

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

**Amendment No. 2 to
FORM S-1
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933**

Journey Medical Corporation

(Exact Name of Registrant as Specified in Its Charter)

Delaware (State or Other Jurisdiction of Incorporation or Organization)	2834 (Primary Standard Industrial Classification Code Number)	47-1879539 (I.R.S. Employer Identification Number)
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**9237 E Via de Ventura Blvd., Suite 105
Scottsdale, AZ 85258
480-434-6670**

(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)

Claude Maraoui
9237 E Via de Ventura Blvd., Suite 105
Scottsdale, AZ 85258
480-434-6670

(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent For Service)

Copies to:

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Alston & Bird LLP
90 Park Avenue
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Approximate date of commencement of proposed sale to the public: As soon as practicable after the effective date of this Registration Statement.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933 check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, 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 Accelerated filer Non-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.

CALCULATION OF REGISTRATION FEE

Title Of Each Class Of Securities To Be Registered	Proposed Maximum Aggregate Offering Price ⁽¹⁾⁽²⁾	Amount of Registration Fee ⁽³⁾
Common Stock, par value \$0.0001 per share	\$ 44,160,000	\$ 4,093.63

(1) Estimated solely for the purpose of computing the amount of the registration fee pursuant to Rule 457(o) under the Securities Act of 1933, as amended.

(2) Includes the aggregate offering price of additional shares that the underwriters have the option to purchase.

(3) Calculated pursuant to Rule 457(o) based on an estimate of the proposed maximum aggregate offering price. Of this amount, \$3,708 was previously paid.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 13. Other Expenses of Issuance and Distribution

The following table sets forth the costs and expenses, other than the underwriting discounts and commissions, payable by the registrant in connection with the sale of our common stock being registered. All amounts are estimates except for the Securities and Exchange Commission, or SEC, registration fee, the Financial Industry Regulatory Authority, or FINRA, filing fee and The Nasdaq Capital Market, or Nasdaq, listing fee.

	Amount to Be Paid
SEC Registration fee	\$ 4,093.63
Legal fees and expenses	\$ 150,000
FINRA filing fee	\$ 6,500
Nasdaq listing fee	\$ 5,000
Accounting fees and expenses	\$ 376,292
Printing expenses	\$ 2,500
Transfer agent fees and expenses	\$ 3,500
Miscellaneous	\$ 2,500
Total	<u>\$550,385.63</u>

Item 14. Indemnification of Directors and Officers

Section 145(a) of the Delaware General Corporation Law, or DGCL, provides, in general, that a Delaware corporation may indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) because that person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or other enterprise. The indemnity may include expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, so long as the person acted in good faith and in a manner he or she reasonably believed was in or not opposed to the corporation's best interests, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful.

Section 145(b) of the DGCL provides, in general, that a Delaware corporation may indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action or suit by or in the right of the corporation to obtain a judgment in its favor because the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or other enterprise. The indemnity may include expenses (including attorneys' fees) actually and reasonably incurred by the person in connection with the defense or settlement of such action, so long as the person acted in good faith and in a manner the person reasonably believed was in or not opposed to the corporation's best interests, except that no indemnification shall be permitted without judicial approval if a court has determined that the person is to be liable to the corporation with respect to such claim. Section 145(c) of the DGCL provides that, if a present or former director or officer has been successful in defense of any action referred to in Sections 145(a) and (b) of the DGCL, the corporation must indemnify such officer or director against the expenses (including attorneys' fees) he or she actually and reasonably incurred in connection with such action.

Section 145(g) of the DGCL provides, in general, that a corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another

corporation or other enterprise against any liability asserted against and incurred by such person, in any such capacity, or arising out of his or her status as such, whether or not the corporation could indemnify the person against such liability under Section 145 of the DGCL.

As permitted by Section 102 of the Delaware General Corporation Law, or the DGCL, we have adopted provisions in our certificate of incorporation that limit the liability of our directors for monetary damages for breach of their fiduciary duties, except for liability that cannot be eliminated under the DGCL. Delaware law provides that directors of a corporation will not be personally liable for monetary damages for breach of their fiduciary duties as directors, except liability for any of the following:

- any breach of their duty of loyalty to the corporation or the stockholder;
- acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;
- unlawful payments of dividends or unlawful stock repurchases or redemptions as provided in Section 174 of the DGCL; or
- any transaction from which the director derived an improper personal benefit.

This limitation of liability does not apply to liabilities arising under the federal securities laws and does not affect the availability of equitable remedies such as injunctive relief or rescission.

Our certificate of incorporation and our Bylaws also provide that we will indemnify our directors and executive officers and may indemnify our other officers and employees and other agents to the fullest extent permitted by law. We believe that indemnification under our Bylaws covers at least negligence and gross negligence on the part of indemnified parties. Our Bylaws also permit us to secure insurance on behalf of any officer, director, employee or other agent for any liability arising out of his or her actions in this capacity, regardless of whether our Bylaws would permit indemnification. We have secured such insurance.

In addition, we have entered into separate indemnification agreements with our directors and officers in addition to the indemnification provided for in our certificate of incorporation and bylaws. These indemnification agreements provide, among other things, that we will indemnify our directors and officers for certain expenses, including damages, judgments, fines, penalties, settlements and costs and attorneys' fees and disbursements, incurred by a director or officer in any claim, action or proceeding arising in his or her capacity as a director or officer of the company or in connection with service at our request for another corporation or entity. The indemnification agreements also provide for procedures that will apply in the event that a director or officer makes a claim for indemnification.

We have entered into an underwriting agreement in connection with this offering, which provides for indemnification by the underwriter of us, our officers and directors, for certain liabilities, including liabilities arising under the Securities Act.

Insofar as indemnification for liabilities arising under the Securities Act 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.

Item 15. Recent Sales of Unregistered Securities

Since January 1, 2018, we have made the issuances of our unregistered securities described below. Also included is the consideration received by us for such securities and information relating to the section of the Securities Act, or rule of the SEC, under which exemption from registration was claimed.

On March 31, 2021, we held the initial closing of a private placement offering (the "Private Placement") of our 8% Cumulative Convertible Class A Preferred Stock (the "Class A Preferred Stock"), pursuant to a private placement agreement with National Securities Corporation, currently owned by B. Riley Securities, as placement agent. In connection with the initial closing of the Private Placement, we issued 501,480 shares of our Class A Preferred Stock at a price of \$25.00 per share, for gross proceeds of approximately \$12,537,000.

On April 30, 2021, we issued and sold 28,000 shares of our Class A Preferred Stock in a subsequent closing of the Private Placement at a purchase price of \$25.00 per share, for gross proceeds of approximately \$700,000.

On June 18, 2021, we issued and sold 43,800 shares of our Class A Preferred Stock in a subsequent closing of the Private Placement at a purchase price of \$25.00 per share, for total gross proceeds of approximately \$1,095,000.

On July 15, 2021, we issued and sold 177,400 shares of our Class A Preferred Stock in a subsequent closing of the Private Placement at a purchase price of \$25.00 per share, for total gross proceeds of approximately \$4,435,000.

On July 20, 2021, we issued and sold 8,000 shares of our Class A Preferred Stock in a subsequent closing of the Private Placement at a purchase price of \$25.00 per share, for total gross proceeds of approximately \$200,000.

These issuances were made in reliance on an exemption from registration set forth in Section 4(a)(2) of the Securities Act, as transactions by an issuer not involving a public offering. The purchasers of securities in each such transaction represented their intention to acquire the securities for investment only and not with a view to offer or sell, in connection with any distribution of the securities. Please see “*Description of Capital Stock*.”

Item 16. Exhibits and Financial Statement Schedules

(a) Exhibits.

The exhibits to the Registration Statement are listed in the Exhibit Index below and incorporated by reference herein.

Exhibit Index

<u>Exhibit Number</u>	<u>Description</u>
1.1	Form of Underwriting Agreement. [‡]
3.1	Form of Second Amended and Restated Certificate of Incorporation of Journey Medical Corporation. [‡]
3.2	Form of Amended and Restated Bylaws of Journey Medical Corporation. [‡]
4.1	Form of Common Stock Certificate. [‡]
5.1	Opinion of Alston & Bird LLP. [‡]
10.1	Journey Medical Corporation 2015 Stock Plan. ^{‡+}
10.2	Executive Employment Agreement with Claude Maraoui, dated September 22, 2014. ^{‡+}
10.3	Executive Employment Agreement with Ernie De Paolantonio. ^{‡+}
10.4	Non-Employee Director Compensation Plan. ^{‡+}
10.5	Loan and Security Agreement, entered into by and between Journey Medical Corporation and East West Bank, dated March 31, 2021. [‡]
10.6	Asset Purchase Agreement for Obrexza, entered into by and between Journey Medical Corporation and Dermira, Inc., a subsidiary of Eli Lilly and Company, dated as of March 31, 2021. ^{‡*}
10.7	License and Supply Agreement for Accutane, entered into by and between Journey Medical Corporation and Dr. Reddy’s Laboratories Ltd., dated as of July 29, 2020. ^{‡*}
10.8	License and Supply Agreement for Targadox, entered into by and between Journey Medical Corporation and Blu Caribe Inc., dated as of March 10, 2015. ^{‡*}
10.9	First Amendment to the License and Supply Agreement for Targadox, entered into by and between Journey Medical Corporation and Blu Caribe Inc., dated as of August 26, 2015. [‡]

Exhibit Number	Description
10.10	<u>Asset Purchase Agreement for Exelderm, entered into by and between Journey Medical Corporation and Sun Pharmaceutical Industries, Inc., dated as of August 31, 2018.</u> ^{♦*}
10.11	<u>Amendment 1 to the Asset Purchase Agreement for Exelderm, entered into by and between Journey Medical Corporation and Sun Pharmaceutical Industries, Inc., dated as of September 5, 2018.</u> ^{♦*}
10.12	<u>Asset Purchase Agreement for Ximino, entered into by and between Journey Medical Corporation and Sun Pharmaceutical Industries, Inc., dated as of July 22, 2019.</u> ^{♦*}
10.13	<u>Asset Purchase Agreement for the Anti-itch Product, entered into by and between Journey Medical Corporation and Sun Pharmaceutical Industries, Inc., dated as of December 18, 2020.</u> ^{♦*}
10.14	<u>License, Collaboration, and Assignment Agreement for DFD-29, entered into by and between Journey Medical Corporation and Dr. Reddy's Laboratories Ltd., dated as of June 29, 2021.</u> ^{♦*}
10.15	<u>Form of Shared Services Agreement with Fortress Biotech, Inc.</u> [♦]
10.16	<u>Fortress Promissory Note, dated as of June 6, 2015.</u> [♦]
10.17	<u>Form of Indemnification Agreement between Journey Medical Corporation and each director.</u> ^{♦+}
23.1	<u>Consent of KPMG LLP.</u> [♦]
23.2	<u>Consent of Alston & Bird LLP (included in Exhibit 5.1).</u> [♦]
24.1	<u>Power of Attorney (included on on page II-7 of the original filing of this registration statement on Form S-1).</u>

♦ Previously filed.

+ Indicates management contract or compensatory plan.

* Certain confidential portions of this exhibit have been omitted pursuant to Item 601(b) of Regulation S-K.

Item 17. Undertakings

(a) The undersigned 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 Commission 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;
 - (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;
 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.
 5. That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser:
 - (A) Each prospectus filed by the registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and
 - (B) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5), or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii), or (x) for the purpose of providing the information required by Section 10(a) of the Securities Act of 1933 shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof. *Provided, however*, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.
 6. That, for the purpose of determining liability of the registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities, the undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the
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securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

- (i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;
 - (ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;
 - (iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and
 - (iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.
- (b) The undersigned 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 Securities and Exchange Commission such indemnification is against public policy as expressed in the 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 Act and will be governed by the final adjudication of such issue.
- (i) The undersigned registrant hereby undertakes that:
- (1) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.
 - (2) For the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus 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.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Scottsdale, State of Arizona, on this 10th day of November, 2021.

Journey Medical Corporation

By: /s/ Claude Maraoui

Claude Maraoui
Chief Executive Officer, President and Director

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 held on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Claude Maraoui</u> Claude Maraoui	Chief Executive Officer, President and Director (Principal Executive Officer)	November 10, 2021
<u>*</u> Lindsay A. Rosenwald, M.D.	Executive Chairman	November 10, 2021
<u>*</u> Ernie De Paolantonio	Chief Financial Officer (Principal Financial and Accounting Officer)	November 10, 2021
<u>*</u> Neil Herskowitz	Director	November 10, 2021
<u>*</u> Jeff Paley, M.D.	Director	November 10, 2021
<u>*</u> Justin Smith	Director	November 10, 2021
<u>*</u> Miranda Toledano	Director	November 10, 2021
<u>*By: /s/ Claude Maraoui</u> Claude Maraoui, Attorney-in-Fact		