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

FORM S-8

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

Capricor Therapeutics, Inc.
(Exact name of Registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

88-0363465
(I.R.S. Employer
Identification Number)

Capricor Therapeutics, Inc.
10865 Road to the Cure, Suite 150
San Diego, CA 92121
(858) 727-1755

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

2021 EQUITY INCENTIVE PLAN
(Full title of the plan)

Karen G. Krasney, Esq.
Capricor Therapeutics, Inc.
10865 Road to the Cure, Suite 150
San Diego, CA 92121
(858) 727-1755

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

Copies to:

Robert R. Carlson, Esq.
Sidley Austin LLP
1001 Page Mill Road Building 1
Palo Alto, CA 94304
Telephone: (650) 565-7000

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.:

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input checked="" type="checkbox"/>	Smaller reporting company	<input checked="" type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

EXPLANATORY NOTE

The Registrant has prepared this registration statement (this "Registration Statement") in accordance with the requirement of Form S-8 under the Securities Act, to register 1,262,070 shares of Common Stock issuable pursuant to the 2021 Plan. The 2021 Plan has been previously approved by the Registrant's stockholders.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The information called for in Part I of Form S-8 is not being filed with or included in this Form S-8 (by incorporation, by reference, or otherwise) in accordance with the rules and regulations of the Securities and Exchange Commissions (the "Commission").

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents, which were filed with the Commission, are incorporated herein by reference:

- (a)(1) The Registrant's Annual Report on Form 10-K for the fiscal year ended [December 31, 2021](#), filed with the Commission on March 11, 2022, including all material incorporated by reference therein;
- (b)(1) The Registrant's Quarterly Report on Form 10-Q for the fiscal quarter ended [March 31, 2022](#), filed with the Commission on May 11, 2022, including all material incorporated by reference therein;
- (b)(2) The Registrant's Quarterly Report on Form 10-Q for the fiscal quarter ended [June 30, 2022](#), filed with the Commission on August 12, 2022, including all material incorporated by reference therein;
- (b)(3) The Registrant's Quarterly Report on Form 10-Q for the fiscal quarter ended [September 30, 2022](#), filed with the Commission on November 10, 2022, including all material incorporated by reference therein;
- (b)(4) The Registrant's Current Report on Form 8-K, filed with the Commission on [January 25, 2022](#), including all material incorporated by reference therein;
- (b)(5) The Registrant's Current Report on Form 8-K, filed with the Commission on [April 1, 2022](#), including all material incorporated by reference therein;
- (b)(6) The Registrant's Current Report on Form 8-K, filed with the Commission on [June 7, 2022](#), including all material incorporated by reference therein;
- (b)(7) The Registrant's Current Report on Form 8-K, filed with the Commission on [July 19, 2022](#), including all material incorporated by reference therein.
- (c)(1) The description of the Registrant's Common Stock contained in the Registration Statement on Form 8-A filed with the Commission on [March 5, 2015](#), including any subsequently filed amendment and reports filed for the purpose of updating that description.

All other reports and documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended, after the date of this Registration Statement and prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference into this Registration Statement and to be a part of this Registration Statement from the date of the filing of such reports and documents, except as to any portion of any future annual or quarterly report to stockholders or document or current report furnished under current Items 2.02 or 7.01 of Form 8-K that is not deemed filed under such provisions.

Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained in this Registration Statement, or in any other subsequently filed document which also is or is deemed to be incorporated by reference in this Registration Statement, modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

You should rely only on the information provided or incorporated by reference in this Registration Statement or any related prospectus. The Registrant has not authorized anyone to provide you with different information. You should not assume that the information in this Registration Statement or any related prospectus is accurate as of any date other than the date on the front of the document.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

Section 145 of the General Corporation Law of the State of Delaware (the "DGCL") authorizes a corporation's board of directors to grant, and authorizes a court to award, indemnity to officers, directors and other corporate agents.

The Registrant's Certificate of Incorporation, as amended (the "Certificate"), requires the Registrant to indemnify its directors and officers to the fullest extent permitted by the DGCL as it presently exists or as may hereafter be amended. Therefore, a director of the Registrant will not be liable to the Registrant or the Registrant's stockholders for monetary damages for any breach of fiduciary duty as a director, provided that the individual acted in good faith and in a manner the individual reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. Any amendment to, or repeal of, these provisions will not eliminate or reduce the effect of these provisions in respect of any act, omission or claim that occurred or arose prior to that amendment or repeal. If the DGCL is amended to provide for further limitations on the personal liability of directors of corporations, then the personal liability of the Registrant's directors will be further limited to the greatest extent permitted by the DGCL.

Additionally, the provisions of the Certificate and of the Registrant's bylaws require the Registrant to indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or as may hereafter be amended, any person who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a director or officer of the Registrant or, while a director or officer of the Registrant, is or was serving at the request of the Registrant as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys' fees) reasonably incurred by such person. Notwithstanding the preceding sentence, the Registrant shall be required to indemnify such a person in connection with a proceeding (or part thereof) commenced by such person only if the commencement of such proceeding (or part thereof) by the person was authorized in the specific case by the Board of Directors. The Registrant's bylaws also provide that the Registrant shall, to the fullest extent not prohibited by applicable law, promptly pay the expenses, including attorneys' fees, incurred by a director or officer in defending any proceeding in advance of its final disposition, subject to certain limited exceptions.

The Registrant's bylaws permit the Registrant to purchase and maintain insurance on behalf of any person that the Registrant is permitted to indemnify in accordance with the bylaws against any liability asserted against any such person and incurred by such person, whether or not the Registrant would have the power to indemnify such person against such liability under the DGCL. In accordance with the provisions of the bylaws, the Registrant currently maintains directors' and officers' liability insurance, which may insure against director or officer liability arising under the Securities Act. In addition, the Registrant has entered into various agreements whereby it has agreed to indemnify its directors and officers for specific liabilities that they may incur while serving in such capacities. These indemnification agreements provide for the maximum indemnity allowed to directors and officers by applicable law. The Registrant believes that these agreements are necessary to attract and retain qualified individuals to serve as directors and executive officers.

The limitation of liability and indemnification provisions that are included in the Certificate, the Registrant's bylaws and in indemnification agreements that the Registrant enters into with its directors and officers may discourage stockholders from bringing a lawsuit against the Registrant's directors and officers for breach of their fiduciary duties. They may also reduce the likelihood of derivative litigation against the Registrant's directors and officers, even though an action, if successful, might benefit the Registrant and other stockholders. Further, a stockholder's investment may be adversely affected to the extent that the Registrant pays the costs of settlement and damage awards against directors and executive officers as required by the applicable indemnification provisions. At present, the Registrant is not aware of any pending litigation or proceeding involving any person who is or was one of its directors, officers, employees or other

agents or is or was serving at its request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, for which indemnification is sought, and the Registrant is not aware of any threatened litigation that may result in claims for indemnification.

The foregoing statements are subject to the detailed provisions of the DGCL and the full text of the corporate documents and agreements referenced above.

Reference is made to Item 9 for the Registrant's undertakings with respect to indemnification for liabilities arising under the Securities Act of 1933, as amended.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

- 4.1 [Certificate of Incorporation of the Company \(incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K, filed with the SEC on February 9, 2007\).](#)
- 4.2 [Certificate of Amendment of Certificate of Incorporation of the Company \(incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K, filed with the SEC on November 26, 2013\).](#)
- 4.3 [Certificate of Amendment of Certificate of Incorporation of the Company \(incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K, filed with the SEC on June 4, 2019\).](#)
- 4.4 [Bylaws of the Company \(incorporated by reference to Exhibit 3.2 to the Company's Current Report on Form 8-K, filed with the SEC on February 9, 2007\).](#)
- 4.5 [Certificate of Amendment of the Bylaws of the Company \(incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K, filed with the SEC on August 25, 2020\).](#)
- 4.6 [Capricor Therapeutics, Inc. 2021 Equity Incentive Plan \(incorporated by reference to Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q, filed with the Commission on August 13, 2021\).](#)
- 4.7 [Form of Stock Option Agreement for Capricor Therapeutics, Inc. 2021 Equity Incentive Plan \(incorporated by reference to Exhibit 10.3 to the Company's Quarterly Report on Form 10-Q, filed with the Commission on August 13, 2021\).](#)
- 5.1* [Opinion of Sidley Austin LLP.](#)
- 23.1* [Consent of Rose Snyder & Jacobs, LLP.](#)
- 23.2* [Consent of Sidley Austin LLP \(included in Exhibit 5.1\).](#)
- 24.1* [Power of Attorney \(included on signature page hereof\).](#)
- 107.1* [Filing Fee Table.](#)

* Filed
herewith.

Item 9. Undertakings.

(a) The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

Provided, however, that:

Paragraphs (1)(i), (1)(ii) and (1)(iii) of this section do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the Registrant's annual report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(h) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of San Diego, State of California, on January 30, 2023.

CAPRICOR THERAPEUTICS, INC.

By: /s/ Linda Marbán, Ph.D.

Linda Marbán, Ph.D.

Chief Executive Officer

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints each of Linda Marbán, Ph.D. and Anthony J. Bergmann and each of them singly, our true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him or her in his or her name, place and stead, in any and all capacities, to sign any or all amendments to this registration statement and additional registration statements relating to the same offering, and to file the same, with all exhibits thereto, and all other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their substitutes, may lawfully do or cause to be done by virtue thereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Linda Marbán, Ph.D.</u> Linda Marbán, Ph.D.	Chief Executive Officer and Director <i>(Principal Executive Officer)</i>	January 30, 2023
<u>/s/ Anthony J. Bergmann</u> Anthony J. Bergmann	Chief Financial Officer <i>(Principal Financial Officer)</i>	January 30, 2023
<u>/s/ Frank Litvack, M.D.</u> Frank Litvack, M.D.	Executive Chairman and Director	January 30, 2023
<u>/s/ Earl M. Collier</u> Earl M. Collier	Director	January 30, 2023
<u>/s/ Louis V. Manzo</u> Louis V. Manzo	Director	January 30, 2023
<u>/s/ George W. Dunbar</u> George W. Dunbar	Director	January 30, 2023
<u>/s/ Karimah Es Sabar</u> Karimah Es Sabar	Director	January 30, 2023
<u>/s/ David B. Musket</u> David B. Musket	Director	January 30, 2023

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AMERICA • ASIA PACIFIC • EUROPE

January 30, 2023

Capricor Therapeutics, Inc.
10865 Road to the Cure, Suite 150
San Diego, California 92121

Re: 1,262,070 Shares of Common Stock, \$0.001 par value per share

Ladies and Gentlemen:

We refer to the Registration Statement on Form S-8 (the “Registration Statement”) being filed by Capricor Therapeutics, Inc., a Delaware corporation (the “Company”), with the Securities and Exchange Commission under the Securities Act of 1933, as amended (the “Securities Act”), relating to the registration of 1,262,070 shares of Common Stock, \$0.001 par value per share (the “Registered Shares”), of the Company, which may be issued under the Capricor Therapeutics, Inc. 2021 Equity Incentive Plan (the “Plan”).

This opinion letter is being delivered in accordance with the requirements of Item 601(b)(5) of Regulation S-K under the Securities Act.

We have examined the Registration Statement, the Company’s certificate of incorporation, the Plan and the resolutions adopted by the board of directors of the Company relating to the Registration Statement and the Plan, and the resolutions adopted by the stockholders of the Company relating to the Plan. We have also examined originals, or copies of originals certified to our satisfaction, of such agreements, documents, certificates and statements of the Company and other corporate documents and instruments, and have examined such questions of law, as we have considered relevant and necessary as a basis for this opinion letter. We have assumed the authenticity of all documents submitted to us as originals, the genuineness of all signatures, the legal capacity of all persons and the conformity with the original documents of any copies thereof submitted to us for examination. As to facts relevant to the opinions expressed herein, we have relied without independent investigation or verification upon, and assumed the accuracy and completeness of, certificates, letters and oral and written statements and representations of public officials and officers and other representatives of the Company.

Based on the foregoing, we are of the opinion that each Registered Share that is newly issued pursuant to the Plan will be validly issued, fully paid and non-assessable when: (i) the Registration Statement, as finally amended, shall have become effective under the Securities Act; (ii) such Registered Share shall have been duly issued and delivered in accordance with the Plan; and (iii) certificates representing such Registered Share shall have been duly executed, countersigned and registered and duly delivered to the person entitled thereto against payment of the agreed consideration therefor in an amount not less than the par value thereof or, if any

Registered Share is to be issued in uncertificated form, the Company's books shall reflect the issuance of such Registered Share to the person entitled thereto against payment of the agreed consideration therefor in an amount not less than the par value thereof, all in accordance with the Plan.

This opinion letter is limited to the General Corporation Law of the State of Delaware. We express no opinion as to the laws, rules or regulations of any other jurisdiction, including, without limitation, the federal laws of the United States of America or any state securities or blue sky laws.

We hereby consent to the filing of this opinion letter as an Exhibit to the Registration Statement and to all references to our Firm included in or made a part of the Registration Statement. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act.

Very truly yours,

/s/ Sidley Austin LLP

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference, in this Registration Statement on Form S-8 of our report dated March 11, 2022, with respect to the consolidated financial statement of Capricor Therapeutics, Inc. and Subsidiary appearing in the Company's Annual Report on Form 10-K for the year ended December 31, 2021.

/s/ Rose, Snyder & Jacobs LLP

Rose, Snyder & Jacobs LLP

Encino, California
January 30, 2023

Calculation of Filing Fee Tables

Form S-8
(Form Type)

Capricor Therapeutics, Inc.
(Exact Name of Registrant as Specified in its Charter)

Table 1: Newly Registered Securities

Security Type	Security Class Title	Fee Calculation Rule	Amount Registered ⁽¹⁾	Proposed Maximum Offering Price Per Unit ⁽³⁾	Maximum Aggregate Offering Price ⁽³⁾	Fee Rate	Amount of Registration Fee
Equity	Common Stock, par value \$0.001 per share	Rule 457(c) and Rule 457(h)	1,262,070 ⁽²⁾	\$4.1851	\$5,281,889.16	0.00011020	\$582.06
Total Offering Amounts					\$5,281,889.16		\$582.06
Total Fee Offsets							—
Net Fee Due							\$582.06

- (1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the “Securities Act”), this Registration Statement shall also cover any additional shares of the Common Stock (the “Common Stock”) of Capricor Therapeutics, Inc. (the “Registrant”) that may be offered or issued under the plan to prevent dilution resulting from stock splits, stock dividends, or similar transactions.
- (2) Represents 1,262,070 additional shares of Common Stock reserved for awards available for future grant under the Capricor Therapeutics, Inc. 2021 Equity Incentive Plan (the “2021 Plan”). Unless otherwise provided by the Registrant’s Board of Directors or Compensation Committee, the 2021 Plan provides each fiscal year, an additional number of shares will be added which is equal to 5% of the outstanding shares of Common Stock as of the last day of the immediately preceding fiscal year (rounded down to the nearest whole share), which for the fiscal year January 1, 2023 was equal to 1,262,070 shares. Of the total 5,971,320 shares of Common Stock reserved for issuance under the 2021 Plan, 4,626,641 shares are currently subject to outstanding awards as of January 27, 2023.
- (3) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(c) and Rule 457(h) under the Securities Act and based upon a \$4.1851 per share average of the high and low sales prices of the Registrant’s Common Stock, as reported on the Nasdaq Capital Market on January 27, 2023, a date within five business days prior to the filing of this Registration Statement.