

Division of Corporations

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L84760

Florida Department of State
Division of Corporations
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MERGER OR SHARE EXCHANGE

MP TOTALCARE, INC.

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Merger

10/08/03

DC



FLORIDA DEPARTMENT OF STATE

Glenda E. Hood
Secretary of State

October 7, 2003

MP TOTALCARE, INC.
615 S WARE BLVD.
TAMPA, FL 33619US

SUBJECT: MP TOTALCARE, INC.
REF: L84760

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We received your electronically transmitted document. However, the document has not been filed. Please make the following corrections and refile the complete document, including the electronic filing cover sheet.

The word "initial" or "first" should be removed from the article regarding directors, officers, and/or registered agent, unless these are the individuals originally designated at the time of incorporation.

The document must contain written acceptance by the registered agent, (i.e. "I hereby am familiar with and accept the duties and responsibilities as registered agent for said corporation/limited liability company"); and the registered agent's signature.

SHOULD THE COMPUTER BE UPDATED WITH THE NEW DIRECTORS LISTED IN THE ARTICLES LISTED IN #2 OF THE PLAN OF MERGER OR SHOULD THE OFFICERS/DIRECTORS REMAIN THE SAME AS MENTIONED IN #4 OF THE PLAN OF MERGER?????

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Darlene Connell
Document Specialist

FAX Aud. #: H03000290809
Letter Number: 503A00054818



FLORIDA DEPARTMENT OF STATE
Glenda E. Hood
Secretary of State

October 7, 2003

MP TOTALCARE, INC.
615 S WARE BLVD.
TAMPA, FL 33619US

SUBJECT: MP TOTALCARE, INC.
REF: LB4760

*Please give
original file
date*

We received your electronically transmitted document. However, the document has not been filed. Please make the following corrections and refax the complete document, including the electronic filing cover sheet.

THE OFFICERS AND DIRECTORS NOW LISTED FOR MP TOTALCARE, INC. (MPTC) ARE JAY GATES (PST), HOWARD DEUTSCH (D), THOMAS DIRCKS (D), LAWRENCE FAGAN (D) AND KEVIN PAWLAWSKI (D). THE DIRECTORS LISTED WITHIN THE MERGER DOCUMENT IN THE AMENDED ARTICLES ARE HOWARD R. DUTSCH (D), KEVIN F. PAWLOWSKI (D), ROBERT FUSCO (D), THOMAS C. DIRCKS (D) AND JAY GATES (D). PLEASE CLARIFY WHICH LIST OF OFFICERS AND/OR DIRECTORS YOU WISH TO HAVE LISTED ON THE COMPUTER?????

Please return your document, along with a copy of this letter, within 60 days or your filing will be considered abandoned.

If you have any questions concerning the filing of your document, please call (850) 245-6906.

Darlene Connell
Document Specialist

FAX Aud. #: H03000290809
Letter Number: 103A00054914

ARTICLES OF MERGER
OF
MPTC NEWCO, INC.
AND
MP TOTALCARE, INC.

FILED
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DIVISION OF CORPORATIONS
2003 OCT - 6 PM 4: 30

To the Secretary of State
State of Florida

Pursuant to the provisions of the Florida Business Corporation Act, the domestic corporations herein named do hereby adopt the following articles of merger.

1. Annexed hereto and made a part hereof is the Plan of Merger for merging MPTC NewCo, Inc. ("NewCo") with and into MP TotalCare, Inc. ("MPTC") as approved and adopted by written consent of the shareholders of NewCo entitled to vote thereon given on October 6, 2003, in accordance with the provisions of Section 607.0704 of the Florida Business Corporation Act, and as approved and adopted by written consent of the shareholders of MPTC entitled to vote thereon given on October 6, 2003 in accordance with the provisions of Section 607.0704 the Florida Business Corporation Act.

2. MPTC will continue its existence as the surviving corporation under its present name pursuant to the provisions of the Florida Business Corporation Act.

3. The merger shall be effective upon filing.

Executed on October 6, 2003

MPTC NEWCO, INC.

By: *M. T. Fricke*
Name: Michael T. Fricke
Title: Vice President

MP TOTALCARE, INC.

By: *M. T. Fricke*
Name: Michael T. Fricke
Title: Vice President

PLAN OF MERGER

PLAN OF MERGER adopted for MPTC NewCo, Inc. ("NewCo"), a business corporation organized under the laws of the State of Florida, by resolution of its Board of Directors on October 6, 2003, adopted for MP TotalCare, Inc. ("MPTC"), a business corporation organized under the laws of the State of Florida, by resolution of its Board of Directors on October 6, 2003, and adopted for MPTC Holdings, Inc. ("Holdings"), a business corporation organized under the laws of the State of Florida and the owner of all the issued and outstanding capital stock of NewCo, by resolution of its Board of Directors on October 6, 2003. The names of the corporations planning to merge are MPTC NewCo, Inc., a business corporation organized under the laws of the State of Florida, and MP TotalCare, Inc., a business corporation organized under the laws of the State of Florida. The name of the surviving corporation into which NewCo plans to merge is MP TotalCare, Inc.

1. NewCo and MPTC shall, pursuant to the provisions of the Florida Business Corporation Act, be merged with and into a single corporation, to wit, MPTC, which shall be the surviving corporation at the effective time and date of the merger and which is sometimes hereinafter referred to as the "surviving corporation", and which shall continue to exist as said surviving corporation under the name of "MP TotalCare, Inc." pursuant to the provisions of the Florida Business Corporation Act. The separate existence of NewCo, which is sometimes hereinafter referred to as the "non-surviving corporation", shall cease at the effective time and date of the merger in accordance with the provisions of the Florida Business Corporation Act.

2. The Articles of Incorporation of the non-surviving corporation at the effective time and date of the merger shall be the Articles of Incorporation of the surviving corporation and said Articles of Incorporation shall continue in full force and effect until amended and changed in the manner prescribed by the provisions of the Florida Business Corporation Act; the Articles of Incorporation of the surviving corporation shall read as follows at the effective time and date of the merger:

"The undersigned does hereby act as incorporator in adopting the following Articles of Incorporation for the purpose of organizing a corporation for profit, pursuant to the provisions of the Florida Business Corporation Act.

Article I
Name

The name of this corporation is MP TotalCare, Inc. (the "Corporation").

Article II
Duration

The Corporation shall have perpetual existence.

Article III
Purpose

The Corporation is organized for the purpose of transacting any and all lawful business.

Article IV
Address

The principal place of business of the Corporation shall be:

*615 South Ware Boulevard
Tampa, Florida 33619*

Article V
Capital Stock

The Corporation is authorized to issue 1,000 shares of common stock at \$0.01 par value per share.

Article VI
Registered Office And Agent

The street address of the registered office of the Corporation is 1201 Hayes Street, Tallahassee, Florida 32301, and the name of the registered agent of the Corporation at that address is Corporation Service Company.

Article VII
Board of Directors

The Corporation shall have five (5) directors. The number of directors may be increased or diminished from time to time by the bylaws but shall never be less than one (1). The name and address of the directors of the Corporation are:

*Howard R. Deutsch
615 South Ware Boulevard
Tampa, Florida 33619-4443*

*Kevin F. Pawlowski
615 South Ware Boulevard
Tampa, Florida 33619-4443*

*Robert Fusco
15 Crane Road
Lloyd Harbor, New York 11743*

*Thomas C. Dircks
535 Madison Avenue
New York, New York 10022*

*Jay Gates
535 Madison Avenue
New York, New York 10022*

*Article VIII
Incorporator*

The name and address of the person signing these Articles of Incorporation is:

*Emerson S. Moore II, Esq.
c/o Proskauer Rose LLP
1585 Broadway
New York, New York 10036*

*Article IX
Powers*

The Corporation shall have all of the corporate powers enumerated in the Florida Business Corporation Act.

*Article X
Indemnification*

Provided that the person proposed to be indemnified meets the requisite standard of conduct for permissive indemnification as set forth in the applicable provisions of the Florida Business Corporation Act (currently, Sections 607.0850(1) and (2) of the Florida Statutes), as the same may be amended from time to time, the Corporation shall indemnify its officers and directors, and may indemnify its employees and agents, from and against any and all of the expenses or liabilities incurred in defending a civil or criminal proceeding, or other matters referred to in or covered by said provisions, including advancement of expenses prior to the final disposition of such proceedings and amounts paid in settlement of such proceedings, both as to action in their official capacity and as to action in any other capacity while an officer, director, employee or agent. The indemnification provided herein shall not be deemed

exclusive of any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of shareholders or disinterested directors or otherwise. The indemnification provided herein shall continue as to a person who has ceased to be an officer, director, employee or agent of the Corporation, and shall inure to the benefit of the heirs, the personal and other legal representatives of such person. An adjudication of liability shall not affect the right to indemnification for those indemnified.

Article XI
Bylaws

The bylaws may be adopted, altered, amended or repealed by either the shareholders or the board of directors, but the board of directors may not amend or repeal any bylaw provision adopted by the shareholders if the shareholders specifically provide such bylaw is not subject to amendment or repeal by the directors.

Article XII
Beginning of Corporate Existence

The corporate existence of this Corporation shall begin effective upon filing."

3. The present bylaws of the non-surviving corporation will be the bylaws of the surviving corporation and will continue in full force and effect until changed, altered, or amended as therein provided and in the manner prescribed by the provisions of the Florida Business Corporation Act.

4. Each issued share of Common Stock, \$.01 par value, of MPTC ("~~MPTC Common Stock~~") immediately prior to the effective time and date of the merger shall, at the effective time and date of the merger, be converted into one share of Common Stock, \$.01 par value, of Holdings ("~~Holdings Common Stock~~").

5. pursuant to the terms of MPTC's Amended and Restated 1999 Stock Option Plan (the "Plan"), each outstanding option to purchase a number of shares of MPTC Common Stock shall become an option to purchase the same number of shares of Holdings Common Stock on identical terms; and MPTC shall assign, and Holdings shall assume, the Plan, subject to approval by the stockholders of Holdings.

6. Each issued share of Series A Convertible Preferred Stock, \$.01 par value, of MPTC immediately prior to the effective time and date of the merger shall, at the effective time and date of the merger, be converted into one share of Series A Convertible Preferred Stock, \$.01 par value, of Holdings.

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7. Each issued share of Holdings Common Stock immediately prior to the effective time and date of the merger shall, at the effective time and date of the merger, be cancelled.

8. Each issued share of Common Stock, \$.01 par value, of NewCo immediately prior to the effective time and date of the merger shall, at the effective time and date of the merger, be converted into one share of Common Stock, \$.01 par value, of the surviving corporation.

9. The Plan of Merger herein made and approved shall be submitted to the shareholders of the non-surviving corporation and to the shareholders of the surviving corporation for their approval or rejection in the manner prescribed by the provisions of the Florida Business Corporation Act.

10. In the event that the Plan of Merger shall have been approved by the shareholders entitled to vote of the non-surviving corporation and by the shareholders entitled to vote of the surviving corporation in the manner prescribed by the provisions of the Florida Business Corporation Act, the non-surviving corporation and the surviving corporation hereby stipulate that they will cause to be executed and filed and/or recorded any document or documents prescribed by the laws of the State of Florida, and that they will cause to be performed all necessary acts therein and elsewhere to effectuate the merger.

11. The Board of Directors and the proper officers of the non-surviving corporation, the Board of Directors and the proper officers of the surviving corporation, and the Board of Directors and the proper officers of Holdings, respectively, are hereby authorized, empowered, and directed to do any and all acts and things, and to make, execute, deliver, file, and/or record any and all instruments, papers, and documents which shall be or become necessary, proper, or convenient to carry out or put into effect any of the provisions of this Plan of Merger or of the merger herein provided for.

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IN WITNESS WHEREOF, the undersigned have executed this Plan of Merger this 6th day of October, 2003.

MPTC NEWCO, INC.

By: *M. T. Fricks*
Name: Michael T. Fricks
Title: Vice President

MP TOTALCARE, INC.

By: *M. T. Fricks*
Name: Michael T. Fricks
Title: Vice President

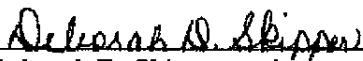
MPTC HOLDINGS, INC.

By: *M. T. Fricks*
Name: Michael T. Fricks
Title: Vice President

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I hereby accept the appointment as registered agent and agree to act in this capacity. I further agree to comply with the provisions of all statutes relative to the proper and complete performance of my duties, and I am familiar with and accept the obligation of my position as registered agent.

Corporation Service Company



Deborah D. Skipper, as its agent

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