

FLEXION THERAPEUTICS INC

FORM S-8

(Securities Registration: Employee Benefit Plan)

Filed 11/06/17

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
(Full title of the plan)

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

Mark S. Levine
General Counsel and Corporate Secretary
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," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act. (Check one):

Large Accelerated filer	<input type="checkbox"/>		Accelerated filer	<input checked="" type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/> (Do not check if a smaller reporting company)		Smaller reporting company	<input type="checkbox"/>
Emerging growth company	<input checked="" 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 13(a) of the Exchange Act.

CALCULATION OF REGISTRATION FEE

Title of securities to be registered	Amount to be registered (1) (3)	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	1,500,000	\$22.01	\$33,015,000.00	\$4,110.37

- (1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the “Securities Act”), this Registration Statement on Form S-8 shall also cover any additional shares of the Registrant’s Common Stock (“Common Stock”) that become issuable under the 2013 Equity Incentive Plan (the “2013 EIP”), by reason of any stock dividend, stock split, recapitalization or other similar transaction.
 - (2) This estimate is made pursuant to Rule 457(c) and Rule 457(h)(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 November 1, 2017, as reported on the Nasdaq Stock Market.
 - (3) Represents 1,500,000 shares of Common Stock added to the 2013 EIP pursuant to an amendment approved by the Registrant’s board of directors without stockholder approval pursuant to Rule 5635(c)(4) of the NASDAQ Listing Rules and to be used exclusively for the grant of awards to individuals who were not previously employees or non-employee directors (or following a bona fide period of non-employment), as an inducement material to the individuals’ entering into employment with the Registrant.
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REGISTRATION OF ADDITIONAL SECURITIES

The additional 1,500,000 shares of Common Stock available for issuance under the 2013 EIP being registered on this Registration Statement on Form S-8 (this “[Registration Statement](#)”) are to be used exclusively for the grant of awards (“[Inducement Awards](#)”) to individuals who were not previously employees or non-employee directors of the Registrant (or following a bona fide period of non-employment with the Registrant), as an inducement material to the individuals’ entering into employment with the Registrant within the meaning of Rule 5635(c)(4) of the NASDAQ Listing Rules (“[Rule 5635\(c\)\(4\)](#)”). The 2013 EIP was amended by the compensation committee of the board of directors of the Registrant to provide for Inducement Awards without stockholder approval pursuant to Rule 5635(c)(4).

INCORPORATION OF DOCUMENTS BY REFERENCE

The Registrant previously registered shares of its Common Stock for issuance under the 2013 EIP under Registration Statements on Form S-8 filed with the Securities and Exchange Commission on February 12, 2014 (File No. 333-193907), on March 24, 2015 (File No. 333-202957), on March 11, 2016 (File No. 333-210111) and on March 10, 2017 (File No. 333-216615). Pursuant to General Instruction E to Form S-8, this Registration Statement hereby incorporates by reference the contents of the Registration Statements referenced above.

ITEM 8. EXHIBITS.

<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, as amended, and Forms of Stock Option Agreement, Notice of Exercise and Stock Option Grant Notice thereunder.

- (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 99.1 to the Registrant’s Current Report on Form 8-K, filed with the Commission on September 14, 2017, and incorporated herein by reference.

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 November 6, 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 Mark S. Levine, 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 and Principal Financial and Accounting Officer)</i>	November 6, 2017
<u>/s/ Patrick J. Mahaffy</u> Patrick J. Mahaffy	Chairman of the Board of Directors	November 6, 2017
<u>/s/ Scott A. Canute</u> Scott A. Canute	Member of the Board of Directors	November 6, 2017
<u>/s/ Samuel D. Colella</u> Samuel D. Colella	Member of the Board of Directors	November 6, 2017
<u>/s/ Heath Lukatch, Ph.D.</u> Heath Lukatch, Ph.D.	Member of the Board of Directors	November 6, 2017
<u>/s/ Sandesh Mahatme</u> Sandesh Mahatme	Member of the Board of Directors	November 6, 2017
<u>/s/ Ann Merrifield</u> Ann Merrifield	Member of the Board of Directors	November 6, 2017
<u>/s/ Alan W. Milinazzo</u> Alan W. Milinazzo	Member of the Board of Directors	November 6, 2017
<u>/s/ Mark Stejbach</u> Mark Stejbach	Member of the Board of Directors	November 6, 2017



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

November 6, 2017

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

Ladies and Gentlemen:

We have acted as counsel to Flexion Therapeutics, Inc., a Delaware corporation (the “*Company*”), and you have requested our opinion 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 1,500,000 shares of the Company’s Common Stock, \$0.001 par value (the “*Shares*”), pursuant to the Company’s 2013 Equity Incentive Plan (the “*Plan*”).

In connection with this opinion, we have examined and relied upon the Registration Statement and the related Prospectus included therein, the Company’s Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws, as currently in effect, the Plan and the originals or copies certified to our satisfaction of such other records, documents, certificates, memoranda and other instruments as we deem 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 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 Shares, when sold and issued in accordance with the Plan, the Registration Statement and related Prospectus, 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).

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

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
November 6, 2017