

MEDICINOVA INC  
Form 8-K  
August 21, 2012

**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): August 20, 2012**

**MEDICINOVA, INC.**

(Exact name of registrant as specified in its charter)

**DELAWARE**  
(State or other jurisdiction  
of incorporation)

**001-33185**  
(Commission  
File Number)

**33-0927979**  
(I.R.S. Employer  
Identification No.)

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**4350 LA JOLLA VILLAGE DRIVE,**

**SUITE 950, SAN DIEGO, CA**  
(Address of principal executive offices)

**Registrant's telephone number, including area code: (858) 373-1500**

**92122**  
(Zip Code)

**Not applicable.**

**(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 (see General Instruction A.2. below):

- ..  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))

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**Item 1.01 Entry into a Material Definitive Agreement.**

On August 20, 2012, MediciNova, Inc., a Delaware corporation (the **Company**), entered into a Common Stock Purchase Agreement (the **Purchase Agreement**) with Aspire Capital Fund, LLC, an Illinois limited liability company (**Aspire Capital**), which provides that, upon the terms and subject to the conditions and limitations set forth therein, Aspire Capital is committed to purchase up to an aggregate of \$20 million of shares of the Company's common stock (the **Purchase Shares**), including the Initial Shares (as defined below) over the two-year term of the Purchase Agreement.

**Summary of terms of Purchase Agreement**

Under the Purchase Agreement, the Company initially will issue 363,636 shares of its common stock to Aspire Capital in consideration for entering into the Purchase Agreement (the **Commitment Shares**). Immediately upon executing the Purchase Agreement, the Company will sell 606,060 shares to Aspire Capital for the purchase price of \$1,000,000 (the **Initial Shares**). Thereafter, on any business day on which the closing sale price of the Company's common stock equals or exceeds \$1.00 per share, over the 24-month term of the Purchase Agreement, the Company has the right, in its sole discretion, to present Aspire Capital with a purchase notice (each, a **Purchase Notice**) directing Aspire Capital to purchase up to 50,000 Purchase Shares per business day; however, no sale pursuant to such Purchase Notice may exceed five hundred thousand dollars (\$500,000) per business day, unless the Company and Aspire Capital mutually agree. The Company and Aspire Capital also may mutually agree to increase the number of shares that may be sold per business day to as much as an additional 1,000,000 Purchase Shares per business day. The purchase price per Purchase Share pursuant to such Purchase Notice (the **Purchase Price**) is the lower of (i) the lowest sale price for the Company's common stock on the date of sale or (ii) the arithmetic average of the three lowest closing sale prices for the Company's common stock during the 12 consecutive business days ending on the business day immediately preceding the purchase date of those securities. The applicable Purchase Price will be determined prior to delivery of any Purchase Notice.

In addition, on any date on which the Company submits a maximum Purchase Notice to Aspire Capital, the Company also has the right, in its sole discretion, to present Aspire Capital with a volume-weighted average price purchase notice (each, a **VWAP Purchase Notice**) directing Aspire Capital to purchase an amount of the Company's common stock equal to a percentage (not to exceed 15%, which limitation may be increased to 30% by the mutual agreement of the parties) of the aggregate shares of common stock traded on the next business day (the **VWAP Purchase Date**), subject to a maximum number of shares determined by the Company (the **VWAP Purchase Share Volume Maximum**). The purchase price per Purchase Share pursuant to such VWAP Purchase Notice (the **VWAP Purchase Price**) shall be the lower of (i) the closing sale price on the date of sale and (ii) 95% of the volume weighted average price for the Company's common stock traded on the NASDAQ Capital Market on (i) the VWAP Purchase Date if the aggregate shares to be purchased on that date does not exceed the VWAP Purchase Share Volume Maximum, or (ii) the portion of such business day until such time as the aggregate shares to be purchased will equal the VWAP Purchase Share Volume Maximum. Further, if the sale price of the Company's common stock falls on the VWAP Purchase Date below the greater of (i) 90% of the closing price of our common stock on the business day immediately preceding the VWAP Purchase Date or (ii) the price set by us in the VWAP Purchase Notice (the **VWAP Minimum Price Threshold**), the VWAP Purchase Price will be determined using the percentage in the VWAP Purchase Notice of the total shares traded for such portion of the VWAP Purchase Date prior to the time that the sale price of our common stock fell below the VWAP Minimum Price Threshold and the volume weighted average price of our common stock sold during such portion of the VWAP Purchase Date prior to the time that the sale price of our common stock fell below the VWAP Minimum Price Threshold.

The number of Purchase Shares covered by, and the timing of, each Purchase Notice or VWAP Purchase Notice are determined by the Company, at its sole discretion. The Company may deliver multiple Purchase Notices and VWAP Purchase Notices to Aspire Capital from time to time during the term of the Purchase Agreement, so long as the most recent purchase has been completed. There are no trading volume requirements or restrictions under the Purchase Agreement. Aspire Capital has no right to require any sales by the Company, but is obligated to make purchases as directed in accordance with the Purchase Agreement.

The Purchase Agreement contains customary representations, warranties, covenants, closing conditions and indemnification and termination provisions. The Purchase Agreement may be terminated by the Company at any time, at its discretion, without any cost or penalty. Aspire Capital has covenanted not to cause or engage in any manner whatsoever, any direct or indirect short selling or hedging of the Company's common stock. The Company did not pay any additional amounts to reimburse or otherwise compensate Aspire Capital in connection with the transaction other than the Commitment Shares. There are no limitations on use of proceeds, financial or business covenants, restrictions on future fundings, rights of first refusal, participation rights, penalties or liquidated damages in the Purchase Agreement.

The Company's net proceeds will depend on the Purchase Price, the VWAP Purchase Price and the frequency of the Company's sales of Purchase Shares to Aspire Capital; *provided, however*, that the maximum aggregate proceeds from sales of Purchase Shares, including the Initial Shares, is \$20 million under the terms of the Purchase Agreement. The Company's delivery of Purchase Notices and VWAP Purchase Notices will be made subject to market conditions, in light of the Company's capital needs from time to time and under the limitations contained in the Purchase Agreement. In order to satisfy any NASDAQ Global Market requirements, the number of shares which may be issued under the Purchase Agreement may not exceed an amount that would result in the Company breaching its obligations under the rules of the NASDAQ Global Market. The Company expects to use proceeds from sales of Purchase Shares for general corporate purposes and working capital requirements.

**Registration Rights**

In connection with the Purchase Agreement, the Company also entered into a Registration Rights Agreement (the "Registration Rights Agreement") with Aspire Capital, dated August 20, 2012. The Registration Rights Agreement provides, among other things, that the Company will register the sale of the Purchase Shares to Aspire Capital. In accordance with the Registration Rights Agreement, the sale of the Purchase Shares to Aspire Capital is being made under the Company's Registration Statement on Form S-3 (File No. 333-163116), filed with the Securities and Exchange Commission on November 13, 2009, as amended and supplemented from time to time (the "Registration Statement"). The Company further agreed to keep the Registration Statement effective and to indemnify Aspire Capital for certain liabilities in connection with the sale of the Securities under the terms of the Registration Rights Agreement.

The foregoing description of the Purchase Agreement and the Registration Rights Agreement is not a complete description of all the terms of those agreements. For a complete description of all the terms, we refer you to the full text of the Purchase Agreement and the Registration Rights Agreement, copies of which are filed herewith as Exhibits 10.1 and 4.1, respectively, to this Current Report on Form 8-K and are incorporated herein by reference. This Current Report on Form 8-K also incorporates by reference the Purchase Agreement and Registration Rights Agreement into the Registration Statement.

**Item 8.01 Other Events.**

On August 20, 2012, the Company issued a press release announcing that it has entered into the Purchase Agreement with Aspire Capital. A copy of the press release is filed as Exhibit 99.1 to this Current Report and is incorporated herein by reference.

On August 20, 2012, pursuant to Rule 424(b)(5) under the Securities Act, the Company filed a prospectus supplement (the "Aspire Capital Prospectus Supplement") to the Company's Registration Statement on Form S-3 (File No. 333-163116) describing the Aspire Capital offering referred to above in Item 1.01. The Aspire Capital Prospectus Supplement is incorporated by reference herein.

**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits.

**Exhibit**

| No.  | Description   |
|------|---|
| 4.1  | Registration Rights Agreement, dated as of August 20, 2012, by and between the Company and Aspire Capital Fund, LLC.                          |
| 5.1  | Opinion of Cooley LLP.  |
| 10.1 | Common Stock Purchase Agreement, dated as of August 20, 2012, by and between the Company and Aspire Capital Fund, LLC.                        |
| 23.1 | Consent of Cooley LLP (included in Exhibit 5.1).  |
| 99.1 | Press release dated August 20, 2012, titled "MediciNova Enters Into a \$20 Million Common Stock Purchase Agreement With Aspire Capital Fund." |

**SIGNATURE**

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 hereunto duly authorized.

**MEDICINOVA, INC.**

By: /s/ Michael Gennaro  
Michael Gennaro

*Chief Financial Officer*

Date: August 20, 2012

**EXHIBIT INDEX**

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