

OPEXA THERAPEUTICS, INC.

FORM 8-K (Current report filing)

Filed 02/11/13 for the Period Ending 02/11/13

Address	2635 TECHNOLOGY FOREST BLVD. THE WOODLANDS, TX 77381
Telephone	(281) 272-9331
CIK	0001069308
Symbol	OPXA
SIC Code	2834 - Pharmaceutical Preparations
Industry	Biotechnology & Drugs
Sector	Healthcare
Fiscal Year	12/31

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 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): February 11 , 2013

OPEXA THERAPEUTICS, INC.

(Exact name of registrant as specified in its charter)

Texas
(State or other jurisdiction of
incorporation)

001-33004
(Commission File Number)

76-0333165
(IRS Employer Identification No.)

2635 Technology Forest Blvd., The Woodlands, Texas
(Address of principal executive offices)

77381
(Zip Code)

Registrant's telephone number, including area code: **(281) 272-9331**
N/A

(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:

- ☐ 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))
-
-
-

Item 8.01. Other Events.

On February 11, 2013, Opexa Therapeutics, Inc. (the “ **Company** ”) closed its previously announced sale of 1,083,334 units, with each unit (a “ **Unit** ”) consisting of the following: (i) one share of the Company’s common stock, par value \$0.01 per share (“ **Common Stock** ”); and (ii) one warrant to purchase half of a share of Common Stock (a “ **Warrant** ”). The price of the securities sold was \$3.00 per Unit, for an aggregate purchase price of \$3.25 million. Each Warrant is exercisable at an initial exercise price of \$3.00 per share, and may be exercised at any time through the fourth anniversary of issuance.

The shares and warrants were offered and sold by the Company pursuant to a base prospectus which is included in the Company’s shelf registration statement on Form S-3 (Registration No. 333-185001), which was declared effective by the Securities and Exchange Commission (the “ **Commission** ”) on December 5, 2012, and the related prospectus supplement filed with the Commission on February 8, 2013. The Company intends to use the net proceeds from the offering for general corporate and working capital purposes, including the continued conduct of the Abili-T clinical study, the Company’s ongoing Phase 2b clinical trial of Tcelna in Secondary Progressive MS patients. Dawson James Securities, Inc. acted as exclusive placement agent for the offering.

Item 9.01. Financial Statements and Exhibits.

(d)

<u>Exhibit No.</u>	<u>Description</u>
5.1	Opinion of Pillsbury Winthrop Shaw Pittman LLP.
23.1	Consent of Pillsbury Winthrop Shaw Pittman LLP (included in Exhibit 5.1).

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: February 11, 2013

OPEXA THERAPEUTICS, INC

By: /s/ Neil K. Warma

Neil K. Warma

President and Chief Executive Officer

EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Description</u>
5.1	Opinion of Pillsbury Winthrop Shaw Pittman LLP.
23.1	Consent of Pillsbury Winthrop Shaw Pittman LLP (included in Exhibit 5.1).



Pillsbury Winthrop Shaw Pittman LLP
12255 El Camino Real, Suite 300 | San Diego, CA 92130-4088 | tel 619.234.5000 | fax 858.509.4010

February 11, 2013

Opexa Therapeutics, Inc.
2635 Technology Forest Blvd.
The Woodlands, Texas 77381

Ladies and Gentlemen:

We are acting as counsel for Opexa Therapeutics, Inc., a Texas corporation (the "Company"), in connection with the issuance and sale of (i) up to 1,083,334 shares of common stock, par value \$0.01 per share ("Common Stock"), of the Company, all of which are authorized but heretofore unissued shares to be offered and sold by the Company (the "Shares"), (ii) warrants (the "Warrants") to purchase up to 541,668 shares of Common Stock, all of which are authorized but heretofore unissued shares to be offered and sold by the Company (the "Warrant Shares"), and (iii) the Warrant Shares, pursuant to the Registration Statement on Form S-3 (File No. 333-185001) (the "Registration Statement") filed by the Company with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933 (the "Act") and related prospectus, dated December 5, 2012, as supplemented by the prospectus supplement dated February 8, 2013, relating to the offer and sale of the Shares, the Warrants and the Warrant Shares (as so supplemented, the "Prospectus").

We have reviewed and are familiar with such corporate proceedings and other matters as we have considered relevant or necessary as a basis for the opinions in this letter. Based on the foregoing, we are of the opinion that:

1. The Shares have been duly authorized and, when issued and sold by the Company in the manner described in the Registration Statement and the Prospectus and in accordance with the resolutions adopted by the Board of Directors of the Company, will be validly issued, fully paid and nonassessable.
 2. The Warrants have been duly authorized and, when duly executed and delivered by the Company and issued and sold by the Company in the manner described in the Registration Statement and the Prospectus and in accordance with the resolutions adopted by the Board of Directors of the Company, will constitute valid and legally binding obligations of the Company, enforceable against the Company in accordance with their terms, except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, arrangement, moratorium, fraudulent transfer and similar laws affecting or relating to the rights of creditors generally, by general principles of equity (regardless of whether considered in a proceeding in equity or at law), and by requirements of reasonableness, good faith and fair dealing.
-



Opexa Therapeutics, Inc.

February 11, 2013

Page

3. The Warrant Shares have been duly authorized and, if issued on the date hereof upon exercise of the Warrants in accordance with the terms of the Warrants and the resolutions adopted by the Board of Directors of the Company, would be validly issued, fully paid and nonassessable.

The opinions set forth in this letter are limited to the Business Organizations Code of the State of Texas and the law of the State of New York, in each case as in effect on the date hereof.

We hereby consent to the filing of this opinion as Exhibit 5.1 to the Company's Current Report on Form 8-K filed with the Commission on the date hereof and the incorporation thereof in the Registration Statement and to the use of our name under the caption "Legal Matters" in the Prospectus. In giving this consent, we do not thereby admit that we are within the category of persons whose consent is required under Section 7 of the Act or the rules and regulations of the Commission promulgated thereunder.

Very truly yours,

/s/ Pillsbury Winthrop Shaw Pittman LLP