

KYPHON INC
Form DFAN14A
September 19, 2007

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
SCHEDULE 14A**

Proxy Statement Pursuant to Section 14(a) of the Securities
Exchange Act of 1934

Filed by the Registrant ☐

Filed by a Party other than the Registrant ☐

Check the appropriate box:

- ☐ Preliminary Proxy Statement
- ☐ **Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**
- ☐ Definitive Proxy Statement
- ☐ Definitive Additional Materials
- ☐ Soliciting Material Pursuant to §240.14a-12

KYPHON INC.

(Name of Registrant as Specified In Its Charter)

MEDTRONIC, INC.

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

- ☐ No fee required.
- ☐ Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.
 - (1) Title of each class of securities to which transaction applies:

(2) Aggregate number of securities to which transaction applies:

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

(4) Proposed maximum aggregate value of transaction:

(5) Total fee paid:

- o Fee paid previously with preliminary materials.
- o Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

(1) Amount Previously Paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

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The following is a joint press release issued by Medtronic, Inc. and Kyphon Inc. on September 19, 2007.

Contacts for Medtronic:

Media:

Marybeth Thorsgaard
763-505-2644

Investors:

Martha Goldberg Aronson
763-505-2694

Contacts for Kyphon:

Media and Investors:

Julie Tracy
408-548-6687

FOR IMMEDIATE RELEASE

**MEDTRONIC AND KYPHON ANNOUNCE CLEARANCE FROM GERMAN
FEDERAL CARTEL OFFICE FOR THE MERGER OF MEDTRONIC AND KYPHON**

MINNEAPOLIS and SUNNYVALE, Calif., Sept. 19, 2007 Medtronic, Inc. (NYSE: MDT) and Kyphon Inc. (Nasdaq: KYPH) announced today that the German Federal Cartel Office has given its clearance in connection with the previously announced merger agreement between Kyphon and Medtronic, Inc. Completion of the transaction, which is expected later this year or in the first quarter of 2008, remains subject to obtaining approvals of antitrust authorities in several other jurisdictions, the approval of Kyphon's stockholders and other customary closing conditions. A special meeting of Kyphon's stockholders to vote on the proposed merger has been called for October 16, 2007. If further antitrust clearances are obtained prior to the Kyphon stockholders' meeting, the companies will provide an update at the time of the meeting.

ABOUT MEDTRONIC

Medtronic, Inc. (www.medtronic.com), headquartered in Minneapolis, is the global leader in medical technology alleviating pain, restoring health, and extending life for millions of people around the world. Medtronic is a registered trademark of Medtronic, Inc.

ABOUT KYPHON

Kyphon develops and markets medical devices designed to restore and preserve spinal function and diagnose the source of low back pain using minimally invasive technologies. The company's products are used in balloon kyphoplasty for the treatment of spinal compression fractures caused by osteoporosis or cancer, in the Functional Anaesthetic Discography (F.A.D.) procedure for diagnosing the source of low back pain, and in the Interspinous Process Decompression (IPD®) procedure for treating the symptoms of lumbar spinal stenosis. More information about the company and its products can be found at www.kyphon.com and its balloon kyphoplasty patient education Web site, www.spinalfracture.com.

Kyphon and IPD are registered trademarks, and Functional Anaesthetic Discography and F.A.D. are trademarks, of Kyphon Inc.

FORWARD-LOOKING STATEMENTS

This press release contains forward-looking statements, within the meaning of the U.S. Private Securities Litigation Reform Act of 1995, about the completion of the merger. Forward-looking statements are based on management's current preliminary expectations and are subject to risks, uncertainties and assumptions, which may cause the company's actual results to differ materially from the statements contained herein. Factors that could cause actual results to differ materially from management's current expectations include, without limitation, the potential inability to obtain the regulatory and stockholder approvals and clearances required to complete the merger, or to do so in a timely manner, and the possibility that other conditions to completion of the merger may not be satisfied. Additional factors that may affect future results are contained in Kyphon's filings with the SEC, which are available at the SEC's web site <http://www.sec.gov>. Kyphon undertakes no obligation to release publicly any revisions to any forward-looking statements contained herein to reflect events or circumstances after the date hereof.

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