

**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 28, 2024

Windtree Therapeutics, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

001-39290
(Commission
File Number)

94-3171943
(I.R.S. Employer
Identification No.)

2600 Kelly Road, Suite 100, Warrington, Pennsylvania
(Address of principal executive offices)

18976
(Zip Code)

Registrant's telephone number, including area code: (215) 488-9300

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))

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

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

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

On October 28, 2024, Windtree Therapeutics, Inc. (the “Company”) filed a prospectus supplement relating to the issuance and sale of up to \$27,243,504 of shares of the Company’s common stock, par value \$0.001 per share (“Common Stock”) that the Company may issue and sell to Seven Knots, LLC (“Seven Knots”) from time to time, in its sole discretion, under the company’s existing equity line of credit with Seven Knots pursuant to a purchase agreement by and between the Company and Seven Knots, dated June 26, 2024 (the “Purchase Agreement”). The prospectus supplement also covers the resale of these shares by Seven Knots to the public.

The Company previously filed a registration statement on Form S-1, which was declared effective by the SEC on September 3, 2024 (SEC File No. 333-281755) (the “Form S-1”) that covered the resale of up to 10,679,758 shares of Common Stock pursuant to the Purchase Agreement. The 10,679,758 shares of Common Stock represented (i) 10,574,018 shares issuable to Seven Knots, from time to time from and after the Commencement Date (as defined in the Purchase Agreement) upon the terms and subject to the conditions and limitations of the Purchase Agreement, and subject to the Exchange Cap (as defined below) (the “Initial Purchase Shares”); and (ii) 105,740 shares that were issuable upon the conversion of the outstanding unpaid principal balance, together with all accrued and unpaid interest of a commitment note issued to Seven Knots as consideration for its execution and delivery of the Purchase Agreement (the “Note Shares”).

Pursuant to certain rules of the Nasdaq Stock Market LLC (“Nasdaq”), the Company was prohibited from issuing to Seven Knots under the Purchase Agreement more than 19.99% of the Common Stock below the “Minimum Price” (as determined in accordance with Nasdaq rules) (the “Exchange Cap”), until the Company obtained stockholder approval to issue shares of Common Stock in excess of the Exchange Cap in accordance with applicable Nasdaq rules (the “Stockholder Approval”). The Company obtained Stockholder Approval at its 2024 annual meeting of stockholders on September 24, 2024.

As of October 25, 2024, the Company issued 5,499,273 shares of Common Stock for total gross cash proceeds of \$7,756,496 pursuant to the Purchase Agreement. The prospectus supplement registers for sale the shares of Common Stock underlying the remaining \$27,243,504 issuable under the Purchase Agreement. Additionally, as a result of its sales of Common Stock pursuant to the Purchase Agreement, the Company redeemed 1,499 Preferred Shares as of October 25, 2024 for an aggregate redemption price of \$2.3 million pursuant to the Company’s Certificate of Designations of Rights and Preferences of Series C Convertible Preferred Stock.

As of October 25, 2024, based on 8,746,128 shares outstanding, the Company was no longer subject to General Instruction 1.B.6. of Form S-3, and therefore is not limited to selling one-third of its public float through a registration statement on Form S-3 until, at the earliest, the filing of its next Annual Report on 10-K in 2025.

As of the date of this Current Report on Form 8-K, 8,746,128 shares of Common Stock were outstanding.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

The following exhibits are being filed herewith:

Exhibit No.	Document
5.1	Opinion of Goodwin Procter LLP
23.1	Consent of Goodwin Procter LLP (included in Exhibit 5.1)
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

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, thereunto duly authorized.

Dated: October 28, 2024

Windtree Therapeutics, Inc.

By: /s/ Craig E. Fraser

Name: *Craig E. Fraser*

Title: *President and Chief Executive Officer*



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October 28, 2024

Windtree Therapeutics, Inc.
2600 Kelly Road, Suite 100
Warrington, Pennsylvania 18976

Re: Securities Registered under Registration Statement on Form S-3

We have acted as counsel to you in connection with your filing of a Registration Statement on Form S-3 (File No. 333-261878) (as amended or supplemented, the "Registration Statement") filed on December 23, 2021 with the Securities and Exchange Commission (the "Commission") pursuant to the Securities Act of 1933, as amended (the "Securities Act"), relating to the registration of the offering by Windtree Therapeutics, Inc., a Delaware corporation (the "Company"), having an aggregate offering price of up to \$100,000,000. The Registration Statement was declared effective by the Commission on January 3, 2022. We are delivering this supplemental opinion letter in connection with the prospectus supplement (the "Prospectus Supplement") filed on October 25, 2024 by the Company with the Commission pursuant to Rule 424 under the Securities Act. The Prospectus Supplement relates to the offering of, subject to certain conditions, shares of the Company's common stock, par value \$0.001 per share (the "Common Stock") having an aggregate gross purchase price up to \$27,243,504 from time to time (the "Shares"). The Shares are being sold to Seven Knots, LLC (the "Purchaser") pursuant to a Purchase Agreement entered into between the Company and the Purchaser on June 26, 2024 (the "Purchase Agreement"). We have reviewed such documents and made such examination of law as we have deemed appropriate to give the opinions set forth below. We have relied, without independent verification, on certificates of public officials and, as to matters of fact material to the opinions set forth below, on certificates of officers of the Company. For purposes of the opinion set forth below, we have assumed that before the Shares are issued the Company does not issue shares of Common Stock or reduce the total number of shares of Common Stock the Company is authorized to issue under its certificate of incorporation such that the number of unissued shares of Common Stock authorized under the Company's certificate of incorporation is less than the number of Shares.

We have reviewed such documents and made such examination of law as we have deemed appropriate to give the opinion set forth below. We have relied, without independent verification, on certificates of public officials and, as to matters of fact material to the opinion set forth below, on certificates of officers of the Company.

For purposes of our opinion set forth below, we have assumed (i) approval by the Company's board of directors (or a duly authorized committee thereof) of each issuance of Shares, (ii) that the Shares are issued for a price per share equal to or greater than the minimum price, if any, authorized by the Company's board of directors (or a duly authorized committee thereof) prior to the date of issuance (the "Minimum Price") and (iii) that no event occurs that causes the number of authorized shares of Common Stock available for issuance by the Company to be less than the number of then unissued Shares that may be issued for the Minimum Price.

Based on the foregoing, we are of the opinion that the Shares have been duly authorized and, subject to issuance by the Company at a price not less than the Minimum Price, when delivered and paid for in accordance with the Purchase Agreement and in accordance with any reservation of shares or other restrictions or limitations imposed by the Company's board of directors (or a duly authorized committee thereof) on sales of Shares by the Company under the Purchase Agreement, will be validly issued, fully paid and nonassessable.

This opinion letter and the opinion it contains shall be interpreted in accordance with the Core Opinion Principles as published in 74 Business Lawyer 815 (Summer 2019).

We hereby consent to the inclusion of this opinion as Exhibit 5.1 to the Registration Statement and to the references to our firm under the caption "Legal Matters" in the Registration Statement. In giving our consent, we do not admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations thereunder.

Very truly yours,

/s/ Goodwin Procter LLP

GOODWIN PROCTER LLP