

**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): October 27, 2021**

**Progenity, Inc.**

(Exact name of Registrant as Specified in Its Charter)

**Delaware**  
(State or Other Jurisdiction  
of Incorporation)

**001-39334**  
(Commission  
File Number)

**27-3950390**  
(IRS Employer  
Identification No.)

**4330 La Jolla Village Drive, Suite 200,  
San Diego, CA**  
(Address of Principal Executive Offices)

**92122**  
(Zip Code)

**Registrant's Telephone Number, Including Area Code: (855) 293-2639**

**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))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.001 per share	PROG	The Nasdaq Global Market

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

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 13(a) of the Exchange Act.

### **Item 8.01. Other Events**

On October 27, 2021, Progenity authorized the issuance of an aggregate of 427,804 shares of common stock to certain investors in consideration for a waiver of certain contractual lock-up provisions to which Progenity agreed in connection with prior offerings of its securities (the “Waiver Shares”). The Waiver Shares were offered and sold pursuant to the Company’s shelf registration statement on Form S-3 (File No. 333-258301) initially filed with the Securities and Exchange Commission (the “Commission”) on July 30, 2021 and declared effective on August 6, 2021. A prospectus supplement relating to the offer and sale of the Waiver Shares was filed with the Commission on October 26, 2021.

An opinion of Gibson, Dunn & Crutcher LLP regarding the validity of the Waiver Shares is filed as Exhibit 5.1.

This Current Report on Form 8-K does not constitute an offer to sell or the solicitation of an offer to buy, and these securities cannot be sold in any state or jurisdiction in which this offer, solicitation, or sale would be unlawful prior to registration or qualification under the securities laws of any state or jurisdiction.

### **Item 9.01. Financial Statements and Exhibits.**

#### Exhibits

<u>Exhibit Number</u>	<u>Description</u>
5.1	<a href="#">Opinion of Gibson, Dunn &amp; Crutcher LLP</a>
23.1	<a href="#">Consent of Gibson, Dunn &amp; Crutcher LLP (contained in Exhibit 5.1)</a>
104	Cover page interactive data file (embedded within the inline XBRL document).

**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 hereunto duly authorized.

Date: October 27, 2021

Progenity, Inc.

By: /s/ Eric d'Esparbes  
Eric d'Esparbes  
Interim Chief Executive Officer and Chief Financial Officer

October 27, 2021

Progenity, Inc.  
4330 La Jolla Village Drive, Suite 200  
San Diego, CA 92122

Re: *Progenity, Inc.*  
*Registration Statement on Form S-3 (File No. 333-258301)*

Ladies and Gentlemen:

We have examined the Registration Statement on Form S-3, File No. 333-258301, as amended (the "Registration Statement"), of Progenity, Inc., a Delaware corporation (the "Company"), filed with the Securities and Exchange Commission (the "Commission") pursuant to the Securities Act of 1933, as amended (the "Securities Act"), in connection with the offering by the Company of 427,804 shares of the Company's common stock, par value \$0.001 per share (the "Shares").

In arriving at the opinion expressed below, we have examined originals, or copies certified or otherwise identified to our satisfaction as being true and complete copies of the originals, of specimen common stock certificates and such other documents, corporate records, certificates of officers of the Company and of public officials and other instruments as we have deemed necessary or advisable to enable us to render the opinions set forth below. In our examination, we have assumed without independent investigation the genuineness of all signatures, the legal capacity and competency of all natural persons, the authenticity of all documents submitted to us as originals and the conformity to original documents of all documents submitted to us as copies.

Based upon the foregoing, and subject to the assumptions, exceptions, qualifications and limitations set forth herein, we are of the opinion that the Shares, when issued against payment therefor as set forth in the Registration Statement, will be validly issued, fully paid and non-assessable.

We consent to the filing of this opinion as an exhibit to the Registration Statement, and we further consent to the use of our name under the caption "Legal Matters" in the Registration Statement and the prospectus that forms a part thereof. In giving these consents, we do not thereby admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act or the Rules and Regulations of the Commission.

Very truly yours,

/s/ Gibson, Dunn & Crutcher LLP