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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

GREGORY C. LANGHAM
CLERK

Civil Action No. 03-N-2193 (PAC)

Y. _____ DEP. CLK

ESTATE OF KIT PETERSON, by Phan Lee Peterson, Personal Representative, on behalf of herself and those similarly situated,

Plaintiff,

v.

MEDTRONIC, INC.,
MEDTRONIC USA, INC.,
MEDTRONIC MED REL, INC., and
MEDTRONIC EUROPE S.A.,

Defendants.

DEFENDANTS' MOTION TO SEAL

Defendants, Medtronic, Inc., Medtronic USA, Inc., and Medtronic Med Rel, Inc. (collectively "Medtronic"), by and through their undersigned counsel, hereby move this Court, pursuant to D.C.Colo.L.Civ.R 7.2, to enter an Order permitting the Affidavit of Robert William Libbey, together with Exhibits A and B thereto, to be filed under seal with this Court

As grounds for and in support of this Motion, Medtronic states as follows:

1. Contemporaneous with the filing of this Motion, Medtronic has filed its Motion for Summary Judgment and Memorandum of Law in Support of Motion for Summary Judgment on Grounds of Federal Preemption.

2. The Affidavit of Robert William Libbey is attached to Medtronic's Memorandum of Law in Support of Motion for Summary Judgment on Grounds of Federal

Preemption as Exhibit A-3 Mr. Libbey is an Engineering Manager for Implantable Cardioverter Defibrillators ("ICD")/Implantable Pulse Generators ("IPG") Mechanical Development As part of and during the course of his work with Medtronic, Mr. Libbey has become familiar with the documentation associated with the manufacturing traceability records for Medtronic's cardiac rhythm management products, including the products at issue in this case, the GEM ICD Model 7227 and the Micro Jewel ICD Model 7221B. Such traceability records are maintained by Medtronic personnel in the ordinary course of business to track the manufacturing and inspection history of each individual product manufactured by Medtronic to insure its compliance with all design and manufacturing processes and requirements approved by the Food and Drug Administration.

3. The Affidavit of Robert William Libbey, together with Exhibits A and B thereto, provide the Court with important information relevant to the issues raised in Defendants' Memorandum of Law in Support of Motion for Summary Judgment on Grounds of Federal Preemption.

4. Attached to Mr. Libbey's Affidavit as Exhibits A and B are traceability data cards pertaining to the ICDs at issue in this case. These traceability data cards contain confidential, proprietary, and trade secret information regarding Medtronic's manufacturing and inspection process. Medtronic in the ordinary course of its business maintains the confidentiality of such traceability data cards.

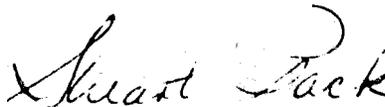
5. Furthermore, on October 12, 2004, the parties filed their Stipulated Motion for Protective Order which permits Medtronic to designate documents produced during this case

containing information of a confidential or proprietary nature as "CONFIDENTIAL" and thereby become subject to the provisions on use and disclosure set out in the Stipulation and Protective Order. Paragraph 8 of the Stipulated Motion for Protective Order authorizes Medtronic to file documents designated as "CONFIDENTIAL" with the Clerk of this Court under seal. A copy of the Stipulated Motion for Protective Order, signed by counsel of record for the parties, is attached hereto as Exhibit A-1

6. Medtronic has designated Exhibits A and B to the Affidavit of Robert William Libbey as "CONFIDENTIAL" under the terms of the Stipulated Motion for Protective Order. Therefore, Medtronic seeks this Court's permission to file the Affidavit of Robert William Libbey, together with Exhibits A and B thereto, under seal with this Court pursuant to the stipulation of the parties as reflected in the Stipulated Motion for Protective Order, specifically paragraph 8 of said Stipulation

WHEREFORE, Defendants request that this Court grant its Motion to Seal and permit it to file the Affidavit of Robert William Libbey, together with Exhibits A and B thereto, under seal

Respectfully submitted this 13th day of October, 2004.



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AND

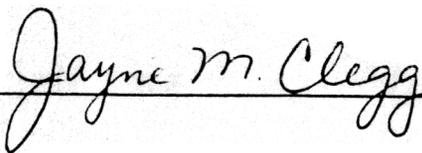
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ATTORNEYS FOR DEFENDANTS,
MEDTRONIC, INC.; MEDTRONIC USA,
INC.; and MEDTRONIC MED REL, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **DEFENDANTS' MOTION TO SEAL** was forwarded via U.S. mail, postage prepaid, this 13th day of October, 2004, addressed as follows:

Kevin S. Hannon, Esq.
Paul Gordon, Esq.
The Hannon Law Firm, LLC
1641 Downing Street
Denver, Colorado 80218



U.S. DISTRICT COURT
DISTRICT OF COLORADO
FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

2004 OCT 2 PM 2:12

GREGORY S. LANGHAM
CLERK

Civil Action No. 03-N-2193 (PAC)

BY _____ DEP. CLK

ESTATE OF KIT PETERSON, by Phan Lee Peterson, Personal Representative, on behalf of herself and those similarly situated,

Plaintiff,

v.

MEDTRONIC, INC.,
MEDTRONIC USA, INC.,
MEDTRONIC MED REL, INC., and
MEDTRONIC EUROPE S.A.

Defendants

STIPULATED MOTION FOR PROTECTIVE ORDER

IT IS HEREBY STIPULATED AND AGREED by and between Kit Peterson, (hereinafter "Plaintiff"), MEDTRONIC, INC. and MEDTRONIC USA, INC. (hereinafter collectively referred to as "Medtronic"), and their undersigned counsel, as follows:

All materials and copies, transcriptions, or other reproductions of materials produced by Medtronic in this action pursuant to the discovery provisions of the Federal Rules of Civil Procedure, or by order of this Court, or otherwise and which Medtronic claims contain, describe, identify or refer to information of a confidential or proprietary nature (hereinafter "The Materials") shall be stamped "CONFIDENTIAL" by Medtronic and shall be subject to the provisions of this Stipulation and Protective Order, except that no Materials shall be stamped "CONFIDENTIAL" that are: 1) already matters of public record having been previously filed or

this Stipulation and Protective Order so long as the person to whom disclosure is made has executed an Affidavit in the form attached hereto as Exhibit A.

5. In the event The Materials themselves, or the contents of The Materials designated "CONFIDENTIAL" are to be identified, discussed, or disclosed during a deposition taken in this action of any person or entity other than those persons or entities described in paragraphs 3 and 4 above, the deponent shall be required to acknowledge on the record, before any identification, discussion or disclosure of The Materials occurs that he or she has been advised of and has agreed to be bound by the terms of this Stipulation and Protective Order.

6. All portions of any deposition transcript taken in this action wherein The Materials themselves, or the contents of The Materials designated "CONFIDENTIAL" are identified, discussed, or disclosed, shall also be designated as "CONFIDENTIAL" and shall be subject to the terms of this Stipulation and Protective Order.

7. In the event that counsel for a party wishes to identify, discuss, or disclose The Materials or the contents of The Materials designated "CONFIDENTIAL" during the course of pre-trial or trial proceedings, he or she shall, prior to each identification, discussion, or disclosure make reference to the confidential nature thereof to the Court and to counsel for Medtronic; and counsel for Medtronic may at that time, or after such identification, discussion, or disclosure, request that The Materials or the contents of the Materials designated "CONFIDENTIAL" be filed under seal with this Court and be subject to the terms of this Stipulation and Protective Order.

8. In the event The Materials designated as "CONFIDENTIAL" or transcripts or other things wherein The Materials or the contents of The Materials designated

"CONFIDENTIAL" are identified, discussed, or disclosed, are filed or are otherwise deposited with the Clerk of this Court, such materials shall be filed or deposited in a sealed envelope bearing the following designation:

"CONFIDENTIAL: THE CONTENTS OF THIS ENVELOPE ARE NOT TO BE COPIED OR SCANNED AND ARE SUBJECT TO A PROTECTIVE ORDER OF THIS COURT AND SHALL NOT BE SHOWN TO ANY PERSONS OTHER THAN A JUDGE OF THIS COURT OR AN ATTORNEY IN THIS CASE (No. 03-N-2193 (PAC))."

Electronic filing of information containing The Materials designated "CONFIDENTIAL" shall not be permitted.

9. During trial, counsel for a party shall not comment on the reasons or motivation for designating The Materials as "CONFIDENTIAL" without first having obtained permission of the Court to do so.

10. This Stipulation and Protective Order shall be binding throughout and after final adjudication of this action, including but not limited to, final adjudication of any appeals and petitions for extraordinary writs.

Within thirty (30) days after final adjudication of this action through expiration or exhaustion of all avenues for appeal, the Clerk of Court shall return, under seal, to counsel for Medtronic all materials designated "CONFIDENTIAL" including, without limitation, all transcripts or other things which were subject to the provisions of this Stipulation and Protective Order, and within thirty (30) days after final adjudication of this action through expiration or exhaustion of all avenues for appeal, counsel then having possession, custody or control of such

materials, transcripts, or other things designated "CONFIDENTIAL" shall verify by executing and mailing to counsel for Medtronic an Affidavit in the form attached hereto as Exhibit B, either: 1) the complete destruction of the Materials; or 2) the return to counsel for Medtronic all of The Materials. In the event counsel returns to Medtronic all of The Materials, Medtronic agrees to retain The Materials for seven years after final adjudication of this action through expiration or exhaustion of all avenues for appeal.

12. Nothing in this Stipulation and Protective Order shall be construed to preclude Medtronic from seeking additional protection for The Materials or the contents of The Materials designated as "CONFIDENTIAL" or from otherwise seeking a modification of this Stipulation and Protective Order.

13. Notwithstanding the date upon which the Court entered this Stipulation and Protective Order, this Stipulation and Protective Order shall become effective and binding upon each of the parties to this action, and each of their undersigned counsel, on the date each party and each counsel execute same.

4 Nothing in this Stipulation and Protective Order shall be construed to prevent this Court from disclosing any facts relied upon by it in making or rendering any finding, ruling, order, judgment or decree of whatever description.

15. This Stipulation and Protective Order may be executed in one or more counterparts in which case all executed counterparts and each of them shall be deemed to be one and the same instrument. A complete set of original executed counterparts shall be filed with this Court.

16. Each of the parties to this action and each of their undersigned counsel acknowledge that they have executed this Stipulation and Protective Order voluntarily and that the terms and provisions of this Stipulation and Protective Order have been read and understood by them.

Dated this 12th day of October, 2004.

By: Stuart Pack

Stuart Pack
GORSUCH KIRGIS LLP
D.C. No. 4

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ATTORNEYS FOR DEFENDANTS,
MEDTRONIC, INC. AND
MEDTRONIC USA, INC.

Date: 10/6/04

By: [Signature]

Kevin S. Hannon, Esq.
Paul Gordon, Esq.

THE HANNON LAW FIRM, LLC
1641 Downing Street
Denver, Colorado 80218

ATTORNEYS FOR PLAINTIFF

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 03-N-2193 (PAC)

ESTATE OF KIT PETERSON, by Phan Lee Peterson, Personal Representative, on behalf of herself and those similarly situated,

Plaintiff,

MEDTRONIC, INC.,
MEDTRONIC USA, INC.,
MEDTRONIC MED REL, INC., and
MEDTRONIC EUROPE S.A.

Defendants.

CERTIFICATION OF _____

My name is _____ am over the age of 18 years and
am a resident of _____ County, _____ I made this Certification
based upon my personal knowledge, and am competent to testify to the matters stated herein

2 am aware that a Protective Order has been entered in *Kit Peterson v. Medtronic, Inc. a Minnesota corporation, et al.*, Civil Action No. 03-N-2193 (PAC). A copy of that Protective Order has been shown to me and have read and understand its contents

3 By signing this Certification, I promise that I will use The Materials and contents of The Materials designated "CONFIDENTIAL " pursuant to the above-described Protective Order solely in the adjudication of that action and for no other purpose

4 By signing this Certification, I also promise that I will not communicate, disclose, discuss, identify, or otherwise use The Materials or the contents of The Materials designated "CONFIDENTIAL" pursuant to the above-described Protective Order with, to, or for any person or entity other than that in the U.S. District Court for the District of Colorado, a party to the above-described civil action, counsel for a party to the above-described civil action, including other counsel, paralegals, and clerical staff employed in his or her office, persons permitted by the above-described Protective Order to attend depositions taken in the above described civil action, and persons or entities assisting such counsel who have executed a certification in the same form as this Certification

5 By signing this Certification, I also promise that I will not copy, transcribe, or otherwise reproduce, or cause to be copied, transcribed, or otherwise reproduced by any means whatsoever, any of The Materials or the contents of any of The Materials designated "CONFIDENTIAL" pursuant to the above-described Protective Order, except to the extent to which I am directed to do so by counsel for a party to the above-described civil action, in which case I promise to deliver all such copies, transcriptions, or reproductions only to the counsel who so directed me to make such copies, transcriptions, or reproductions and to no other person or entity.

6. I understand that any use of The Materials or contents of The Materials designated "CONFIDENTIAL" pursuant to the above-described Protective Order in any manner contrary to the provisions of the Protective Order will subject me, among other things, to the summary sanctions of this Court for contempt

CERTIFIED BY:

Signature

Printed name

Date

