

ATHERSYS, INC / NEW

FORM 8-K (Current report filing)

Filed 10/16/17 for the Period Ending 10/12/17

Address	3201 CARNEGIE AVENUE CLEVELAND, OH, 44115-2634
Telephone	216-431-9900
CIK	0001368148
Symbol	ATHX
SIC Code	2834 - Pharmaceutical Preparations
Industry	Biotechnology & Medical Research
Sector	Healthcare
Fiscal Year	12/31

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549**

FORM 8-K

**CURRENT REPORT
Pursuant to Section 13 or 15(d)
of the Securities Exchange Act of 1934**

Date of report (Date of earliest event reported): October 12, 2017

ATHERSYS, INC.
(Exact Name of Registrant as Specified in Charter)

Delaware
(State or Other Jurisdiction
of Incorporation)

001-33876
(Commission
File Number)

20-4864095
(IRS Employer
Identification No.)

**3201 Carnegie Avenue,
Cleveland, Ohio**
(Address of Principal Executive Offices)

44115-2634
(Zip Code)

Registrant's telephone number, including area code: (216) 431-9900

Not Applicable
(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

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 13(a) of the Exchange Act.

Item 8.01. Other Events.

As a routine matter, Athersys, Inc. (“Athersys”) has been active in the development, improvement and protection of its intellectual property portfolio through its prosecution efforts, collaborative research, and in-licensing, among other things. From time-to-time, Athersys also engages in adversarial processes, such as interference and potentially, litigation, to protect or advance certain patents or applications. Over the past several years, Athersys has been involved in several proceedings in the United States and Europe with a third party, Garnet BioTherapeutics, Inc. (“Garnet”), focused on stem cell technologies. These proceedings have been previously disclosed. On October 12, 2017, Athersys entered into an agreement with Garnet to settle these longstanding intellectual property disagreements between the parties. The settlement brings clarity to Athersys as it enters into the final stages of development and approaches commercialization of its ischemic stroke program, and takes into consideration current and potential new commercial partnership arrangements. Additionally, it eliminates the legal costs associated with the ongoing dispute.

As part of the agreement, Athersys has been granted a worldwide, non-exclusive license, with the right to sublicense, to Garnet patents and applications that have been at the core of the intellectual property disputes, for use related to the treatment or prevention of disease or conditions using cells. In return, Athersys has agreed not to enforce its intellectual property rights against Garnet with respect to therapeutic agents derived from cells (but Athersys fully retains its ability to enforce its rights with respect to cells used as therapy). Athersys has also agreed not to further challenge the patentability or validity of certain Garnet applications or patents (noting that Athersys has been granted a license as described above). Pursuant to the terms of the agreement, Athersys initially will pay Garnet \$500,000 and issue 1,000,000 shares of common stock in connection with the execution of the agreement, and will pay an additional \$250,000 over each of the next four quarters. Additionally, Athersys will issue 500,000 shares of common stock upon issuance of a patent from the Garnet patent applications at the core of the dispute. There will be no royalty payments or milestone payments to Garnet associated with the development and commercialization of Athersys’ cell therapy products or other payments to Garnet related to the settlement agreement. The shares of Athersys common stock will be issued to Garnet pursuant to Athersys’ existing shelf registration statement.

The opinion of counsel relating to the issuance of the shares of common stock to Garnet is attached hereto as exhibit 5.1.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

<u>Exhibit Number</u>	<u>Description</u>
5.1	Opinion of Jones Day
23.1	Consent of Jones Day (included in Exhibit 5.1)

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

ATHERSYS, INC.

By: /s/ Laura K. Campbell

Laura K. Campbell

Senior Vice President of Finance

Date: October 16, 2017

JONES DAY

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October 16, 2017

Athersys, Inc.
3201 Carnegie Avenue
Cleveland, Ohio 44115-2634

Re: Registration Statement on Form S-3 Filed by Athersys, Inc.

Ladies and Gentlemen:

We are acting as counsel for Athersys, Inc., a Delaware corporation (the “*Company*”), in connection with the issuance of up to 1,500,000 shares (the “*Shares*”) of common stock, \$0.001 par value per share, of the Company pursuant to the Settlement Agreement (the “*Settlement Agreement*”) between the Company and Garnet Biotherapeutics, Inc. The Shares are included in a registration statement on Form S-3 under the Securities Act of 1933 (the “*Act*”), filed with the Securities and Exchange Commission on March 10, 2017 (Registration No. 333-216626) (as the same may be amended from time to time, the “*Registration Statement*”), to which this opinion is an exhibit.

In connection with the opinion expressed herein, we have examined such documents, records and matters of law as we have deemed relevant or necessary for purposes of such opinion. Based on the foregoing, and subject to the further limitations, qualifications and assumptions set forth herein, we are of the opinion that the Shares, when issued and delivered pursuant to the Settlement Agreement against payment of the consideration therefor as provided in the Settlement Agreement, will be validly issued, fully paid and nonassessable.

The opinion set forth above is subject to the following limitations, qualifications and assumptions:

As to facts material to the opinion and assumptions expressed herein, we have relied upon oral or written statements and representations of the officers and other representatives of the Company and others.

The opinion expressed herein is limited to the General Corporation Law of the State of Delaware, as currently in effect, and we express no opinion as to the effect of the laws of any other jurisdiction on the opinion expressed herein.

Athersys, Inc.
October 16, 2017
Page 2

We hereby consent to the filing of this opinion as Exhibit 5.1 to the Registration Statement filed by the Company to effect the registration of the Shares under the Act. In giving such consent, we do not thereby admit that we are included in the category of persons whose consent is required under Section 7 of the Act or the rules and regulations of the Securities and Exchange Commission promulgated thereunder.

Very truly yours,

/s/ Jones Day