

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA**

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United States of America,	:	
	:	
Plaintiff,	:	
	:	
v.	:	CR 08-172
	:	
AGA Medical Corporation,	:	
	:	
Defendant.	:	

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**GOVERNMENT’S MOTION TO  
DISMISS CRIMINAL INFORMATION**

Pursuant to Rule 48(a) of the Federal Rules of Criminal Procedure, the United States of America, by and through undersigned counsel, hereby moves to dismiss the criminal information filed in the above-captioned case against the defendant, AGA Medical Corporation (“AGA”).

As grounds therefor, the United States provides the following information:

1. On or about June 3, 2008, the United States filed a two-count criminal information charging AGA with conspiring to violate the Foreign Corrupt Practices Act (“FCPA”), in violation of Title 18, United States Code, Section 371, and a substantive violation of the FCPA, in violation of Title 15 U.S.C. § 78dd-2(a)(1). Dkt. Entry No. 1.
2. On or about the same date, the United States and AGA entered into a three-year deferred prosecution agreement (“DPA”). Dkt. Entry No. 2. The DPA required, among other things, that AGA acknowledge responsibility for the actions of its employees and agents who made corrupt payments in order to secure sales of medical devices to government physicians and hospitals in China. Dkt. Entry No. 2 at 2, and Attachment A at ¶¶ 11 - 29.

As part of the DPA, AGA also agreed to cooperate with the United States, pay a \$2 million penalty, improve its internal controls, policies and procedures regarding compliance with the FCPA, and have its compliance program and procedures reviewed by an independent monitor. Dkt. Entry No. 2 at 5, 6, 8-10.

3. AGA paid the \$2 million penalty on or about June 9, 2008. AGA also met fully its obligation of cooperating with the United States and, in the Department's analysis, during the course of the three-year term of the DPA, improved its internal controls, policies and procedures regarding compliance with the FCPA and other anti-corruption laws.
4. In addition, AGA retained an independent monitor ("the Independent Monitor") to conduct an independent assessment of its internal controls. AGA was required to provide information necessary for the Independent Monitor's assessment of "the effectiveness of AGA's internal controls, record-keeping, and financial reporting policies and procedures" as they relate to AGA's FCPA compliance.
5. On June 9, 2011, the Independent Monitor issued his Final Report, setting forth the results of his review and making additional recommendations as to how the compliance policies and procedures of AGA might be further improved. According to the report, the Independent Monitor was able to conduct a thorough review of AGA's FCPA compliance procedures and infrastructure, FCPA-related internal controls and processes, FCPA training in related areas, previously conducted FCPA-related audits and their methodology, and AGA's current operations at several international sites.
6. The Independent Monitor concluded, in accordance with the requirements of the DPA, that the anti-bribery compliance program of AGA is appropriately designed and

implemented to ensure compliance with the FCPA and other applicable anti-corruption laws. The Independent Monitor suggested certain areas for possible improvements to further reduce risk. AGA implemented certain recommendations of the Independent Monitor during the Independent Monitor's review. AGA and its parent corporation, St. Jude Medical, have agreed to consider the recommendations of the Independent Monitor if appropriate and necessary in connection with future enhancements or changes to its compliance programs.

7. Pursuant to the DPA, if AGA fully complied with all of its obligations under the DPA, the United States agreed not to continue the criminal prosecution against AGA and to move to dismiss the criminal information. Dkt. Entry No. 1.
8. Given that AGA has paid a \$2 million penalty, fully cooperated with the United States, adopted recommendations of the Independent Monitor and met its obligations regarding improving its compliance policies and procedures to ensure compliance with the FCPA and other applicable anti-corruption laws, as certified by the Independent Monitor, and has not otherwise breached the DPA, the United States believes that dismissal is appropriate under the circumstances and pursuant to the agreement of the United States and AGA contained in the DPA.

WHEREFORE, pursuant to Rule 48(a) of the Federal Rules of Criminal Procedure and by leave of Court endorsed hereon, the United States hereby moves to dismiss the criminal information filed in the instant case. A proposed order is attached.

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Respectfully submitted,

DENIS J. McINERNEY  
CHIEF, FRAUD SECTION  
Criminal Division  
United States Department of Justice

DATED: June 30, 2011

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**ORDER TO DISMISS**

Presently pending before this Court is the Government’s June 30, 2011, Motion to Dismiss in the above-captioned case filed pursuant to Rule 48(a) of the Federal Rules of Criminal Procedure. Having carefully considered this request, it is hereby **ORDERED** that the Government’s Motion is granted and the criminal information in the above-captioned case is hereby dismissed with prejudice.

**DONE AND ORDERED** in chambers on July \_\_\_\_, 2011.

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UNITED STATES DISTRICT COURT JUDGE