

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

In re: MEDTRONIC, INC,
IMPLANTABLE DEFIBRILLATORS
PRODUCTS LIABILITY LITIGATION.

Multidistrict Litigation No.
05-1726 (JMR/AJB)

**SECOND AMENDED ORDER ESTABLISHING PROTOCOL FOR
TESTING REGARDING DEVICES IN PLAINTIFFS' POSSESSION**

1. Pursuant to the Order for the Preservation of Evidence, dated January 23, 2006, as amended by the parties' stipulation entered by Order of the Court dated February 10, 2006, and further amended by stipulation of the parties and entered by Order of the Court in the Amended Order for the Preservation of Evidence, dated January 31, 2007 (the "Amended Preservation Order"), any Plaintiff in possession of one of the following Medtronic ICDs and/or CRT-Ds, subject to Medtronic's February 2005 "field action," including the Marquis VR Model 7230; Marquis DR Model 7274; Maximo VR Model 7232; Maximo DR Model 7278; InSync Marquis Model 7277; InSync II Marquis Model 7289; InSync III Marquis Model 7279; and InSync III Protect Model 7285 or Medtronic's April 2004 "field action," including the Gem DR Model 7271 and Micro Jewel II Model 7223 Cx (collectively, the "Devices at Issue"), must produce to Medtronic, Inc., within thirty (30) days from the date of this Amended Order, the following information:

- A. The model number and serial number of each Device at Issue;
- B. All available Chain of Custody information and verification for each

Device such as the names of the persons having possession of each Device, the dates of

such possession, the date of any shipping or receipt of each Device, and copies of any invoices or other shipping records for each device.

Each and every plaintiff joined in MDL 1726 after the date of this Amended Order who has retained, personally and/or through his/her attorneys or agents, any explanted Device at Issue shall provide this information within thirty (30) days after the action is either filed in or transferred to MDL 1726.

2. Any Plaintiff in possession of a Device at Issue that has been explanted must produce that Device to Medtronic, as set forth in Paragraph 3, below, for testing and analysis in the presence of Plaintiff or Plaintiff's designated representative and/or a representative of the Plaintiff's Steering Committee in MDL 1726. Such analysis and testing shall include the following:

- A. Performing "Save to Disk" and "Hex Dump" downloads.
- B. Visually inspecting the Devices at Issue.
- C. Taking photographs or videos of each of the Devices at Issue.
- D. Performing functional and/or destructive analysis and testing as

permitted by the Court or agreed to by the parties; provided, however, if functional testing indicates a Device has no telemetry and/or a Save to Disk or Hex Dump cannot be performed on that Device, Medtronic will be allowed to destructively analyze and test said Device in accordance with the Amended Preservation Order.

3. Plaintiffs who are in possession of any Devices at Issue that have been explanted must produce, if they have not done so already, their Devices, within thirty (30) days of the date of this Amended Order, to R. Lawrence Purdy, Esq., Maslon, Edelman, Borman

& Brand LLP, 3300 Wells Fargo Center, 90 South Seventh Street, Minneapolis, MN 55402-4140, (612) 672-8361. Each and every plaintiff joined in MDL 1726 after the date of this Amended Order who has retained, personally and/or through his/her attorneys or agents, any explanted Device at Issue must produce their Device, as set forth herein, within thirty (30) days after the action is either filed in or transferred to MDL 1726. Failure by any Plaintiff to timely produce any Device at Issue in accordance with this Amended Order shall be grounds for a motion by Medtronic to preclude the use at trial by Plaintiff of any evidence regarding the Device's performance.

4. Any Plaintiff currently in or who is joined in MDL 172 who was but is no longer in possession of a Device at Issue that was explanted must provide, within thirty (30) days from the date of this Amended Order or from the date their action is filed in or transferred to MDL 1726, any and all information related to the current whereabouts or status of that Device unless it is in Medtronic's possession.

5. Each Device at Issue received pursuant to Paragraph 3, above, shall be delivered by R. Lawrence Purdy or a representative from his office to Medtronic's Returned Product Laboratory, with a chain of custody form, within three (3) business days of its receipt, and Medtronic shall perform a Save to Disk upon delivery of each Device. After performing the Save to Disk, Medtronic shall sterilize and maintain each Device at Issue in its custody and control so that it can perform a Hex Dump on each Device after providing the notice required in Paragraph 6, below.

6. Plaintiffs or their counsel and Co-Lead Counsel in MDL 1726 shall be notified within a reasonable time prior to conducting the Hex Dump set forth in Paragraph 4,

above, on each Device at Issue in order to allow attendance. Medtronic shall conduct the Hex Dump on each Device at Issue at Medtronic's Cardiac Rhythm Disease Management Returned Product Laboratory located at 7000 Central Avenue NE, Fridley, Minnesota. The results of the Save to Disk and Hex Dump shall be made available to Plaintiffs or their counsel and Co-Lead Counsel in MDL 1726 within twenty (20) days after the Hex Dump is completed.

6. **PLAINTIFFS SHALL NOT FILE THE INFORMATION REQUIRED IN THIS AMENDED ORDER WITH THE COURT.**

7. **THIS AMENDED ORDER DOES NOT REQUIRE ANY NOTIFICATION RELATED TO A DEVICE AT ISSUE STILL IMPLANTED WITHIN A PLAINTIFF.**

IT IS SO ORDERED.

Dated: February 5, 2007

s/ Arthur J. Boylan
ARTHUR J. BOYLAN
UNITED STATES MAGISTRATE JUDGE