

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

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

Fractyl Health, Inc.
(Exact name of Registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

**17 Hartwell Avenue
Lexington, MA**
(Address of Principal Executive Offices)

27-3553477
(I.R.S. Employer
Identification Number)

02421
(Zip Code)

**Amended and Restated 2011 Stock Incentive Plan
2024 Incentive Award Plan
2024 Employee Stock Purchase Plan**
(Full Title of the Plans)

Harith Rajagopalan, M.D., Ph.D.
Chief Executive Officer
Fractyl Health, Inc.
17 Hartwell Avenue
Lexington, MA 02421
(781) 902-8800
(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

**Nathan Ajiashvili
Johan Brigham
Evan Smith
Jonathan Sarna
Latham & Watkins LLP
1271 Avenue of the Americas
New York, New York 10020
(212) 906-1200**

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 checked="" 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.

**Proposed sale to take place as soon after the effective date of the
registration statement as awards under the plans are exercised and/or vest.**



PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The information called for in Part I of Form S-8 is not being filed with or included in this Form S-8 (by incorporation by reference or otherwise) in accordance with the rules and regulations of the Securities and Exchange Commission (the "SEC").

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

In this registration statement, Fractyl Health, Inc. is sometimes referred to as "Registrant," "we," "us" or "our."

Item 3. Incorporation of Documents by Reference.

The SEC allows us to incorporate by reference the information we file with them, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is considered to be part of this registration statement, and later information filed with the SEC will update and supersede this information. We hereby incorporate by reference into this registration statement the following documents previously filed with the SEC:

- (a) The prospectus filed by the Registrant with the SEC pursuant to [Rule 424\(b\)](#) under the Securities Act, on February 2, 2024, relating to the registration statement on Form S-1, as amended (File No. 333-276046), which contains the Registrant's audited financial statements for the latest fiscal year for which such statements have been filed; and
- (b) The description of the Registrant's common stock contained in the Registrant's registration statement on [Form 8-A](#) (File No. 001-41942), filed by the Registrant with the SEC under Section 12(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), on January 29, 2024 including any amendments or reports filed for the purpose of updating such description.

All documents that the Registrant subsequently files pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act prior to the filing of a post-effective amendment to the registration statement which indicates that all of the shares of common stock offered have been sold or which deregisters all of such shares then remaining unsold, shall be deemed to be incorporated by reference in this registration statement and to be a part hereof from the date of the filing of such documents, except as to any portion of any future annual or quarterly report to stockholders or document or current report furnished under current Items 2.02 or 7.01 of Form 8-K, and exhibits furnished on such form that relate to such items, that is not deemed filed under such provisions. For the purposes of this registration statement, any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded 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.

Under no circumstances will any information filed under current Items 2.02 or 7.01 of Form 8-K, and exhibits furnished on such form that relate to such items, be deemed incorporated herein by reference unless such Form 8-K expressly provides to the contrary.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

None.

Item 6. Indemnification of Directors and Officers.

As permitted by Section 102 of the Delaware General Corporation Law, we have adopted provisions in our amended and restated certificate of incorporation (the "Certificate of Incorporation") filed with the Secretary of State of the State of Delaware and our amended and restated bylaws (the "Bylaws") that limit or eliminate the personal liability of our directors for a breach of their fiduciary duty of care as a director. The duty of care generally requires that, when acting on behalf of the corporation, directors exercise an informed business judgment based on all material information reasonably available to them. Consequently, a director will not be personally liable to us or our stockholders for monetary damages for breach of fiduciary duty as a director, except for liability for:

- any breach of the director's duty of loyalty to us or our stockholders;
- any act or omission not in good faith or that involves intentional misconduct or a knowing violation of law;
- any act related to unlawful stock repurchases, redemptions or other distributions or payment of dividends; or
- any transaction from which the director derived an improper personal benefit.

These limitations of liability do not affect the availability of equitable remedies such as injunctive relief or rescission. Our Certificate of Incorporation also authorizes us to indemnify our officers, directors and other agents to the fullest extent permitted under Delaware law.

As permitted by Section 145 of the Delaware General Corporation Law, our Bylaws provide that:

- we may indemnify our directors, officers and employees to the fullest extent permitted by the Delaware General Corporation Law, subject to limited exceptions;
- we may advance expenses to our directors, officers and employees in connection with a legal proceeding to the fullest extent permitted by the Delaware General Corporation Law, subject to limited exceptions; and
- the rights provided in our Bylaws are not exclusive.

Our Certificate of Incorporation and our Bylaws provide for the indemnification provisions described above and elsewhere herein. We have entered or will enter into, and intend to continue to enter into, separate indemnification agreements with our directors and officers that may be broader than the specific indemnification provisions contained in the Delaware General Corporation Law. These indemnification agreements generally require us, among other things, to indemnify our officers and directors against certain liabilities that may arise by reason of their status or service as directors or officers, other than liabilities arising from willful misconduct. These indemnification agreements also generally require us to advance any expenses incurred by the directors or officers as a result of any proceeding against them as to which they could be indemnified. These indemnification provisions and the indemnification agreements may be sufficiently broad to permit indemnification of our officers and directors for liabilities, including reimbursement of expenses incurred, arising under the Securities Act of 1933, as amended, or the Securities Act.

We have purchased and currently intend to maintain insurance on behalf of each and every person who is or was a director or officer of the company against any loss arising from any claim asserted against him or her and incurred by him or her in any such capacity, subject to certain exclusions.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

Exhibit Number	Exhibit Description	Incorporated by Reference			Filed Herewith
		Form	Date	Number	
3.1	Amended and Restated Certificate of Incorporation, currently in effect.	8-K	2/6/2024	3.1	
3.2	Amended and Restated Bylaws, currently in effect.	8-K	2/6/2024	3.2	
4.1	Specimen Stock Certificate evidencing the shares of common stock.	S-1	12/14/2023	4.1	
5.1	Opinion of Latham & Watkins LLP.				X
23.1	Consent of Latham & Watkins LLP (included in Exhibit 5.1).				X
23.2	Consent of Ernst & Young LLP, independent registered public accounting firm.				X
24.1	Power of Attorney (included on signature page).				X
99.1#	Fractyl Health, Inc. Amended and Restated 2011 Stock Incentive Plan and forms of award agreements thereunder.	S-1	12/14/2023	10.4	
99.2#	Fractyl Health, Inc. 2024 Incentive Award Plan and forms of award agreements thereunder.	S-1/A	1/29/2024	10.15	
99.3#	Fractyl Health, Inc. 2024 Employee Stock Purchase Plan.	S-1/A	1/29/2024	10.16	
107	Filing Fee Table.				X

Indicates management contract or compensatory plan.

Item 9. Undertakings.

(a) The 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 of 1933;
 - (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 set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of 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 SEC pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20 percent 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) do not apply if the registration statement is on Form S-8, and the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the SEC by the Registrant pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement.

- (2) That, for the purpose of determining any liability under the Securities Act of 1933, 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 Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the Registrant's annual report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) 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.

(h) Insofar as indemnification for liabilities arising under the Securities Act of 1933 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 SEC 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 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.

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 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 Lexington, Commonwealth of Massachusetts, on this 6th day of February, 2024.

Fractyl Health, Inc.

By: /s/ Harith Rajagopalan

Name: Harith Rajagopalan, M.D., Ph.D.

Title: Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Harith Rajagopalan, M.D., Ph.D. and Lisa A. Davidson, and each of them, 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 and all amendments (including post-effective amendments) to this registration statement and any and all additional registration statements pursuant to Rule 462(b) of the Securities Act of 1933, and to file the same, with all exhibits thereto, and all other documents in connection therewith, with the Securities and Exchange Commission, granting unto each said attorney-in-fact and agents full power and authority to do and perform each and every act in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or either of them or their or his or her 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 dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Harith Rajagopalan</u> Harith Rajagopalan, M.D., Ph.D.	Chief Executive Officer (Principal Executive Officer)	February 6, 2024
<u>/s/ Lisa A. Davidson</u> Lisa A. Davidson	Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	February 6, 2024
<u>/s/ Kelly Barnes</u> Kelly Barnes	Director	February 6, 2024
<u>/s/ William W. Bradley</u> William W. Bradley	Director	February 6, 2024
<u>/s/ Samuel Conaway</u> Samuel Conaway	Director	February 6, 2024
<u>/s/ Marc Elia</u> Marc Elia	Director	February 6, 2024
<u>/s/ Clive Meanwell</u> Clive Meanwell, M.B., Ch.B., M.D.	Director	February 6, 2024

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<hr/> <i>/s/ Ajay Royan</i> Ajay Royan	Director	February 6, 2024
<hr/> <i>/s/ Amy W. Schulman</i> Amy W. Schulman	Director	February 6, 2024
<hr/> <i>/s/ Allan R. Will</i> Allan R. Will	Chairman	February 6, 2024

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LATHAM & WATKINS LLP

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February 6, 2024

Fractyl Health, Inc.
 17 Hartwell Avenue
 Lexington, Massachusetts 02421

Re: Registration Statement on Form S-8; 22,853,906 shares of Common Stock of Fractyl Health, Inc., par value \$0.00001 per share

To the addressee set forth above:

We have acted as special counsel to Fractyl Health, Inc., a Delaware corporation (the “*Company*”), in connection with the registration by the Company of 22,853,906 shares of common stock of the Company, par value \$0.00001 per share (the “*Shares*”), issuable under the Amended and Restated 2011 Stock Incentive Plan (the “*2011 Plan*”), the 2024 Incentive Award Plan (the “*2024 Plan*”) and the 2024 Employee Stock Purchase Plan (together with the 2011 Plan and the 2024 Plan, the “*Plans*”).

The Shares are included in a registration statement on Form S-8 under the Securities Act of 1933, as amended (the “*Act*”), filed with the Securities and Exchange Commission (the “*Commission*”) on February 6, 2024 (the “*Registration Statement*”). This opinion is being furnished in connection with the requirements of Item 601(b)(5) of Regulation S-K under the Act, and no opinion is expressed herein as to any matter pertaining to the contents of the Registration Statement or the related prospectuses, other than as expressly stated herein with respect to the issue of the Shares.

LATHAM & WATKINS^{LLP}

As such counsel, we have examined such matters of fact and questions of law as we have considered appropriate for purposes of this letter. With your consent, we have relied upon certificates and other assurances of officers of the Company and others as to factual matters without having independently verified such factual matters. We are opining herein as to the General Corporation Law of the State of Delaware (the “**DGCL**”), and we express no opinion with respect to any other laws.

Subject to the foregoing and the other matters set forth herein, it is our opinion that, as of the date hereof, when the Shares shall have been duly registered on the books of the transfer agent and registrar therefor in the name or on behalf of the purchasers, or certificates representing the Shares have been manually signed by an authorized officer of the transfer agent and registrar therefor, and have been issued by the Company against payment therefor (not less than par value) in the circumstances contemplated by the Plans, assuming in each case that the individual issuances, grants or awards under the Plans are duly authorized by all necessary corporate action and duly issued, granted or awarded and exercised in accordance with the requirements of law and the applicable Plans (and the agreements and awards duly adopted thereunder and in accordance therewith), the issue and sale of the Shares will have been duly authorized by all necessary corporate action of the Company, and the Shares will be validly issued, fully paid and nonassessable. In rendering the foregoing opinion, we have assumed that the Company will comply with all applicable notice requirements regarding uncertificated shares provided in the DGCL.

This opinion is for your benefit in connection with the Registration Statement and may be relied upon by you and by persons entitled to rely upon it pursuant to the applicable provisions of the Act. We consent to your filing this opinion as an exhibit to the Registration Statement. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Act or the rules and regulations of the Commission thereunder.

Sincerely,

/s/ Latham & Watkins

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Registration Statement (Form S-8) pertaining to the Amended and Restated 2011 Stock Incentive Plan, 2024 Incentive Award Plan and 2024 Employee Stock Purchase Plan of Fractyl Health, Inc. of our report dated August 22, 2023 (except for Note 17, as to which the date is January 26, 2024), included in the Registration Statement (Form S-1 No. 333-276046) filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

Boston, Massachusetts
February 5, 2024

Calculation of Filing Fee Tables

Form S-8
(Form Type)Fractyl Health, Inc.
(Exact Name of Registrant as Specified in its Charter)

Table 1—Newly Registered Securities

Security Type	Security Class Title	Fee Calculation Rule	Amount to be Registered ⁽¹⁾	Proposed Maximum Offering Price Per Unit	Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee
Equity	Common stock, \$0.00001 par value per share, issuable pursuant to the exercise of outstanding options granted under the Registrant's Amended and Restated 2011 Stock Incentive Plan	Rule 457(c) and Rule 457(h)	8,696,206 ⁽²⁾	\$5.33 ⁽³⁾	\$46,350,777.98	0.00014760	\$6,841.38
Equity	Common stock, \$0.00001 par value per share, issuable pursuant to the vesting and settlement of outstanding restricted stock units granted under the Registrant's Amended and Restated 2011 Stock Incentive Plan	Rule 457(c) and Rule 457(h)	604,509 ⁽⁴⁾	\$15.00 ⁽⁵⁾	\$9,067,635	0.00014760	\$1,338.39
Equity	Common stock, \$0.00001 par value per share, reserved for future issuance under the Registrant's 2024 Incentive Award Plan	Rule 457(c) and Rule 457(h)	11,604,905 ⁽⁶⁾⁽⁷⁾	\$15.00 ⁽⁸⁾	\$174,073,575	0.00014760	\$25,693.26
Equity	Common stock, \$0.00001 par value per share, reserved for future issuance under the Registrant's 2024 Employee Stock Purchase Plan	Rule 457(c) and Rule 457(h)	1,948,286 ⁽⁹⁾⁽¹⁰⁾	\$12.75 ⁽¹¹⁾	\$24,840,646.50	0.00014760	\$3,666.48
Total Offering Amounts					\$254,332,634.48		\$37,539.51
Total Fee Offsets⁽¹¹⁾							\$ —
Net Fee Due							\$37,539.51

- (1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the “Securities Act”), this registration statement shall also cover any additional shares of Fractyl Health, Inc.’s (the “Registrant”) common stock that become issuable under the Registrant’s Amended and Restated 2011 Stock Incentive Plan (the “2011 Plan”) by reason of any stock dividend, stock split, recapitalization or similar transaction effected without the Registrant’s receipt of consideration which would increase the number of outstanding shares of common stock.
- (2) Represents shares of common stock issuable upon the exercise of stock options granted under the 2011 Plan.
- (3) Estimated solely for purposes of calculating the registration fee in accordance with Rule 457(h) under the Securities Act. The proposed maximum offering price per share and the proposed maximum aggregate offering price are based upon \$5.33, which is the weighted-average exercise price for stock options outstanding under the 2011 Plan as of the date of this Registration Statement.
- (4) Represents shares of common stock issuable upon the vesting and settlement of restricted stock units (“RSUs”) granted under the 2011 Plan.
- (5) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(h) and Rule 457(c) promulgated under the Securities Act. The proposed maximum offering price per share and the proposed maximum aggregate offering price are based on the initial public offering price of the common stock of \$15.00 per share, as set forth in the Registrant’s Registration Statement on Form S-1 (File No. 333-276046), as amended, that was declared effective on February 1, 2024.
- (6) Represents 11,604,905 shares of common stock reserved for future issuance under the Registrant’s 2024 Incentive Award Plan (the “2024 Plan”) which number consists of (a) 4,298,825 shares of common stock initially reserved for future issuance under the 2024 Plan and (b) an additional 7,306,080 shares of common stock that may become issuable under the 2024 Plan pursuant to its terms. To the extent outstanding awards under the 2011 Plan (i) expire or lapse, or are terminated, exchanged for cash, surrendered, repurchased, or cancelled, in any case, in a manner that results in the Registrant acquiring the underlying shares at a price not greater than the price paid by the participant or not issuing the underlying shares, or (ii) are tendered or withheld to satisfy the grant, exercise price, or tax withholding obligation with respect to any award, the shares of common stock subject to such awards instead will be available for future issuances as common stock under the 2024 Plan.
- (7) The number of shares reserved for issuance under the 2024 Plan will automatically increase on January 1 of each calendar year beginning in 2025 and ending in and including 2034, equal to the lesser of (a) 5% of the shares of common stock outstanding on the final day of the immediately preceding calendar year and (b) a smaller number of shares determined by the Registrant’s board of directors.
- (8) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(h) and Rule 457(c) promulgated under the Securities Act. The proposed maximum offering price per share and the proposed maximum aggregate offering price are based on the initial public offering price of the common stock of \$15.00 per share, as set forth in the Registrant’s Registration Statement on Form S-1 (File No. 333-276046), as amended, that was declared effective on February 1, 2024.
- (9) Represents 1,948,286 shares of common stock reserved for future issuance under the Registrant’s Employee Stock Purchase Plan (the “ESPP”) which number consists of (a) 487,070 shares of common stock initially reserved for future issuance under the ESPP and (b) 1,461,216 shares of common stock that may become issuable under the ESPP pursuant to its terms.
- (10) The number of shares reserved for issuance under the ESPP will be annually increased on January 1 of each calendar year beginning in 2025 and ending in and including 2034, by an amount equal to the lesser of (a) 1% of the shares outstanding on the final day of the immediately preceding calendar year and (b) such smaller number of shares as is determined by the Registrant’s board of directors.
- (11) Estimated solely for the purpose of calculating the registration in accordance with Rule 457(h) under the Securities Act. The proposed maximum offering price per share and the proposed maximum aggregate offering price are based upon the initial public offering price of the common stock of \$15.00 per share, as set forth in the Registrant’s Registration Statement on Form S-1 (File No. 333-276046), as amended, that was declared effective on February 1, 2024, multiplied by 85%, which reflects the discount to the purchase price applicable to purchases under the ESPP.
- (11) The Registrant does not have any fee offsets.