

# CEMPRA, INC.

## FORM S-8

(Securities Registration: Employee Benefit Plan)

Filed 08/10/17

Address	6320 QUADRANGLE DRIVE SUITE 360 CHAPEL HILL, NC 27517-8149
Telephone	919-576-2306
CIK	0001461993
Symbol	CEMP
SIC Code	2834 - Pharmaceutical Preparations
Industry	Biotechnology & Medical Research
Sector	Healthcare
Fiscal Year	12/31

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

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

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**CEMPRA, INC.**  
(Exact name of registrant as specified in its charter)

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**Delaware**  
(State of incorporation)

**45-4440364**  
(I.R.S. Employer Identification No.)

**6320 Quadrangle Drive, Suite 360**  
**Chapel Hill, North Carolina 27517-8149**  
**Telephone: (919) 313-6601**  
(Address, including zip code, of registrant's principal executive offices)

**2011 Equity Incentive Plan, as amended**  
(Full title of the plan)

**David S. Zaccardelli, Pharm.D.**  
**Acting Chief Executive Officer**  
**Cempra, Inc.**  
**6320 Quadrangle Drive, Suite 360**  
**Chapel Hill, North Carolina 27517-8149**  
**Telephone: (919) 313-6601**  
(Name, address, including zip code, and telephone number, including area code,  
of agent for service)

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**COPIES TO:**

**Kenneth E. Eheman, Esq.**  
**Alexander M. Donaldson, Esq.**  
**Wyrick Robbins Yates & Ponton LLP**  
**4101 Lake Boone Trail, Suite 300**  
**Raleigh, North Carolina 27607**  
**Telephone: (919) 781-4000**  
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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 Act) (Check one):

Large accelerated filer	<input checked="" type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/> (Do not check if smaller reporting company)	Smaller reporting company	<input 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 financing accounting standards provided pursuant to Section 13(a) of the Exchange Act.

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**CALCULATION OF REGISTRATION FEE**

Title of securities to be registered	Amount to be registered (1)(2)	Proposed maximum offering price per share(3)	Proposed maximum aggregate offering price(3)	Amount of registration fee
Common Stock, \$0.001 par value per share	3,855,346	\$3.85	\$14,843,082	\$1,720.32

- (1) Consists of 3,855,346 additional shares of the Registrant's common stock reserved for issuance under the Registrant's 2011 Equity Incentive Plan, as amended (the "Plan"). The remaining 4,842,105 shares under the Registrant's 2011 Equity Incentive Plan were registered under Registration Statements No. 333-181358, No. 333-190891 and No. 333-204560.
- (2) Pursuant to Rule 416(a) of the Securities Act of 1933, as amended (the "Securities Act"), this registration statement also covers any additional shares of the Registrant's common stock that may become issuable under the Plan as a result of any future stock splits, stock dividends or similar adjustments of the Registrant's outstanding common stock.
- (3) Estimated solely for the purpose of calculating the registration fee, based upon the average of the high and low prices of the common stock on The NASDAQ Global Market on August 4, 2017 in accordance with Rule 457(c).

**PART I**

**INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS**

**Item 1. Plan Information**

The information required by Item 1 is included in documents sent or given to participants in the plan covered by this registration statement pursuant to Rule 428(b)(1) of the Securities Act of 1933, as amended (the "Securities Act").

**Item 2. Registrant Information and Employee Plan Annual Information**

The written statement required by Item 2 is included in documents sent or given to participants in the plan covered by this registration statement pursuant to Rule 428(b)(1) of the Securities Act.

**PART II**

**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

**Item 3. Incorporation of Documents by Reference**

The following documents heretofore filed by Cempra, Inc. (the "Company") with the Securities and Exchange Commission (the "Commission") are incorporated herein by reference:

(a) The Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2016, filed with the Commission pursuant to Section 13 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), on February 28, 2017;

(b) The Company's Amendment No. 1 to its Annual Report on Form 10-K/A for the fiscal year ended December 31, 2016, filed with the Commission pursuant to Section 13 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), on April 13, 2017;

(c) The Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2017 filed with the Commission pursuant to Section 13 of the Exchange Act on April 28, 2017;

(d) The Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2017 filed with the Commission pursuant to Section 13 of the Exchange Act on August 9, 2017;

(e) The Company's Current Reports on Form 8-K or portions thereof, filed pursuant to Section 13 of the Exchange Act on February 24, March 13, March 28, April 28 (second Form 8-K filed that day to report an Item 5.02 matter), June 28 and August 10, 2017; and

(f) The description of the Company's common stock contained in the registration statement on Form 8-A (File No. 333-177261) filed with the Commission on January 24, 2012, including any amendment or report filed for the purpose of updating such description.

All documents filed, but not furnished, by the Company pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date hereof and prior to the filing of a post-effective amendment that indicates that all securities offered under this registration statement have been sold or that deregisters all securities then remaining unsold shall be deemed to be incorporated by reference herein and to be a part hereof from the date of filing of such documents. In no event, however, will any of the information, including exhibits, that the Company discloses under Item 2.02 and Item 7.01 of any report on Form 8-K that has been or may from time to time be furnished to the Commission be incorporated by reference into or otherwise become a part of this registration statement.

Any statement contained in a document incorporated by reference herein shall be deemed to be modified or superseded for purposes hereof to the extent that a statement contained herein (or in any other subsequently filed document that also is or is deemed to be incorporated by reference herein) modifies or supersedes such statement.

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Any statement so modified or superseded shall not be deemed to constitute a part hereof except as so modified or superseded.

**Item 4. Description of Securities**

Not applicable. The class of securities to be offered is registered under Section 12 of the Exchange Act.

**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”) provides, in effect, that any person made a party to any action by reason of the fact that he is or was a director, officer, employee or agent of the Company may and, in certain cases, must be indemnified by the Company against, in the case of a non-derivative action, judgments, fines, amounts paid in settlement and reasonable expenses (including attorneys’ fees) incurred by him as a result of such action, and in the case of a derivative action, against expenses (including attorneys’ fees), if in either type of action he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company. This indemnification does not apply, in a derivative action, to matters as to which it is adjudged that the director, officer, employee or agent is liable to the Company, unless upon court order it is determined that, despite such adjudication of liability, but in view of all the circumstances of the case, he is fairly and reasonably entitled to indemnity for expenses, and, in a non-derivative action, to any criminal proceeding in which such person had reasonable cause to believe his conduct was unlawful.

Section 145 also gives a corporation power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys’ fees) actually and reasonably incurred by the person in connection with the defense or settlement of such action or suit if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper. Section 145 further provides that, to the extent that a present or former director or officer of a corporation has been successful on the merits or otherwise in defense of any such action, suit or proceeding, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys’ fees) actually and reasonably incurred by such person in connection therewith.

Section 145 also authorizes a corporation to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him and incurred by him in any such capacity, arising out of his status as such, whether or not the corporation would otherwise have the power to indemnify him under Section 145.

The Company’s certificate of incorporation provides that no director of the Company shall be liable to the Company or its stockholders for monetary damages for breach of fiduciary duty as a director to the fullest extent permitted by the DGCL.

The Company’s certificate of incorporation also provides that the Company shall indemnify to the fullest extent permitted by Delaware law any and all of its directors and officers, or former directors and officers, or any person who may have served at the Company’s request as a director or officer of another corporation, partnership, joint venture, trust or other enterprise.

All of the Company's directors and officers are covered by insurance policies maintained by the Company against certain liabilities for actions taken in their capacities as such, including liabilities under the Securities Act.

**Item 7. Exemption From Registration Claimed**

Not applicable.

**Item 8. Exhibits**

The following exhibits are filed as part of this Registration Statement:

<u>Exhibit No.</u>	<u>Description</u>
5.1	Opinion of Wyrick Robbins Yates & Ponton LLP
10.1	2011 Equity Incentive Plan, as amended May 21, 2015 (incorporated by reference to Exhibit 10.1 to Form S-8 filed on May 29, 2015)
23.1	Consent of PricewaterhouseCoopers LLP, Independent Registered Public Accounting Firm
23.2	Consent of Wyrick Robbins Yates & Ponton LLP (contained in Exhibit 5.1)
24.1	Power of Attorney (see page 5)

**Item 9. Undertakings**

(a) The undersigned registrant hereby undertakes as follows:

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

(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 section 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 related to the securities offered therein, and the offering of such securities at the 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.

**[THE NEXT PAGE IS THE SIGNATURE PAGE]**

## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, 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 Chapel Hill, State of North Carolina, on the 9th day of August 2017.

### CEMPRA, INC.

By: /s/ David S. Zaccardelli, Pharm.D.  
David S. Zaccardelli, Pharm.D.  
Acting Chief Executive Officer

## POWER OF ATTORNEY

We, the undersigned officers and directors of Cempra, Inc., do hereby constitute and appoint David S. Zaccardelli, Pharm.D. and Mark Hahn, or either of them, our true and lawful attorneys-in-fact and agents, each with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments to this Registration Statement, and to file the same, with exhibits thereto, and other documents in connection therewith, with the SEC, 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 are 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 each of said attorney-in-fact and agents, or his or her substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

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>Capacity</u>	<u>Date</u>
<u>/s/ David S. Zaccardelli, Pharm.D.</u> David S. Zaccardelli, Pharm.D.	Acting Chief Executive Officer and Director (Principal Executive Officer)	August 9, 2017
<u>/s/ Mark W. Hahn</u> Mark W. Hahn	Executive Vice President and Chief Financial Officer (Principal Financial Officer)	August 9, 2017
<u>/s/ Garheng Kong, Ph.D.</u> Garheng Kong, Ph.D.	Chairman of the Board	August 9, 2017
<u>Michael R. Dougherty</u>	Director	August 9, 2017
<u>/s/ David N. Gill</u> David N. Gill	Director	August 9, 2017
<u>/s/ Dov Goldstein, M.D.</u> Dov Goldstein, M.D.	Director	August 9, 2017
<u>/s/ John H. Johnson</u> John H. Johnson	Director	August 9, 2017
<u>/s/ Richard Kent, M.D.</u> Richard Kent, M.D.	Director	August 9, 2017
<u>/s/ P. Sherrill Neff</u> P. Sherrill Neff	Director	August 9, 2017

WYRICK ROBBINS YATES & PONTON LLP  
Attorneys at Law

The Summit  
4101 Lake Boone Trail, Suite 300  
Raleigh, North Carolina 27607-7506

August 10, 2017

Cempra, Inc.  
6320 Quadrangle Drive, Suite 360  
Chapel Hill, North Carolina 27517-8149

Re: Registration Statement on Form S-8

Ladies and Gentlemen:

We have examined the Registration Statement on Form S-8 filed on or about the date hereof by Cempra, Inc., a Delaware corporation (the "Company"), with the Securities and Exchange Commission (the "Registration Statement"), in connection with the registration under the Securities Act of 1933, as amended, of 3,855,346 shares of the Company's common stock, \$0.001 par value per share (the "Shares"). We understand the Shares are to be issued pursuant to the Company's 2011 Equity Incentive Plan, as amended. In our examination, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals and the conformity with the original of all documents submitted to us as copies thereof.

As your legal counsel, we have examined the proceedings taken, and are familiar with the proceedings proposed to be taken, in connection with the sale of the Shares.

It is our opinion that, upon completion of the proceedings being taken or contemplated by us, as your counsel, to be taken prior to the issuance of the Shares, the Shares when issued in the manner referred to in the Registration Statement and in accordance with the Plan, will be legally and validly issued, fully paid and nonassessable.

We consent to the use of this opinion as an exhibit to the Registration Statement and further consent to the use of our name wherever appearing in the Registration Statement, including the Prospectus constituting a part thereof, and any amendments thereto.

Very truly yours,

/s/ Wyrick Robbins Yates & Ponton 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 February 28, 2017 relating to the financial statements and the effectiveness of internal control over financial reporting, which appears in Cempra, Inc.'s Annual Report on Form 10-K for the year ended December 31, 2016.

/s/ PricewaterhouseCoopers LLP

Raleigh, North Carolina  
August 10, 2017