

FILED/EFFECTIVE

SEP 28 4 38 PM '00

SECRET
STATE OF IDAHO

ARTICLES OF MERGER
MERGING
ORTHOPAEDIC ASSOCIATES, P.A.,
an Idaho professional corporation,
and
BOISE ORTHOPEDIC CLINIC, P.A.,
an Idaho professional corporation,
and
IDAHO SPORTS MEDICINE INSTITUTE, P.A.,
an Idaho professional corporation,
WITH AND INTO
ORTHOPEDIC CENTERS OF IDAHO, P.A.,
an Idaho professional corporation

*In accordance with Section 30-1-1105 of the
Idaho Business Corporation Act*

ORTHOPEDIC CENTERS OF IDAHO, P.A., an Idaho professional corporation, DOES
HEREBY CERTIFY as follows:

1. The Constituent corporations (the "Constituent Corporations") in the merger (the "Merger") are Orthopaedic Associates, P.A., an Idaho professional corporation ("OA"), Boise Orthopedic Clinic, P.A., an Idaho professional corporation ("BOC"), Idaho Sports Medicine Institute, P.A., an Idaho professional corporation ("ISMI"), and Orthopedic Centers of Idaho, P.A., an Idaho professional corporation ("OCI").
2. Pursuant to the Merger, OA, BOC and ISMI are being merged with and into OCI, with OCI being the surviving corporation ("Surviving Corporation") in the Merger.
3. A Plan of Merger dated as of September 26, 2000 (the "Merger Plan") has been approved, adopted, and executed by each of the Constituent Corporations in accordance with Section 30-1-1103 of the Idaho Business Corporation Act (the "IBCA"). The Merger Plan is attached hereto as Exhibit A and is incorporated herein by this reference.
4. The shareholders of OCI, the Surviving Corporation in the Merger, were not required to approve the Merger pursuant to the provisions of the IBCA.

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5. The number of shares of OA outstanding and entitled to vote was 500 shares of Common Stock; the following shares voted for, voted against or did not vote or abstained from voting with respect to the Merger Plan:

	<u>Voted For</u>	<u>Against</u>	<u>No Vote Received or Vote Abstained</u>
Common Stock	(100%)	(0%)	(N/A)

5. The number of shares of BOC outstanding and entitled to vote was 160 shares of Common Stock; the following shares voted for, voted against or did not vote or abstained from voting with respect to the Merger Plan:

	<u>Voted For</u>	<u>Against</u>	<u>No Vote Received or Vote Abstained</u>
Common Stock	(75%)	(12.5%)	(12.5%)

6. The number of shares of ISMI outstanding and entitled to vote was 300 shares of Common Stock; the following shares voted for, voted against or did not vote or abstained from voting with respect to the Merger Plan:

	<u>Voted For</u>	<u>Against</u>	<u>No Vote Received or Vote Abstained</u>
Common Stock	(66-2/3%)	(33-1/3%)	(N/A)

7. The Merger shall become effective at 12:01 a.m. on October 1, 2000.

* * *

IN WITNESS WHEREOF, Orthopedic Centers of Idaho, P.A. has caused these Articles of Merger to be executed by its duly authorized officer this 24th day of September, 2000.

ORTHOPEDIC CENTERS OF IDAHO, P.A.

By: John G. Kloss M.D.
John G. Kloss, M.D., President

**Exhibit A
(To Articles of Merger)**

PLAN OF MERGER

This Plan of Merger (this "Merger Plan") is entered into as of this 24th day of September, 2000, by and among BOISE ORTHOPEDIC CLINIC, P.A., an Idaho professional corporation ("BOC"), ORTHOPAEDIC ASSOCIATES, P.A., an Idaho professional corporation ("OA"), and IDAHO SPORTS MEDICINE INSTITUTE, P.A., an Idaho professional corporation ("ISMI"), *on the one hand*, and ORTHOPEDIC CENTERS OF IDAHO, P.A., an Idaho professional corporation ("OCI"), *on the other hand*

R E C I T A L S

WHEREAS, the Boards of Directors of BOC, OA and ISMI have each determined that it is advisable and in the best interests of their respective companies and their physician shareholders ("Physician Shareholders") to consummate, and have approved, the business combination transaction provided for herein in which BOC, OA and ISMI would merge with and into OCI, so that OCI is the surviving corporation in the merger (the "Merger"). BOC, OA and ISMI are sometimes referred to individually in this Agreement as a "Care Center," and collectively as the "Care Centers;"

WHEREAS, OCI was formed by the Care Centers for the specific purpose of consummating the Merger, and combining the medical practices and certain other business operations of the Care Centers into one corporation;

WHEREAS, the Care Centers believe that the Merger will provide the following beneficial effects to the Care Centers' practice of medicine and the community as a whole:

- (a) Better medical coverage for hospitals by maximizing the skills of existing physicians without the necessity of recruiting additional doctors to the community;
- (b) The ability to provide to the community all necessary musculoskeletal services and the improvement of overall medical care;
- (c) A vehicle for determining best practices on both clinical and operational/administrative levels;
- (d) The ability to provide greater continuity of patient care;
- (e) A vehicle for implementing management service activities , and more efficient use of resources, including equipment and real estate; and

(f) A stabilizing force for physicians' quality of life, to allow physicians to focus on clinical, rather than business and administrative matters;

WHEREAS, the parties desire to make certain representations, warranties and agreements in connection with the Merger and also to prescribe certain conditions to the Merger.

A G R E E M E N T

NOW, THEREFORE, in consideration of the foregoing Recitals and of the mutual covenants and agreements herein set forth, the parties hereby covenant and agree as follows:

ARTICLE 1 - THE MERGER

1.1 **The Merger.** Subject to the terms and conditions of this Merger Plan, in accordance with the relevant provisions of the Idaho Business Corporation Act (the "IBCA"), at the Effective Time (as defined in *Section 1.2* hereof), BOC, OA and ISMI shall be merged with and into OCI. At the Effective Time, (a) the separate corporate existence of the Care Centers shall cease, and (b) OCI shall continue as the Surviving Corporation in the Merger (the "Surviving Corporation") and shall continue its existence under the laws of the State of Idaho. The Care Centers and OCI are sometimes referred to herein as the "Constituent Corporations." As a result of the Merger, the outstanding shares of capital stock of the Care Centers shall be converted or canceled in the manner provided in *Article 2* hereof.

1.2 **Effective Time.** Articles of Merger shall be executed by the Surviving Corporation in accordance with the relevant provisions of the IBCA, and thereafter delivered for filing to the Idaho Secretary of State concurrently with the filing of this Merger Plan. The Merger shall become effective as of 12:01 a.m. Mountain Time on October 1, 2000 (the time the Merger becomes effective being the "Effective Time").

1.3 **Articles and Bylaws of the Surviving Corporation.** At the Effective Time, (a) the Articles of Incorporation of OCI as in effect immediately prior to the Effective Time shall be the Articles of Incorporation of the Surviving Corporation, until thereafter amended as provided by law and such Articles of Incorporation; and (b) the Bylaws of OCI as in effect immediately prior to the Effective Time shall be the Bylaws of the Surviving Corporation until thereafter amended as provided by law, the Articles of Incorporation of the Surviving Corporation and such Bylaws.

1.4 **Directors and Officers of the Surviving Corporation.** The directors and officers of OCI immediately prior to the Effective Time shall, from and after the Effective Time, be the directors and officers, respectively, of the Surviving Corporation until their successors shall have been duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with the Surviving Corporation's Articles of Incorporation and Bylaws and any written agreements between OCI and such officers and directors.

1.5 Effects of the Merger. At and after the Effective Time, the Merger shall have the effects set forth in the IBCA.

ARTICLE 2 - CONVERSION OF SHARES

2.1 Conversion of Care Center Shares. At the Effective Time, by virtue of the Merger and without any action on the part of the holder thereof:

(a) all shares of common stock of BOC ("BOC Common Stock") held by any BOC Physician Shareholder (other than shares of BOC Common Stock held in the treasury of BOC, all of which shall be canceled, and Dissenting Shares, as hereinafter defined, if applicable), shall be converted into the right to receive 100 shares of common stock, par value \$0.01 per share, of OCI ("OCI Common Stock"), such that following the Merger, each Physician Shareholder of BOC shall be the record and beneficial owner of 100 shares of OCI Common Stock;

(b) all shares of common stock of OA ("OA Common Stock") held by any OA Physician Shareholder (other than shares of OA Common Stock held in the treasury of OA, all of which shall be canceled, and Dissenting Shares), shall be converted into the right to receive 100 shares of OCI Common Stock, such that following the Merger, each Physician Shareholder of OA shall be the record and beneficial owner of 100 shares of OCI Common Stock; and

(c) all shares of common stock of ISMI ("ISMI Common Stock") held by any ISMI Physician Shareholder (other than shares of ISMI Common Stock held in the treasury of ISMI, all of which shall be canceled, and Dissenting Shares), shall be converted into the right to receive 100 shares of OCI Common Stock, such that following the Merger, each Physician Shareholder of ISMI shall be the record and beneficial owner of 100 shares of OCI Common Stock.

2.2 Cancellation of OCI Shares. At the Effective Time, without any action on the part of the holder thereof, each share of OCI Common Stock issued and outstanding prior to the Merger shall be canceled and shall cease to exist from and after the Effective Time.

2.3 Surrender of Certificates. Each Physician Shareholder of record of outstanding shares of BOC, OA or ISMI Common Stock will be entitled to receipt of the OCI Common Stock set forth in *Section 2.1* above, only after the following documents are returned to OCI after the Effective Time: (i) a duly executed stock power, (ii) the share certificate(s) representing the Physician Shareholder's BOC, OA or ISMI Common Stock, as the case may be (the "Share Certificates") and (iii) such other documents as OCI may reasonably require.

2.4 Closing Stock Transfer Books. As of the Effective Time, it shall be deemed that the stock transfer books of the Care Centers are closed and no transfer of shares of BOC, OA or ISMI Common Stock on such books, as applicable, shall thereafter be made.

ARTICLE 3 - DISSENTING SHARES

3.1 Dissenting Shares. If required by the IBCA and notwithstanding anything in this Agreement to the contrary, shares of Care Center Common Stock which are issued and outstanding immediately prior to the Effective Time and which are held by any Physician Shareholders who have not voted such shares in favor of the approval of the Merger and who shall have delivered a written objection to the Merger in the manner provided in the IBCA (the "Dissenting Shares"), shall not be converted into the right to receive the shares of OCI Common Stock provided in *Section 2.1* hereof, unless and until such Physician Shareholders shall have failed to perfect in the manner provided in the IBCA or shall have effectively withdrawn or lost their rights to appraisal and payment under the IBCA. If any such Physician Shareholder shall have so failed to perfect or shall have effectively withdrawn or lost such right, such Physician Shareholder's shares shall thereupon be deemed to have been converted into the right to receive, as of the Effective Time, the shares of OCI Common Stock provided in *Section 2.1* hereof, without any interest thereon. Any payment for Dissenting Shares will be made by the Surviving Corporation. No Care Center will settle or compromise any claims for dissenters' rights in respect to the Merger prior to the Effective Time without the prior written consent of OCI and the other Care Centers.

ARTICLE 4 - MISCELLANEOUS

4.1 Abandonment. At any time before the Effective Time, this Merger Plan may be terminated and the Merger may be abandoned by the Board of Directors of the Constituent Corporations, notwithstanding approval of this Agreement by their respective shareholders.

4.2 Amendment. At any time prior to the Effective Time, this Merger Plan may be amended by the Boards of Directors of the Constituent Corporations to the fullest extent permitted by applicable law; *provided, however*, there may not be, without further approval of the shareholders of the Care Center, any amendment of this Merger Plan which reduces the number of shares of OCI Common Stock received in the Merger.

4.3 Counterparts. In order to facilitate the filing and recording of this Agreement, the same may be executed in any number of counterparts, each of which shall be deemed to be an original.

4.4 Applicable Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of Idaho.

IN WITNESS WHEREOF, the parties have caused this Plan of Merger to be signed by their respective officers thereunto duly authorized as of the date and year first above written.

BOISE ORTHOPEDIC CLINIC, P.A.

By: Phum E. Goodwin MD
Title: VP

ORTHOPAEDIC ASSOCIATES, P.A.

By: Jeffrey D. Hessig
Title: Secretary

**IDAHO SPORTS MEDICINE
INSTITUTE, P.A.**

By: Dean A. Wachs MD
Title: President

**ORTHOPEDIC CENTERS OF IDAHO,
P.A.**

By: John G. Kloss MD
Title: President