

08-02-2002



102175818

Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof

1. Name of conveying party(ies):

American Hospital Supply Corporation

☐ Individual(s) ☐ Association  
☐ General Partnership ☐ Limited Partnership  
☒ Corporation State: Illinois  
☐ Other

3. Nature of conveyance:

☐ Assignment ☒ Merger  
☐ Security Agreement ☐ Change of Name  
☐ Other:

Execution Date: November 25, 1985

2. Name and address of receiving party(ies):

Baxter Travenol Laboratories, Inc.  
One Baxter Parkway  
Deerfield, Illinois 60015

☐ Individual(s) citizenship:  
☐ Association:  
☐ General Partnership:  
☐ Limited Partnership:  
☒ Corporation - State: Delaware  
☐ Other:

If assignee is not domiciled in the United States, a domestic representative designation is attached:  
☐ Yes ☒ No  
(Designations must be a separate document from Assignment)

Additional name(s) & address(es) attached?  
☐ Yes ☒ No

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)

Additional numbers attached?

B. Trademark Registration No.(s)

814,250

☐ Yes ☒ No

5. Name and address of party to whom correspondence concerning document should be mailed:

Michael D. Fishman, Esq.  
Rader, Fishman & Grauer  
39533 Woodward Avenue  
Suite 140  
Bloomfield Hills, Michigan 48304  
(248) 594-0630

6. Total number of applications and registrations involved: one (1)

7. Total fee (37 CFR 3.41).....\$40.00

☐ Enclosed  
☒ Authorized to be charged to deposit account.

8. Deposit Account Number: 18-0013  
(Attach duplicate copy of this page if using deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Michael D. Fishman

Name

Signature

July 3, 2002

Date

Total number of pages comprising cover sheet 18

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ARTICLES OF MERGER OF

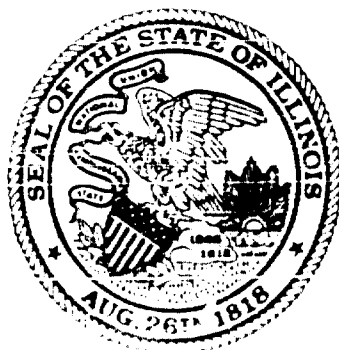
**BAXTER TRAVENOL LABORATORIES, INC.**

INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE HAVE BEEN  
FILED IN THE OFFICE OF THE SECRETARY OF STATE AS PROVIDED BY THE  
BUSINESS CORPORATION ACT OF ILLINOIS, IN FORCE JULY 1, A.D. 1934.

*Now Therefore, I, Jim Edgar, Secretary of State of the State  
of Illinois, by virtue of the powers vested in me by law, do hereby  
issue this certificate and attach hereto a copy of the Application  
of the aforesaid corporation.*

**In Testimony Whereof,** I hereto set my hand and cause to  
be affixed the Great Seal of the State of Illinois.

*at the City of Springfield, this 25TH  
day of NOVEMBER AD 1935 and  
of the Independence of the United States  
the two hundred and 10TH*



*Jim Edgar*  
\_\_\_\_\_  
SECRETARY OF STATE

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BCA-11.25K1.30 (Rev. Jul. 1984)

Submit in Duplicate

Remit payment in check or Money  
Order, payable to "Secretary of  
State".

DO NOT SEND CASH!

Filing Fee is \$100, but if merger or con-  
solidation of more than 2 corporations  
\$50 for each additional corporation.

JIM EDGAR  
Secretary of State  
State of Illinois

ARTICLES OF MERGER,  
CONSOLIDATION, EXCHANGE

File # 1642-135-9

This Space for Use By Secretary of State	
Date	11/25/85
Filing Fee \$	100.00
Clerk	11/25

Pursuant to the provisions of "The Business Corporation Act of 1983", the undersigned corporation(s) hereby adopt(s)  
the following Articles of Merger, Consolidation or Exchange. (Strike inapplicable words)

1. The names of the corporations proposing to ~~consolidate~~ <sup>merge</sup> ~~exchange~~ and the State or Country of their in-  
corporation, are:

Name of Corporation	State or Country of Incorporation
American Hospital Supply Corporation	Illinois 1642-135-9
Baxter Travenol Laboratories, Inc.	Delaware 0457-442-4

2. The laws of the State or Country under which each corporation is incorporated permit such merger, consolida-  
tion or exchange.

3. The name of the ~~new~~ <sup>surviving</sup> corporation is Baxter Travenol Laboratories, Inc.  
~~consolidation~~ and it shall be governed by the laws of Delaware

4. The plan of ~~consolidation~~ <sup>merger</sup> is as follows See attached  
~~exchange~~

If not sufficient space to cover this point, add one or more sheets of this size

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(11) - 701 - 2/22/85

## AMENDED AND RESTATED PLAN AND AGREEMENT OF MERGER

PLAN AND AGREEMENT OF MERGER, dated as of July 15, 1985, and amended and restated as of August 13, 1985 and amended as of October 9, 1985, between American Hospital Supply Corporation, an Illinois corporation ("American") and Baxter Travenol Laboratories, Inc., a Delaware corporation ("Baxter Travenol"). American and Baxter Travenol are hereinafter sometimes collectively referred to as the "Constituent Corporations".

This Amended and Restated Plan and Agreement of Merger is being entered into pursuant to an Amended and Restated Agreement and Plan of Acquisition of even date herewith between American and Baxter Travenol (the "Acquisition Agreement").

### ARTICLE I

1.1. *Merger of American into Baxter Travenol.* On the Merger Date (as defined in paragraph 1.6 hereof), American shall merge with and into Baxter Travenol (the "Merger"). Baxter Travenol shall be the surviving corporation in the Merger (hereinafter sometimes referred to as the "Surviving Corporation") and its separate corporate existence, with all its purposes, objects, rights, privileges, powers and franchises, shall continue unaffected and unimpaired by the Merger.

1.2. *Effect of Merger.* The Surviving Corporation shall succeed to all of the rights, privileges, powers and franchises, as well of a public as of a private nature, of the Constituent Corporations, all of the properties and assets of the Constituent Corporations and all of the debts, choses in action and other interests due or belonging to the Constituent Corporations and shall be subject to, and responsible for, all of the debts, liabilities and duties of the Constituent Corporations with the effect set forth under applicable law.

1.3. *Additional Action.* If, at any time after the Merger Date, the Surviving Corporation shall consider or be advised that any deeds, bills of sale, assignments, assurances or any other actions or things are necessary or desirable to 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 American acquired or to be acquired by the Surviving Corporation as a result of, or in connection with, the Merger or to otherwise carry out this Plan and Agreement of Merger, the officers and directors of the Surviving Corporation shall and will be authorized to execute and deliver, in the name and on behalf of the Constituent Corporations or otherwise, all such deeds, bills of sale, assignments and assurances and to take and do, in the name and on behalf of the Constituent Corporations or otherwise, all such other 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 to otherwise carry out this Amended and Restated Plan and Agreement of Merger.

1.4. *Articles of Incorporation and By-Laws.* The Certificate of Incorporation, as amended, of Baxter Travenol and the By-Laws of Baxter Travenol as in effect immediately prior to the Merger Date shall be the Certificate of Incorporation and By-Laws of the Surviving Corporation and shall thereafter continue to be its Certificate of Incorporation and By-Laws until changed as provided therein and by law.

1.5. *Officers and Directors.* The directors and officers of Baxter Travenol immediately prior to the Merger Date shall be the directors and officers of the Surviving Corporation, and such directors and officers of the Surviving Corporation shall thereafter continue in office in accordance with the Certificate of Incorporation and By-Laws of the Surviving Corporation; provided, that, on the Merger Date, Baxter Travenol shall cause the number of directors on its Board of Directors to be increased by six and the vacancies thus created to be filled by electing six persons selected jointly by American and Baxter Travenol from among the current members of the Board of Directors of American to serve as directors.

1.6. *Certificate of Merger.* If this Amended and Restated Plan and Agreement of Merger is duly approved by the shareholders of each of the Constituent Corporations in accordance with applicable law and the respective Certificate or Articles of Incorporation and By-Laws of the Constituent Corporations and is not

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terminated under paragraph 3.1 hereof, this Agreement or a Certificate of Merger and Articles of Merger (as applicable) with respect to the Merger shall be filed under applicable law. The Merger shall become effective at the time and date of the filing with the Secretary of State (such time and date are herein collectively referred to as the "Merger Date").

## ARTICLE II

2.1. *Baxter Travenol Securities.* On the Merger Date, by virtue of the Merger and without further action by the holder thereof, each share of the Common Stock, \$1.00 par value per share, of Baxter Travenol then outstanding shall continue to be outstanding as one share of the Common Stock, \$1.00 par value per share, of the Surviving Corporation and each other security of Baxter Travenol then outstanding shall continue to be outstanding as a security of the Surviving Corporation in accordance with its terms.

2.2. *Conversion of American Common Stock.* On the Merger Date, by virtue of the Merger and without any action on the part of the holder of any share of the Common Stock, without par value, of American (the "Shares"):

(a) All Shares which are held by American as treasury stock (or held by a majority-owned subsidiary of American) and all Shares owned by Baxter Travenol or any of its majority-owned subsidiaries shall be cancelled and retired and no stock of Baxter Travenol, cash or other consideration shall be paid or delivered in exchange therefor under this Agreement.

(b) All Shares which are held of record by Harris Trust and Savings Bank of Chicago (the "Custodian") as custodian for the trustees of the American Hospital Supply Corporation Employee Incentive Investment Plan ("IIP") and the American Stock Ownership Plan ("ASOP") shall be converted into that number of shares of Baxter Travenol Common Stock (with cash being payable on the Merger Date in lieu of any right to acquire a fractional share of Baxter Travenol Common Stock in an amount equal to such fraction multiplied by the Average Market Price (as defined below)) as equals the number of Shares held of record by the Custodian for the trustees of the IIP and the ASOP on the Merger Date multiplied by the quotient (rounded down to the nearest one hundredth) obtained by dividing \$51 by the Average Market Price (such quotient is hereafter referred to as the "Share Ratio").

(c) Each Share which is held as a restricted Share by participants under American's 1981 Master Stock Incentive Plan shall be converted into that number of shares of Baxter Travenol Common Stock as equals the number of restricted Shares attributable to such holder multiplied by the Share Ratio (with cash being payable on the Merger Date in lieu of any right to acquire a fractional share of Baxter Travenol Common Stock in an amount equal to such fraction multiplied by the Average Market Price).

(d) Subject to paragraph (e) below, each outstanding Share which under the terms of Section 2.4 is to be converted into Baxter Travenol Equity Securities (as defined below) shall be converted into the following combination of securities: (i) such number of shares of common stock, \$1.00 par value, of Baxter Travenol ("Baxter Travenol Common Stock") as shall have an Average Market Price of \$25 (such number of shares of Baxter Travenol Common Stock shall be rounded to the nearest one hundredth of a share); (ii) .20 of a share of adjustable rate \* stock of Baxter Travenol ("Baxter Travenol Preferred Stock") with a liquidation value of \$50; and (iii) .32 of a share of cumulative convertible exchangeable \* stock of Baxter Travenol ("Baxter Travenol Convertible Preferred Stock") with a liquidation value of \$50 (such combination of Baxter Travenol Common Stock, Baxter Travenol Preferred Stock and Baxter Travenol Convertible Preferred Stock is collectively referred to herein as "Baxter Travenol Equity Securities"). The Baxter Travenol Convertible Preferred Stock and Baxter Travenol Preferred Stock shall have the terms set forth in Annexes 1 and 2, respectively, and such additional terms as shall be mutually agreed upon by The First Boston Corporation, financial advisor to Baxter Travenol ("First Boston"), and Goldman, Sachs & Co., financial advisors to American ("Goldman Sachs"), or in the event they are unable to agree not later than one day prior to the Merger Date, as determined by a third investment banking firm of recognized national standing selected by First Boston and Goldman Sachs. As used herein, the "Average Market Price" of a share of Baxter Travenol Common Stock shall be equal

\*preferred

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to the average of the closing prices of Baxter Travenol Common Stock on the New York Stock Exchange-Composite Tape during the period of the ten consecutive trading days on the New York Stock Exchange ending on the third calendar day (or fourth calendar day if the Merger Date falls on a Tuesday) prior to the Merger Date. The Baxter Travenol Preferred Stock and Baxter Travenol Convertible Preferred Stock shall have such terms, with respect to matters specified as to be determined on the term sheets annexed hereto, as shall be determined by First Boston and Goldman Sachs as of a date not more than three calendar days (or four calendar days if the Merger Date falls on a Tuesday) prior to the Merger Date so as to have a value on a fully distributed basis, in the opinion of both such firms, equal to their respective liquidation values. In the event that either or both of First Boston and Goldman Sachs are unable to render such an opinion not later than one day prior to the Merger Date, a third investment banking firm of recognized national standing shall be selected by First Boston and Goldman Sachs to render such opinion. Baxter Travenol shall use its best efforts to have the Baxter Travenol Preferred Stock and Baxter Travenol Convertible Preferred Stock rated by Standard & Poor's and Moody's.

(e) Baxter Travenol shall have the right, exercisable by notice in writing to American not later than three business days prior to the mailing of the joint proxy statement referred to in paragraph VI.3 of the Acquisition Agreement, (i) to increase the number of shares of Baxter Travenol Common Stock included in the Baxter Travenol Equity Securities to such number as shall have an Average Market Price of not more than \$27.50 or to decrease the same to such number as shall have an Average Market Price of not less than \$22.50, or (ii) to increase the number of shares of Baxter Travenol Preferred Stock and/or Baxter Travenol Convertible Preferred Stock included in the Baxter Travenol Equity Securities to not more than .22 shares and .352 shares respectively, or to decrease the same to not less than .18 and .288 shares, respectively; provided, however, as a result of any such adjustment or adjustments, the Average Market Price of such number of shares of Baxter Travenol Common Stock and the number of shares of either or both of the Baxter Travenol Preferred Stock and Baxter Travenol Convertible Preferred Stock shall be adjusted in such manner as Baxter Travenol shall determine to preserve the \$51 aggregate Average Market Price and liquidation values of the Baxter Travenol Equity Securities; provided, further that no such increase or decrease shall be made if the Board of Directors of American, in consultation with Goldman Sachs, concludes that the same would adversely affect such aggregate Average Market Price and liquidation values.

(f) Each outstanding Share which under the terms of Section 2.4 is to be converted into the right to receive cash shall be converted into the right to receive \$51 in cash (the "Cash Election Price").

(g) Each outstanding Share the holder of which has perfected his right to dissent under the Illinois Business Corporation Act ("Illinois Statute") and has not effectively withdrawn or lost such right (the "Dissenting Shares") shall not be converted into or represent a right to receive shares of Baxter Travenol Equity Securities or cash hereunder (or Baxter Travenol Common Stock as the case may be), but the holder thereof shall be entitled only to such rights as are granted by the Illinois Statute. American shall give Baxter Travenol prompt notice upon receipt by American of any such written demands for payment of the fair value of such Shares and of withdrawals of such notice and any other instruments provided pursuant to the Illinois Statute (any shareholder duly making such demand being hereinafter called a "Dissenting Shareholder"). Any payments made in respect of Dissenting Shares shall be made by the Surviving Corporation.

(h) If any holder of Shares who demands payment of the fair value of his Shares under the Illinois Statute shall effectively withdraw or lose (through failure to perfect or otherwise) his right to such payment at or prior to the Merger Date, such holder's Shares shall be converted into a right to receive cash or Baxter Travenol Equity Securities (or Baxter Travenol Common Stock as the case may be) in accordance with the applicable provisions of this Agreement, including Section 2.3(f). If such holder shall effectively withdraw or lose (through failure to perfect or otherwise) his right to such payment after the Merger Date, each Share of such holder shall be converted on a share by share basis into either the right to receive the Cash Election Price or the Baxter Travenol Equity Securities (or Baxter Travenol Common Stock as the case may be), as Baxter Travenol shall determine.

2.3. *Election Procedures.* Each holder of Shares, other than holders of Shares which are to be cancelled as set forth in Section 2.2(a) or converted into shares of Baxter Travenol Common Stock pursuant to the

provisions of Sections 2.2(b) and 2.2(c) shall have the right to submit a request specifying the number of his Shares which he desires to have converted into Baxter Travenol Equity Securities in the Merger and the number of his Shares which he desires to have converted into a right to receive cash in the Merger in accordance with the following procedures:

(a) Each holder of Shares, with respect to all or any part of his Shares, will be entitled to make (i) an unconditional cash election (an "Unconditional Cash Election"), (ii) a cash election conditioned upon receiving cash for not less than all or a specified percentage of the Shares with respect to which such election is made (a "Conditional Cash Election") (as used herein, the term "Cash Election" shall refer to either an Unconditional Cash Election or a Conditional Cash Election), (iii) an unconditional stock election (an "Unconditional Stock Election") or (iv) a stock election conditioned upon receiving Baxter Travenol Equity Securities for not less than all or a specified percentage of the Shares with respect to which such election is made (a "Conditional Stock Election") (as used herein, the term "Stock Election" shall refer to either an Unconditional Stock Election or a Conditional Stock Election). If a shareholder of American making a Conditional Cash Election fails to specify on his form of Cash Election (as described in Section 2.2(c)) a minimum percentage (the "Cash Minimum Percentage") of Shares covered by such Form of Cash Election for which he must receive cash in order for such Conditional Cash Election to be deemed not to have been revoked by such holder, he shall be deemed to have specified a Cash Minimum Percentage of 100% pursuant to such Conditional Cash Election. If a shareholder of American making a Conditional Stock Election fails to specify on his Form of Stock Election (as described in Section 2.2(c)) a minimum percentage (the "Stock Minimum Percentage") of the Shares covered by such form of Stock Election for which he must receive Baxter Travenol Equity Securities in order for such Conditional Stock Election to be deemed not to have been revoked by such shareholder, he shall be deemed to have specified a Stock Minimum Percentage of 100% pursuant to such Conditional Stock Election. As used herein, the term "Election" shall refer to any or all of an Unconditional Cash Election, a Conditional Cash Election, an Unconditional Stock Election or a Conditional Stock Election.

(b) Baxter Travenol shall authorize one or more banks or trust companies to receive Cash Elections and Stock Elections and to act as the exchange agent hereunder (the "Exchange Agent").

(c) American and Baxter Travenol shall prepare a form (the "Form of Cash Election") pursuant to which each holder of Shares may make Cash Elections and a form (the "Form of Stock Election") pursuant to which each holder of Shares may make Stock Elections, which forms must refer to and be accompanied by certificates or forms of guaranteed delivery for the exact number of shares covered by each such form. As used herein, the term Forms of Election shall refer to the Form of Cash Election and the Form of Stock Election and each such form may be combined on a single form.

(d) The "Election Commencement Date" shall mean the first trading day which is at least twenty-one calendar days prior to the Election Date (as defined below). Prior to or on the Election Commencement Date, Baxter Travenol will, or will cause the Exchange Agent to, mail Forms of Election (accompanied with appropriate transmittal materials) to all persons who were holders of record on the Election Notice Record Date (as defined below). During the period between the Election Notice Record Date and the trading day prior to the Election Date (as defined below), Baxter Travenol will use its best efforts to make Forms of Election available to all persons who become shareholders of record after the Election Notice Record Date. The "Election Notice Record Date" shall mean the date fixed by the Board of Directors of American to determine the shareholders entitled to notice of and to vote at the meeting of American shareholders at which the Merger Agreement will be presented for approval or such later date as may be fixed by the Board of Directors of American specifically for the purpose of establishing the shareholders to whom the Form of Election shall first be mailed.

(e) Any such American shareholder's Election shall have been properly made only if the Exchange Agent shall have received at its designated office, by 5:00 p.m., New York City time, on the eleventh consecutive trading day on the New York Stock Exchange prior to the Merger Date (the "Election Date") a Form of Election properly completed and accompanied by certificates for the Shares to which such Form of Election relates, duly endorsed in blank or otherwise in form acceptable for transfer on the books of American.

(f) Any Form of Election may be revoked or changed by the person who submitted the same to the Exchange Agent only by written notice, accompanied in the case of a change by a properly completed revised Form of Election, received by the Exchange Agent prior to 5:00 p.m., local time on the Election

Date. In addition, all Forms of Election shall automatically be revoked if the Exchange Agent is notified in writing by Baxter Travenol and American that this Agreement has been terminated. If a Form of Election is revoked, the certificate or certificates (or guarantee of delivery, as appropriate) for the Shares to which such Form of Election relates shall be promptly returned to the person submitting the same to the Exchange Agent. Any Election relating to Shares with respect to which the holder thereof has filed and not withdrawn as of the Merger Date a written objection to the adoption of this Agreement within the meaning of the Illinois Statute shall be deemed to have been automatically revoked as of the Election Date.

(g) Baxter Travenol and American shall have the right to make rules, not inconsistent with the terms of this Agreement, governing the validity of the Forms of Election, whether any election, modification or revocation shall be treated as effective and the procedures for the lottery. All such determinations shall be final and binding on all holders of Shares. Baxter Travenol may, with the agreement of American, make such equitable changes in the procedures set forth in this Article II for the implementation of Elections as shall be necessary or desirable to fully effect such Elections.

2.4. *Selection of Shares.* The manner in which each Share (other than Shares to be cancelled as set forth in Section 2.2(a), or converted into shares of Baxter Travenol Common Stock pursuant to the provisions of Sections 2.2(b) and 2.2(c) and other than Dissenting Shares) shall be converted into Baxter Travenol Equity Securities or the right to receive the Cash Election Price at the Merger Date shall be as set forth in this Section 2.4 and Section 2.2(h).

(a) As is more fully set forth below, and subject to the determination by Baxter Travenol pursuant to Section 2.2(h), the maximum number of Shares to be converted into cash in the Merger pursuant to this Agreement (the "Maximum Cash Number") shall be no greater than the number of Shares outstanding (excluding for this purpose Shares owned by Baxter Travenol or any of its majority-owned subsidiaries) immediately prior to the Merger Date multiplied by 53% less (i) the number of Dissenting Shares whose holders have not lost or withdrawn their rights as described in Section 2.2(g) at or prior to the Merger Date, and (ii) the aggregate number of Shares of American the holders of which received cash in lieu of fractional shares of Baxter Travenol Equity Securities (or Baxter Travenol Common Stock as the case may be). Subject to the determination by Baxter Travenol pursuant to Section 2.2(h), the maximum number of Shares to be converted into Baxter Travenol Equity Securities in the Merger pursuant to this Agreement (the "Maximum Stock Number") shall be no greater than the number of Shares outstanding (excluding for this purpose Shares owned by Baxter Travenol or any of its majority-owned subsidiaries) immediately prior to the Merger Date multiplied by 60% less (i) the number of Dissenting Shares whose holders have not lost or withdrawn their rights as described in Section 2.2(g) at or prior to the Merger Date and (ii) the number of Shares converted into Baxter Travenol Common Stock pursuant to Sections 2.2(b) and 2.2(c). Baxter Travenol shall make available to the Exchange Agent (X) such number of shares of Baxter Travenol Common Stock as is equal to the product of (i) the number of shares of Baxter Travenol Common Stock to be included per Share in the Baxter Travenol Equity Securities times (ii) the Maximum Stock Number and (Y) such number of shares of Baxter Travenol Preferred Stock and Baxter Travenol Convertible Preferred Stock as shall equal (i) .20 and .32, respectively, times (ii) the Maximum Stock Number (such aggregate combination of securities made available to the Exchange Agent is referred to herein as the "Available Baxter Travenol Equity Securities"). Baxter Travenol will also make available to the Exchange Agent such amount of cash as shall equal the product of the Cash Election Price times the Maximum Cash Number plus such amount of cash as shall be necessary to make cash payments in lieu of fractional shares of Baxter Travenol Equity Securities pursuant to Section 2.5 of this Amended and Restated Plan and Agreement of Merger.

(b) If Cash Elections are received for a number of Shares which exceeds the Maximum Cash Number, each Non-Electing Share (as defined in Section 2.4(g)) shall be converted into Baxter Travenol Equity Securities in the Merger and the Shares for which Cash Elections have been received shall be converted into a right to receive cash and shares of Baxter Travenol Equity Securities in the following manner:

(i) A cash proration factor (the "Cash Proration Factor") shall be determined by dividing the Maximum Cash Number by the total number of Shares with respect to which effective Cash Elections were made.



(ii) The number of Shares covered by each Unconditional Cash Election to be converted into the right to receive the Cash Election Price shall be determined by multiplying the Cash Proration Factor by the total number of Shares covered by such Unconditional Cash Election.

(iii) The number of Shares covered by each Conditional Cash Election (other than Conditional Cash Elections with respect to which a record holder of Shares shall have specified a Cash Minimum Percentage that is greater than the Cash Proration Factor) to be converted into the right to receive the Cash Election Price shall be determined by multiplying the Cash Proration Factor by the total number of Shares covered by such Conditional Cash Election.

(iv) An additional pool (the "Secondary Cash Pool") of Conditional Cash Elections shall be created which shall consist of all Conditional Cash Elections with respect to which a record holder of Shares shall have specified (or have been deemed to have specified) a Cash Minimum Percentage that is greater than the Cash Proration Factor. Cash Elections in the Secondary Cash Pool shall be selected for elimination therefrom by lot or other equitable means. Such selections shall cease when the total number of Eligible Shares (as defined below) covered by Conditional Cash Elections remaining in the Secondary Cash Pool plus the total number of Shares to be converted into the right to receive the Cash Election Price under Sections 2.4(b)(ii) and 2.4(b)(iii) hereof is as close as practicable to, but not greater than, the Maximum Cash Number. The "Eligible Shares" covered by a Conditional Cash Election shall be the number of Shares covered by such Conditional Cash Election multiplied by the Cash Minimum Percentage specified therein. If, as a result of any selection for elimination from the Secondary Cash Pool, the total number of Eligible Shares covered by all Conditional Cash Elections remaining in the Secondary Cash Pool plus the number of Shares to be converted into the right to receive the Cash Election Price under Sections 2.4(b)(ii) and 2.4(b)(iii) hereof would be less than ninety-nine and nine-tenths percent (99.9%) of the Maximum Cash Number, any selection may be disregarded and one or more additional selections for elimination from the Secondary Cash Pool may be made so that the total of the number of Eligible Shares covered by the Conditional Cash Elections remaining in the Secondary Cash Pool plus the number of Shares to be converted into the right to receive the Cash Election Price under Sections 2.4(b)(ii) and 2.4(b)(iii) hereof is as close as practicable to but not greater than, the Maximum Cash Number. Each Eligible Share remaining in the Secondary Cash Pool after completion of the selection procedure provided for in this Section 2.4(b)(iv) shall be converted into the right to receive the Cash Election Price.

(v) Each Share covered by a Cash Election other than those Shares converted into the right to receive the Cash Election Price in accordance with this Section 2.4(b) shall be converted into Baxter Travenol Equity Securities.

(c) If Stock Elections are received with respect to a number of Shares greater than the Maximum Stock Number, each Non-Electing Share shall be converted into a right to receive the Cash Election Price in the Merger and the Shares for which Stock Elections have been received shall be converted into Baxter Travenol Equity Securities and a right to receive cash in the following manner:

(i) A stock proration factor (the "Stock Proration Factor") shall be determined by dividing the Maximum Stock Number by the total number of Shares with respect to which effective Stock Elections were made.

(ii) The number of Shares covered by each Unconditional Stock Election to be converted into the right to receive Baxter Travenol Equity Securities shall be determined by multiplying the Stock Proration Factor by the total number of Shares covered by such Unconditional Stock Election.

(iii) The number of Shares covered by each Conditional Stock Election (other than Conditional Stock Elections with respect to which a record holder of Shares shall have specified a Stock Minimum Percentage that is greater than the Stock Proration Factor) to be converted into the right to receive Baxter Travenol Equity Securities shall be determined by multiplying the Stock Proration Factor by the total number of shares covered by such Conditional Stock Election.

(iv) An additional pool (the "Secondary Stock Pool") of Conditional Stock Elections shall be created which shall consist of all Conditional Stock Elections with respect to which a record holder

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of Shares shall have specified (or have been deemed to have specified) a Stock Minimum Percentage that is greater than the Stock Proration Factor. Stock Elections in the Secondary Stock Pool shall be selected for elimination therefrom by lot or other equitable means. Such selections shall cease when the total number of Eligible Shares (as defined below) covered by Conditional Stock Elections remaining in the Secondary Stock Pool plus the total number of Shares to be converted into the right to receive Baxter Travenol Equity Securities under Sections 2.4(c)(ii) and 2.4(c)(iii) hereof is as close as practicable to, but not greater than, the Maximum Stock Number. The "Eligible Shares" covered by a Conditional Stock Election shall be the number of Shares covered by such Conditional Stock Election multiplied by the Stock Minimum Percentage specified therein. If, as a result of any selection for elimination from the Secondary Stock Pool, the total of the number of Eligible Shares covered by all Conditional Stock Elections remaining in the Secondary Stock Pool plus the number of Shares to be converted into the right to receive Baxter Travenol Equity Securities under Sections 2.4(c)(ii) and 2.4(c)(iii) hereof would be less than ninety-nine and nine-tenths percent (99.9%) of the Maximum Stock Number, any selection may be disregarded and one or more additional selections for elimination from the Secondary Stock Pool may be made so that the total of the number of Eligible Shares covered by the Conditional Stock Elections remaining in the Secondary Stock Pool plus the number of Shares to be converted into the right to receive Baxter Travenol Equity Securities under Sections 2.4(c)(ii) and 2.4(c)(iii) hereof is as close as practicable to, but not greater than, the Maximum Stock Number. Each Eligible Share remaining in the Secondary Stock Pool after completion of the selection procedure provided for in this Section 2.4(c)(iv) shall be converted into the right to receive Baxter Travenol Equity Securities.

(v) Each Share covered by a Stock Election other than those Shares converted into Baxter Travenol Equity Securities in accordance with this Section 2.4(c) shall be converted into the right to receive the Cash Election Price.

(d) If Cash Elections are received for a number of Shares not in excess of the Maximum Cash Number, each Share covered by a Cash Election shall be converted into a right to receive the Cash Election Price in the Merger.

(e) If Stock Elections are received with respect to a number of Shares not in excess of the Maximum Stock Number, each Share covered by a Stock Election shall be converted into Baxter Travenol Equity Securities in the Merger.

(f) If Non-Electing Shares are not converted under either Section 2.4(b) or Section 2.4(c), the Exchange Agent shall determine by lot (or by such other method as is deemed reasonable by Baxter Travenol) which of the holders of Non-Electing Shares shall receive in the Merger a right to receive the Cash Election Price for each Non-Electing Share held of record by such holder provided that such selection by lot (or by such other method) will cease when the sum of Shares converted in such manner plus the number of Shares for which Cash Elections have been received would exceed the Maximum Cash Number. Each Non-Electing Share not so converted into a right to receive cash shall be converted into Baxter Travenol Equity Securities.

(g) For the purposes of this Section 2.4, each outstanding Share, other than Shares converted into Shares of Baxter Travenol Common Stock as set forth in Sections 2.2(b) and 2.2(c), Dissenting Shares and Shares owned by Baxter Travenol or any of its majority-owned subsidiaries) as to which an Election is not in effect on the Election Date shall be called a "Non-Electing Share". If Baxter Travenol and American jointly shall determine for any reason that any Election was not properly made with respect to Shares, such Election shall be deemed to be not in effect and each Share covered by such Election shall, for purposes hereof, be deemed to be a Non-Electing Share.

2.5. *Fractional Shares.* No fractional shares of Baxter Travenol Equity Securities or Baxter Travenol Common Stock, as the case may be, shall be issued in the Merger. In lieu thereof, each holder of Shares who would otherwise be entitled to a fractional share of Baxter Travenol Equity Securities or Baxter Travenol Common Stock, as the case may be, shall, upon surrender of such holder's certificate which immediately prior to the Merger Date represented Shares, receive a cash payment (without interest) (a) in the case of Baxter Travenol Common Stock, equal to the Average Market Price of such fractional share and (b) in the case of

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Baxter Travenol Preferred Stock and Baxter Travenol Convertible Preferred Stock, the liquidation value of such fractional share.

2.6. *No Further Transfers.* At the close of business on the Merger Date, the stock transfer books of American shall be closed, and no transfer of Shares shall thereafter be made. If, after the Merger Date, certificates representing Shares are presented to the Surviving Corporation or its transfer agent, they shall be cancelled and exchanged for certificates representing Baxter Travenol Equity Securities (or Baxter Travenol Common Stock as the case may be) and/or cash as provided in this Article II and in the Acquisition Agreement.

### ARTICLE III

3.1. *Termination.* Notwithstanding the approval and adoption of this Plan and Agreement of Merger by the shareholders of American and Baxter Travenol, this Amended and Restated Plan and Agreement of Merger shall terminate forthwith in the event that the Acquisition Agreement shall be terminated as therein provided. In the event of the termination of this Amended and Restated Plan and Agreement of Merger as provided above, this Amended and Restated Plan and Agreement of Merger shall forthwith become void and there shall be no liability on the part of any of the parties hereto except as otherwise provided in the Acquisition Agreement.

3.2. *Amendment or Supplement.* At any time before or after approval of this Agreement and the Acquisition Agreement by the shareholders of American and the approval of this Amended and Restated Plan and Agreement of Merger and the Acquisition Agreement and the approval of the Certificate Amendment (as defined in the Acquisition Agreement) by the shareholders of Baxter Travenol, and prior to the Merger Date, this Amended and Restated Plan and Agreement of Merger may be amended or supplemented in writing by Baxter Travenol and American with respect to any of the terms contained in this Amended and Restated Plan and Agreement of Merger, except that following approval by the shareholders of Baxter Travenol or American, there shall be no amendment or change to the provisions hereof with respect to the consideration payable by Baxter Travenol to the holders of Shares as provided herein and in the Acquisition Agreement, without further approval by the shareholders of Baxter Travenol and American.

3.3. *Counterparts.* This Amended and Restated Plan and Agreement of Merger may be executed in one or more counterparts, all of which shall be considered one and the same agreements, and shall become effective when one or more counterparts have been signed by each of the parties and delivered to each of the other parties.

3.4. *Governing Law.* This Amended and Restated Plan and Agreement of Merger shall be governed by and construed in accordance with the laws of the State of Delaware, except that insofar as this Amended and Restated Plan and Agreement of Merger relates to internal corporate matters of American, this Amended and Restated Plan and Agreement of Merger shall be governed by and construed in accordance with the laws of the State of Illinois.

IN WITNESS WHEREOF, the parties hereto have caused this Amended and Restated Plan and Agreement of Merger to be duly executed and delivered as of the date first above written.

AMERICAN HOSPITAL SUPPLY CORPORATION

By /s/ KARL D. BAYS  
Chairman of the Board and  
Chief Executive Officer

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BAXTER TRAVENOL LABORATORIES, INC.

By /s/ VERNON R. LOUCKS, JR.  
President and Chief Executive Officer

**BAXTER TRAVENOL LABORATORIES, INC.****Term Sheet****Cumulative Convertible Exchangeable Preferred Stock**

To be Issued to Shareholders of  
American Hospital Supply Corporation

<b>Liquidating Value per Share:</b>	\$50
<b>Value per Share on a Fully Distributed Basis:</b>	\$50
<b>Per Annum Dividend Rate:</b>	To be determined three calendar days (or four calendar days if the effective date of the Merger falls on a Tuesday) prior to the effective date of the Merger.
<b>Conversion Rights:</b>	The Convertible Preferred Stock will be convertible into the Common Stock of Baxter Travenol at a conversion ratio to be determined three calendar days (or four calendar days if the effective date of the Merger falls on a Tuesday) prior to the effective date of the Merger.
<b>Exchange Provisions:</b>	The Convertible Preferred Stock will be exchangeable in whole at the option of the Issuer on any dividend payment date beginning five years after the effective date of the Merger, for Convertible Subordinated Debentures, in aggregate principal amount equal to the liquidating value of the Convertible Preferred Stock and with the same coupon and conversion features as the Convertible Preferred Stock but with a sinking fund starting in the 11th year sufficient to retire 6.67% of the issue annually and with a final maturity twenty-five years after issuance of the Convertible Preferred Stock. A cash payment will be made equal to any accrued and unpaid dividends at the time of the exchange.
<b>Redemption Provisions:</b>	The Convertible Preferred Stock will be non-callable for five years. After five years the Convertible Preferred Stock will be redeemable, in whole or in part, at the option of Baxter Travenol, at a price to be determined, based on 100% of the liquidating value of the Convertible Preferred Stock plus the annual dividend expressed as a percentage of the liquidating value in the first year declining ratably to the stated value in the 11th year and thereafter.
<b>Sinking Fund:</b>	None, unless the exchange is effected
<b>Voting Rights:</b>	One vote per share, voting together with the Common Stock, on all matters submitted to shareholders. If six quarterly dividends payable on the Convertible Preferred Stock or any other series of preferred stock are in default, the number of directors shall be increased by two and such additional directors shall be elected by the holders of all series of the preferred stock, voting as a class until all dividends in default have been paid in full. The affirmative vote of at least two-thirds of the outstanding shares of the Convertible Preferred Stock will be required to authorize the creation or issuance of any preferred stock ranking prior to these Convertible Preferred Shares.

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**BAXTER TRAVENOL LABORATORIES, INC.**

**Term Sheet**

**Adjustable Rate Preferred Stock**

To be Issued to Shareholders of  
American Hospital Supply Corporation

<b>Liquidating Value per Share:</b>	\$50
<b>Value per Share on a Fully Distributed Basis:</b>	\$50
<b>Per Annum Dividend Rate for Initial Period:</b>	To be determined three calendar days (or four calendar days if the effective date of the Merger falls on a Tuesday) prior to the effective date of the Merger.
<b>Dividend Readjustment Period:</b>	Quarterly
<b>Floating Rate Dividend Terms:</b>	The highest of (i) the Three Month Treasury Bill Discount Rate, (ii) the Ten Year Constant Maturity Treasury Rate, and (iii) the Twenty Year Constant Maturity Treasury Rate minus, in each case, a number of basis points to be determined three calendar days (or four calendar days if the effective date of the Merger falls on a Tuesday) prior to the effective date of the Merger; provided that dividends will be subject to maximum and minimum rates to be determined three calendar days (or four calendar days if the effective date of the Merger falls on a Tuesday) prior to the effective date of the Merger.
<b>Sinking Fund:</b>	None, except to the extent provided otherwise under the mandatory redemption provisions.
<b>Redemption Provisions:</b>	Not redeemable for 5 years. Thereafter redeemable at par. Baxter Travenol shall have the right to elect, exercisable by notice in writing to American not later than ten business days prior to the effective date of the Merger, to add a provision to the terms of the Adjustable Rate Preferred Stock to the effect that such Stock shall be subject to mandatory redemption at liquidating value in six approximately equal annual installments commencing in the tenth year following the Merger.
<b>Liquidation Rights:</b>	The holders of the Adjustable Rate Preferred Stock will be entitled to receive, before any distribution of assets to holders of Common Stock, liquidating distributions on a parity with the holders of the Cumulative Convertible Exchangeable Preferred Stock in the amount of \$50 per share, plus accrued and unpaid dividends.
<b>Voting Rights:</b>	If six quarterly dividends payable on the Adjustable Rate Preferred Stock or any other series of preferred stock are in default, the number of directors will be increased by two and such additional directors will be selected by the holders of all series of preferred stock voting as a single class, until all dividends in default have been paid in full.

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**Anti-dilution:**

The conversion price is subject to adjustment upon the occurrence of certain events, including: the issuance of shares of capital stock by Baxter Travenol as a dividend or distribution on the Common Stock; subdivisions and combinations of the Common Stock; certain reclassifications; certain consolidations and mergers of Baxter Travenol; the issuance to all holders of Common Stock of certain rights or warrants entitling such holders to subscribe for Common Stock at less than the then current market price; and distribution to all holders of Common Stock or debt securities of Baxter Travenol or assets of Baxter Travenol. No adjustment in the conversion price will be required unless such adjustment would require a change of at least one percent in the conversion premium, but any adjustment that would otherwise be required to be made shall be carried forward and taken into account in any subsequent adjustment.

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**EXHIBIT B  
to Agreement and  
Plan of Acquisition**

**MEMORANDUM OF UNDERSTANDING**

**1. Retention Compensation**

Special bonuses may be paid by American to American employees who remain employed (a) by American or Baxter Travenol until the day before the sale by American or Baxter Travenol of one of American's businesses or product lines (of which the employee was a part) or (b) by American until the day before the closing of the merger (with respect to Executive Office employees and other key employees). All such bonuses will range from one month to one year of annual base salary, unless a larger amount is approved by Karl Bays and Vernon Loucks, and will be granted to such employees on such conditions as American shall determine.

**2. Car Policy**

Each American employee on whose behalf a car was leased may continue while employed to use such car for 3 years or the term of current lease (whichever is longer). American employees whose employment is terminated for any reason other than cause, whether by the employer or the employee, may continue to use a car for 90 days following such termination.

**3. Retirees**

Current retirees and active employees who are age 55 or older at the Merger Date will be able to maintain health benefits under present plans in accordance with terms of such plans as currently in effect.

**4. Termination Benefits**

With respect to health and dental plans, disability, group life and accident policies:

Key Managers continue in plans at American's expense for 6 months after termination of employment for any reason except cause.

All other employees may continue in plans at employee's expense for 6 months after termination of employment for any reason except cause.

**5. Incentive Investment Plan and Supplement Plan (§ 401(k) plan)**

Such Plans will continue for 5 years except as to changes applicable to all Baxter Travenol employees. In the event of an Operational Termination (as defined in American's Severance Benefit Procedure), an American employee will be 100% vested in all funds in his or her account.

**6. Retirement Plan and Supplemental Retirement Plan**

All funds currently in the American Hospital Supply Corporation Retirement Plan and the American Hospital Supply Corporation Supplemental Retirement Plan shall remain in such Plan for the benefit of the employees who are participants on the Merger Date.

**7. Benefit Plans**

The following American benefit plans will be continued after the Merger Date for not less than two years, except as required by law: American Benefit Choice (employee funded reimbursement account for health and dependent care), medical and dental care, disability, group life and accident insurance, severance, vacation, sick pay, relocation, mortgage differential, and educational assistance; provided, however, that changes in any such plan may be implemented from time to time upon the agreement of Karl Bays and Vernon Loucks.

**8. Attorney's Fees**

Baxter Travenol will reimburse American employees for legal fees incurred in contested personal tax issues arising out of this Memorandum of Understanding and Paragraph V.5 of the Agreement and Plan of Acquisition.

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merger  
consolidation  
~~exchange~~

5. The plan of ~~exchange~~ was approved, (a) as to each corporation not organized in Illinois in compliance with the laws of the state under which it is organized, and (b) as to each Illinois corporation, as follows:

*(The following items are not applicable to mergers under § 11.30 — 90% owned subsidiary provisions. See Article 7.)*

*(Only "X" one box for each corporation)*

By the shareholders, a resolution of the board of directors having been duly adopted and submitted to a vote at a meeting of shareholders. Not less than the minimum number of votes required by statute and by the articles of incorporation voted in favor of the action taken.

(§ 11.20)

By written consent of the shareholders having not less than the minimum number of votes required by statute and by the articles of incorporation. Shareholders who have not consented in writing have been given notice in accordance with § 7.10 (§ 11.20)

By written consent of ALL the shareholders entitled to vote on the action, in accordance with § 7.10 & § 11.20

Name of Corporation

American Hospital Supply Corporation

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Baxter Travenol Laboratories, Inc.

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6. *(Not applicable if surviving, new or acquiring corporation is an Illinois corporation)*

It is agreed that, upon and after the issuance of a certificate of merger, consolidation or exchange by the Secretary of State of the State of Illinois:

- The surviving, new or acquiring corporation may be served with process in the State of Illinois in any proceeding for the enforcement of any obligation of any corporation organized under the laws of the State of Illinois which is a party to the merger, consolidation or exchange and in any proceeding for the enforcement of the rights of a dissenting shareholder of any such corporation organized under the laws of the State of Illinois against the surviving, new or acquiring corporation.
- The Secretary of State of the State of Illinois shall be and hereby is irrevocably appointed as the agent of the surviving, new or acquiring corporation to accept service of process in any such proceedings, and
- The surviving, new, or acquiring corporation will promptly pay to the dissenting shareholders of any corporation organized under the laws of the State of Illinois which is a party to the merger, consolidation or exchange the amount, if any, to which they shall be entitled under the provisions of "The Business Corporation Act of 1983" of the State of Illinois with respect to the rights of dissenting shareholders.

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7. (Complete this item if reporting a merger under § 1130 — 30% owned subsidiary provisions.)

- a. The number of outstanding shares of each class of each merging subsidiary corporation and the number of such shares of each class owned immediately prior to the adoption of the plan of merger by the parent corporation, are:

Name of Corporation	Total Number of Shares Outstanding of Each Class	Number of Shares of Each Class Owned immediately Prior to Merger by the Parent Corporation
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

- b. The date of mailing a copy of the plan of merger and notice of the right to dissent to the shareholders of each merging subsidiary corporation was \_\_\_\_\_, 19\_\_\_\_  
was written consent for the merger or written waiver of the 30 day period by the holders of all the outstanding shares of all subsidiary corporations received? ☐ Yes ☐ No

(If the answer is "No", the duplicate copies of the Articles of Merger may not be delivered to the Secretary of State until after 30 days following the mailing of a copy of the plan of merger and of the notice of the right to dissent to the shareholders of each merging subsidiary corporation.)

The undersigned corporation has caused these articles to be signed by its duly authorized officers, each of whom affirm, under penalties of perjury, that the facts stated herein are true.

Dated November 25, 1985

attested by

(Signature of Secretary or Assistant Secretary)

Charles J. Hansen- Ass't Secretary

(Type or Print Name and Title)

Dated November 25, 1985

attested by

(Signature of Secretary or Assistant Secretary)

John F. Gaither, Jr.- Ass't

(Type or Print Name and Title)

Secretary

Dated \_\_\_\_\_, 19\_\_\_\_

attested by

(Signature of Secretary or Assistant Secretary)

(Type or Print Name and Title)

American Hospital Supply Corporation

(Exact Name of Corporation)

by

(Signature of President or Vice President)

Thomas A. Dumit- Vice President & Deputy

(Type or Print Name and Title) General Counsel

Baxter Inavenol Laboratories, Inc.

(Exact Name of Corporation)

by

(Signature of President or Vice President)

G. Marshall Abbey- Senior Vice President,

(Type or Print Name and Title)

Secretary and  
General Counsel

by

(Signature of President or Vice President)

(Type or Print Name and Title)

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(ILL. - 781)

File Number 1642-135-2



To all to whom these Presents Shall Come, Greeting:

I, Jim Edgar, Secretary of State of the State of Illinois,  
do hereby certify that

THE FOLLOWING AND HERETO ATTACHED IS A TRUE  
COPY OF THE ARTICLES OF MERGER OF AMERICAN HOSPITAL SUPPLY  
CORPORATION\*\*\*\*\*

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In Testimony Whereof, I hereby set

my hand and cause to be affixed the Great Seal of  
the State of Illinois this 20TH  
day of JUNE 1935

Jim Edgar  
SECRETARY OF STATE

JUL 7 1935