

P94000093210

GREENBERG
ATTORNEYS AT LAW

TRAURIG

April 16, 1998

Via Federal Express

Florida Department of State
409 East Gaines Street
Tallahassee, Florida 32399

FILED
SECRETARY OF STATE
DIVISION OF CORPORATIONS
98 APR 17 PM 2:14

Attention: Susan Payne

Re: Articles of Merger - Mioa Acquisition Company III, Inc. (a Florida corporation) into Ivanhoe Medical Systems, Inc. (a Florida corporation)

Enclosed please find one manually executed and one photo copy of the Articles of Merger including Exhibits for the above referenced entities. Also, enclosed please find a check in the amount of \$157.50 to cover the cost of filing fee and certified copy. Please file immediately with the State and return a certified copy to the Greenberg Traurig box located in your office, attention Michelle Beal.

Thank you for your assistance with this matter. Please contact me if you have any questions at (407) 418-2430.

Very truly yours,

Michele Turton

Michele Turton
Paralegal

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Encls.

cc: Angela Grinstead, Esq.

ORLANDO/TURTONM/40221/v19011.DOC/4/16/98

merger
sf 4/17/98

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FORT LAUDERDALE WEST PALM BEACH ORLANDO TALLAHASSEE

ARTICLES OF MERGER
Merger Sheet

MERGING:

MIOA ACQUISITION COMPANY III, INC., a FL corp., P97000108238

INTO

IVANHOE MEDICAL SYSTEMS, INC., a Florida corporation, P94000093210

File date: April 17, 1998

Corporate Specialist: Susan Payne

STATE OF FLORIDA
ARTICLES OF MERGER

FILED
SECRETARY OF STATE
DIVISION OF CORPORATIONS

98 APR 17 PM 2:14

OF

MIOA ACQUISITION COMPANY III, INC.,
a Florida corporation,

INTO

IVANHOE MEDICAL SYSTEMS, INC.
a Florida corporation

To the Secretary of State
State of Florida

Pursuant to the provisions of Section 607.1105 of the Florida Business Corporation Act (the "Act"), the corporations herein named do hereby adopt the following articles of merger.

1. The Agreement and Plan of Merger dated February 28, 1998 (the "Plan of Merger") by and between MEDICAL INDUSTRIES OF AMERICA, INC., a Florida corporation ("Parent"), IVANHOE MEDICAL SYSTEMS, INC., a Florida corporation ("Ivanhoe") and a wholly-owned subsidiary of Parent, MIOA ACQUISITION COMPANY III, INC., a Florida corporation ("Subsidiary"), Rogers W. Kirven, Jr., Ronald W. Mills, Sr., Kathy S. Wikle, George F. Slade & Linda W. Slade, Trustees of The George F. Slade Revocable Trust dated April 16, 1997, and George F. Slade & Linda W. Slade, Trustees of the Linda W. Slade Revocable Trust dated April 16, 1997, with Subsidiary merging with and into Ivanhoe, has been adopted by the Board of Directors of Subsidiary on April 15, 1998, by the Board of Directors of Ivanhoe on April 15, 1998, by the Parent, as the sole shareholder of Subsidiary, on April 15, 1998, and by the shareholders of Ivanhoe on April 15, 1998. A copy of the relevant portions of the Plan of Merger, as required by the provisions of section 607.1101 of the Act, is attached hereto as Exhibit A and made a part hereof.

2. Ivanhoe shall continue in existence as the surviving corporation.

3. The merger herein provided for shall take effect on the date that these articles of merger have been filed with the Secretary of State of the State of Florida.

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Executed as of the 16th day of April, 1998.

"Subsidiary"

**MIOA ACQUISITION COMPANY
III, INC.**

By: 

Paul C. Pershes
President

"Ivanhoe"

**IVANHOE MEDICAL SYSTEMS,
INC.**

By: _____

Rogers W. Kirven, Jr.
CEO

Executed as of the 16 day of April, 1998.

"Subsidiary"

**MIOA ACQUISITION COMPANY
III, INC.**

By: _____
Paul C. Pershes
President

"Ivanhoe"

**IVANHOE MEDICAL SYSTEMS,
INC.**

By: _____
Rogers, W. Kirven, Jr.
CEO

EXHIBIT A

AGREEMENT AND PLAN OF MERGER

This **AGREEMENT AND PLAN OF MERGER** (the "Agreement") is entered into this 28th day of February, 1998 by and among **MEDICAL INDUSTRIES OF AMERICA, INC.**, a Florida corporation or its assigns ("MIOA"), **MIOA ACQUISITION COMPANY III, INC.**, a Florida corporation (the "Acquisition Corp"), **IVANHOE MEDICAL SYSTEMS, INC.**, a Florida corporation (the "Company") and **ROGERS W. KIRVEN, JR., RONALD W. MILLS, SR., KATHY S. WIKLE, GEORGE F. SLADE & LINDA W. SLADE, TRUSTEES OF THE GEORGE F. SLADE REVOCABLE TRUST DATED APRIL 16, 1997, and GEORGE F. SLADE & LINDA W. SLADE, TRUSTEES OF THE LINDA W. SLADE REVOCABLE TRUST DATED APRIL 16, 1997** (hereinafter referred to collectively as the "Shareholders").

Recitals:

A. The Company is engaged in the advanced sleep diagnostic services business (the "Business").

B. Shareholders are the record and beneficial owners of Ten Thousand (10,000) shares of common stock, \$1.00 par value per share, of the Company (the "Company Stock" or "Company Shares"), which shares represent one hundred percent (100%) of the outstanding shares of capital stock of the Company. Immediately prior to the effectiveness of the Merger, the Shareholders will cause the Company to effect a 1.9-to-1 stock split so that there will then be outstanding 19,000 Company Shares. Such shares shall also be deemed "Company Stock" or "Company Shares".

C. MIOA's wholly owned-subsidiary, Acquisition Corp, will statutorily merge into the Company (such merger being referred to herein as the "Merger") in accordance with this Agreement, the articles of merger and the Florida Business Corporation Act (the "Florida Statute"), and thereby vest title in 81% of all the authorized, issued and outstanding Company stock in the name of MIOA, solely in exchange for shares of MIOA common stock, no par value (the "MIOA Stock" or the "MIOA Shares") in accordance with the terms and conditions hereof.

D. The Merger shall constitute a "B" Reorganization Structured as a "reverse subsidiary merger" pursuant to Section 368(a)(1)(B) of the Internal Revenue Code, as amended.

ARTICLE I. THE MERGER

1.1. **The Merger.** As of the Effective Date (as hereinafter defined) and in accordance with the provisions of this Agreement and the applicable provisions of the Florida Statute, the Acquisition Corp shall be merged with and into the Company, in accordance with the terms and conditions of this Agreement and the articles of merger, as annexed hereto, hereinafter referred to as the "Articles of Merger". The Company shall be the surviving corporation of the Merger (the Company, in such capacity, being hereinafter sometimes referred to as the "Surviving Corporation"). Thereupon, the separate existence of the Acquisition Corp shall cease, and the Company, as the Surviving Corporation, shall continue its corporate existence under Florida Statute under its name as provided in said Articles of Merger, to wit "Ivanhoe Medical Systems, Inc."

1.2. **Effectiveness of the Merger.** The Merger shall become effective as of the date of the filing of the Articles of Merger with the Secretary of State of the State of Florida.

1.3. **Effect of the Merger.** Upon the effectiveness of the Merger, (a) the Surviving Corporation shall own and possess all assets and property of every kind and description, and every interest therein, wherever located, and all rights, privileges, immunities, powers, franchises and authority of a public

as well as of a private nature, of the Acquisition Corp and the Company (the "Constituent Corporations"), and all obligations owed to, belonging to or due to each of the Constituent Corporations, all of which shall be vested in the Surviving Corporation pursuant to Florida Statute without further act or deed, and (b) the Surviving Corporation shall be liable for all claims, liabilities and obligations of the Constituent Corporations, all of which shall become and remain the obligations of the Surviving Corporation pursuant to Florida Statute without further act or deed.

1.4. Surviving Corporation. Upon the effectiveness of the Merger, the Articles of Incorporation of the Surviving Corporation shall be amended and restated and a copy of the Amended and Restated Articles of Incorporation are attached hereto as Exhibit B. The directors of the Surviving Corporation initially shall be Rogers W. Kirven, Jr., Ronald W. Mills, Paul Pershes, Randy Lubinsky and Arthur Kobrin each of whom shall continue to be the directors of the Surviving Corporation, subject to the Articles of Incorporation, the Bylaws and that certain shareholder agreement dated the 28th day of Feb, 1998 (the "Shareholder Agreement").

1.5. Status and Conversion of Shares. Upon the effectiveness of the Merger:

(a) Each share certificate representing each outstanding share of Company Stock shall continue to be a share of issued and outstanding Common Stock of the Surviving Corporation and shall be retained by the Shareholders (the "Minority Stock"). In exchange for the issuance of Eighty-One Thousand (81,000) shares of the Surviving Corporation's common stock to MIOA, the Shareholders shall receive the Merger Consideration set forth and defined in Section 2.1 below; and

(b) The share certificates representing all the outstanding shares of capital stock of the Acquisition Corp (the "Acquisition Corp Shares") issued and outstanding immediately prior to the effectiveness of the Merger shall, by virtue of the Merger and without any action on the part of the holder thereof, be deemed canceled and extinguished and converted into a total of Eight-One Thousand (81,000) shares of Common Stock, par value \$1.00 per share (the "MIOA Merger Consolidation") of the Surviving Corporation as set forth in Section 2.2 below (and shall constitute 81% of the issued and outstanding shares of the Surviving Corporation). All of the issued and outstanding shares of the Surviving Corporation (the "Surviving Corporation Shares") shall be subject to the terms and conditions of the Shareholder Agreement.

ARTICLE II. MERGER CONSIDERATION

2.1. Shareholder Merger Consideration. In exchange for the issuance of 81,000 Surviving Corporation Shares of MIOA, constituting 81% of the issued and outstanding shares of capital stock of the Surviving Corporation, the Shareholders shall receive the merger consideration (the "Merger Consideration") equivalent to an aggregate of 607,500 shares of MIOA Stock. On the Effective Date, the Merger Consideration shall be delivered to the Shareholders. The MIOA Stock shall not be registered under the Securities Act of 1933, as amended. The Surviving Corporation Shares shall be subject to the terms and conditions of the Shareholder Agreement.

2.2. MIOA Merger Consideration. In exchange for canceling and extinguishing converting 100% of the issued and outstanding Acquisition Corp Shares (the "Acquisition Corp Shares"), MIOA shall receive an aggregate of Eighty-One Thousand (81,000) Surviving Corporation Shares. Such Surviving Corporation Shares shall be delivered to MIOA on the Effective Date. Such Surviving Corporation Stock shall not be registered under the Securities Act of 1933, as amended. The Surviving Corporation Shares shall be subject to the terms and conditions of the Shareholder Agreement.

**AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
IVANHOE MEDICAL SYSTEMS, INC.**

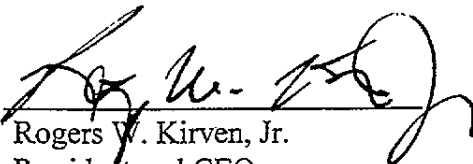
Pursuant to Sections 607.1003 and 607.1007 of the Florida Business Corporation Act, the undersigned hereby amends and restates its Articles of Incorporation to read as follows:

1. The name of the corporation is IVANHOE MEDICAL SYSTEMS, INC. Mailing address of the corporation is 2710 Rew Circle, Ocoee, FL 34761.
2. The duration of the corporation shall be perpetual.
3. The purposes for which the corporation is organized are to transact any or all lawful business for which corporations may be incorporated under Chapter 607 of the Florida Business Corporation Act, or any substantially similar laws adopted in the future.
4. The maximum aggregate number of shares of common stock, par value of \$1.00 per share (the "Common Stock"), that this corporation shall have authority to issue is 100,000 shares.
5. The street address of the corporation's registered office and the name of its' registered agent at such address is:

Arthur Kobrin
1903 South Congress Avenue, #400
Boynton Beach, Florida 33463

The undersigned, Rogers W. Kirven, Jr., being the President of the corporation, does make these Amended and Restated Articles of Incorporation, hereby declaring and certifying that this is the act and deed of this corporation and, accordingly, have herewith set my hand, this 15 day of April, 1998.

IVANHOE MEDICAL SYSTEMS, INC.

By: 
Rogers W. Kirven, Jr.
President and CEO