

IN THE MATTER OF
 ST. MARY MEDICAL CENTER -
 HOBART AND GARY;
 LICENSE NOS.: 13-03459-02
 13-03459-03
 DOCKET NOS.: 030-01616
 030-31370

AFFIDAVIT OF LICENSEES

Comes now Milton Triana, Vice President Operations of Lakeshore Health Systems, Inc. d/b/a St. Mary Medical Center ("Licensees"), and pursuant to 10 C.F.R. 2.790, requests that the United States Nuclear Regulatory Commission ("NRC") maintain as confidential, and withhold from public disclosure, the Final Audit Report and all Appendices thereto ("Report") prepared pursuant to an NRC Order and submitted to the NRC on December 14, 1990. In support of this request, the Licensees state the following:

1. That the Affiant is a Vice President of the Licensees and has administrative responsibility for the brachytherapy program, and related departments, of the Licensees.

2. That the Licensees request that the Report prepared by Ned Hornback, M.D., Richard A. Steeves, M.D., Ph.D., George Anthony Sandison, Ph.D., and Bhudatt R. Paliwal, Ph.D. ("Audit Team") pursuant to the NRC Order dated April 27, 1990, be withheld in whole from public disclosure on the grounds that it contains privileged and confidential information.

3. That the Audit Team is a "peer review committee" under Indiana law and all communications to, the records of, and the determinations of, a peer review committee are confidential and may be disclosed only as permitted or required by law.

IL 11
 MAR 6 1991 *1/6*

4. That the Indiana Peer Review Act, I.C. 34-4-12.6 et seq. establishes a comprehensive state statutory scheme and process that enables the Licensees, and all other Indiana hospitals, to fulfill their common-law duty of exercising due care in selecting and maintaining qualified and competent personnel, procedures, and medical staff members, and as a result, assure citizens of the State of Indiana that medical practices and procedures within the State are being closely monitored and reviewed. The maintenance of the confidentiality of the Report is essential to enable the Licensees, and members of the Licensees' medical staff, to engage in critical self-analysis and thereby fulfill their common-law duties. The disclosure by the NRC of the Report, or any aspect of the Report, would result in a reduction in the ability of the Licensees to fulfill their common-law duties because it would result in a reluctance on the part of knowledgeable persons, and physicians, to freely and openly participate in the peer review process.

5. That Indiana Peer Review Act unequivocally states that no records or determinations of, or communications to, a peer review committee, such as the Audit Team, shall be subject to subpoena or admissible as evidence in any judicial or administrative proceeding. I.C. 34-4-12.6-2(h). The NRC, as an agency of the United States government, should give effect to the laws and judicial decisions of the State of Indiana, and should treat the Report in the same manner as it would be treated by any

WITNESS my hand and Notarial Seal this 4th day of

March, 1991.

Micela G. Pawlowski

Notary Public

Micela G. Pawlowski

Printed

My Commission Expires:

Oct. 4, 1992

My County of Residence:

Porter