

As filed with the Securities and Exchange Commission on March 22, 2023

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

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

Abeona Therapeutics Inc.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

51-0407811
(IRS Employer
Identification No.)

1330 Avenue of the Americas, 33rd Floor,
New York, NY 10019
(Address of Principal Executive Offices)(Zip Code)

Inducement Equity Awards to Various Employees
(Full title of the plan)

Vishwas Seshadri
President & Chief Executive Officer
Abeona Therapeutics Inc.
1330 Avenue of the Americas, 33rd Floor,
New York, NY 10019
(Name and address of agent for service)

(646) 813-4701
(Telephone number, including area code, of agent for service)

Copies of all correspondence to:

John J. Concannon III
Morgan, Lewis & Bockius LLP
One Federal Street
Boston, Massachusetts 02110
(617) 951-8000

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	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input checked="" type="checkbox"/>	Smaller reporting company	<input checked="" type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

If an emerging growth company, include 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 (the "Registration Statement") is being filed for the purpose of registering 131,750 shares of common stock, par value \$0.01 per share ("Common Stock"), of Abeona Therapeutics Inc. ("we," "us," the "Company," or the "Registrant"), which are being issued pursuant to the restricted stock awards between the Company and each of six new hires (collectively, the "Inducement Award Recipients"), in accordance with the provisions set forth in certain employment agreements by and between the Registrant and each of the Inducement Award Recipients, as an inducement that is material to each such individual's employment with the Registrant (the "Inducement Awards"). The Inducement Awards are being granted to the Inducement Award Recipients as a material inducement for each Inducement Award Recipient accepting employment with the Company, and were approved by the Compensation Committee of the Company's Board of Directors in reliance on the employment inducement

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The documents containing the information specified in this Part I (plan information and registrant information) will be sent or given to the award recipient, pursuant to Rule 428(b)(1) of the Securities Act of 1933, as amended (the “Securities Act”). Such documents need not be filed with the Securities and Exchange Commission (the “Commission”) either as part of this registration statement or as prospectuses or prospectus supplements pursuant to Rule 424 of the Securities Act. These documents and the documents incorporated by reference in this Registration Statement pursuant to Item 3 of Part II of this Registration Statement, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act. The Company will furnish without charge to the award recipient, upon his written or oral request, a copy of any and all documents incorporated by reference in Item 3 of Part II of this Registration Statement, other than exhibits to such document (unless such exhibits are specifically incorporated by reference to the information that is incorporated). These documents are incorporated by reference in the Section 10(a) prospectus. Requests should be directed to Abeona Therapeutics Inc., 1330 Avenue of the Americas, 33rd Floor, New York, NY 10019, Attention: Chief Executive Officer, Telephone number: (646) 813-4701.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents previously filed by us with the Commission are incorporated by reference into this Registration Statement:

- (a) Our Annual Report on [Form 10-K](#) for the fiscal year ended December 31, 2021, filed with the Commission on March 31, 2022;
- (b) Our Quarterly Reports on Form 10-Q for the quarterly periods ended [March 31, 2022](#), [June 30, 2022](#) and [September 30, 2022](#) (filed with the Commission on May 13, 2022, August 11, 2022 and November 14, 2022, respectively);
- (c) Our Current Reports on Form 8-K filed with the Commission on [March 9, 2022](#), [April 29, 2022](#), [May 2, 2022](#), [May 17, 2022](#), [May 19, 2022](#), [June 14, 2022](#), [June 30, 2022](#), [July 20, 2022](#), [August 17, 2022](#) and [November 3, 2022/November 3, 2022](#) (both filings); and
- (d) The description of our common stock contained in the Description of Capital Stock of Abeona Therapeutics Inc. filed as [Exhibit 4.4](#) to our Annual Report on Form 10-K for the fiscal year ended December 31, 2019, including any amendments or reports filed thereafter for the purpose of updating this description.

To the extent that any information contained in any Current Report on Form 8-K, or any exhibit thereto, was furnished to, rather than filed with, the Commission, such information or exhibit is specifically not incorporated by reference.

All reports and other documents that the Company subsequently files with the Commission pursuant to Sections 13(a), 13(c), 14, or 15(d) of the Securities Exchange Act of 1934, as amended, after the date of this Registration Statement and prior to the filing of a post-effective amendment that indicates that the Company has sold all of the securities offered under this Registration Statement or deregisters the distribution of all such securities then remaining unsold shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the date that the Company files such report or document.

Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement 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. 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.

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 (“DGCL”) empowers a Delaware corporation to indemnify its officers and directors and certain other persons to the extent and under the circumstances set forth therein.

Our Certificate of Incorporation and Bylaws provide for indemnification of our officers and directors and certain other persons against liabilities and expenses incurred by any of them in certain stated proceedings and under certain stated conditions.

The above discussion of our Certificate of Incorporation, as amended, Bylaws and Section 145 of DGCL is not intended to be exhaustive and is qualified in its entirety by such Certificate of Incorporation, Bylaws, and statute.

The Company maintains a general liability insurance policy that covers certain liabilities of the Company’s directors and officers arising out of claims based on acts or omissions in their capacities as directors or officers.

In any underwriting agreement that the Company enters into in connection with the sale of Common Stock being registered hereby, the underwriters will agree to indemnify, under certain conditions, the Company, its directors, its officers, and persons who control the Company within the meaning of the Securities Act, against certain liabilities.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

See the attached Exhibit Index, which is incorporated herein by reference.

Item 9. Undertakings.

(a) The undersigned 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 in the Registration Statement. Notwithstanding the foregoing, any increase or decrease in the volume of securities offered (if the total dollar value of the 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) of this section do not apply to this Registration Statement on Form S-8 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 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 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 of 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.

EXHIBIT INDEX

Exhibit No.	Description
5.1	Opinion of Morgan, Lewis & Bockius LLP.
23.1	Consent of Whitley Penn LLP.
23.2	Consent of Morgan, Lewis & Bockius LLP (included in Exhibit 5.1 hereto).
24.1	Power of Attorney (included on the signature page of this Registration Statement).
107	Filing Fee Table.

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 New York, State of New York, on March 22, 2023.

ABEONA THERAPEUTICS INC.

By: /s/ Vishwas Seshadri

Name: Vishwas Seshadri

Title: Chief Executive Officer

POWERS OF ATTORNEY

Each person whose signature appears below hereby constitutes and appoints Joseph Vazzano and Vishwas Seshadri, and each of them, as his or her true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution for him or her and in his or her name, place and stead, in any and all capacities, to sign any or all amendments or supplements to this Registration Statement, whether pre-effective or post-effective, and to file the same with all 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 necessary or appropriate to be done with respect to this Registration Statement or any amendments or supplements hereto in the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their or his substitute or substitutes, may lawfully do or cause to be done by virtue thereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed below by the following persons, in the capacities and on the date indicated:

<u>Signature</u>	<u>Capacity in Which Signed</u>	<u>Date</u>
<u>/s/ Vishwas Seshadri</u> Vishwas Seshadri	President, Chief Executive Officer and Director (Principal Executive Officer)	March 22, 2023
<u>/s/ Joseph Vazzano</u> Joseph Vazzano	Chief Financial Officer (Principal Financial and Accounting Officer)	March 22, 2023
<u>/s/ Michael Amoroso</u> Michael Amoroso	Chairman of the Board	March 22, 2023
<u>/s/ Christine Silverstein</u> Christine Silverstein	Director	March 22, 2023
<u>/s/ Todd Wider</u> Todd Wider	Director	March 22, 2023
<u>/s/ Paul Mann</u> Paul Mann	Director	March 22, 2023
<u>/s/ Faith L. Charles</u> Faith L. Charles	Director	March 22, 2023
<u>/s/ Mark Alvino</u> Mark Alvino	Director	March 22, 2023
<u>/s/ Leila Alland</u> Leila Alland	Director	March 22, 2023
<u>/s/ Donald Wuchterl</u> Donald Wuchterl	Director	March 22, 2023

March 22, 2023

Abeona Therapeutics Inc.
1330 Avenue of the Americas, 33rd Floor
New York, NY 10019

Re: Registration Statement on Form S-8 under the Securities Act of 1933, as amended

Ladies and Gentlemen:

We have acted as counsel to Abeona Therapeutics Inc., a Delaware corporation (the "Company"), in connection with the filing of a Registration Statement on Form S-8 (the "Registration Statement") under the Securities Act of 1933, as amended (the "Securities Act"), with the Securities and Exchange Commission (the "SEC"). This Registration Statement relates to the registration of 131,750 shares (the "Shares") of restricted common stock, par value \$0.01 per share (the "Common Stock"), to be issued pursuant to restricted stock awards made to certain individuals as an inducement material to such individuals' entering into employment with the Company (collectively, the "Inducement Grants").

In connection with this opinion letter, we have examined the Registration Statement and originals, or copies certified or otherwise identified to our satisfaction, of the Restated Certificate of Incorporation and Amended and Restated Bylaws of the Company and such other documents, records and other instruments as we have deemed appropriate for purposes of the opinion set forth herein.

We have assumed the genuineness of all signatures, the legal capacity of all natural persons, the authenticity of the documents submitted to us as originals, the conformity with the originals of all documents submitted to us as certified, facsimile, or photostatic copies, and the authenticity of the originals of all documents submitted to us as copies.

Based on the foregoing, we are of the opinion, as of the date hereof, that the Shares have been duly authorized by the Company and, when issued by the Company in accordance with the provisions of the Inducement Grants will be validly issued, fully paid, and non-assessable.

This opinion letter is rendered as of the date first written above and we disclaim any obligation to advise you of facts, circumstances, events or developments which hereafter may be brought to our attention and may alter, affect or modify the opinion expressed herein. Our opinion is expressly limited to the matters set forth above and we render no opinion, whether by implication or otherwise, to any other matters relating to the Company or the Common Stock.

We hereby consent to the use of this opinion as Exhibit 5.1 to the Registration Statement. In giving such consent, we do not admit that we are acting within the category of persons whose consent is required under the provisions of the Securities Act or the rules or regulations of the SEC thereunder.

Very truly yours,

/s/ Morgan, Lewis & Bockius LLP

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in this Registration Statement on Form S-8 of our report dated March 31, 2022, relating to the consolidated financial statements of Abeona Therapeutics Inc., which appears in the Annual Report on Form 10-K of Abeona Therapeutics Inc. for the year ended December 31, 2021.

/s/ Whitley Penn LLP

Plano, Texas
March 21, 2023

CALCULATION OF REGISTRATION FEE

Form S-8
(Form Type)

Abeona Therapeutics Inc.
(Exact Name of Registrant as Specified in its Charter)

Table 1—Newly Registered Securities

<u>Security Type</u>	<u>Security Class Title</u>	<u>Fee Calculation Rule</u>	<u>Amount Registered(1)</u>	<u>Proposed Maximum Offering Price Per Unit(2)</u>	<u>Maximum Aggregate Offering Price(2)</u>	<u>Fee Rate</u>	<u>Amount of Registration Fee</u>
	Common stock, par value \$0.01 per share					\$110.20 per	
Equity		Rule 457(h)	131,750	\$ 2.45	\$ 322,787.50	\$1,000,000	\$ 35.58
	Total Offering Amounts				\$ 322,787.50		\$ 35.58
	Total Fee Offsets						—
	Net Fee Due				\$ 322,787.50		\$ 35.58

- (1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended, (the “Securities Act”), this Registration Statement shall be deemed to cover an indeterminate amount of additional shares of the registrant’s Common stock, par value \$0.01 per share (the “Common Stock”), that may be offered and issued as a result of any share split, share dividend or similar transactions.
- (2) Estimated in accordance with Rules 457(c) and (h) under the Securities Act solely for the purpose of calculating the registration fee based on the average of the high and low prices of the Common Stock as reported on the Nasdaq Capital Market on March 17, 2023.