

MEDICAL INDUSTRIES OF AMERICA

P97000108240

VIA UPS OVERNIGHT MAIL

September 2, 1998

Florida Department of State
Division of Corporations
409 East Gaines Street
Tallahassee, FL 32399

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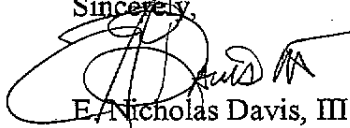
Re: Articles of Merger of David S. Klein, Inc. Into
MIOA Acquisition Company V, Inc.

Dear Sir or Madam:

Enclosed please find the original and one (1) copy of the Articles of Merger of David S. Klein, Inc. into MIOA Acquisition Company V, Inc. together with our check made payable to Florida Department of State in the amount of \$122.50. Please file the original and return the certified copy to me at the letterhead address as soon as possible.

Thank you for your attention to this matter.

Sincerely,


E. Nicholas Davis, III
Senior Vice President
Legal Affairs

END:mh
Enclosures

FILED
98 OCT 12 AM 10:19
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

merger
10-19-98

ARTICLES OF MERGER
Merger Sheet

MERGING:

DAVID S. KLEIN, INC., a Virginia corporation (not qualified to transact business
in Florida)

INTO

VALLEY PAIN CENTERS, INC., a Florida corporation, P97000108240

File date: October 12, 1998

Corporate Specialist: Louise Flemming-Jackson

MEDICAL INDUSTRIES OF AMERICA

October 9, 1998

VIA AIR BORNE EXPRESS MAIL – FOR MONDAY DELIVERY

Ms. Louise Flemming-Jackson
Corporate Specialist Supervisor
Florida Department of State
Division of Corporations
409 East Gaines Street
Tallahassee, FL 32399

Re: MIOA Acquisition Company V, Inc.
Your Reference Number: P97000108240

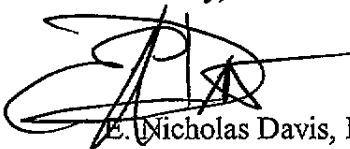
Dear Ms. Fleming-Jackson:

Enclosed please find an original revised Articles of Merger together with a copy of same in connection with the above-referenced Merger. These documents have been corrected to reflect your comments in your letter to me dated September 16, 1998, a copy of which I have enclosed herewith.

Please file the original and return the certified copy to me at the letterhead address as soon as possible.

Thank you for your attention to this matter.

Sincerely,



E. Nicholas Davis, III
Senior Vice President

END:mh
Enclosures



FLORIDA DEPARTMENT OF STATE
Sandra B. Mortham
Secretary of State

September 16, 1998

E. Nicholas Davis, III
% MEDICAL INDUSTRIES OF AMERICA
1903 S. Congress Avenue, Suite 400
Boynton Beach, FL 33426

SUBJECT: MIOA ACQUISITION COMPANY V, INC.
Ref. Number: P97000108240

We have received your document for MIOA ACQUISITION COMPANY V, INC. and your check(s) totaling \$122.50. However, the enclosed document has not been filed and is being returned for the following correction(s):

The new name of the surviving corporation must be the same wherever it appears in the document.

We are enclosing a computer printout which reflects the registered agent and registered office now on file with this office. Please amend your document accordingly.

Please include the exhibit(s) referred to in your document.

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) 487-6910.

Louise Flemming-Jackson
Corporate Specialist Supervisor

Letter Number: 598A00046866

STATE OF FLORIDA
ARTICLES OF MERGER
OF

FILED
98 OCT 12 AM 10:20
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

DAVID S. KLEIN, INC.
f/k/a DAVID S. KLEIN, M.D., P.C.
a Virginia corporation,

INTO

VALLEY PAIN CENTERS, INC.
f/k/a MIOA ACQUISITION COMPANY V, 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 August 6, 1998 (the "Plan of Merger") by and between MEDICAL INDUSTRIES OF AMERICA, INC., a Florida corporation ("MIOA"), VALLEY PAIN CENTERS, INC. f/k/a MIOA ACQUISITION COMPANY V, INC., a Florida corporation and a wholly-owned subsidiary of MIOA ("Acquisition Corp"), DAVID S. KLEIN, INC., f/k/a DAVID S. KLEIN, M.D., P.C., Virginia corporation ("Company"), and DAVID S. KLEIN, M.D. ("Shareholder"), with Company merging with and into Acquisition Corp, has been adopted by the Board of Directors of Acquisition Corp on August 12, 1998, by the Board of Directors of Company on August 24, 1998, by MIOA, as the sole shareholder of Acquisition Corp, on August 12, 1998, and by the shareholders of Company on August 24, 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. Acquisition Corp shall continue in existence as the surviving corporation in accordance with its Amended and Restated Articles of Incorporation attached hereto as Exhibit B and made a part hereof.
3. The merger herein provided for shall take effect on August 31, 1998.

Executed as of the 15 day of ~~August~~ Sept, 1998.

Acquisition Corp

VALLEY PAIN CENTERS, INC.

By: Paul C. Pershes
Paul C. Pershes
President

DAVID S. KLEIN, INC.

By: David S. Klein
David S. Klein, President

EXHIBIT "A"

AGREEMENT AND PLAN OF MERGER

This **AGREEMENT AND PLAN OF MERGER** (the "Agreement") is entered into this 6th day of August, 1998 by and among **MEDICAL INDUSTRIES OF AMERICA, INC.**, a Florida corporation or its assigns ("MIOA"), **MIOA ACQUISITION COMPANY V, INC.**, to be renamed **VALLEY PAIN CENTERS, INC.**, a Florida corporation (the "Acquisition Corp"), **DAVID S. KLEIN, M.D., P.C.**, to be renamed **DAVID S. KLEIN, INC.**, a Virginia professional corporation (the "Company") and **DAVID S. KLEIN, M.D.** (hereinafter referred to as the "Shareholder").

Recitals:

- A. The Company is the owner and operator of four (4) medical clinics (hereinafter the "Clinics") located at and operating under the following trade names:

Shenandoah Pain Clinic
109 MacTanly Place
Staunton, VA 24401

Roanoke Pain Center
101 Mountain Ave., S.W.
Suite 3
Roanoke, VA 24022

Albemarle Pain Center
1265 Seminole Trail
Charlottesville, VA 22906

Rockingham Pain Center
861 Cantrell Ave.
Harrisonburg, VA 22801

- B. The Company provides pain, physical rehabilitation and other related services (the "Business") at the Clinics.
- C. The principal business location of the Company is 109 MacTanly Place, Staunton, VA 24401 (the "Principal Business Location").
- D. The Company's billing and administrative offices are located at 13 W. Beverley Street, Masonic Lodge, 2nd floor, Staunton, VA 24401.
- E. Shareholder owns one hundred (100) shares of common stock, \$1.00 par value per share, of the Company (the "Klein Shares"), which shares represent one hundred percent (100%) of the outstanding shares of capital stock of the Company.
- F. The Company will, immediately after the execution of this Agreement, file Articles of Amendment with the Virginia State Corporation Commission ("SCC") changing the status of the Company from a Virginia professional corporation to a standard for-profit Virginia corporation and contemporaneously therewith file Articles of Merger with the SCC thereby statutorily merging the Company into MIOA's wholly owned-subsidiary, Acquisition Corp, (such merger being referred

to herein as the "Merger"). The Merger shall be in accordance with this Agreement, the articles of merger, the Florida Business Corporation Act (the "Florida Statute") and the corporate statute of the State of Virginia (the "Virginia Statute").

- G. MIOA presently owns and upon consummation of the Merger will own 100% of all authorized, issued and outstanding Acquisition Corp stock. The Shareholder shall receive in exchange shares of MIOA restricted voting common stock, no par value (the "MIOA Stock" or the "MIOA Shares") in accordance with the terms and conditions hereof.
- H. The Merger shall constitute a "B" Reorganization structured as a "forward 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 applicable provisions of the Florida Statute and the Virginia Statute, the Company shall be merged with and into the Acquisition Corp, in accordance with the terms and conditions of this Agreement and the articles of merger, subject to such changes as to form (but not substance) as may be required by the Florida Statute and the Virginia Statute, hereinafter referred to as the "Articles of Merger". The Acquisition Corp shall be the surviving corporation of the Merger (the Acquisition Corp, in such capacity, being hereinafter sometimes referred to as the "Surviving Corporation"). Thereupon, the separate existence of the Company shall cease, and the Acquisition Corp, as the Surviving Corporation, shall continue its corporate existence under the Florida Statute under its amended name as provided in said Articles of Merger, to wit "Valley Pain Centers, Inc."

1.2. Effectiveness of the Merger. As soon as practicable upon or after the satisfaction or waiver of the conditions precedent set forth in Articles VII and VIII of this Agreement, the Company shall execute an amendment to its Articles of Incorporation changing the status of the Company from a Virginia professional corporation to a Virginia for-profit corporation and contemporaneously therewith, the Acquisition Corp and the Company will execute appropriate Articles of Merger, and shall file or cause to be filed such Articles of Amendment and Merger with the Secretary of State of Florida and the State Corporation Commission of Virginia; and, the subject Merger shall become effective as of the later of (i) the filing of the Articles of Merger with the Secretary of the State of Florida or (ii) the approval by Virginia SCC of the Company's Articles of Merger.

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 and Virginia 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 and Virginia Statute without further act or deed.

1.4. Surviving Corporation. Upon the effectiveness of the Merger, the Articles of Incorporation and Bylaws of the Surviving Corporation shall be identical to those Articles and Bylaws currently in effect. The directors of the Surviving Corporation initially shall be Rogers W. Kirven, Jr., David S. Klein, M.D., Paul Pershes, E. Nicholas Davis, III and Arthur Kobrin each of whom shall continue to be the directors of the Surviving Corporation, subject to the Articles of Incorporation, and the Bylaws.

1.5. Subsequent Actions. If at any time after the Effective Date, the Surviving Corporation shall consider or be advised that any deeds, bills of sale, assignments, assurance or any other actions or things are necessary or desirable to (i) vest, perfect or confirm of record or otherwise in the Surviving Corporation its right, title or interest in, to or under any of the rights, properties or assets of either Acquisition Corp or the Company acquired or to be acquired by the Surviving Corporation as a result of, or in connection with, the Merger or (ii) otherwise to carry out this Agreement, then the officers and directors of the Surviving Corporation shall be authorized to (x) execute and deliver, in the name and on behalf of either the Acquisition Corp or the Company, as the case may be, all such deeds, bills of sale, assignments and assurances and (y) to take and do, in the name of and on behalf of each corporation or otherwise, all such actions and things as may be necessary or desirable, to vest, perfect or confirm any and all right, title and interest in, to and under such rights, properties or assets in the Surviving Corporation or otherwise to carry out this Agreement.

1.6. Status and Conversion of Shares. Upon the Effective Date of the Merger:

(a) Each share certificate representing each outstanding share of Acquisition Corp shall continue to be a share of issued and outstanding Common Stock of the Surviving Corporation and shall be retained by MIOA (the "Acquisition Corp Stock").

(b) The share certificates representing all the outstanding shares of capital stock of the Company (i.e., the Klein 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. In exchange for the merger of the Company into the Acquisition Corp, the Shareholder shall receive the Merger Consideration set forth and defined in Section 2.1 below (the "Merger Consideration").

1.7. **Books and Records.** On the Effective Date (as hereinafter defined), the Company shall deliver to MIOA all of the stock books, records and minute books of the Company, all financial and accounting books and records of the Company, all tax returns and records of the Company, and all supplier, client, customer, sales and other business records of the Company.

ARTICLE II. MERGER CONSIDERATION

2.1. **Shareholder Merger Consideration.** In exchange for merging the Company into the Acquisition Corp and canceling and extinguishing the Klein Shares in accordance with this Merger Agreement, the Shareholder shall receive the following Merger Consideration:

(a) MIOA agrees, subject to the provisions of this Agreement, to pay to the Shareholder an amount up to, but not exceeding, Three Million Three Hundred Thousand Dollars (\$3,300,000.00) (hereinafter the "Purchase Price") as set forth below. The Purchase Price is based upon the representation of Shareholder that the Surviving Company will have Formula Profits (as defined below) of at least One Million One Hundred Thousand Dollars (\$1,100,000.00) for each Formula Period (prorated for Formula Periods of less than one year) (as defined below). The Purchase Price shall be paid as follows:

(i) **Initial Payment.** On the Effective Date, MIOA will pay the Shareholder One Million Three Hundred Twenty Thousand Dollars (\$1,320,000.00) (the "Initial Payment");

(ii) **Installment Payments.** On the Effective Date, MIOA will grant the Shareholder the right to earn the remaining unpaid portion of the Purchase Price of One Million Nine Hundred Eighty Thousand Dollars (\$1,980,000.00) (hereinafter the "Installment Payments") during the Formula Periods in accordance with the following formula:

A. Installment Formula:

1. In respect to Formula Period 1: (x) If Formula Profits equal the product of One Million One Hundred Thousand Dollars (\$1,100,000.00) multiplied by the Prorated Percentage (defined below), MIOA will pay the Shareholder an amount equal to the product of Six Hundred Sixty Thousand Dollars (\$660,000.00) multiplied by the Prorated Percentage; (y) If Formula Profits exceed the product of One Million One Hundred Thousand Dollars (\$1,100,000.00) multiplied by the Prorated Percentage (defined below), MIOA will pay the Shareholder an amount equal to the product of Six Hundred Sixty Thousand Dollars (\$660,000.00) multiplied by the Prorated Percentage plus One Dollar (\$1.00) for each Dollar in excess of the product of One Million One Hundred Thousand Dollars (\$1,100,000.00) multiplied by the

Prorated Percentage (defined below); or, (z) If Formula Profits are less than the product of the Prorated Percentage multiplied by One Million One Hundred Thousand Dollars (\$1,100,000.00), the amount the Shareholder shall receive shall be equal to: sixty-seven percent (67%) of the Formula Profits for Formula Period 1 divided by the product of the Prorated Percentage multiplied by One Million One Hundred Thousand Dollars (\$1,100,000.00) with the resulting quotient multiplied by the product of the Prorated Percentage multiplied by Six Hundred Sixty Thousand Dollars (\$660,000.00). For these purposes the "Prorated Percentage" shall be a fraction the numerator of which shall equal the number of days from the Effective Date through March 31, 1999 and the denominator of which shall equal 365.

2. In respect to Formula Period 2: (x) If Formula Profits equal One Million One Hundred Thousand Dollars (\$1,100,000.00), MIOA will pay the Shareholder the sum of Six Hundred Sixty Thousand Dollars (\$660,000.00); (y) If Formula Profits exceed One Million One Hundred Thousand Dollars (\$1,100,000.00), MIOA will pay the Shareholder the sum of Six Hundred Sixty Thousand Dollars (\$660,000.00) plus One Dollar (\$1.00) for each Dollar in excess of One Million One Hundred Thousand Dollars (\$1,100,000.00) or, (z) If Formula Profits are less than One Million One Hundred Thousand Dollars (\$1,100,000.00), the amount the Shareholder shall receive shall be equal to: sixty-seven percent (67%) of the Formula Profits for Formula Year 2 divided by One Million One Hundred Thousand Dollars (\$1,100,000.00) with the resulting quotient multiplied by Six Hundred Sixty Thousand Dollars (\$660,000.00).

3. In respect to Formula Period 3, apply the formula enumerated for Formula Period 2 above, substituting where appropriate Period 3 for Period 2.

4. The installment payments in respect to Formula Period 4, shall be calculated on the same basis as Formula Period 1, except that the Prorated Percentage shall be equal to a fraction the numerator of which will be the number of days in Formula Period 4 and the denominator of which shall be equal to 365.

5. The foregoing notwithstanding, the maximum amount of Installment Payments the Shareholder may receive shall not exceed One Million Nine Hundred Eighty Thousand Dollars (\$1,980,000.00). In addition, in the event MIOA or any successor company causes the Surviving Company to undertake a Spin-Off (as hereinafter defined) or Offering (as hereinafter defined) of its stock prior to the expiration of the Formula Periods, the Shareholder shall be paid the portion of the unpaid Purchase Price immediately prior to the Spin-Off or Offering by applying the above formula to the proforma Formula Profits for the remainder of the Formula Periods calculated based on the immediately preceding twelve (12) month period or such shorter period if less than 12 months. The term "Spin-Off" shall mean a spin-off of all or a part of the Surviving Company's capital stock owned by MIOA to the public shareholders of MIOA resulting in the Surviving Company becoming a separate and independent (non-

subsidiary) corporation. The term "Offering" shall mean a public offering of the Surviving Company's equity securities. These defined terms shall also include a merger and/or roll-up of the Surviving Corporation with Ivanhoe Medical Systems, Inc. ("Ivanhoe") for the purpose of undertaking a "Spin-Off" or "Offering" of Ivanhoe.

B. Formula Profits. For the purposes of this Agreement, the term "Formula Profits" shall mean the pre-tax net profits of Surviving Company, as calculated utilizing generally accepted accounting principles by the Surviving Company's independent certified public accountants for annual Formula Periods, where possible, and as calculated for MIOA's 10Q for quarterly Formula Periods. Notwithstanding the foregoing, for purposes of determining Formula Profits: (i) there shall not be included any charge for corporate overhead of MIOA or other administrative or similar charges that MIOA might impose upon the Surviving Company except those charges for which the Surviving Company receives a direct and cost efficient benefit, (ii) there shall not be included any non-recurring charges, losses, profits, gains, or non-cash adjustments not related to the ongoing operations of the business, including, but not limited to discount operations, extraordinary items, acquisition costs, goodwill charges, or unusual or infrequent items as they are defined under generally accepted accounting principles, and (iii) there shall not be included any charge related to grants or exercises of options pursuant to this Agreement.

C. Formula Periods. The period commencing on the Effective Date, 1998 and ending on March 31, 1999 shall be deemed to be "Formula Period 1". The two immediately succeeding twelve (12) month periods following Formula Period 1 shall be deemed to be "Formula Period 2" and "Formula Period 3", respectively. Formula Period 4 shall be the period from April 1, 2001 through such day in 2001 which when added to Formula Period 1 would result in a period equal to 12 complete months.

D. Calculation Timing. MIOA, Surviving Company and Shareholder shall each work in good faith to derive the calculations required hereunder, it being understood and agreed that MIOA shall cause such calculations to be made and payments to the Shareholder be made no later than the 90th day following each Formula Period.

(iii) Payment of Purchase Price. One hundred percent (100%) of the Purchase Price shall be made with restricted voting common stock (the "Shares") of MIOA. For purposes of determining the number of MIOA Shares the Shareholder will receive in respect to a given payment, the following calculation shall be made: the amount of the Purchase Price which is due at the time shall be divided by One Dollar and Fifty Cents (\$1.50); the resulting quotient is the number of MIOA Shares that shall be delivered to the Shareholder in respect to such payment.

EXHIBIT "B"

AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
MIOA ACQUISITION COMPANY V, 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 hereby changed to VALLEY PAIN CENTERS, INC. Mailing address of the corporation is 1903 S. Congress Avenue, Suite 400, Boynton Beach, Florida 33426.
2. The duration of the corporation shall be perpetual.
3. The purposes for which the corporation is organized and 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 \$.01 per share (the "Common Stock"), that this corporation shall have authority to issue is 1,000,000 shares.
5. The street address of the corporation's registered office and the name of its registered agent at such address is:

Corporation Service Company
1201 Hays Street
Tallahassee, Florida 32301

The undersigned, Paul C. Pershes, being the Chief Executive Officer of the corporation, does makes 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 26th day of August, 1998.

MIOA ACQUISITION COMPANY
V, INC.

By:



Paul C. Pershes
Chief Executive Officer