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CERTIFICATE OF SERVICE

I hereby certify a copy of the foregoing has been served upon all counsel of record as listed below via Electronic Mail, properly addressed and postage prepaid on this the 2nd day of **September, 2011**:

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20110902000260320 2/4 \$21.00
Shelby Cnty Judge of Probate, AL
09/02/2011 11:35:33 AM FILED/CERT



OF COUNSEL

IN THE CIRCUIT COURT OF SHELBY COUNTY, ALABAMA

W. DAVID LINDSAY, M.D.

Plaintiff,

vs.

**SHELBY BAPTIST MEDICAL
CENTER**

Defendant.

Case No. CV-2010-740



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AFFIDAVIT IN SUPPORT OF RULE 56(f) MOTION

My name is James S. Ward. I am an attorney who has been licensed to practice law in the State of Alabama since 1974. I, along with Sam Maples and Jim Pino, represent W. David Lindsay, MD, the Plaintiff in the above captioned case.

This Motion is made pursuant to, and as required by, Rule 56f of the A.R.C.P. I have personal knowledge of the matters asserted herein.

Shelby Baptist Medical Center takes the position that it is immune from liability and/or certain documents and evidentiary materials crucial to Dr. Lindsay's case are protected and privileged as part of the peer review and/or quality assurance process. Due to Shelby Baptist Medical Center's continued efforts to have the case dismissed, Dr. Lindsay has been unable to take the deposition of either the appropriate representatives of Shelby Baptist Medical Center or its counsel. Just because Shelby Baptist Medical Center claims there was a peer review or quality assurance process and therefore materials generated in connection therewith are privileged does not make it so. Dr. Lindsay should be entitled to depose certain witnesses to determine if, in fact, the peer review or quality assurance process was actually initiated and if so, was it properly initiated. Dr. Lindsay is entitled to conduct discovery through deposition to question and determine whether the matters at issue are even subject to peer review and if so, was the peer review process proper and

afforded him all rights to which he is entitled. The peer review process is not an edict or like a “thumbs up or thumbs down” of a Roman emperor, physicians subject to it are entitled to certain protections and due process. Dr. Lindsay has a right to conduct discovery on those issues.

As Dr. Lindsay’s counsel, it is asserted that conducting the above described discovery through deposition is essential to Dr. Lindsay’s opposition to the pending motion mandating the denial of Shelby Baptist Medical Center’s Motion for Summary Judgment, or alternatively, justifying a continuance so that the above referenced discovery and depositions can be taken.

Further the affiant saith not.

Sworn to and subscribed before me this the 2 day of September, 2011.

Affiant

Notary Public:

My commission expires: 4/25/15

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