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

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**FORM S-1  
REGISTRATION STATEMENT**  
UNDER  
THE SECURITIES ACT OF 1933

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**WINDTREE THERAPEUTICS, INC.**  
(Exact name of registrant as specified in its charter)

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**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**2836**  
(Primary Standard Industrial  
Classification Code Number)

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

**2600 Kelly Road, Suite 100  
Warrington, Pennsylvania 18976  
(215) 488-9300**

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

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**Craig E. Fraser**  
**President and Chief Executive Officer**  
**Windtree Therapeutics, Inc.**  
**2600 Kelly Road, Suite 100**  
**Warrington, Pennsylvania 18976**  
**(215) 488-9300**

(Name, address, including zip code, and telephone number, including area code, of agent for service)

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*Copies to:*

**Rachael M. Bushey**  
**Jennifer L. Porter**  
**Goodwin Procter LLP**  
**2929 Arch Street Suite #1700**  
**Philadelphia, Pennsylvania 19104**  
**(445) 207-7800**

**Diane Carman**  
**Senior Vice President, General Counsel**  
**Windtree Therapeutics, Inc.**  
**2600 Kelly Road, Suite 100**  
**Warrington, Pennsylvania 18976**  
**(215) 488-9300**

**Michael Nertney**  
**Ellenoff Grossman & Schole LLP**  
**1345 Avenue of the Americas**  
**New York, New York 10105**  
**(212) 370-1300**

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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, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.  **333-269775**

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.

**The Registration Statement shall become effective upon filing in accordance with Rule 462(b) promulgated under the Securities Act of 1933, as amended.**

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## EXPLANATORY NOTE AND INCORPORATION BY REFERENCE

This Registration Statement is being filed pursuant to Rule 462(b) under the Securities Act of 1933, as amended, or the Securities Act, for the sole purpose of increasing the aggregate offering price of shares of common stock and warrants to purchase shares of common stock, to be offered by Windtree Therapeutics, Inc., or the Registrant, by \$4,140,000, which includes additional shares and warrants that the underwriters have the option to purchase. The contents of the Registration Statement on Form S-1 (File No. 333-269775) filed by the Registrant with the Securities and Exchange Commission, or the Commission, pursuant to the Securities Act, or the Prior Registration Statement, which was declared effective by the Commission on April 19, 2023, including all exhibits to the Prior Registration Statement, are incorporated by reference into this Registration Statement. The additional securities that are being registered for issuance and sale are in an amount and at a price that together represent no more than 20% of the maximum aggregate offering price set forth in the Calculation of Filing Fees table contained in the Prior Registration Statement.

The required opinion and consents are listed on an Exhibit Index attached hereto and filed herewith.

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## EXHIBIT INDEX

<b>Exhibit Number</b>	<b>Description of Exhibit</b>
5.1	<a href="#">Opinion of Goodwin Procter LLP.</a>
23.1	<a href="#">Consent of EisnerAmper LLP, independent registered public accounting firm.</a>
23.2	<a href="#">Consent of Ernst &amp; Young LLP, independent registered public accounting firm.</a>
23.3	<a href="#">Consent of Goodwin Procter LLP (included in Exhibit 5.1).</a>
24.1*	<a href="#">Power of Attorney.</a>
107	<a href="#">Filing Fee Table.</a>

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\* Previously filed on the signature page to the [Registrant's Registration Statement on Form S-1 \(File No. 333-269775\)](#), originally filed with the [Securities and Exchange Commission on February 14, 2023](#) and incorporated by reference herein.

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**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 Township of Warrington, Commonwealth of Pennsylvania, on April 19, 2023.

**WINDTREE THERAPEUTICS, INC.**

By: /s/ Craig E. Fraser  
Name: Craig E. Fraser  
Title: President and Chief Executive Officer

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.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
<u>/s/ Craig E. Fraser</u> Craig E. Fraser	Director, President, and Chief Executive Officer <i>(Principal Executive Officer)</i>	April 19, 2023
<u>*</u> John Tattory	Interim Chief Financial Officer <i>(Principal Financial and Accounting Officer)</i>	April 19, 2023
<u>*</u> Daniel E. Geffken	Director	April 19, 2023
<u>*</u> Robert A. Scott, M.D.	Director	April 19, 2023
<u>*</u> Leslie J. Williams	Director	April 19, 2023

\*By: /s/ Craig E. Fraser  
Craig E. Fraser  
Attorney-in-fact



Goodwin Procter LLP  
2929 Arch Street, Suite #1700  
Philadelphia, PA 19104

goodwinlaw.com  
+1 445 207 7800

April 19, 2023

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

Re: Securities Registered under Registration Statement on Form S-1

We have acted as counsel to you in connection with your filing of a (i) Registration Statement on Form S-1 (File No. 333-269775) (as amended or supplemented, the "Initial Registration Statement") initially filed on February 14, 2023 pursuant to the Securities Act of 1933, as amended (the "Securities Act"), and (ii) a second Registration Statement on Form S-1 filed pursuant to Rule 462(b) promulgated under the Securities Act (the "462(b) Registration Statement," and together with the Initial Registration Statement, the "Registration Statement"). This opinion letter is furnished to you in connection with your filing of the 462(b) Registration Statement, relating to the registration of the offering by Windtree Therapeutics, Inc., a Delaware corporation (the "Company"), of up to an aggregate of 706,484 shares (the "Shares") of the Company's common stock, \$0.001 par value per share ("Common Stock") and accompanying warrants to purchase up to an aggregate of 706,484 shares of Common Stock (the "Common Warrants," and shares of Common Stock underlying the Common Warrants, the "Common Warrant Shares") covered by the Registration Statement. The Shares and Common Warrants are being sold to the several underwriters named in, and pursuant to, an underwriting agreement among the Company and such underwriters (the "Underwriting 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.

The opinion set forth below is limited to the Delaware General Corporation Law.

Based on the foregoing, we are of the opinion that:

1. The Shares have been duly authorized and, when delivered and paid for in accordance with the terms of the Underwriting Agreement, will be validly issued, fully paid and non-assessable.
  2. The Common Warrants have been duly authorized and, when issued, delivered and paid for in accordance with the terms of the Underwriting Agreement, will be valid and binding obligations of the Company.
  3. Assuming a sufficient number of authorized but unissued shares of Common Stock are available for issuance when the Common Warrants are exercised, the Common Warrant Shares, when and if issued upon exercise of the Common Warrants in accordance with the terms of the Common Warrants, will be validly issued, fully paid and non-assessable.
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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 462(b) Registration Statement and to the references to our firm under the caption “Legal Matters” in the Initial 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

We consent to the incorporation by reference in this Registration Statement of Windtree Therapeutics, Inc. on Form S-1 to be filed on or about April 19, 2023 of our report dated March 31, 2023, on our audit of the financial statements as of December 31, 2022 and for the year then ended, which report was included in the Annual Report on Form 10-K filed March 31, 2023. Our report includes an explanatory paragraph about the existence of substantial doubt concerning the Company's ability to continue as a going concern.

/s/ EisnerAmper LLP

EISNERAMPER LLP  
Philadelphia, Pennsylvania  
April 18, 2023



**Consent of Independent Registered Public Accounting Firm**

We consent to the incorporation by reference in the Registration Statement on Form S-1 filed pursuant to Rule 462(b) of the Securities Act of 1933 of the reference to our firm under the caption “Experts” in the Registration Statement (Form S-1 No. 333-269775) and related Prospectus of Windtree Therapeutics, Inc. for the registration of its common stock and warrants and to the incorporation by reference therein of our report dated March 31, 2022 (except for the second paragraph of Note 2, as to which the date is March 31, 2023), with respect to the consolidated financial statements of Windtree Therapeutics, Inc. included in its Annual Report (Form 10-K) for the year ended December 31, 2022, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

Philadelphia, Pennsylvania  
April 19, 2023

**Calculation of Filing Fee Tables**  
**Form S-1**  
(Form Type)

**Windtree Therapeutics, Inc.**  
(Exact Name of Registrant as Specified in its Charter)

**Table 1: Newly Registered Securities and Carry Forward Securities**

	Security type	Security class title	Fee calculation or carry forward rule	Amount registered	Proposed maximum offering price per unit	Maximum aggregate offering price(1)(2)	Fee rate	Amount of registration fee(1)
Fees to Be Paid	Equity	Common Stock, par value \$0.001 per share	457(o)	—	—	\$2,070,000	0.00011020	\$228.12
Fees to Be Paid	Equity	Common warrants(3)	457(g)	—	—	Included above	—	—
Fees to Be Paid	Equity	Shares of Common Stock issuable upon exercise of Common warrants	457(o)	—	—	\$2,070,000	0.00011020	\$228.12
			Total Offering Amounts			\$ 4,140,000		\$ 456.24
			Total Fees Previously Paid					—
			Total Fee Offsets					—
			Net Fee Due					\$ 456.24

- (1) Estimated solely for the purpose of calculating the registration fee pursuant Rule 457(o) under the Securities Act of 1933, as amended (the “Securities Act”).
- (2) Pursuant to Rule 416(a) under the Securities Act, this registration statement shall also cover an indeterminate number of shares that may be issued and resold resulting from stock splits, stock dividends or similar transactions.
- (3) No fee pursuant to Rule 457(g) of the Securities Act.