IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

KYPHON, INC.,	)	
	)	
Plaintiff	)	
	)	
vs.	)	Civil Action No. 04-204-JJF
	)	
DISC-O-TECH MEDICAL TECHNOLOGIES, LTD. and DISC ORTHOPAEDIC TECHNOLOGIES, INC.,	)	
	)	
Defendants.	)	

DECLARATION OF FRED I. WILLIAMS IN SUPPORT OF MEDTRONIC'S EMERGENCY MOTION FOR LEAVE TO INTERVENE FOR THE PURPOSE OF MODIFYING THE STIPULATED PROTECTIVE ORDER AND TO MODIFY THE STIPULATED PROTECTIVE ORDER

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Dated: November 9, 2006

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

KYPHON, INC., **Plaintiff** **vs.** **DISC-O-TECH MEDICAL TECHNOLOGIES, LTD. and DISC ORTHOPAEDIC TECHNOLOGIES, INC.,** **Defendants.**	Civil Case No. 04-0204-JJF

DECLARATION OF FRED I. WILLIAMS IN SUPPORT OF MEDTRONIC'S EMERGENCY MOTION FOR LEAVE TO INTERVENE FOR THE PURPOSE OF MODIFYING THE STIPULATED PROTECTIVE ORDER AND TO MODIFY THE STIPULATED PROTECTIVE ORDER

I, Fred I. Williams, declare as follows:

1. I am an attorney duly licensed in the State of Texas and admitted to practice before the United States District Courts for the Southern, Eastern, Northern, and Western Districts of Texas and the United States Courts of Appeals for the Fifth and Eleventh Circuits. I am a partner of Akin Gump Strauss Hauer & Feld LLP and counsel for Medtronic Sofamor Danek, Inc., Medtronic Sofamor Danek USA, Inc., and SDGI Holdings, Inc. (collectively "Medtronic" or "Defendants"). I make this declaration in support of Medtronic's Brief in Support of Its Emergency Motion for Leave to Intervene for the Purpose of Modifying the Stipulated Protective Order and to Modify the Stipulated Protective Order. I have personal knowledge of the facts stated in this declaration.

2. Attached hereto as Exhibit "A" is a true and correct copy of United States Magistrate Judge Diane Vescovo's Order on Defendants' Second Motion to Compel entered on November 7, 2006, in Civil Action No. 05-2863-MI V; *Harvinder S. Sandhu and Kyphon, Inc. v.*

Medtronic Sofamor Danek, Inc., et al.; In the United States District Court for the Western District of Tennessee, Western Division (the "Tennessee case").

3. Attached hereto as Exhibit "B" is a true and correct copy of the email and attachment to Steven M. Zager from Karen I. Boyd, dated October 25, 2006.

4. Attached hereto as Exhibit "C" is a true and correct copy of Medtronic's Second Motion to Compel, served in the Tennessee case on October 14, 2006.

5. Attached hereto as Exhibit "D" is a true and correct copy of the email to Jonathan M. Sobel from Karen I. Boyd, dated October 15, 2006.

6. Attached hereto as Exhibit "E" is a true and correct copy of the transcript of the November 2, 2006, hearing on Medtronic's Second Motion to Compel in the Tennessee case.

7. Attached hereto as Exhibit "F" is a true and correct copy of Request No. 30 from Medtronic's First Set of Document Requests to Kyphon, Inc. (Nos. 1-41), served on June 29, 2006, in Civil Action No. C06-02559 SI; *Medtronic, Inc., et al. v. Kyphon, Inc.*; In the United States District Court for the Northern District of California, San Francisco (the "California case").

8. Attached hereto as Exhibit "G" is a true and correct copy of Request No. 74 from Medtronic's Second Set of Document Requests to Kyphon, Inc. (Nos. 42-86), served on August 3, 2006, in the California case.

9. Attached hereto as Exhibit "H" is a true and correct copy of Kyphon's Responses and Objections to Medtronic's First Set of Interrogatories (Nos. 6 and 7), served on September 1, 2006, in the California case.

10. Attached hereto as Exhibit "I" is a true and correct copy of the Protective Order, dated August 17, 2006, in the Tennessee case.

11. Attached hereto as Exhibit "J" is a true and correct copy of the "[proposed] Protective Order," dated September 30, 2004, in Civil Action No. CA 04-0204-JJF; *Kyphon Inc. v. Disc-O-Tech Medical Technologies Ltd. and Disc Orthopaedic Technologies, Inc.*; In the United States District Court for Delaware.

Date: November 9, 2006

Fred I. Williams

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

CERTIFICATE OF SERVICE

I, Philip A. Rovner, hereby certify that on November 9, 2006, the within document was filed with the Clerk of the Court using CM/ECF which will send notification of such filing(s) to the following; that the document was served on the following counsel as indicated; and that the document is available for viewing and downloading from CM/ECF.

BY HAND DELIVERY AND E-MAIL

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I hereby certify that on November 9, 2006 I have sent by E-mail the foregoing document to the following non-registered participants:

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