

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

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

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

**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 ("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 (the "Devices at Issue"), must produce to Medtronic, Inc., within thirty (30) days from the date of this 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.

2. Any Plaintiff in possession of a Device at Issue must produce that Device to Medtronic, according to the schedule 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 Preservation Order, as amended.

3. Schedule for Device production:

Plaintiffs who are in possession of any Devices at Issue must produce their Devices, within thirty (30) days of the date of this Order, to R. Lawrence Purdy, Esq., Maslon, Edelman, Borman & Brand LLP, 3300 Wells Fargo Center, 90 South Seventh Street, Minneapolis, MN 55402-4140, (612) 672-8631.

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

5. Plaintiffs or their counsel and Co-Lead Counsel in MDL 1726 shall be notified within a reasonable time prior to the testing set forth in Paragraph 2, above, in order to

allow attendance. The test results shall be made available to Plaintiffs or their counsel and Co-Lead Counsel in MDL 1726 within twenty (20) days after the non-destructive testing concludes.

IT IS SO ORDERED.

Dated: January 8, 2007

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