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July 3, 2002

Senator Herb Kohl
330 Hart Senate Office Building
United States Senate
Washington, D.C. 20510

Dear Senator Kohl,

It is with great concern that I write this letter. My testimony to the Senate Judiciary committee on April 30th was made in the interest of bettering medical care through increasing the availability of improved, innovative technologies designed to increase the accessibility and availability of improved healthcare products to patients. In their rebuttal, Tyco/Mallinckrodt/Nellcor appears to have disregarded the issue at hand.

At issue is neither the performance of their monitors, nor the interactions they have had with their chief competitor, but the relationship they have with the Group Purchasing Organizations. My testimony was directed towards justifying the need to qualify additional products for GPO inventories.

As such, if Tyco/Mallinckrodt/Nellcor did not have a significant market share to leverage, perhaps they would have been more responsive to my needs as a Neonatologist. I am not obligated in any way to Masimo and would publish results that were not favorable if research indicated that a competitor's product was superior. I have been involved at many different levels in the design and evaluation process and have made suggestions for improvements in equipment of many different manufacturers without having any formal obligation in the form of financial remuneration. Through the many years that I have done research on pulse oximeters, other manufacturers have consulted me to help them assess difficulties they were having monitoring neonates. If Tyco/Mallinckrodt/Nellcor had bothered to check carefully, they would find favorable evaluations and research involving other products in the Tyco product line in my CV.

Approximately two years ago, at a conference of the Society of Critical Care Medicine (SCCM), I was asked to participate in an award ceremony honoring Masimo technology. I was to present the case report on the infant born with complex heart disease (as presented in senate testimony). After flying across country, my part of the ceremony was cancelled. Tyco/Mallinckrodt/Nellcor had prevailed on the conference organizers to eliminate the case presentation. I later spoke with a Vice-President of the company and expressed my concern that I was discriminated against as an independent researcher presenting favorable data regarding a competitor s product. I received a letter of "non-intent" from him and a suggestion that Tyco/Mallinckrodt/Nellcor and the SCCM should "collectively make amends" to me.

When I was informed that the Tyco/Mallinckrodt/Nellcor website had posted a rebuttal to my testimony regarding the infant born with complex heart disease, I was

disappointed to see that they had once again misunderstood the intent of the case report. As I have indicated under separate cover, their interpretation of the facts does not portend an understanding of the importance of these events. What irritated me further was that Tyco/Mallinckrodt/Nellcor contended that my case report was "grossly overstated" and that these events "would never have occurred in a real world NICU environment". These contentions were not peer reviewed and, by way of publication on the website, impugn my credibility as a physician internationally.

By way of simple reasoning, it is clear that Tyco/Mallinckrodt/Nellcor had full intent of malice when they suppressed my presentation at the SCCM. Along with the GPO's, Tyco/Mallinckrodt/Nellcor's behavior has been clearly anti-competitive. It is not within the context of this letter to suggest a remedy to this situation. However, when a multi-billion dollar conglomerate demonstrates a disregard for the sanctity of academic pursuit and care of the individual patient, the entire system of product research and development of innovative devices is in jeopardy.

Sincerely,

Mitchell Goldstein, M.D.
Neonatologist