

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

CIVIL DIVISION

In Re Minnesota State Court Guidant Corp.
Implantable Defibrillators Product Liability
Litigation.

ORDER 4

Court File No.: 62-C4-06-006672

PROTECTIVE ORDER

Without conceding that any discovery is, in fact, entitled to protection under Minn. R. Civ. P. 26.03, the parties agree that good cause exists for discovery in this litigation to be conducted pursuant to the entry of a protective order by the Court. Therefore, this Court issues the following order. References to "this litigation" in this Order are to the above-captioned matter unless otherwise qualified. This Order is to be read in conjunction with the other Orders of this Court.

IT IS ORDERED that the production of discovery in this litigation shall be conducted in accordance with the following:

1. Confidential Information. "Confidential Information" refers to information, documents, or other material that the designating party reasonably and in good faith believes constitutes or reflects trade secrets, or information whose confidentiality is otherwise protected by law. This includes but is not limited to research, development, or commercial information (as those terms are used in Minn. R. Civ. P. 26.03(g)), and personal medical information, private personal information, protected health information, tax returns, and

other information reasonably sought to be kept confidential.

2. **Designation of Confidential Information.** A party may reasonably designate any document, or a portion thereof, which it may produce as Confidential Information by labeling the document substantially as follows: "CONFIDENTIAL: SUBJECT TO PROTECTIVE ORDER".

3. **Use of Confidential Information.** Anyone who is provided access to Confidential Information under this Order shall use such information solely in connection with this litigation, shall keep such information strictly confidential, and shall in no way disclose such information, or any portion, summary, abstract or other derivation thereof, to any firm, person, or entity, except as provided in paragraph 4.

4. **Disclosure of Confidential Information.** Access to Confidential Information shall be limited to:

- (a) *Attorneys.* Attorneys of record and other personnel in their law firm(s) (including other attorneys, paralegals, and other staff personnel (collectively "staff personnel")) who require access for the purpose of representing a party in this litigation.
- (b) *Named parties.* The named parties in this litigation.
- (c) *Experts and consultants.* Outside experts or consultants retained in connection with this litigation. However, Plaintiffs must provide notice of disclosure to a Defendant who has designated information to be Confidential before providing access to Confidential Information to an expert or consultant who is currently an employee of any competitor of Defendant. This notice requirement does not include any expert or consultant retained in connection with this litigation that may have, or has had, an independent-consultant contract with a competitor of a Defendant, as long as he or she is not currently an employee of such

competitor.

- (d) *Witnesses.* Witnesses who testify at depositions, hearings, or trial, in this litigation. However, Plaintiffs must provide notice to a Defendant who has designated information to be Confidential before providing access to Confidential Information to that witness if such witness is currently an employee of a competitor of the designating Defendant. This notice requirement does not include any witness who may have, or has had, an independent-consultant contract with a competitor of any Defendant, as long as he or she is not currently an employee of such competitor.
- (e) *Court reporters and videographers.* Court reporters and videographers appearing at depositions, hearings, or trial, if any such further proceedings occur in this case.
- (f) *Court.* The Court and its personnel.
- (g) *Other persons.* Without the necessity of further Court order, any other person who the parties jointly agree may have access to the Confidential Information.
- (h) *Attorneys in other actions.* Attorneys, and their staff personnel, that have commenced other actions against any Defendant generally involving the products of Cardiac Pacemakers, Inc. Prior to such disclosure, each such attorney shall execute, file with the Court, and serve on Joseph Price, Esq., the *Agreement to Comply with Protective Order* attached as Attachment A. Such attorneys shall not further disclose Confidential Information in the other action without further order of this Court. Such an order will issue if a protective order no less protective of Confidential Information is entered in the other action. The parties agree that such attorneys in other actions include those on the list attached as Attachment B.

5. Non-waiver of confidentiality or objection to production. Review of

Confidential Information by any person in paragraph 4 shall not waive the confidentiality of that information or any objection to production of that information.

6. Execution of Agreement to Comply with Protective Order (Attachment A). Each person who is permitted access to Confidential Information under paragraph 4(a)-(h) above, except the Court, its personnel, and witnesses who are current employees of Defendants, shall first be shown a copy of this Order, shall be advised of the obligation to honor the confidentiality designation, and shall sign the *Agreement to Comply with Protective Order* ("Agreement") that is attached as Attachment A. Any attorney of record in this action who provides such access to any such person shall retain that person's signed Agreement in his or her files throughout this litigation, and upon request shall make the signed Agreement available for inspection by the Court.

7. Inadvertent disclosure of Confidential Information. The inadvertent, unintentional, or *in camera* disclosure of Confidential Information shall not be deemed a waiver, in whole or in part, of any party's claim of confidentiality. Within fifteen (15) days of discovering such inadvertent or unintentional disclosure, any party to this Order may advise the other parties that the Confidential Information is to be designated as Confidential under the terms of this Order.

8. Inadvertent disclosure of privileged information. The inadvertent or unintentional disclosure in this litigation of privileged information and/or work product shall not be deemed a waiver, in whole or in part, of any otherwise valid claim of privilege or other protection. The failure to assert a privilege and/or work product in this litigation as to one document or communication shall not be deemed to constitute a waiver, in whole or in part, of the privilege or other protection as to any other document or communication allegedly so protected, even involving the same subject matter. In the case of inadvertently produced privileged and/or work product documents, the documents, together with all copies made of them and any notes made from them, shall be returned forthwith to the party claiming privilege and/or work product immunity. Any party may, within five (5) court days after notification of inadvertent disclosure under this

paragraph, object to the claim of inadvertence by notifying the producing party in writing of that objection and specifying the designated or produced material to which the objection is made. The parties shall confer within fifteen (15) days of service of any written objection. If the objection is not resolved, the designating party shall, within fifteen (15) days of the conference, file and serve a motion before this Court to resolve the dispute. If a motion is filed, information subject to dispute shall be treated consistent with the producing party's most recent designation until further order of this Court.

9. Depositions. Any deposition which a party determines will or might reasonably include disclosure of Confidential Information shall be attended only by those persons entitled to receive such Confidential Information pursuant to this Order. During a deposition, any party may ask the reporter to designate certain portions of the testimony as Confidential, in which case the confidential portions shall be separately transcribed and labeled as Confidential. In addition, within thirty (30) days after the deposition is delivered to the parties, counsel may designate the entirety or any specified portion of the transcript or exhibits thereto as Confidential by letter to the opposing party. Until such thirty-day period expires, the entirety of such transcripts and all exhibits thereto shall be treated as Confidential and subject to this Order. After such thirty-day period expires, such transcripts, exhibits or portions thereof designated as Confidential shall be treated as such under this Order. If no such designation is made within thirty days, such transcripts or exhibits shall not be subject to this Order, except for good cause shown by the designating party.

10. Filing with Court. In filing materials with the Court in pretrial proceedings, counsel shall file under seal only those specific documents and that deposition testimony designated as Confidential Information, and only those specific portions of briefs, applications, and other filings that either contain verbatim Confidential Information or set forth the substance of such Confidential Information. The Court retains the power, either upon motion of any interested party or on its own motion, to determine whether materials filed under seal shall remain sealed. Any such Confidential Information shall be filed under seal in a sealed

envelope (or other sealed container), marked with the title of this action, the title of each such transcript or document being filed, and a statement substantially in the following form:

CONFIDENTIAL

Pursuant to the Order 4 of this Court dated October 30, 2006, this envelope or other container containing the above-entitled transcripts or documents filed by [the name of the party] is not to be opened, nor the contents thereof displayed or revealed, except in accordance with an Order of the Court.

11. Objection to Designation. If any party to the litigation disputes the designation of any document or information as Confidential Information, the parties, before seeking the assistance of the Court, must first confer in good faith in an attempt to resolve the question of whether or on what terms the document or information is entitled to confidentiality. The party objecting to the confidential designation shall notify the designating party, and the designating party shall respond within ten (10) days. If the parties are unable to agree as to whether the document or information is properly designated as Confidential Information, the party asserting the designation may file an appropriate motion with this Court within thirty (30) days of the challenge. The burden of proving the propriety of the designation rests on the party who has made the designation. Until a resolution of the dispute is achieved either through consent or court order, the parties shall treat the designated document or information as Confidential Information.

12. Return of Confidential Information upon termination. Upon the termination of all actions commenced by a law firm in this litigation, whether by court order, judgment, settlement, or otherwise, including the termination of any appeals, the law firm, on behalf of its clients, and the law firm representing Defendants in this litigation, shall return to the other all documents, including copies and reproductions, designated as Confidential Information. The return of Confidential Information shall be completed within ninety (90) days after termination of all such actions. Any attorney of record in such actions who provides access to Confidential Information to any expert, consultant, witness, or other person (as defined in paragraph 4) is responsible for the retrieval from any such expert, consultant, witness, or other person of all documents designated as Confidential and for the return of all documents designated Confidential;

and the work product prepared by any such expert, consultant, witness, or other person derived from that Confidential Information shall be destroyed and/or returned to that attorney of record. This Order, and the obligation to keep Confidential Information confidential, shall survive the final termination of this litigation.

13. Request to produce Confidential Information by subpoena or otherwise. If any party who has received Confidential Information is asked to produce such information, by subpoena or otherwise, for purposes of use in a separate legal action, the party receiving such a request shall promptly inform the producing party that such request has been received and shall object to such request on the basis of this Order.

14. Waiver of Privilege or Other Protection. Nothing in this Order shall be deemed a waiver of any type of privilege or other protection applicable to any type of information in this litigation or any other action or proceeding.

15. Use of Documents Acquired Lawfully or Through Other Litigation. This Order shall not prevent any persons bound hereby from making use of any document or information without the restrictions of this Order if the document or information came into their possession lawfully or through discovery in this litigation or any other action or proceeding in which such document or information was not designated Confidential Information, was not subject to a protective order or other restrictive court order, or where there has been a final judgment, with no further right to appeal, by which the document or information was deemed not to be confidential.

16. Non-party's Confidential Information. Any non-party producing discovery material or giving deposition testimony in this action may avail itself of the confidentiality provisions of this Order for its discovery material or testimony by following the procedures provided herein. This Order shall be binding on such non-parties unless they object to its terms within ten (10) days of service upon them of this Order.

17. Others challenges to confidentiality designation. Nothing contained herein shall prevent a member of the general public from filing a motion with the

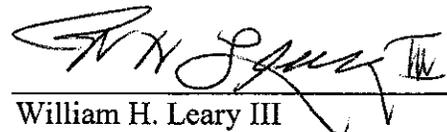
Court contesting any party's designation of information as confidential, seeking to have information filed under seal unsealed, or seeking an order permitting the disclosure of Confidential Information to non-party witnesses. Nothing shall prevent disclosure beyond the terms of this Order if the party designating the materials or testimony as confidential either publicly discloses such information or consents in writing to such disclosure, or if the Court, after notice to all affected parties, orders such disclosure and there has been a final judgment, with no further right to appeal, on the issue.

18. Modification. This Order shall not prevent any party from applying to the Court for modification of the Order or for further relief.

19. Failure to Comply. Failure to comply with this Order shall be a basis for monetary sanctions or other appropriate relief.

20. Subtitles. The subtitles in this Order have been provided for convenience only and are not to be considered in construing or interpreting the meaning of this Order.

October 30, 2006



William H. Leary III
Judge of the District Court

Attachment "B"

[INSERT CAPTION]

LIST OF ATTORNEYS IN OTHER ACTIONS

The parties agree that the following are considered "attorneys in other actions" as defined in paragraph 4(h) of the Protective Order and, therefore, may be provided access to "Confidential Information" after he or she has executed, filed with the Court, and served on all attorneys of record the Agreement to Comply with Protective Order (Attachment A). Information (including documents and discovery), and are not waived by the disclosure provided for herein. Further, in the event of a breach of this Agreement, I recognize that the producing party may pursue all civil remedies available to it as a third-party beneficiary of this Agreement.

NAME: _____

ADDRESS: _____

TELEPHONE NUMBER: _____