MEDICAL DEVICE MANUFACTURERS ASSOCIATION

FOR IMMEDIATE RELEASE

Contact: Mark Leahey
Executive Director
(202) 349-7171

Masimo Verdict a Victory for Patients, Innovation and Hospitals

Washington, D.C., March 24, 2005 – The Medical Device Manufacturers Association (MDMA) today hailed Masimo Corporation's victory this week in its federal antitrust case against Tyco International as "a critical step" in addressing the anticompetitive and other questionable practices by certain dominant manufacturers and hospital group purchasing organizations (GPOs).

In determining that Tyco Healthcare violated antitrust laws related to the sales of its pulse oximetry technology, a federal jury in the Central District of California awarded Masimo $140 million, which was then trebled to $420 million plus attorneys fees. The jury found that Tyco had utilized various anticompetitive practices, including sole-source and high compliance agreements, bundled rebates and co-marketing agreements, to exclude Masimo from the marketplace. Irvine, California-based Masimo, an MDMA member, manufactures and markets pulse oximetry technology that has been highly acclaimed in clinical studies and by physicians and hospitals that have used it.

These exclusionary contracting practices have also been the subject of three Senate Judiciary Antitrust Subcommittee hearings led by Senators Herb Kohl (D-Wis.) and Mike DeWine (R-Ohio). Last October, Senators Kohl and DeWine introduced the Medical Device Competition Act of 2004, which would ensure open and fair access to innovative, cost-effective medical technologies. Several federal and state agencies, including the U. S. Department of Justice, are also investigating these practices.

"This decision is a victory for patients, innovation and the healthcare system as a whole," said MDMA Executive Director Mark Leahey. "Dominant manufacturers should not be able to prevent doctors, nurses and patients from accessing innovative, cost-effective products."

The verdict also represents a victory for hospitals seeking to negotiate contracts with manufacturers. Over the years, GPOs have been accused of facilitating anticompetitive contracts between hospitals and dominant manufacturers in exchange for millions of dollars in "fees" from the manufacturers. Yet GPOs claimed the dominant manufacturers were responsible for the terms of the contracts. "With this verdict, GPOs and their member hospitals will have the legal cover to refuse onerous contracts from dominant suppliers. The result will be a higher quality of care at a lower cost," said Leahey.

Leahey added: "MDMA remains committed to working with Congress, and state and federal agencies to ensure that hospital supply markets stay open, so that competition is restored, costs are reduced, and patients and caregivers get the products they need."

To learn more about MDMA or this issue, visit www.medicaldevices.org or email mleahey@medicaldevices.org.

###

The Medical Device Manufacturers Association (MDMA) seeks to improve the quality of patient care by encouraging the development of new medical technology and fostering the availability of innovative products in the marketplace. A national trade association based in Washington, D.C., MDMA represents thousands of innovators and entrepreneurs in the medical device community, including over 200 members who develop and manufacture medical devices, diagnostic products, and health care information systems.