

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

FORM S-8

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

Cumberland Pharmaceuticals Inc.

(Exact name of registrant as specified in its charter)

Tennessee

(State or other jurisdiction of
incorporation or organization)

62-1765329

(I.R.S. Employer
Identification No.)

1600 West End Avenue, Suite 1300

Nashville, Tennessee

(Address of Principal Executive Offices)

37203

(Zip Code)

Amended and Restated 2007 Long-Term Incentive Compensation Plan

(Full Title of Plan)

A. J. Kazimi

Cumberland Pharmaceuticals Inc.
1600 West End Avenue, Suite 1300
Nashville, Tennessee 37203

(Name and address of agent for service)

(615) 255-0068

(Telephone number, including area code, of agent for service)

With a copy to:

Tonya Mitchem Grindon, Esq.
Nathanael P. Kibler, Esq.
Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
1600 West End Avenue, Suite 2000
Nashville, TN 37203
(615) 726-5600
(615) 744-5607 (fax)

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See the definitions of "large accelerated filer," "accelerated filer" and smaller reporting 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, 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 7(a)(2)(B) of the Securities Act.

EXPLANATORY NOTE

Cumberland Pharmaceuticals Inc. (the “Registrant”) is filing this Registration Statement on Form S-8 (this “Registration Statement”) to register an additional 750,000 shares of its common stock, no par value (the “Common Stock”), for issuance under the Registrant’s Amended and Restated 2007 Long-Term Incentive Compensation Plan (the “2007 Plan”). An amendment to increase the number of shares available to be awarded under the 2007 Plan from 2,400,000 shares to 3,150,000 shares was described in the Company’s definitive proxy statement, filed with the Securities Exchange Commission (the “SEC”) on March 15, 2023 and was approved by the Company’s shareholders on April 25, 2023. The additional shares of Common Stock under the 2007 Plan are securities of the same class as other securities for which an original registration statement on Form S-8 (File No. 333-164376) was filed with the SEC on January 15, 2010 (the “Prior Registration Statement”). Pursuant to General Instruction E to Form S-8, the contents of the Prior Registration Statement are incorporated herein by reference except to the extent supplemented, amended or superseded by the information set forth herein.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The Registrant hereby incorporates by reference into this Registration Statement the following documents previously filed with the SEC:

- (1) The contents of the Prior Registration Statement relating to the 2007 Plan filed with the SEC on [January 15, 2010 \(File No. 333-164376\)](#).
- (2) The description of the Registrant’s Common Stock contained in its registration statement on Form 8-A filed with the SEC on [August 1, 2007 \(File No. 001-33637\)](#), and any amendment or report subsequently filed for the purpose of updating such description.
- (3) The Registrant’s Annual Report on Form 10-K (File No. 001-33637) for the year ended December 31, 2022, filed with the SEC on [March 13, 2023](#).
- (4) The information specifically incorporated by reference into the Registrant’s Annual Report on Form 10-K for the year ended December 31, 2022 from its definitive proxy statement on Schedule 14A (File No. 001-33637) for the 2023 Annual Meeting of Stockholders, filed with the SEC on [March 15, 2023](#).
- (5) The Registrant’s Quarterly Report on Form 10-Q (File No. 001-33637) for the quarter ended March 31, 2023, filed with the SEC on [May 12, 2023](#).
- (6) The Registrant’s Current Reports on Form 8-K (File No. 001-33637), filed with the SEC, excluding the items furnished as exhibits to such reports, on [January 17, 2023](#), [March 15, 2023](#), [April 4, 2023](#), [April 17, 2023](#) and [April 28, 2023](#).

All documents that the Registrant subsequently files pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended, after the date of this Registration Statement (except for any portions of the Registrant’s Current Reports on Form 8-K furnished pursuant to Item 2.02 or Item 7.01 thereof and any corresponding exhibits thereto not filed with the SEC), and prior to the filing of a post-effective amendment to this Registration Statement indicating that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference into this Registration Statement and to be a part hereof from the date of filing of such documents.

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 which 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 6. Indemnification of Directors and Officers.

Under the Tennessee Business Corporation Act (“TBCA”), a corporation shall indemnify a director or officer against reasonable expenses incurred in connection with the proceeding to the extent the director or officer has been wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director or officer was a party because he or she is or was a director or officer of the corporation.

The TBCA provides that a corporation may indemnify any of its directors and officers against liability incurred in connection with a proceeding if (a) such person acted in good faith; (b) in the case of conduct in an official capacity with the corporation, such person reasonably believed such conduct was in the corporation's best interests; (c) in all other cases, such person reasonably believed that his or her conduct was at least not opposed to the best interests of the corporation; and (d) in connection with any criminal proceeding, such person had no reasonable cause to believe his or her conduct was unlawful.

Under the TCBA, a Tennessee business corporation may not eliminate or limit director monetary liability for (i) breaches of the director's duty of loyalty to the corporation or its shareholders; (ii) acts or omissions not in good faith or involving intentional misconduct or a knowing violation of law; or (iii) unlawful distributions to shareholders.

In actions brought by or in the right of the corporation, however, the TBCA provides that no indemnification may be made if the director or officer was adjudged to be liable to the corporation. The TBCA also provides that in connection with any proceeding charging improper personal benefit to an officer or director, no indemnification may be made if such officer or director is adjudged liable on the basis that such personal benefit was improperly received.

The Registrant’s Second Amended and Restated Bylaws include an indemnification provision under which the Registrant has the power to indemnify its directors, officers and former officers and directors (including heirs and personal representatives) against all costs, charges and expenses actually and reasonably incurred, including an amount paid to settle an action or satisfy a judgment to which the director or officer is made a party by reason of being or having been a director or officer of the Registrant or any of our subsidiaries.

The Registrant’s Second Amended and Restated Bylaws also provide that the Registrant has the power to purchase and maintain insurance for the benefit of a person who is or was serving as a director, officer, employee or agent of the Registrant or any of our subsidiaries (including heirs and personal representatives) against a liability incurred by him or her as the Registrant’s director, officer, employee or agent.

Item 8. Exhibits.

A list of exhibits filed with this Registration Statement or incorporated by reference is set forth in the Exhibit Index hereto and is incorporated herein by reference.

EXHIBIT INDEX

Exhibit No.

Description

- | | |
|-----|--|
| 4.1 | Third Amended and Restated Charter of Cumberland Pharmaceuticals Inc., incorporated herein by reference to Exhibit 3.1 of Amendment No. 19 of the Registrant’s Registration Statement on Form S-1 (File No. 333-142535) as filed with the SEC on July 17, 2009 |
| 4.2 | Second Amended and Restated Bylaws of Cumberland Pharmaceuticals Inc., incorporated herein by reference to Exhibit 3.2 of Amendment No. 19 of the Registrant’s Registration Statement on Form S-1 (File No. 333-142535) as filed with the SEC on July 17, 2009 |
| 4.3 | Specimen Common Stock Certificate of Cumberland Pharmaceuticals Inc., incorporated herein by reference to Exhibit 4.1 of Amendment No. 5 of the Registrant’s Registration Statement on Form S-1 (File No. 333-142535) as filed with the SEC on August 6, 2007 |
| 4.4 | Preferred Stock Terms, Rights, and Provisions, incorporated herein by reference to Exhibit 4.2 of the Registrant’s Registration Statement Form S-3 (File No. 333-221402) as filed with the SEC on December 19, 2017 |

- 4.5 Amended and Restated 2007 Long-Term Incentive Compensation Plan of Cumberland Pharmaceuticals Inc., incorporated here by reference to Appendix A of the Registrant's Schedule 14A as filed with the SEC on March 12, 2012 and approved by the Registrant's shareholders on April 17, 2012
- 4.6 Amendment Number 1 to the Amended and Restated 2007 Long-Term Incentive Compensation Plan, incorporated herein by reference to Appendix A of the Registrant's Schedule 14A as filed with the SEC on March 16, 2017 and approved by the Registrant's shareholders on April 25, 2017
- 4.7 Amendment Number 2 to the Amended and Restated 2007 Long-Term Incentive Plan, incorporated herein by reference to Exhibit 10.1 of the Registrant's Quarterly Report on Form 10-Q (File No. 001-33637) as filed with the SEC on August 14, 2020 and approved by the Registrant's shareholders on May 5, 2020
- 4.8 Amendment Number 3 to the Amended and Restated 2007 Long-Term Incentive Compensation Plan, incorporated herein by reference to Appendix A of the Registrant's Schedule 14A as filed with the SEC on March 15, 2023 and approved by the Registrant's shareholders on April 25, 2023
- 5.1* Legal Opinion of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
- 23.1* Consent of Independent Registered Public Accounting Firm, FORVIS, LLP
- 23.2* Consent of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC (included as part of Exhibit 5.1)
- 24.1* Power of Attorney (included as part of the signature page hereto)
- 107* Filing Fee Table

* Filed herewith

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 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 Nashville, State of Tennessee, on May 16, 2023.

CUMBERLAND PHARMACEUTICALS INC.

By: /s/ A. J. Kazimi
Name: A. J. Kazimi
Title: Chief Executive Officer
(Principal Executive Officer)

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, each person whose signature appears below hereby constitutes and appoints A. J. Kazimi his or her true and lawful attorney-in-fact and agent, 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 and all amendments and post-effective amendments to this Registration Statement and any registration statement filed pursuant to Rule 462(b) under the Securities Act of 1933, as amended, and to file the same with the SEC, granting unto said attorney-in-fact and agent 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 attorney-in-fact and agents, or their 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 date indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ A. J. Kazimi</u> A. J. Kazimi	Chairman and CEO (Principal Executive Officer and Director)	May 16, 2023
<u>/s/ John M. Hamm</u> John M. Hamm	Senior Director and CFO (Principal Financial and Accounting Officer)	May 16, 2023
<u>/s/ Gordon R. Bernard</u> Gordon R. Bernard	Director	May 16, 2023
<u>/s/ James R. Jones</u> James R. Jones	Director	May 16, 2023
<u>/s/ Caroline R. Young</u> Caroline R. Young	Director	May 16, 2023
<u>/s/ Kenneth J. Krogulski</u> Kenneth J. Krogulski	Director	May 16, 2023
<u>/s/ Joseph C. Galante</u> Joseph C. Galante	Director	May 16, 2023
<u>/s/ Martin S. Brown, Jr.</u> Martin S. Brown, Jr.	Director	May 16, 2023

Calculation of Filing Fee Table

Form S-8
(Form Type)

Cumberland Pharmaceuticals Inc.
(Exact Name of Registrant as Specified in its Charter)

Newly Registered Securities

Security Type	Security Class Title	Fee Calculation Rule	Amount Registered ⁽¹⁾	Proposed Maximum Offering Price Per Unit ⁽²⁾	Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee
Equity	Common Stock, no par value, reserved for issuance pursuant to the Amended and Restated 2007 Long-Term Incentive Compensation Plan, as amended	Rule 457(h)	750,000	\$1.68	\$1,260,000	0.00011020	\$138.85
Total Offering Amounts							\$138.85
Total Fee Offsets							\$—
Net Fee Due							\$138.85

¹pursuant to Rule 416(a) of the Securities Act of 1933, as amended (the "Securities Act"), this Registration Statement shall cover any additional securities as may be issuable under the Registrant's Amended and Restated 2007 Long-Term Incentive Compensation Plan, as amended, by reason of any stock splits, stock dividends, recapitalizations or similar transactions.

²Estimated solely for purposes of calculating the registration fee pursuant to Rule 457(h) of the Securities Act based on the average of the high and low prices of the Registrant's common stock on the NASDAQ Global Select Market on May 12, 2023.

May 16, 2023

Cumberland Pharmaceuticals Inc.
2525 West End Avenue, Suite 950
Nashville, Tennessee 37203

Re: Registration Statement on Form S-8

Ladies and Gentlemen:

We have served as counsel to Cumberland Pharmaceuticals Inc., a Tennessee corporation (the “Company”), in connection with certain matters of Tennessee law arising out of the issuance of up to an additional 750,000 shares (the “Shares”) of common stock, no par value (the “Common Stock”), of the Company, pursuant to Amendment Number 3 (the “Amendment”) to the Cumberland Pharmaceuticals Inc. Amended and Restated 2007 Long-Term Incentive Compensation Plan (as amended, the “Plan”), covered by the above-referenced Registration Statement (the “Registration Statement”), filed by the Company with the United States Securities and Exchange Commission (the “Commission”) under the Securities Act of 1933, as amended (the “1933 Act”), on the date hereof.

In connection with our representation of the Company, and as a basis for the opinion hereinafter set forth, we have examined originals, or copies certified or otherwise identified to our satisfaction, of the following documents (hereinafter collectively referred to as the “Documents”):

1. The Registration Statement;
2. The fourth amended and restated charter of the Company (the “Charter”), certified as of a recent date by the Tennessee Secretary of State (the “TN SOS”);
3. The second amended and restated by-laws of the Company, certified as of the date hereof by an officer of the Company;
4. A certificate of the TN SOS as to the good standing of the Company, dated as of a recent date;
5. Resolutions adopted by the Board of Directors (the “Board”) of the Company relating to the Plan (the “Resolutions”), certified as of the date hereof by an officer of the Company;
6. The Plan, certified as of the date hereof by an officer of the Company;
7. A certificate executed by an officer of the Company, dated as of the date hereof; and
8. Such other documents and matters as we have deemed necessary or appropriate to express the opinion set forth below, subject to the assumptions, limitations and qualifications stated herein.

In expressing the opinion set forth below, we have assumed the following:

- i. Each individual executing any of the Documents, whether on behalf of such individual or another person, is legally competent to do so.
- ii. Each individual executing any of the Documents on behalf of a party (other than the Company) is duly authorized to do so.
- iii. Each of the parties (other than the Company) executing any of the Documents has duly and validly executed and delivered each of the Documents to which such party is a signatory, and such party's obligations set forth therein are legal, valid and binding and are enforceable in accordance with all stated terms.
- iv. All Documents submitted to us as originals are authentic. The form and content of all Documents submitted to us as unexecuted drafts do not differ in any respect relevant to this opinion from the form and content of such Documents as executed and delivered. All Documents submitted to us as certified or photostatic copies conform to the original documents. All signatures on all Documents are genuine. All public records reviewed or relied upon by us or on our behalf are true and complete. All representations, warranties, statements and information contained in the Documents are true and complete. There has been no oral or written modification of or amendment to any of the Documents, and there has been no waiver of any provision of any of the Documents, by action or omission of the parties or otherwise.
- v. Upon the issuance of any Shares, the total number of shares of Common Stock issued and outstanding will not exceed the total number of shares of Common Stock that the Company is then authorized to issue under the Charter.
- vi. Each stock award, right or other security granted under the Plan pursuant to which Shares may be issued (each, an "Award"), will be duly authorized and validly granted in accordance with the Plan, and any such Shares will be so issued in accordance with the terms of the Plan and any applicable rights agreement or other award agreement entered into in connection with the grant of such Award (each, an "Award Agreement").

Based upon the foregoing, and subject to the assumptions, limitations and qualifications stated herein, it is our opinion that the issuance of the Shares has been duly authorized and, when and if delivered against payment therefore in accordance with the Registration Statement, the Resolutions, the Plan, and any applicable Award Agreement, the Shares will be validly issued, fully paid and nonassessable.

The foregoing opinion is limited to the laws of the State of Tennessee, and we do not express any opinion herein concerning any other law. We express no opinion as to the applicability or effect of federal or state securities laws, including the securities laws of the State of Tennessee, or as to federal or state laws regarding fraudulent transfers. To the extent that any matter as to which our opinion is expressed herein would be governed by the laws of any jurisdiction other than the State of Tennessee, we do not express any opinion on such matter. The opinion expressed herein is subject to the effect of any judicial decision which may permit the introduction of parol evidence to modify the terms or the interpretation of agreements.

The opinion expressed herein is limited to the matters specifically set forth herein and no other opinion shall be inferred beyond the matters expressly stated. We assume no obligation to

supplement this opinion if any applicable law changes after the date hereof or if we become aware of any fact that might change the opinion expressed herein after the date hereof.

This opinion is being furnished to you for submission to the Commission as an exhibit to the Registration Statement. We hereby consent to the filing of this opinion as Exhibit 5.1 to the Registration Statement. In giving this consent, we do not admit that we are within the category of persons whose consent is required by Section 7 of the 1933 Act.

Best regards,

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, PC

/s/ Baker, Donelson, Bearman,
Caldwell & Berkowitz, PC

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in this Registration Statement on Form S-8 of Cumberland Pharmaceuticals Inc. (Company) of our report dated March 13, 2023, on our audits of the consolidated financial statements of the Company as of December 31, 2022 and 2021, and for each of the two years in the period ended December 31, 2022, which report is included in the Company's Annual Report on Form 10-K for the year ended December 31, 2022.

/s/ FORVIS, LLP

Nashville, Tennessee

May 16, 2023