

FLEXION THERAPEUTICS INC

FORM S-8

(Securities Registration: Employee Benefit Plan)

Filed 03/10/17

Address	10 MALL ROAD SUITE 301 BURLINGTON, MA 01803
Telephone	(781) 305-7777
CIK	0001419600
Symbol	FLXN
SIC Code	2834 - Pharmaceutical Preparations
Industry	Biotechnology & Medical Research
Sector	Healthcare
Fiscal Year	12/31

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

FORM S-8
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

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

Delaware
(State or other jurisdiction
of incorporation or organization)

26-1388364
(I.R.S. Employer
Identification No.)

10 Mall Road, Suite 301
Burlington, Massachusetts
(Address of Principal Executive Offices)

01803
(Zip Code)

2013 Equity Incentive Plan
2013 Employee Stock Purchase Plan
(Full titles of the plans)

Michael D. Clayman, M.D.
Chief Executive Officer
Flexion Therapeutics, Inc.
10 Mall Road, Suite 301
Burlington, MA 01803
(781) 305-7777

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

Copies to:

Thomas A. Coll, Esq.
Sean M. Clayton, Esq.
Cooley LLP
4401 Eastgate Mall
San Diego, CA 92121
(858) 550-6000

Frederick W. Driscoll
Chief Financial Officer
Flexion Therapeutics, Inc.
10 Mall Road, Suite 301
Burlington, MA 01803
(781) 305-7777

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

Large Accelerated filer

Accelerated filer

Non-accelerated filer (Do not check if a smaller reporting company)

Smaller reporting company

CALCULATION OF REGISTRATION FEE

Title of securities to be registered	Amount to be registered (1)	Proposed maximum offering price per share (2)	Proposed maximum aggregate offering price (2)	Amount of registration fee
2013 Equity Incentive Plan Common Stock, \$0.001 par value per share	1,266,698 shares (3)	\$20.93	\$26,511,989.14	\$3,072.74
2013 Employee Stock Purchase Plan Common Stock, \$0.001 par value per share	316,674 shares (4)	\$20.93	\$6,627,986.82	\$768.18

- (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 Registrant’s Common Stock (“Common Stock”) that become issuable under the plans by reason of any stock dividend, stock split, recapitalization or other similar transaction.
- (2) This estimate is made pursuant to Rule 457(h) and Rule 457(c)(1) of the Securities Act solely for purposes of calculating the registration fee. The price per share and aggregate offering price are based upon the average of the high and low prices of the Common Stock on March 8, 2017, as reported on the Nasdaq Stock Market.
- (3) Represents shares of Common Stock that were automatically added to the shares authorized for issuance under the Flexion Therapeutics, Inc. 2013 Equity Incentive Plan (the “2013 EIP”) on January 1, 2017 pursuant to an “evergreen” provision contained in the 2013 EIP. Pursuant to such provision, on January 1 of each year from 2015 until 2023, the number of shares authorized for issuance under the 2013 EIP is automatically increased by: (a) a number equal to 4% of the total number of shares of Common Stock outstanding on December 31 of the preceding calendar year; or (b) a number determined by the Registrant’s board of directors that is less than the amount set forth in the foregoing clause (a).
- (4) Represents shares of Common Stock that were automatically added to the shares authorized for issuance under the Flexion Therapeutics, Inc. 2013 Employee Stock Purchase Plan (the “2013 ESPP”) on January 1, 2017 pursuant to an “evergreen” provision contained in the 2013 ESPP. Pursuant to such provision, on January 1 of each year from 2015 until 2023, the number of shares authorized for issuance under the 2013 ESPP is automatically increased by a number equal to the least of: (a) 1% of the total number of shares of Common Stock outstanding on December 31 of the preceding calendar year; (b) 375,768 shares of Common Stock; and (c) a number determined by the Registrant’s board of directors that is less than the amounts set forth in the foregoing clauses (a) and (b).

INCORPORATION OF DOCUMENTS BY REFERENCE

This Registration Statement is being filed for the purpose of increasing the number of securities of the same class as other securities for which a Registration Statement of the Registrant on Form S-8 relating to the same employee benefit plans is effective.

The Registrant previously registered shares of its Common Stock for issuance under the 2013 EIP and the 2013 ESPP under Registration Statements on Form S-8 filed with the Securities and Exchange Commission (the "Commission") on February 12, 2014 (File No. 333-193907), on March 24, 2015 (File No. 333-202957) and on March 11, 2016 (File No. 333-210111). Pursuant to General Instruction E to Form S-8, this Registration Statement hereby incorporates by reference the contents of the Registration Statements referenced above.

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 Burlington, State of Massachusetts, on March 10, 2017.

FLEXION THERAPEUTICS, INC.

By: /s/ Michael D. Clayman, M.D.

Michael D. Clayman, M.D.
President and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Michael D. Clayman and Frederick W. Driscoll, and each of them, as his or her true and lawful attorneys-in-fact and agents, each with the full power of substitution, for him or her and in his or her name, place or stead, in any and all capacities, to sign any and all amendments to this Registration Statement (including post-effective amendments), and to file the same, with all exhibits thereto and 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 or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, 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/ Michael D. Clayman, M.D.</u> Michael D. Clayman, M.D.	President, Chief Executive Officer and Member of the Board of Directors <i>(Principal Executive Officer)</i>	March 10, 2017
<u>/s/ Frederick W. Driscoll</u> Frederick W. Driscoll	Chief Financial Officer <i>(Principal Financial and Accounting Officer)</i>	March 10, 2017
<u>/s/ Patrick J. Mahaffy</u> Patrick J. Mahaffy	Chairman of the Board of Directors	March 10, 2017
<u>/s/ Scott Canute</u> Scott Canute	Member of the Board of Directors	March 10, 2017
<u>/s/ Samuel D. Colella</u> Samuel D. Colella	Member of the Board of Directors	March 10, 2017
<u>/s/ Heath Lukatch, Ph.D.</u> Heath Lukatch, Ph.D.	Member of the Board of Directors	March 10, 2017
<u>/s/ Sandesh Mahatme</u> Sandesh Mahatme	Member of the Board of Directors	March 10, 2017
<u>/s/ Ann Merrifield</u> Ann Merrifield	Member of the Board of Directors	March 10, 2017
<u>/s/ Alan Milinazzo</u> Alan Milinazzo	Member of the Board of Directors	March 10, 2017
<u>/s/ Mark Stejbach</u> Mark Stejbach	Member of the Board of Directors	March 10, 2017

EXHIBIT INDEX

<u>Exhibit Number</u>	<u>Description</u>
4.1 (1)	Amended and Restated Certificate of Incorporation of the Registrant.
4.2 (2)	Amended and Restated Bylaws of the Registrant.
4.3 (3)	Form of Common Stock Certificate of the Registrant.
5.1	Opinion of Cooley LLP.
23.1	Consent of PricewaterhouseCoopers LLP, Independent Registered Public Accounting Firm.
23.2	Consent of Cooley LLP. Reference is made to Exhibit 5.1.
24.1	Power of Attorney. Reference is made to the signature page hereto.
99.1 (4)	Flexion Therapeutics, Inc. 2013 Equity Incentive Plan and Forms of Stock Option Agreement, Notice of Exercise and Stock Option Grant Notice thereunder.
99.2 (5)	Flexion Therapeutics, Inc. 2013 Employee Stock Purchase Plan.

(1)	Previously filed as Exhibit 3.1 to the Registrant's Current Report on Form 8-K, filed with the Commission on February 19, 2014, and incorporated herein by reference.
(2)	Previously filed as Exhibit 3.2 to the Registrant's Current Report on Form 8-K, filed with the Commission on February 19, 2014, and incorporated herein by reference.
(3)	Previously filed as Exhibit 4.1 to the Registrant's Registration Statement on Form S-1 (File No. 333-193233), originally filed with the Commission on January 8, 2014, as amended, and incorporated herein by reference.
(4)	Previously filed as Exhibit 10.3 to the Registrant's Registration Statement on Form S-1 (File No. 333-193233), originally filed with the Commission on January 8, 2014, as amended, and incorporated herein by reference.
(5)	Previously filed as Exhibit 10.4 to the Registrant's Registration Statement on Form S-1 (File No. 333-193233), originally filed with the Commission on January 8, 2014, as amended, and incorporated herein by reference.



Sean M. Clayton
T: +1 858 550 6034
sclayton@cooley.com

March 9, 2017

Flexion Therapeutics, Inc.
10 Mall Road, Suite 301
Burlington, MA 01803

Ladies and Gentlemen:

We have represented Flexion Therapeutics, Inc., a Delaware corporation (the “*Company*”), in connection with the filing by the Company, of a Registration Statement on Form S-8 (the “*Registration Statement*”) with the Securities and Exchange Commission, covering the offering of up to an aggregate of 1,583,372 shares of the Company’s Common Stock, \$0.001 par value (the “*Shares*”), including (i) 1,266,698 shares (the “*2013 Plan Shares*”) reserved for issuance pursuant to the Company’s 2013 Equity Incentive Plan (the “*2013 Plan*”), and (ii) 316,674 shares (the “*ESPP Shares*”) reserved for issuance pursuant to the Company’s 2013 Employee Stock Purchase Plan (the “*2013 ESPP*”).

In connection with this opinion, we have examined and relied upon the Registration Statement and the related prospectuses, the 2013 Plan and the 2013 ESPP, the Company’s Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws and such other documents, records, certificates, memoranda and other instruments as in our judgment are necessary or appropriate to enable us to render the opinion expressed below. We have assumed the genuineness and authenticity of all documents submitted to us as originals and the conformity to originals of all documents submitted to us as copies thereof.

Our opinion is expressed only with respect to the federal laws of the United States of America and the General Corporation Law of the State of Delaware.

On the basis of the foregoing, and in reliance thereon, we are of the opinion that the 2013 Plan Shares, when sold and issued in accordance with the 2013 Plan and applicable stock option agreement, and the ESPP Shares, when sold and issued in accordance with the 2013 ESPP, and in each case when sold and issued in accordance with the Registration Statement and related prospectuses, will be validly issued, fully paid, and nonassessable (except as to shares issued pursuant to certain deferred payment arrangements, which will be fully paid and nonassessable when such deferred payments are made in full).

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Sean M. Clayton
+1 858 550 6034
sclayton@cooley.com

We consent to the filing of this opinion as an exhibit to the Registration Statement.

Sincerely,

Cooley LLP

By: /s/ Sean M. Clayton
Sean M. Clayton

Cooley LLP 4401 Eastgate Mall San Diego, CA 92121
t: (858) 550-6000 f: (858) 550-6420 cooley.com

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 10, 2017 relating to the financial statements, which appears in Flexion Therapeutics Inc.'s Annual Report on Form 10-K for the year ended December 31, 2016.

/s/ PricewaterhouseCoopers LLP
Boston, Massachusetts
March 10, 2017