

**Written Testimony of**  
**Dan Moore, President and CEO of Cyberonics, Inc.**

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**U.S. House of Representatives**

**Subcommittee on Oversight of the Committee on Ways and Means**

**Hearing on the tax provisions contained in the Patient Protection and Affordable Care Act and  
Health Care and Education Reconciliation Act of 2010 (“President’s Health Care Law”)**

## TESTIMONY

Thank you Chairman Boustany and Ranking Member Lewis for the opportunity to testify here today. My name is Dan Moore, and I am the CEO of Cyberonics, Inc., a Texas-based medical device company that focuses on device solutions for epilepsy and other neurological conditions. I am also the Chairman of the Board for the Medical Device Manufacturers Association, a group representing the innovative and entrepreneurial sector of the medical technology industry. I am here today to testify on behalf of MDMA and its hundreds of member companies to highlight this great American success story known as the medical technology industry and to share our concerns about the future of America's global leadership in medical devices. I will also share my perspectives taken from my personal experiences as the son of a steelworker, hoping that as a country, we do not lose leadership in yet another industry.

I was born in Gary, Indiana, which at one time was one of two big American steel towns, and raised in Northwest Indiana. My grandfather, father, and oldest brothers, along with many of my relatives, family friends and neighbors were all employed in the steel industry. I have fond memories of my father and others talking proudly about the work they did in the steel mills. These men had opportunities for advancement when the industry was thriving. I'm extremely proud of my father, who, through a series of promotions over the years, went from

being a laborer to having responsibility for maintenance in three of the steel mills within Gary Works. He worked hard and was able to provide for my mom and our family of eight children. My parents emphasized the importance of a college education, and it's ironic that my student loans were provided by the steel mill's credit union. The United States was the global leader in steel production and manufacturing, and the byproduct of this leadership position was great jobs that built communities and sustained families for many decades. Sadly, we all know what has happened to this chapter of American manufacturing. Workers and elected officials simply NEVER thought that we could lose our leadership position, and the great jobs, economic benefits, and positive family impact associated with a strong industry.

I consider myself extremely fortunate to be a part of a vibrant industry that plays a critical role in working with physicians and providers in the lives of patients. The medical device industry is comprised of over 400,000 highly skilled and science-driven professionals, with more than 1.4 million jobs that support this supply chain. In total, there are nearly 2 million hard working Americans who drive this proud success story, one where the United States is still the global leader. In fact, towns and communities in many states where steel and textile mills once thrived -- such as Indiana, Pennsylvania, Ohio, North Carolina and others -- have developed economically important medical technology clusters.

I am here to tell you that the global leadership position of the medical device industry is at a crossroads, and not unlike what faced America's steel industry. If we lose this leadership – and the great jobs and all the other benefits that come with it -- we will never get it back, and countless communities will again never look the same. The bad news is that the largest and one of the most daunting headwinds we face is a result of unintended consequences due to policies enacted by our government. The good news is that there is legislation to fix this problem, and bipartisan momentum continues to build in support of it.

Under a provision in the Affordable Care Act that went into effect on January 1, 2013, medical device innovators must pay a 2.3% excise tax to the government. While this policy has only been enacted for two months, it has already resulted in approximately \$200 million being sent to the I.R.S rather than being invested in patient care and job creation.

I am often asked how a 2.3% tax could be so damaging to innovation, jobs and patient care; after all, it's only 2.3%, right? It is important to remember that this is an excise tax based on medical device company revenue, not profits. One study has estimated the 2.3% excise tax on revenues will increase a company's effective tax rate by an average of 29%. This is a critical point: in addition to all of the local, state and federal income taxes that medical device companies already pay,

this policy is, on average, increasing the tax bill for one of America's most dynamic industries by almost a third.

Many companies are having their entire profits wiped away because of the medical device tax. Others aren't even profitable yet, but find themselves still having to pay a tax that is destroying their ability to grow.

Regardless of a company's size, success or stage of development of medical technologies, a 2.3% excise tax will have a significant impact, and at the end of the day, a negative impact on providers and patients, the people we intend to help.

One of the unique aspects of this innovative industry is that it is comprised overwhelmingly of small companies, 80 percent which have fewer than 50 employees. In fact, 98 percent of companies have fewer than 500 employees.

These are the very small and mid-sized companies responsible for the majority of job creation, companies on whom we are relying to help improve this economy.

To put the challenge of becoming successful in this industry into perspective, in our company's first 20 years, we had only one year with a small amount of profitability. In fact, during the first 20 years, we accumulated more than 250 million dollars in losses as we developed our life-changing technology.

Investments of tens of millions of dollars, even \$100 million or more over ten years or more, are not uncommon if one hopes one day to become a successful med-tech story. It takes tremendous amounts of research and development, clinical

trials and other expensive steps before a medical technology can – if it ever does – turn a profit.

I was fortunate to spend much of my career at a great company that was started by two individuals in the late 1970s with a dream to improve patient care and the passion to see that dream fulfilled. For nearly 18 years, I worked with engineers, scientists, manufacturers and doctors who dedicated their careers to improving the human condition. At its peak, that company grew to nearly 30,000 employees.

My understanding is that company, Boston Scientific, currently has a workforce of approximately 24,000 and just announced a layoff of approximately 1,000 more people. They announced this layoff in part as a result of the device tax, which some estimates show will cost them \$75 million this year alone. This is money that should be invested in the American workforce and research and development to continue the amazing advancements in health care delivery. And this is but one story of the countless others where this policy is adversely impacting job creators. One study shows that 43,000 good paying jobs will be lost as a result of this onerous policy.

The reason I share this story is to show just how dynamic this American industry is. We all love the stories of innovators and entrepreneurs coming up with ideas in their garages or spare bedrooms and building American dreams into proud organizations. As I speak before you today, physicians and engineers are working

on new technologies like an artificial pancreas that will allow diabetics to control blood glucose levels automatically. Earlier this month the FDA approved a new product that literally allows the blind to see. Do we really want to risk the loss of these amazing new devices by imposing an additional tax on medical device companies? Medical technology innovators are pushing the boundaries of science, all driven by American ingenuity and manufacturing. The medical device tax is putting an end to some of these dreams and aspirations before they ever get out of the lab – or perhaps one’s garage.

And what does this mean to patients and providers? Sadly, policies such as the medical device tax are placing burdensome hurdles to delivering on the promises of improved patient care and a better quality of life. While many companies are addressing the device tax by cutting jobs, others are making severe cuts to R&D. The consequence of these actions is delaying or eliminating new technologies and devices that could revolutionize the health care of the future. I cannot emphasize enough just how delicate the innovation ecosystem is for medical device makers. Any cuts to R&D today will manifest themselves down the road in ways that negatively impact patients and providers.

I’ve often wondered where patient care and our industry would be had this policy been in place when I was getting started 24 years ago in medical devices. How many companies would long since have folded due to an inability to generate profit

in a reasonable time? How many jobs would have been lost, adding to the roles of the unemployed and uninsured? How many cuts to R&D would have been made, leading to unknown losses in innovation and patient care? Would all the cutting-edge devices and technologies developed over the past decade really be available today? Perhaps I would never have had the opportunity to be a part of this great American success story.

I respectfully urge all of you to continue working together to provide an environment where tomorrow's technologies and devices will not be sacrificed as a result of misguided policies today. We cannot allow this great American success story to end simply because we failed to enact policies that support innovation and patient care. None of us want to have to explain to our children one day why they don't have the opportunity to work in the same dynamic industry as did their parents, focused on improving the human condition. Repealing the medical device tax will help a proud American industry continue to be the global leader, as well as protect the innovation, jobs and communities that it supports.

America's patients, providers and workers are relying on you, and I pledge to do all that I can to help Congress and policy makers ensure that the 21<sup>st</sup> century is as bright for medical technology innovation as was the last. I urge you to support the repeal of this onerous medical device tax on innovation, jobs, and most important, patient care. Thank you for the opportunity to share my concerns with you today.