be withheld or such other amount that will not result in a negative accounting impact.

**10. Adjustments.** The number and kind of Shares deliverable pursuant to the Performance Shares are subject to adjustment as provided in Section 13 of the Plan.

**11. Compliance with Law.** The Company shall make reasonable efforts to comply with all applicable federal and state securities laws and listing requirements with respect to the Performance Shares; provided, however, notwithstanding any other provision of this Agreement, the Company shall not be obligated to deliver any Shares pursuant to this Agreement if the delivery of this Agreement would result in a violation of any such law or listing requirement.

**12. Amendments.** Subject to the terms of the Plan, the Committee may modify this Agreement upon written notice to the Grantee. Any amendment to the Plan shall be deemed to be an amendment to this Agreement to the extent that the amendment is applicable to this Agreement. Notwithstanding the foregoing, no amendment of the Plan or this Agreement shall adversely affect the rights of the Grantee under this Agreement without the Grantee's consent unless the Committee determines, in good faith, that such amendment is required for the Agreement to either be exempt from the application of, or comply with, the requirements of Section 409A of the Code, or as otherwise may be provided in the Plan.

**13. Compliance with Section 409A of the Code.** It is intended that this Agreement shall either be exempt from the application of, or comply with, the requirements of Section 409A of the Code. This Agreement shall be construed, administered, and governed in a manner that effects such intent, and the Committee shall not take any action that would be inconsistent with such intent. Without limiting the foregoing, the Performance Shares shall not be deferred, accelerated, extended, paid out, settled, adjusted, substituted, exchanged or modified in a manner

that would cause the award to fail to satisfy the conditions of an applicable exception from the requirements of Section 409A of the Code or otherwise would subject the Grantee to the additional tax imposed under Section 409A of the Code. The amounts payable pursuant to this Agreement are intended to be separate payments that qualify for the "short-term deferral" exception to Section 409A of the Code to the maximum extent possible.

**14. Severability.** In the event that one or more of the provisions of this Agreement shall be invalidated for any reason by a court of competent jurisdiction, any provision so invalidated shall be deemed to be separable from the other provisions of this Agreement, and the remaining provisions of this Agreement shall continue to be valid and fully enforceable.

**15. Relation to Plan.** This Agreement is subject to the terms and conditions of the Plan. This Agreement and the Plan contain the entire agreement and understanding of the parties with respect to the subject matter contained in this Agreement, and supersede all prior written or oral communications, representations and negotiations with respect to this Agreement. In the event of any inconsistency between the provisions of this Agreement and the Plan, the Plan shall govern. Capitalized terms used of this Agreement without definition shall have the meanings assigned to them in the Plan. The Committee acting pursuant to the Plan, as constituted from time to time, shall, except as expressly provided otherwise of this Agreement, have the right to determine any questions which arise in connection with the grant of the Performance Shares.

**16. Successors and Assigns.** Without limiting Section 4, the provisions of this Agreement shall inure to the benefit of, and be binding upon, the successors, administrators, heirs, legal representatives and assigns of the Grantee, and the successors and assigns of the Company.

**17. Governing Law.** The interpretation, performance, and enforcement of this Agreement shall be governed by the laws of the State of Delaware, without giving effect to the principles of conflict of laws of this Agreement.

**18. Electronic Delivery.** The Grantee consents and agrees to electronic delivery of any documents that the Company may elect to deliver (including, but not limited to, prospectuses, prospectus supplements, grant or award notifications and agreements, account statements, annual and quarterly reports, and all other forms of communications) in connection with this and any other award made or offered under the Plan. The Grantee understands that, unless earlier revoked by the Grantee by giving written notice to the Chief Financial Officer of the Company, this consent shall be effective for the duration of the Agreement. The Grantee also understands that he or she shall have the right at any time to request that the Company deliver written copies of any and all materials referred to above at no charge. The Grantee consents to any and all procedures the Company has established or may establish for an electronic signature system for delivery and acceptance of any such documents that the Company may elect to deliver, and agrees that his or her electronic signature is the same as, and shall have the same force and effect as, his or her manual signature. The Grantee consents and agrees that any such procedures and delivery may be effected by a third party engaged by the Company to provide administrative services related to the Plan.

The Company has caused this Agreement to be executed on its behalf by its duly authorized officer and the Grantee has also executed this Agreement, as of the Grant Date.



By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

The undersigned acknowledges that a copy of the Plan, Plan Summary and Prospectus, and the Company's most recent Annual Report and Proxy Statement (the "Prospectus Information") are available for viewing on the Company's intranet site at [www.atricure.com](http://www.atricure.com). The Grantee consents to receiving this Prospectus Information electronically, or, in the alternative, agrees to contact the Company's Chief Financial Officer at (513) 755-4100 to request a paper copy of the Prospectus Information at no charge. The Grantee represents that he or she is familiar with the terms and provisions of the Prospectus Information and accepts the award of Performance Shares on the terms and conditions set forth of this Agreement and in the Plan.

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

**ALTERNATIVE FOR ELECTRONIC SIGNATURE**

You may accept the award online or by telephone in accordance with the procedures established by the Company and the Plan administrator. By accepting your award in accordance with these procedures, you acknowledge that a copy of the Plan, Plan Summary and Prospectus, and the Company's most recent Annual Report and Proxy Statement (the "Prospectus Information") either have been received by you or are available for viewing on the Company's intranet site at [www.atricure.com](http://www.atricure.com), and consent to receiving this Prospectus Information electronically, or, in the alternative, agree to contact the Company's Chief Financial Officer at (513) 755-4100 to request a paper copy of the Prospectus Information at no charge. You also represent that you are familiar with the terms and provisions of the Prospectus Information and accept the award on the terms and conditions set forth of this Agreement and in the Plan. These terms and conditions constitute a legal contract that will bind both you and the Company as soon as you accept the award as described above.

**EXHIBIT A**

**PERFORMANCE GOALS AND PERFORMANCE PERIOD**

**Performance Period: Year Ending December 31, 2009**

Performance Goal: Net income (excluding non-cash compensation) of the Company of more than \$0.

If, for the year ending December 31, 2009 Performance Period, the Company achieves the Performance Goal set forth above, Grantee shall be entitled to \_\_\_\_\_ Performance Shares.

If, for the year ending December 31, 2009 Performance Period, the Grantee fails to achieve the Performance Goal set forth above, then Grantee's right to earn Performance Shares for the year ending December 31, 2009 Performance Period shall be forfeited automatically without further action or notice.

**Performance Period: Year Ending December 31, 2010**

Performance Goal: Increase in net revenue of the Company of at least 20% over net revenue of the Company for the year ended December 31, 2009.

If, for the year ending December 31, 2010 Performance Period, the Company achieves the Performance Goal set forth above, Grantee shall be entitled to \_\_\_\_\_ Performance Shares.

If, for the year ending December 31, 2010 Performance Period, the Grantee fails to achieve the Performance Goal set forth above, then Grantee's right to earn Performance Shares for the year ending December 31, 2010 Performance Period shall be forfeited automatically without further action or notice.



Contact:

**AtriCure, Inc.**

Julie A. Piton  
Vice President and Chief Financial Officer  
(513) 755-4561  
jpiton@atricure.com

**Press Release**

### **AtriCure Announces Investigation by the Department of Justice**

WEST CHESTER, Ohio – October 31, 2008 – AtriCure, Inc. (Nasdaq: ATRC), received a letter on October 27, 2008 from the U.S. Department of Justice-Civil Division (the “DOJ”) informing the Company that the DOJ is conducting an investigation for potential False Claims Act and common law violations relating to the Company’s surgical ablation devices. Specifically, the letter states that the DOJ is investigating the Company’s marketing practices utilized in connection with its surgical ablation system to treat atrial fibrillation, a specific use outside the Federal Food and Drug Administration’s 510(k) clearance. The letter also states that the DOJ is investigating whether AtriCure instructed hospitals to bill Medicare for surgical ablation using incorrect billing codes.

The Company understands that the DOJ is in the process of compiling a document request. The Company intends to cooperate with the DOJ in its investigation and operate its business in the ordinary course during the investigation.

#### **About AtriCure, Inc.**

AtriCure, Inc. is a medical device company and a leader in developing, manufacturing and selling innovative cardiac surgical ablation systems designed to create precise lesions, or scars, in cardiac, or heart, tissue. Medical journals have described the adoption by leading cardiothoracic surgeons of the AtriCure Isolator® bipolar ablation system as a treatment alternative during open-heart surgical procedures to create lesions in cardiac tissue to block the abnormal electrical impulses that cause atrial fibrillation, or AF, a rapid, irregular quivering of the upper chambers of the heart. Additionally, medical journals and leading cardiothoracic surgeons have described the AtriCure Isolator® system as a promising treatment alternative for patients who may be candidates for sole-therapy minimally invasive procedures. AF affects more than 5.5 million people worldwide and predisposes them to a five-fold increased risk of stroke. The FDA has cleared the AtriCure Isolator® system, including its Isolator Synergy™ ablation clamps, and AtriCure’s multifunctional pen and Coolrail™ linear ablation device, for the ablation, or destruction, of cardiac tissue during surgical procedures. Additionally, the FDA has cleared AtriCure’s multifunctional pen for temporary pacing, sensing, stimulating and recording

during the evaluation of cardiac arrhythmias. To date, the FDA has not cleared or approved AtriCure's products for the treatment of AF. AtriCure's left atrial appendage clip system has not been approved for commercial use.

### **Forward-Looking Statements**

This press release contains "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Forward-looking statements include statements that address activities, events or developments that AtriCure expects, believes or anticipates will or may occur in the future, such as earnings estimates, other predictions of financial performance, launches by AtriCure of new products and market acceptance of AtriCure's products. Forward-looking statements are based on AtriCure's experience and perception of current conditions, trends, expected future developments and other factors it believes are appropriate under the circumstances and are subject to numerous risks and uncertainties, many of which are beyond AtriCure's control. These risks and uncertainties include the rate and degree of market acceptance of AtriCure's products, AtriCure's ability to develop and market new and enhanced products, the timing of and ability to obtain and maintain regulatory clearances and approvals for its products, the timing of and ability to obtain reimbursement of procedures utilizing AtriCure's products, competition from existing and new products and procedures or AtriCure's ability to effectively react to other risks and uncertainties described from time to time in AtriCure's SEC filings, such as fluctuation of quarterly financial results, reliance on third party manufacturers and suppliers, litigation (including the purported class action lawsuit) or other proceedings, government regulation and stock price volatility. AtriCure does not guarantee any forward-looking statement, and actual results may differ materially from those projected. AtriCure undertakes no obligation to publicly update any forward-looking statement, whether as a result of new information, future events or otherwise.