

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

In the Matter of

KYPHON, INC.,
a corporation,

**DISC-O-TECH MEDICAL
TECHNOLOGIES LTD. (Under
Voluntary Liquidation)**,
a corporation,

and

**DISCOTECH ORTHOPEDIC
TECHNOLOGIES INC.**,
a corporation.

File No. 071-0101

AGREEMENT CONTAINING CONSENT ORDERS

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition of certain vertebral compression fracture repair system assets of Disc-O-Tech Medical Technologies Ltd. (Under Voluntary Liquidation) and Discotech Orthopedic Technologies Inc. (hereafter collectively referred to as “Proposed Respondent DOT”) by Kyphon Inc. (hereafter referred to as “Proposed Respondent Kyphon”), and it now appearing that Proposed Respondents are willing to enter into this Agreement Containing Consent Orders (“Consent Agreement”) to divest certain assets and providing for other relief:

IT IS HEREBY AGREED by and between Proposed Respondents, by their duly authorized officers and attorneys, and counsel for the Commission that:

1. Kyphon Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 1221 Crossman Avenue, Sunnyvale, CA 94089.
2. Disc-O-Tech Medical Technologies Ltd. (Under Voluntary Liquidation) is a corporation organized, existing and doing business under and by virtue of the laws of the State of Israel, with its office and principal place of business located at 11 Ha’hoshlim St., Herzeliya, Israel.

3. Discotech Orthopedic Technologies Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 7 Centre Dr., Suite 1, Monroe Township, NJ 08831.
4. Medtronic, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the state of Minnesota, with its office and principal place of business located at 710 Medtronic Parkway, Northwest, Minneapolis, MN 55432.
5. Proposed Respondents admit all the jurisdictional facts set forth in the draft of Complaint here attached.
6. Proposed Respondents waive:
 - a. any further procedural steps;
 - b. the requirement that the Commission's Decision and Order and Order to Hold Separate and Maintain Assets, both of which are attached hereto and made a part hereof, contain a statement of findings of fact and conclusions of law;
 - c. all rights to seek judicial review or otherwise challenge or contest the validity of the Decision and Order or the Order to Hold Separate and Maintain Assets entered pursuant to this Consent Agreement; and
 - d. any claim under the Equal Access to Justice Act.
7. Because there may be interim competitive harm, the Commission may issue its Complaint and the Order to Hold Separate and Maintain Assets in this matter at any time after it accepts the Consent Agreement for public comment.
8. The Proposed Respondents shall submit initial reports, pursuant to Section 2.33 of the Commission's Rules, 16 C.F.R. § 2.33, within fifteen (15) days of the date on which it executes this Consent Agreement and every thirty (30) days thereafter until the Decision and Order becomes final or the divestiture required pursuant to Paragraph II.A of the Decision and Order is accomplished, whichever is earlier. Each such report shall be signed by the Proposed Respondent and shall set forth in detail the manner in which the Proposed Respondent has to date complied or has prepared to comply, is complying, and will comply with the Order to Hold Separate and Maintain Assets and the Decision and Order. Such reports will not become part of the public record unless and until the Consent Agreement and Decision and Order are accepted by the Commission for public comment.
9. This Consent Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Consent Agreement is accepted by the Commission, it, together with the draft of Complaint contemplated thereby, will be placed

on the public record for a period of thirty (30) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Consent Agreement and so notify Proposed Respondents, in which event it will take such action as it may consider appropriate, or issue or amend its Complaint (in such form as the circumstances may require) and issue its Decision and Order, in disposition of the proceeding.

10. This Consent Agreement is for settlement purposes only and does not constitute an admission by Proposed Respondents that the law has been violated as alleged in the draft of Complaint here attached, or that the facts as alleged in the draft of Complaint, other than jurisdictional facts, are true.
11. This Consent Agreement contemplates that, if it is accepted by the Commission, the Commission may (a) issue and serve its Complaint corresponding in form and substance with the draft of Complaint here attached, (b) issue and serve its Order to Hold Separate and Maintain Assets, and (c) make information public with respect thereto. If such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission may, without further notice to the Proposed Respondents, issue the attached Decision and Order containing an order to divest and providing for other relief in disposition of the proceeding.
12. When final, the Decision and Order and the Order to Hold Separate and Maintain Assets shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Decision and Order and the Order to Hold Separate and Maintain Assets shall become final upon service. Delivery of the Complaint, the Decision and Order, and the Order to Hold Separate and Maintain Assets to Proposed Respondents by any means provided in Commission Rule 4.4(a), 16 C.F.R. § 4.4(a), shall constitute service. Proposed Respondents waive any right they may have to any other manner of service. Proposed Respondents also waive any right they may otherwise have to service of any Appendices incorporated by reference into the Decision and Order, and agree that they are bound to comply with and will comply with the Decision and Order and the Order to Hold Separate and Maintain Assets to the same extent as if they had been served with copies of the Appendices, where Proposed Respondents are already in possession of copies of such Appendices.
13. The Complaint may be used in construing the terms of the Decision and Order and the Order to Hold Separate and Maintain Assets, and no agreement, understanding, representation, or interpretation not contained in the Decision and Order, the Order to Hold Separate and Maintain Assets, or the Consent Agreement may be used to vary or contradict the terms of the Decision and Order or the Order to Hold Separate and Maintain Assets.
14. By signing this Consent Agreement, each of the Proposed Respondents represents and warrants that it can accomplish the full relief contemplated by the attached Decision and

Order and Order to Hold Separate and Maintain Assets (including effectuating all required divestitures, assignments, and transfers) required to be accomplished by it thereunder and that all parents, subsidiaries, affiliates, and successors necessary to effectuate the full relief contemplated by this Consent Agreement are parties to this Consent Agreement.

15. By signing this Consent Agreement, Proposed Respondents represent and warrant that they have obtained all third-party approvals necessary for Proposed Respondents to comply with the Decision and Order.
16. Proposed Respondents have read the draft of the Complaint, the Decision and Order, and the Order to Hold Separate and Maintain Assets contemplated hereby. Proposed Respondents understand that once the Decision and Order and the Order to Hold Separate and Maintain Assets have been issued, they will be required to file one or more compliance reports showing that they have fully complied with the Decision and Order and the Order to Hold Separate and Maintain Assets. Proposed Respondents agree to comply with the terms of the proposed Decision and Order and the Order to Hold Separate and Maintain Assets from the date they sign this Consent Agreement. Proposed Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Decision and Order and of the Order to Hold Separate and Maintain Assets after they become final.
17. Medtronic, Inc. understands and agrees that in the event it acquires Proposed Respondent Kyphon, it will become the successor to Proposed Respondent Kyphon for purposes of all of Proposed Respondent Kyphon's responsibilities and obligations contained in this Consent Agreement, the Decision and Order, and the Order to Hold Separate and Maintain Assets.

Signed this _____ day of _____, 2007.

KYPHON INC.

By: _____

Art Taylor
Vice President and Chief Operating
Officer
Kyphon Inc.

Debbie Feinstein
Arnold & Porter
Counsel for Kyphon, Inc.

FEDERAL TRADE COMMISSION

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Attorneys
Bureau of Competition

**DISC-O-TECH MEDICAL
TECHNOLOGIES LTD. (Under
Voluntary Liquidation)**

By: _____

Mordechay Beyar, M.D.
Liquidator
Disc-O-Tech Medical Technologies
Ltd. (Under Voluntary Liquidation)

APPROVED:

Michael Moiseyev
Assistant Director
Bureau of Competition

**DISCOTECH ORTHOPEDIC
TECHNOLOGIES, INC.**

By: _____

Ronny Barak
Chief Executive Officer
Discotech Orthopedic Technologies,
Inc.

Jeffrey Schmidt
Director
Bureau of Competition

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Counsel for Disc-O-Tech Medical
Technologies Ltd. (Under Voluntary
Liquidation) and Discotech Orthopedic
Technologies, Inc.

MEDTRONIC, INC.

By: _____
Terrance L. Carlson
Senior Vice President, General Counsel,
and Secretary
Medtronic, Inc.

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