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

**FORM S-8
REGISTRATION STATEMENT**
*Under
The Securities Act of 1933*

BETTER THERAPEUTICS, INC.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

85-3472546
(I.R.S. Employer
Identification Number)

**548 Market Street, #49404
San Francisco, CA 94104
(415) 887-2311**
(Address of Principal Executive Offices)

**Better Therapeutics, Inc. 2021 Stock Option and Incentive Plan
Better Therapeutics, Inc. 2021 Employee Stock Purchase Plan
Better Therapeutics, Inc. 2022 Inducement Plan**
(Full Title of the Plans)

**Frank Karbe
Chief Executive Officer
548 Market Street, #49404
San Francisco, CA 94104
(415) 887-2311**
(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

**Sam Zucker, Esq.
Shoib A. Ghias, Esq.
Goodwin Procter LLP
601 Marshall Street
Redwood City, CA 94063
Tel: (650) 752-3100**

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
Non-accelerated filer

Accelerated filer
Smaller reporting company
Emerging growth company

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

This Registration Statement on Form S-8 registers (i) 1,192,551 additional shares of the Registrant's common stock, \$0.0001 par value per share, under the Registrant's 2021 Stock Option and Incentive Plan (the "2021 Plan"), (ii) 238,510 additional shares of common stock under the Registrant's 2021 Employee Stock Purchase Plan (the "2021 ESPP") and (iii) 600,000 shares of common stock under the Registrant's 2022 Inducement Plan (the "Inducement Plan"). The additional shares of common stock registered hereby are of the same class as other securities relating to the 2021 Plan and 2021 ESPP for which the Registrant's Registration Statement filed on [Form S-8](#) (Registration No. 333-262096) on January 11, 2022 is effective. The information contained in the Registrant's Registration Statement on Form S-8 (Registration No. 333-262096) is hereby incorporated by reference pursuant to General Instruction E.

On November 30, 2022, the Registrant's board of directors adopted the Inducement Plan pursuant to which the Registrant reserved 600,000 shares of common stock to be used exclusively for grants of equity-based awards to individuals who were not previously employees or directors of the Registrant, as an inducement material to the individual's entry into employment with the Registrant within the meaning of Rule 5635(c)(4) of the Marketplace Rules of the Nasdaq Stock Market, Inc. The Inducement Plan provides for the grant of equity-based awards in the form of nonstatutory stock options, stock appreciation rights, restricted stock awards, restricted stock unit awards, unrestricted stock awards, and dividend equivalent rights. The Inducement Plan was adopted by the Registrant's board of directors without stockholder approval pursuant to Rule 5635(c)(4) of the Marketplace Rules of the Nasdaq Stock Market, Inc.

Part I INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

Item 1. Plan Information.

The documents containing the information specified in this Item 1 will be sent or given to participants as specified by Rule 428(b)(1) under the Securities Act. In accordance with the rules and regulations of the Commission and the instructions to Form S-8, such documents are not being filed with the Commission either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424 under the Securities Act.

Item 2. Registrant Information and Employee Plan Annual Information.

The documents containing the information specified in this Item 2 will be sent or given to participants as specified by Rule 428(b)(1) under the Securities Act. In accordance with the rules and regulations of the Commission and the instructions to Form S-8, such documents are not being filed with the Commission either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424 under the Securities Act.

Part II INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The Registrant hereby incorporates by reference into this Registration Statement the following documents filed with the Commission:

- (a) The Registrant's Annual Report on [Form 10-K](#) for the fiscal year ended December 31, 2022, filed with the Commission on March 30, 2023 (other than information furnished rather than filed);
- (b) The Registrant's Current Report on [Form 8-K](#), filed with the Commission on March 24, 2023 (excluding any information furnished in such report under Item 7.01 or Item 9.01); and

- (c) The description of the Registrant’s common stock contained in the Registrant’s registration statement on [Form 8-A](#) (File No. 001-39864), filed by the Registrant with the Commission under Section 12(b) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) on January 7, 2021, including any amendments or reports filed for the purpose of updating such description.

All documents that the registrant subsequently files pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act prior to the filing of a post-effective amendment to this Registration Statement which indicates that all of the shares of common stock offered have been sold or which deregisters all of such shares then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the date of the filing of such documents.

Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein 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.

Under no circumstances will any information filed under current items 2.02 or 7.01 of Form 8-K be deemed incorporated herein by reference unless such Form 8-K expressly provides to the contrary.

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 Delaware General Corporation Law (the “DGCL”) authorizes a corporation to indemnify its directors and officers against liabilities arising out of actions, suits and proceedings to which they are made or threatened to be made a party by reason of the fact that they have served or are currently serving as a director or officer to a corporation. The indemnity may cover expenses (including attorneys’ fees) judgments, fines and amounts paid in settlement actually and reasonably incurred by the director or officer in connection with any such action, suit or proceeding. Section 145 permits corporations to pay expenses (including attorneys’ fees) incurred by directors and officers in advance of the final disposition of such action, suit or proceeding. In addition, Section 145 provides that a corporation has the power to purchase and maintain insurance on behalf of its directors and officers against any liability asserted against them and incurred by them in their capacity as a director or officer, or arising out of their status as such, whether or not the corporation would have the power to indemnify the director or officer against such liability under Section 145.

The Registrant has adopted provisions in the Registrant’s certificate of incorporation and bylaws, which became effective in connection with the completion of the Registrant’s business combination on October 28, 2021, that limit or eliminate the personal liability of the Registrant’s directors to the fullest extent permitted by the DGCL, as it now exists or may in the future be amended. Consequently, a director will not be personally liable to the Registrant or its stockholders for monetary damages or breach of fiduciary duty as a director, except for liability for:

- any breach of the director’s duty of loyalty to the Registrant or its stockholders;
- any act or omission not in good faith or that involves intentional misconduct or a knowing violation of law;
- any unlawful payments related to dividends or unlawful stock purchases, redemptions or other distributions; or
- any transaction from which the director derived an improper personal benefit.

These limitations of liability do not alter director liability under the federal securities laws and do not affect the availability of equitable remedies such as an injunction or rescission.

In addition, the Registrant's bylaws provide that:

- the Registrant will indemnify its directors, officers and, in the discretion of its board of directors, certain employees to the fullest extent permitted by the DGCL, as it now exists or may in the future be amended; and
- the Registrant will advance expenses, including attorneys' fees, to its directors and, in the discretion of its board of directors, to its officers and certain employees, in connection with legal proceedings relating to their service for or on behalf of the registrant, subject to limited exceptions

The Registrant has entered into indemnification agreements with several of its directors and executive officers. These agreements provide that the registrant will indemnify each of its directors and executive officers to the fullest extent permitted by Delaware law. The registrant will advance expenses, including attorneys' fees (but excluding judgments, fines and settlement amounts), to each indemnified director or executive officer in connection with any proceeding in which indemnification is available and the registrant will indemnify its directors and officers for any action or proceeding arising out of that person's services as a director or officer brought on behalf of the registrant or in furtherance of the Registrant's rights. Additionally, certain of the Registrant's directors may have certain rights to indemnification, advancement of expenses or insurance provided by their affiliates or other third parties, which indemnification relates to and might apply to the same proceedings arising out of such director's services as a director referenced herein. Nonetheless, the Registrant has agreed in the indemnification agreements that the Registrant's obligations to those same directors are primary and any obligation of such affiliates or other third parties to advance expenses or to provide indemnification for the expenses or liabilities incurred by those directors are secondary.

The registrant also maintains general liability insurance which covers certain liabilities of its directors and officers arising out of claims based on acts or omissions in their capacities as directors or officers, including liabilities under the Securities Act.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

EXHIBIT INDEX

| <u>Exhibit No.</u> | <u>Description</u> |
|--------------------|--|
| 4.1 | <u>Second Amended and Restated Certificate of Incorporation of the Registrant (incorporated by reference to Exhibit 3.1 to our Form 8-K filed with the SEC on November 3, 2021).</u> |
| 4.2 | <u>Amended and Restated Bylaws of the Registrant (incorporated by reference to Exhibit 3.2 to our Form 8-K filed with the SEC on November 3, 2021).</u> |
| 4.3 | <u>Amended and Restated Registration Rights Agreement, dated as of October 28, 2021 by and among Better Therapeutics, Inc., and each of the other shareholders party thereto. (incorporated by reference to Exhibit 10.16 to our Form 8-K filed with the SEC on November 3, 2021).</u> |
| 4.4 | <u>Subscription Agreement dated October 28, 2021 by and among Mountain Crest Acquisition Corp. II and Cowen and Company, LLC. (incorporated by reference to Exhibit 10.17 to our Form 8-K filed with the SEC on November 3, 2021).</u> |
| 4.5 | <u>Form of Subscription Agreement, dated as of April 6, 2021, by and among Mountain Crest Acquisition Corp. II and certain institutional and accredited investors (incorporated by reference to Exhibit 10.3 to our Form 8-K filed with the SEC on April 7, 2021).</u> |
| 5.1* | <u>Opinion of Goodwin Procter LLP.</u> |
| 23.1* | <u>Consent of Elliott Davis, LLC, independent registered public accounting firm.</u> |
| 23.3* | <u>Consent of Goodwin Procter LLP (included in Exhibit 5.1).</u> |
| 24.1* | <u>Power of Attorney (included on signature page of this Registration Statement).</u> |
| 99.1 | <u>2021 Employee Stock Purchase Plan (incorporated by reference to Exhibit 10.1 to our Form 8-K filed with the SEC on November 3, 2021).</u> |
| 99.2 | <u>2021 Option and Incentive Plan, as amended, and forms of award agreements thereunder (incorporated by reference to Exhibit 10.2 to our Form 8-K filed with the SEC on November 3, 2021).</u> |
| 99.3 | <u>2022 Inducement Plan (incorporated by reference to Exhibit 10.4 to our Form 10-K filed with the SEC on March 30, 2023).</u> |
| 107* | <u>Filing Fee Table.</u> |

* Filed herewith.

Item 9. Undertakings.

(a) The 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;

(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 (a)(1)(i) and (a)(1)(ii) herein 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 Exchange Act (15 U.S.C. 78m or 78o(d)) that are incorporated by reference in the Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act, 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, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) 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.

(c) Insofar as indemnification for liabilities arising under the Securities Act 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 Commission such indemnification is against public policy as expressed in the Securities 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 Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act, 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 Francisco, California, on March 30, 2023.

BETTER THERAPEUTICS, INC.

By: /s/ Frank Karbe

Name: Frank Karbe

Title: President and Chief Executive Officer

POWER OF ATTORNEY AND SIGNATURES

KNOW ALL BY THESE PRESENT, that each individual whose signature appears below hereby constitutes and appoints each of Frank Karbe and Mark Heinen as such person's true and lawful attorney-in-fact and agent with full power of substitution and resubstitution, for such person in such person's name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement on Form S-8, and to file the same, with all exhibits thereto, and all documents in connection therewith, with the Commission granting unto each said attorney-in-fact and agent 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 such person might or could do in person, hereby ratifying and confirming all that any said attorney-in-fact and agent, or any substitute or substitutes of any of them, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed by the following person in the capacities and on the date indicated below.

| Signature | Title | Date |
|---|---|----------------|
| <hr/> <i>/s/ Frank Karbe</i> Frank Karbe | Director, President and Chief Executive Officer (Principal Executive Officer) | March 30, 2023 |
| <hr/> <i>/s/ David P. Perry</i> David P. Perry | Executive Chairman and Director | March 30, 2023 |
| <hr/> <i>/s/ Mark Heinen</i> Mark Heinen | Head of Finance and Interim Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer) | March 30, 2023 |
| <hr/> <i>/s/ Richard Carmona</i> Richard Carmona | Director | March 30, 2023 |
| <hr/> <i>/s/ Geoffrey Parker</i> Geoffrey Parker | Director | March 30, 2023 |
| <hr/> <i>/s/ Andrew Armanino</i> Andrew Armanino | Director | March 30, 2023 |
| <hr/> <i>/s/ Risa Lavizzo-Mourey</i> Risa Lavizzo-Mourey | Director | March 30, 2023 |
| <hr/> <i>/s/ Suying Liu</i> Suying Liu | Director | March 30, 2023 |
| <hr/> <i>/s/ Elder Granger</i> Elder Granger | Director | March 30, 2023 |

March 30, 2023

Better Therapeutics, Inc.
548 Market Street, #49404
San Francisco, CA 94104

Re: Securities Being Registered under Registration Statement on Form S-8

We have acted as counsel to you in connection with your filing of a Registration Statement on Form S-8 (the "Registration Statement") pursuant to the Securities Act of 1933, as amended (the "Securities Act"), on or about the date hereof relating to an aggregate of 2,031,061 shares (the "Shares") of Common Stock, \$0.0001 par value per share ("Common Stock"), of Better Therapeutics, Inc., a Delaware corporation (the "Company"), that may be issued pursuant to the Company's 2021 Stock Option and Incentive Plan, 2021 Employee Stock Purchase Plan and 2022 Inducement Plan (collectively, the "Plans").

We have reviewed such documents and made such examination of law as we have deemed appropriate to give the opinions set forth below. We have relied, without independent verification, on certificates of public officials and, as to matters of fact material to the opinion set forth below, on certificates of officers of the Company.

The opinion set forth below is limited to the Delaware General Corporation Law.

For purposes of the opinion set forth below, we have assumed that no event occurs that causes the number of authorized shares of Common Stock available for issuance by the Company to be less than the number of then unissued Shares.

Based on the foregoing, we are of the opinion that the Shares have been duly authorized and, upon issuance and delivery against payment therefor in accordance with the terms of the Plans, will be validly issued, fully paid and nonassessable.

This opinion letter and the opinion it contains shall be interpreted in accordance with the Core Opinion Principles as published in *74 Business Lawyer* 815 (Summer 2019).

We hereby consent to the inclusion of this opinion as Exhibit 5.1 to the Registration Statement. In giving our consent, we do not admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations thereunder.

Very truly yours,

/s/ GOODWIN PROCTER LLP

GOODWIN PROCTER LLP

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in this Registration Statement on Form S-8 of Better Therapeutics, Inc. of our report dated March 30, 2023, relating to the financial statements of Better Therapeutics, Inc., as of and for the years ended December 31, 2022 and 2021 appearing in the Annual Report on Form 10-K.

/s/ Elliott Davis, LLC

Greenville, South Carolina
March 30, 2023

Calculation of Filing Fee Tables

Form S-8
(Form Type)

Better 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 (3) | Proposed Maximum Offering Price Per Share | Maximum Aggregate Offering Price | Fee Rate | Amount of Registration Fee |
|------------------------|--|----------------------|-----------------------|---|----------------------------------|-----------|----------------------------|
| Equity | 2021 Stock Option and Incentive Plan Common Stock, \$0.0001 par value per share (1) | Other (1) | 1,192,551 shares (4) | \$0.87955 (1) | \$1,048,908.23 (1) | 0.0001102 | \$115.59 |
| Equity | 2021 Employee Stock Purchase Plan Common Stock, \$0.0001 par value per share (2) | Other (2) | 238,510 shares (5) | \$0.74762 (2) | \$178,314.25 (2) | 0.0001102 | \$19.65 |
| Equity | 2022 Inducement Plan Common Stock, \$0.0001 par value per share (3) | Other (1) | 600,000 shares (6) | \$0.87955 (1) | \$527,730.00 (1) | 0.0001102 | \$58.16 |
| Total Offering Amounts | | | | | \$1,754,952.48 | | \$193.40 |
| Total Fee Offsets | | | | | | | \$0 |
| Net Fee Due | | | | | | | \$193.40 |

- (1) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(c) and 457(h) of the Securities Act of 1933, as amended (the "Securities Act"), and based on \$0.87955, the average of the high and low sale prices of the Registrant's common stock as reported on the Nasdaq Capital Market on March 27, 2023.
- (2) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(c) and 457(h) of the Securities Act, and based on 85% of the average of the high and low sales price of the Registrant's common stock, as quoted on the Nasdaq Capital Market on March 27, 2023. Pursuant to the Registrant's 2021 Employee Stock Purchase Plan, the purchase price of the shares of common stock reserved for issuance thereunder will be 85% of the fair market value per share of common stock on the applicable offering date or on the exercise date, whichever is less.
- (3) Pursuant to Rule 416 under the Securities Act, this Registration Statement shall be deemed to cover any additional securities that may from time to time be offered or issued to prevent dilution resulting from stock splits, stock dividends or similar transactions effected without the receipt of consideration which results in an increase in the number of our outstanding shares of common stock.
- (4) Consists of 1,192,551 shares of common stock that may become issuable under the Registrant's 2021 Stock Option and Incentive Plan pursuant to its terms.
- (5) Consists of 238,510 shares of common stock that may become issuable under the Registrant's 2021 Employee Stock Purchase Plan pursuant to its terms.
- (6) Consists of 600,000 shares of common stock that may become issuable under the Registrant's 2022 Inducement Plan pursuant to its terms.