

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:

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- 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.

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

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**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](http://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.

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**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](http://www.kyphon.com) and its balloon kyphoplasty patient education Web site, [www.spinalfracture.com](http://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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