

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

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

**BIOCEPT, INC.**

(Exact Name of Registrant as Specified in Its Charter)

**Delaware**

(State or Other Jurisdiction of Incorporation or Organization)

**80-0943522**

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

**9955 Mesa Rim Road  
San Diego, CA 92121**

(Address of Principal Executive Offices)

**Biocept, Inc. Amended and Restated 2013 Equity Incentive Plan**

(Full Title of the Plan)

Michael W. Nall  
Chief Executive Officer and President  
Biocept, Inc.

9955 Mesa Rim Road  
San Diego, CA 92121

(Name and Address of Agent for Service)

(858) 320-8200

(Telephone Number, Including Area Code, of Agent for Service)

Copy to:

Charles J. Bair

Asa M. Henin

Cooley LLP

4401 Eastgate Mall

San Diego, CA 92121

(858) 550-6000

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

Non-accelerated filer

Accelerated filer

Smaller reporting company

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 7(a)(2)(B) of the Securities Act.

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**CALCULATION OF REGISTRATION FEE**

Title of Each Class of Securities to be Registered	Amount to be Registered (1)	Proposed Maximum Offering Price per Share	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock (par value \$0.0001 per share)	1,300,000 shares (2)	\$3.815 (3)	\$4,959,500 (3)	\$460

- (1) Pursuant to Rule 416(a) of the Securities Act of 1933, as amended (the "Securities Act"), this registration statement shall also cover any additional shares of the Registrant's common stock that may become issuable under the Biocept, Inc. Amended and Restated 2013 Equity Incentive Plan (the "2013 Plan") by reason of any stock dividend, stock split, recapitalization or other similar transaction.
- (2) Represents shares of the Registrant's common stock that were added to the shares authorized for issuance under the 2013 Plan, which increase was approved by the Registrant's stockholders on July 16, 2021.
- (3) This estimate is made pursuant to Rule 457(c) and Rule 457(h)(1) of the Securities Act solely for purposes of calculating the registration fee. The price per share and aggregate offering price are based upon the average of the high and low prices of the Registrant's common stock on November 11, 2021, as reported on the Nasdaq Capital Market.

**INCORPORATION BY REFERENCE OF CONTENTS OF  
REGISTRATION STATEMENTS ON FORM S-8**

This registration statement is being filed for the purpose of increasing the number of securities of the same class as other securities for which a registration statement of the Registrant on Form S-8 relating to the same benefit plan is effective. The Registrant previously registered shares of its common stock for issuance under the 2013 Plan under Registration Statements on Form S-8 filed with the Securities and Exchange Commission on [March 31, 2014 \(No. 333-194930\)](#), [March 11, 2015 \(No. 333-202656\)](#), [August 13, 2015 \(No. 333-206347\)](#), [August 5, 2016 \(No. 333-212960\)](#), [May 15, 2017 \(No. 333-218018\)](#), [September 10, 2018 \(No. 333-227267\)](#), [October 19, 2018 \(No. 333-227900\)](#), [August 15, 2019 \(No. 333-233285\)](#) and [December 23, 2020 \(333-251676\)](#). Pursuant to General Instruction E to Form S-8, this Registration Statement hereby incorporates by reference the contents of those Registration Statements.

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**Item 8. Exhibits**

Exhibits:	Description
3.1	<a href="#">Certificate of Amendment of Certificate of Incorporation (incorporated by reference to Exhibit 3.1.4 of the Registrant's Current Report on Form 8-K, filed with the SEC</a>
3.2	<a href="#">Amended and Restated Bylaws (incorporated by reference to Exhibit 3.2.1 of the Registrant's Registration Statement on Form S-1 (File No. 333-191323), filed with the SEC on September 13, 2013).</a>
3.3	<a href="#">Certificate of Amendment of Certificate of Incorporation (incorporated by reference to Exhibit 3.1 of the Registrant's Current Report on Form 8-K, filed with the SEC</a>
3.4	<a href="#">Amendment to Amended and Restated Bylaws (incorporated by reference to Exhibit 3.1 of the Registrant's Current Report on Form 8-K, filed with the SEC on September 13, 2013).</a>
3.5	<a href="#">Certificate of Amendment to Certificate of Incorporation (incorporated by reference to Exhibit 3.1 of the Registrant's Current Report on Form 8-K, filed with the SEC</a>
3.6	<a href="#">Certificate of Amendment to Certificate of Incorporation (incorporated by reference to Exhibit 3.1 of the Registrant's Current Report on Form 8-K, filed with the SEC</a>
3.7	<a href="#">Certificate of Designation of Preference, Rights and Limitations of Series A Convertible Preferred Stock (incorporated by reference to Exhibit 3.1 of the Registrant's Current Report on Form 8-K, filed with the SEC on August 13, 2018).</a>
4.1	Reference is made to Exhibits <a href="#">3.1</a> , <a href="#">3.2</a> , <a href="#">3.3</a> , <a href="#">3.4</a> , <a href="#">3.5</a> , <a href="#">3.6</a> and <a href="#">3.7</a> .
4.2	<a href="#">Specimen Common Stock certificate of Biocept, Inc. (incorporated by reference to Exhibit 4.2 of the Registrant's Quarterly Report on Form 10-Q, filed with the SEC on August 13, 2018).</a>
5.1	<a href="#">Opinion of Cooley LLP.</a>
23.1	<a href="#">Consent of Mayer Hoffman McCann P.C., an Independent Registered Public Accounting Firm.</a>
23.2	Consent of Cooley LLP. Reference is made to Exhibit <a href="#">5.1</a> .
24.1	<a href="#">Power of Attorney. Reference is made to the signature page hereto.</a>
99.1	<a href="#">Biocept, Inc. Amended and Restated 2013 Equity Incentive Plan, as amended.</a>

## 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 San Diego, State of California, on November 15, 2021.

### BIOCEPT, INC.

By: /s/ Michael W. Nall  
Michael W. Nall  
*President and Chief Executive Officer*

### POWER OF ATTORNEY

KNOW ALL BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Michael W. Nall and Timothy Kennedy, and each of them, as his true and lawful attorneys-in-fact and agents, each with the full power of substitution, for him and in his name, place or stead, in any and all capacities, to sign any and all amendments to this Registration Statement (including post-effective amendments), and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, 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 requisite and necessary to be done in and about 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 their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
<u>/s/ Michael W. Nall</u> Michael W. Nall	Chief Executive Officer, President and Director <i>(Principal Executive Officer)</i>	November 15, 2021
<u>/s/ Timothy Kennedy</u> Timothy Kennedy	Chief Financial Officer, Chief Operating Officer and Secretary <i>(Principal Financial Officer and Principal Accounting Officer)</i>	November 15, 2021
<u>/s/ Samuel D. Riccitelli</u> Samuel D. Riccitelli	Chairman of the Board	November 15, 2021
<u>/s/ M. Faye Wilson</u> M. Faye Wilson	Director	November 15, 2021
<u>/s/ David F. Hale</u> David F. Hale	Director	November 15, 2021
<u>/s/ Marsha A. Chandler</u> Marsha A. Chandler	Director	November 15, 2021
<u>/s/ Bruce E. Gerhardt</u> Bruce E. Gerhardt	Director	November 15, 2021
<u>/s/ Ivor Royston</u> Ivor Royston	Director	November 15, 2021

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/s/ Linda Rubinstein  
Linda Rubinstein

Director

November 15, 2021

/s/ Antonino Morales  
Antonino Morales

Director

November 15, 2021

Charles J. Bair  
+1 858 550 6142  
cbair@cooley.com

EXHIBIT 5.1

November 15, 2021

Biocept, Inc.  
9955 Mesa Rim Road  
San Diego, CA 92121

Ladies and Gentlemen:

You have requested our opinion, as counsel to Biocept, Inc., a Delaware corporation (the "**Company**"), in connection with the filing by the Company of a Registration Statement on Form S-8 (the "**Registration Statement**") with the Securities and Exchange Commission, covering the offering of up to 1,300,000 shares (the "Shares") of the Company's Common Stock, par value \$0.0001 per share (the "**Shares**"), issuable pursuant to the Company's Amended and Restated 2013 Equity Incentive Plan, as amended (the "**Plan**").

In connection with this opinion, we have examined and relied upon the Registration Statement and related prospectus, the Plan, the Company's Amended and Restated Certificate of Incorporation, as amended, and Amended and Restated Bylaws, as amended, 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. 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 prerequisites to the effectiveness of such documents. 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 is expressed only with respect to the General Corporation Law of the State of Delaware. 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.

On the basis of the foregoing, and in reliance thereon, we are of the opinion that the Shares, when issued and sold in accordance with the Plan, the Registration Statement and related prospectus, will be validly issued, fully paid and nonassessable (except as to Shares issued pursuant to certain deferred payment arrangements under the Plan, which will be fully paid and nonassessable when such deferred payments are made in full).



Biocept, Inc.  
November 15, 2021  
Page 2

We consent to the filing of this opinion as an exhibit to the Registration Statement.

Sincerely,

Cooley LLP

By: Charles J. Bair

COOLEY LLP 4401 EASTGATE MALL SAN DIEGO, CA 92121  
T: (858) 550-6000 F: (858) 550-6420 COOLEY.COM

**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, 2021, with respect to the financial statements of Biocept, Inc., as of December 31, 2020 and 2019 and for each of the two years in the period ended December 31, 2020.

/s/ Mayer Hoffman McCann P.C.

San Diego, California  
November 15, 2021