

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

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

VICAL INCORPORATED

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

2836
(Primary Standard Industrial
Classification Code Number)

93-0948554
(I.R.S. Employer
Identification Number)

**10390 Pacific Center Court
San Diego, California 92121
(858) 646-1100**

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

**Vijay B. Samant
President and Chief Executive Officer
Vical Incorporated
10390 Pacific Center Court
San Diego, California 92121
(858) 646-1100**

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

Copies to:

**Frederick T. Muto, Esq.
Sean M. Clayton, Esq.
Cooley LLP
4401 Eastgate Mall
San Diego, California 92121
(858) 550-6000**

**Matthew T. Bush, Esq.
Latham & Watkins LLP
12670 High Bluff Drive
San Diego, California 92130
(858) 523-5400**

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, as amended (the "Securities Act"), 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. (File No. 333-220981)

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, 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

Accelerated filer

Non-accelerated filer (Do not check if a smaller reporting company)

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

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered (1)	Proposed maximum aggregate offering price(2)	Amount of registration fee(3)
Common stock, \$0.01 par value per share	\$2,375,002.00	\$296.00
Pre-funded warrants to purchase shares of common stock and common stock issuable upon exercise thereof	\$2,109,999.50	\$263.00
Total	\$4,485,001.50	\$559.00

- (1) Pursuant to Rule 416 under the Securities Act of 1933, as amended, the securities registered also include such indeterminate amounts and numbers of shares of common stock issuable to cover additional securities that may be offered or issued to prevent dilution resulting from stock splits, stock dividends or similar transactions.
- (2) Estimated solely for the purpose of calculating the amount of the registration fee in accordance with Rule 457(o) under the Securities Act. Includes the offering price of any additional securities that the underwriter has the option to purchase.
- (3) The registrant previously registered \$24,265,000 worth of its common stock and pre-funded warrants to purchase common stock on a Registration Statement on Form S-1, as amended (File No. 333-220981) and paid an aggregate registration fee of \$3,122 in connection with the filing of such Registration Statement.

This Registration Statement shall become effective upon filing in accordance with Rule 462(b) under the Securities Act.

**EXPLANATORY NOTE AND
INCORPORATION OF CERTAIN INFORMATION BY REFERENCE**

This Registration Statement is being filed with the Securities and Exchange Commission (the "Commission") with respect to the registration of (i) additional shares of common stock, par value \$0.01 per share, of Vical Incorporated, a Delaware corporation ("Common Stock") and (ii) pre-funded warrants to purchase shares of Common Stock, pursuant to Rule 462(b) under the Securities Act. This Registration Statement incorporates by reference the contents of, including all amendments and exhibits thereto and all information incorporated by reference therein, the Registration Statement on Form S-1 (Registration No. 333-220981), which was declared effective by the Commission on November 7, 2017, and is being filed solely for the purpose of increasing the aggregate offering price of securities to be offered in the public offering by \$4,485,001.50.

EXHIBIT INDEX

<u>Exhibit Number</u>	<u>Description of Document</u>
5.1	<u>Opinion of Cooley LLP.</u>
23.1	<u>Consent of Independent Registered Public Accounting Firm.</u>
23.2	<u>Consent of Cooley LLP (reference is made to Exhibit 5.1).</u>
24.1†	<u>Powers of Attorney.</u>

† Included on the signature pages of the Registration Statement on Form S-1, as amended (File No. 333-220981), filed with the Securities and Exchange Commission on October 16, 2017 and October 30, 2017, and incorporated herein by reference.

SIGNATURES

Pursuant to the requirements of the Securities Act, the Registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of San Diego, California, on the 8th day of November, 2017.

Vical Incorporated

By: /s/ Vijay B. Samant

Vijay B. Samant
President and Chief Executive Officer

Pursuant to the requirements of the Securities Act, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

SIGNATURE	TITLE	DATE
<u>/s/ Vijay B. Samant</u> Vijay B. Samant	President, Chief Executive Officer and Director <i>(Principal Executive Officer)</i>	November 8, 2017
<u>/s/ Anthony A. Ramos</u> Anthony A. Ramos	Vice President, Chief Financial Officer <i>(Principal Financial and Accounting Officer)</i>	November 8, 2017
<u>/s/ R. Gordon Douglas, M.D.*</u> R. Gordon Douglas, M.D.	Chairman of the Board of Directors	November 8, 2017
<u>/s/ Richard M. Beleson*</u> Richard M. Beleson	Director	November 8, 2017
<u>/s/ Gary A. Lyons*</u> Gary A. Lyons	Director	November 8, 2017
<u>/s/ Robert C. Merton, Ph.D.*</u> Robert C. Merton, Ph.D.	Director	November 8, 2017
<u>/s/ George J. Morrow*</u> George J. Morrow	Director	November 8, 2017
<u>/s/ Thomas E. Shenk, Ph.D.*</u> Thomas E. Shenk, Ph.D.	Director	November 8, 2017

* Pursuant to power of attorney

By: /s/ Vijay B. Samant
Vijay B. Samant



Sean M. Clayton
+1 858 550 6034
sclayton@cooley.com

November 8, 2017

Vical Incorporated
10390 Pacific Center Court
San Diego, CA 92121

Ladies and Gentlemen:

You have requested our opinion, as counsel to Vical Incorporated, a Delaware corporation (the “*Company*”), in connection with the filing, pursuant to Rule 462(b) of Regulation C promulgated under the Securities Act of 1933, as amended, of a registration statement on Form S-1 (the “*Registration Statement*”) with the Securities and Exchange Commission, relating to 1,357,144 shares of the Company’s common stock, par value \$0.01 (the “*Shares*”) and warrants (the “*Warrants*”) to purchase up to 1,205,714 shares of the Company’s common stock (the “*Warrant Shares*”). The Registration Statement incorporates by reference the registration statement on Form S-1 (No. 333-220981), which was declared effective on November 7, 2017, including the prospectus which forms a part of such registration statement (the “*Prospectus*”). The Shares, the Warrants and the Warrant Shares are to be sold by the Company as described in the Registration Statement and the Prospectus.

In connection with this opinion, we have (i) examined and relied upon the Registration Statement and Prospectus, the form of Warrant filed as an exhibit to the Registration Statement, the Company’s Amended and Restated Certificate of Incorporation, its Amended and Restated Bylaws 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 and (ii) assumed the Pricing Committee of the Board of Directors of the Company has taken action to set the sale price of the Shares and the Warrants.

We have assumed the genuineness and authenticity of all documents submitted to us as originals and the conformity to originals of all documents submitted to us as copies. As to certain factual matters, we have relied upon a certificate of an officer of the Company and have not sought independently to verify such matters.

Our opinion is expressed only with respect to the General Corporation Law of the State of Delaware and, as to the Warrants constituting valid and binding obligations of the Company, with respect to the laws of the State of New York. Our opinion is based on these laws as in effect on the date hereof. 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. With regard to our opinion concerning the Warrants constituting valid and binding obligations of the Company:

(i) Our opinion is subject to, and may be limited by, (a) applicable bankruptcy, reorganization, insolvency, moratorium, fraudulent conveyance, debtor and creditor, and similar laws which relate to or affect creditors’ rights generally, and (b) general principles of equity (including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing) regardless of whether considered in a proceeding in equity or at law.

(ii) Our opinion is subject to the qualification that the availability of specific performance, an injunction or other equitable remedies is subject to the discretion of the court before which the request is brought.

(iii) We express no opinion as to any provision of the Warrants that: (a) provides for liquidated damages, buy-in damages, monetary penalties, prepayment or make-whole payments or other economic remedies to the extent such provisions may constitute unlawful penalties, (b) relates to advance waivers of claims, defenses, rights granted by law, or notice, opportunity for hearing, evidentiary requirements, statutes of limitations, trial by jury, or procedural rights, (c) restricts non-written modifications and waivers, (d) provides for the payment of legal and other professional fees where such payment is contrary to law or public policy, (e) relates to exclusivity, election or accumulation of rights or remedies, or (f) provides that provisions of the Warrants are severable to the extent an essential part of the agreed exchange is determined to be invalid and unenforceable.

(iv) We express no opinion as to whether a state court outside of the State of New York or a federal court of the United States would give effect to the choice of New York law provided for in the Warrants.

With respect to the Warrant Shares, we express no opinion to the extent that, notwithstanding its current reservation of shares of Common Stock, future issuances of securities, including the Warrant Shares, of the Company and/or adjustments to outstanding securities, including the Warrants, of the Company may cause the Warrants to be exercisable for more shares of Common Stock than the number that remain authorized but unissued. Further, we have assumed the Exercise Price (as defined in the Warrants) will not be adjusted to an amount below the par value per share of the Common Stock.

On the basis of the foregoing, and in reliance thereon, we are of the opinion that the Shares, when sold and issued in accordance with the Registration Statement and the Prospectus, will be validly issued, fully paid and non-assessable, (ii) provided that the Warrants have been duly executed and delivered by the Company and duly delivered to the purchasers thereof against payment therefor, the Warrants, when sold and issued as contemplated in the Registration Statement and the Prospectus will be valid and binding obligations of the Company, and (iii) the Warrant Shares, when issued and paid for in accordance with the terms of the Warrants, will be validly issued, fully paid and non-assessable.

We consent to the reference to our firm under the caption “Legal Matters” in the Prospectus and to the filing of this opinion as an exhibit to the Registration Statement.

Sincerely,

Cooley LLP

By: /s/ Sean M. Clayton
Sean M. Clayton

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 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" and to the incorporation by reference of our report dated March 10, 2017, with respect to the financial statements of Vical Incorporated incorporated by reference in Amendment No. 2 to the Registration Statement (Form S-1 No. 333-220981) and related Preliminary Prospectus of Vical Incorporated for the registration of its common stock and warrants to purchase shares of its common stock.

/s/ Ernst & Young LLP

San Diego, California
November 7, 2017