LOBBY WATCH

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Don't' Shunt the Blame:

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Implant Maker Inserts Itself Into Constitutional Debate

Medtronic Is Dogged By Product Liability Suits & Alleged Illegal Kickbacks To Doctors. Yet Its Prop. 12 Ads Express Altruistic Concerns About Medical-Malpractice Rates.

Medical-implant maker Medtronic, Inc. will stop at nothing, it seems, to help its doctor pals.

Last week the Minnesota company disclosed a federal probe into allegations that its spinal-implant unit paid illegal kickbacks to physicians who use its medical devices. Yesterday the company took out a big *Austin American-Statesman* ad that plugged Proposition 12, Texas' constitutional amendment that would let lawmakers cap virtually any kind of lawsuit awards.

Cynics might think that Medtronic--which faces a slew of product-liability lawsuits alleging faulty implants--is promoting Prop. 12 out of its own selfish interest in bargain-basement legal damages. Yet the company's ad makes no mention of any narrow self-interests. Instead, the Medtronic ad exclusively promotes Prop. 12 as an way to reduce medical-malpractice insurance rates for doctors.

This would be all the more touching if Medtronic, with $5 billion in annual revenues, did not have a history of stabbing physicians in the back when things get rough. In defending itself from a slew of lawsuits alleging implant flaws, Medtronic frequently argues that doctor error—not product defects—caused a patient's injury or wrongful death. If doctor error causes even a fraction of the injuries that Medtronic has alleged in court, then weeding out bad doctors would be a much more compassionate—and effective—way to control malpractice premiums. Yet Prop. 12's greatest defect is that it is not limited to medical-malpractice damages at all. Instead, it would allow lawmakers to set damage limits on toxic torts, lemon-home claims and product-liability cases.

A big source of Medtronic's liability woes is its aortic stent, AneuRx. A 2002 *U.S. News* expose revealed that Medtronic and a competitor both got 1999 Food and Drug Administration approval to sell stents to prevent aortic artery ruptures. Within two years, hundreds of problems prompted competitor Guidant to recall its stents. Meanwhile, an FDA probe of AneuRx trials cited Medtronic's repeated violations of agency rules, including failing to report ruptures in five patients who tested the stents. A 2001 FDA warning cited 25 AneuRx ruptures as well as leaks, tears and migrations of the device. Houston technology consultant William Anderson, for example, sued Medtronic for having to endure two surgeries after a wire from his broken, migrating stent punctured his artery wall.

Medtronic's recurring defense is to blame any problems on the doctors who installed these devices. Prop.12 would go a long way to letting wealthy people and businesses buy absolution from injuries that they inflict on others. If this happens on Saturday, don't shunt all of the blame on the doctors.•

Note: *Independent Prop. 12 expenditures made in the last week of the campaign need not be disclosed until January 15, 2004.*