

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

**FORM 8-K/A**  
**(Amendment No. 1)**

**CURRENT REPORT**

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

Date of Report (Date of earliest event reported): **June 21, 2022**

**TRACON Pharmaceuticals, Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction  
of incorporation)

**001-36818**

(Commission File Number)

**34-2037594**

(IRS Employer Identification No.)

**4350 La Jolla Village Drive, Suite 800**  
**San Diego, California**

(Address of principal executive offices)

**92122**

(Zip Code)

**Registrant's telephone number, including area code: (858) 550-0780**

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:

- 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))

Securities registered pursuant to Section 12(b) of the Securities Act:

Title of each class	Trading symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.001 per share	TCON	The Nasdaq Stock Market LLC

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.

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## EXPLANATORY NOTE

This Current Report on Form 8-K/A (this “Form 8-K/A”) amends and supplements the second Current Report on Form 8-K filed with the Securities and Exchange Commission (“SEC”) on June 21, 2022 (the “Original Form 8-K”) by TRACON Pharmaceuticals, Inc. (the “Company”). The Company disclosed its entry into a securities purchase agreement on June 21, 2022 on the Original Form 8-K. This Form 8-K/A is being filed solely for the purpose of filing Exhibits 5.1 and 23.1 (contained in Exhibit 5.1) to the Original Form 8-K, as amended by this Form 8-K/A. No other modifications to the Original Form 8-K are being made by this Form 8-K/A. This Form 8-K/A speaks as of the original filing date of the Original Form 8-K, does not reflect events that may have occurred subsequent to the original filing date and does not modify or update in any way disclosures made in the Original Form 8-K, except as otherwise set forth in this Form 8-K/A. Unless filed herewith, references to the exhibits in this Form 8-K/A are references to the exhibits filed with the Original Form 8-K.

### Item 8.01 Other Events.

On June 21, 2022, the Company entered into a securities purchase agreement (the “Purchase Agreement”) with Opaleye L.P., relating to the issuance and sale (the “Offering”) of 841,989 shares of its common stock, par value \$0.001 per share (“Common Stock”) and pre-funded warrants to purchase 2,205,018 shares of Common Stock (the “Pre-Funded Warrants”), as previously reported on the Original Form 8-K.

The Purchase Agreement and the form of Pre-Funded Warrant were previously filed as Exhibit 10.1 and Exhibit 4.1, respectively, to the Original Form 8-K, and the description of the terms of the Purchase Agreement and the Pre-Funded Warrants are qualified in their entirety by reference to such exhibit. A copy of the opinion of Cooley LLP relating to the legality of the issuance and sale of the shares of Common Stock and Pre-Funded Warrants is attached as Exhibit 5.1 hereto.

### Item 9.01 Financial Statements and Exhibits

#### (d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
5.1	<a href="#">Opinion of Cooley LLP</a>
23.1	<a href="#">Consent of Cooley LLP (contained in Exhibit 5.1)</a>
104	Cover page Interactive Data File (embedded within the Inline XBRL document)

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**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.

Date: June 21, 2022

**TRACON Pharmaceuticals, Inc.**

By: /s/ Charles P. Theuer, M.D., Ph.D.

Name: Charles P. Theuer, M.D., Ph.D.

*President and Chief Executive Officer*



Matthew Browne  
+1 858 550 6045  
mbrowne@cooley.com

June 21, 2022

TRACON Pharmaceuticals, Inc.  
4350 La Jolla Village Drive, Suite 800  
San Diego, CA, 92122

Ladies and Gentlemen:

We have acted as counsel to TRACON Pharmaceuticals, Inc., a Delaware corporation (the "**Company**"), with respect to certain matters in connection with the offering by the Company of 841,989 shares (the "**Shares**") of the Company's common stock, par value \$0.001 per share (the "**Common Stock**"), and pre-funded warrants (the "**Warrants**") to purchase up to 2,205,018 shares of the Common Stock (the "**Warrant Shares**") pursuant to a Registration Statement on Form S-3 (Registration Statement No. 333-263590) (the "**Registration Statement**"), filed with the Securities and Exchange Commission (the "**Commission**") under the Securities Act of 1933, as amended (the "**Act**"), the prospectus included in the Registration Statement (the "**Base Prospectus**"), and the prospectus supplement relating to the Shares and the Warrants filed with the Commission pursuant to Rule 424(b) under the Act (together with the Base Prospectus, the "**Prospectus**").

In connection with this opinion, we have examined and relied upon the Registration Statement and the Prospectus, the form of Warrant to be filed as an exhibit to a current report of the Company on Form 8-K, the Company's certificate of incorporation and bylaws, each as currently in effect, and the originals or copies certified to our satisfaction of such records, documents, certificates, memoranda and other instruments as in our judgment are necessary or appropriate to enable us to render the opinion expressed below. In rendering this opinion, we have assumed the genuineness of all signatures; the authenticity of all documents submitted to us as originals; the conformity to originals of all documents submitted to us as copies; the accuracy, completeness and authenticity of certificates of public officials; and the due authorization, execution and delivery of all documents by all persons other than the Company where authorization, execution and delivery are a prerequisite to the effectiveness thereof. As to certain factual matters, we have relied upon a certificate of an officer of the Company and have not independently verified such matters.

Our opinion herein is expressed solely with respect to the General Corporation Law of the State of Delaware and, as to the Warrants constituting valid and binding obligations of the Company, the laws of the State of New York. We express no opinion to the extent that any other laws are applicable to the subject matter hereof and express no opinion and provide no assurance as to compliance with any federal or state securities law, rule or regulation.



TRACON Pharmaceuticals, Inc.  
June 21, 2022  
Page Two

With regard to our opinion concerning the Warrants constituting valid and binding obligations of the Company:

(i) Our opinion is subject to, and may be limited by, (a) applicable bankruptcy, reorganization, insolvency, moratorium, fraudulent conveyance, debtor and creditor, and similar laws which relate to or affect creditors' rights generally, and (b) general principles of equity (including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing) regardless of whether considered in a proceeding in equity or at law.

(ii) Our opinion is subject to the qualification that the availability of specific performance, an injunction or other equitable remedies is subject to the discretion of the court before which the request is brought.

(iii) We express no opinion as to any provision of the Warrants that: (a) provides for liquidated damages, buy-in damages, monetary penalties, prepayment or make-whole payments or other economic remedies to the extent such provisions may constitute unlawful penalties, (b) relates to advance waivers of claims, defenses, rights granted by law, or notice, opportunity for hearing, evidentiary requirements, statutes of limitations, trial by jury, or procedural rights, (c) restricts non-written modifications and waivers, (d) provides for the payment of legal and other professional fees where such payment is contrary to law or public policy, (e) relates to exclusivity, election or accumulation of rights or remedies, or (f) provides that provisions of the Warrants are severable to the extent an essential part of the agreed exchange is determined to be invalid and unenforceable.

(iv) We express no opinion as to whether a state court outside of the State of New York or a federal court of the United States would give effect to the choice of New York law provided for in the Warrants.

With respect to the Warrant Shares, we express no opinion to the extent that future issuances of securities of the Company, including the Warrant Shares, and/or adjustments to outstanding securities of the Company, including the Warrants, cause the Warrants to be exercisable for more shares of Common Stock than the number that remain available for issuance. Further, we have assumed the exercise price of the Warrants will not be adjusted to an amount below the par value per share of the Common Stock.

On the basis of the foregoing, and in reliance thereon, and subject to the qualifications set forth herein, we are of the opinion that (i) the Shares, when sold and issued in accordance with the Registration Statement and the Prospectus, will be validly issued, fully paid and nonassessable, (ii) the Warrants, when duly executed by the Company and delivered to the purchasers thereof against payment therefor as provided in the Registration Statement and the Prospectus, will be valid and binding obligations of the Company, and (iii) the Warrant Shares, when issued and paid for in accordance with the terms of the Warrants, will be validly issued, fully paid and nonassessable.



TRACON Pharmaceuticals, Inc.  
June 21, 2022  
Page Three

We consent to the reference to our firm under the caption "Legal Matters" in the Prospectus and to the filing of this opinion as an exhibit to a Current Report on Form 8-K to be filed with the Commission for incorporation by reference into the Registration Statement.

This opinion is expressed as of the date hereof, and we disclaim any responsibility to advise you of any changes in the facts stated or assumed herein or of any changes in applicable law.

Sincerely,

Cooley LLP

By: /s/ Matthew Browne  
Matthew Browne

COOLEY LLP 4401 EASTGATE MALL SAN DIEGO, CA 92121  
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