

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

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UNITED STATES OF AMERICA,            )  
  )  
                  Plaintiff,            )  
  )  
v.                                        )     No. 04-20017-DV  
  )  
RANDE LAZAR, M.D., d/b/a            )  
OTOLARYNGOLOGY                    )  
CONSULTANTS OF MEMPHIS,            )  
                  Defendant.         )

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ORDER DENYING DEFENDANT'S MOTION  
TO SEAL EXHIBITS (Doc. No. 129)

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Before the court is motion of the defendant, Rande Lazar, filed October 15, 2004, to seal identical exhibits filed in support of the defendant's motion for additional time to make expert disclosures (Doc. No. 54.) and the defendant's response to the government's motion to compel defendant to provide experts (Doc. No. 112.). Lazar seeks to seal the exhibits based on Federal Rule of Evidence 410. The government's response to defendant's motion to seal and memorandum of law was filed October 22, 2004. The motion was referred to the United States Magistrate Judge for determination.

After a search of the record, the court is unable to find the identical exhibits claimed to have been filed by Lazar separately in support of both his motion for additional time to make expert

disclosures and his response to the government's motion to compel defendant to provide experts. Nor do the exhibits appear to have been docketed in this matter. Therefore, because the exhibits are not of record, there is no reason to order the exhibits be sealed.

The question of whether the exhibits would be admissible into evidence is a matter to be determined at trial. Federal Rule of Evidence 410, regarding inadmissibility of pleas, plea discussions, and related statements, is an evidentiary rule applying to the trial setting. It is at trial where arguments about the proper use of plea negotiation statements to impeach the defendant are applicable. The court may allow evidence of pleas and plea statements for the purpose of "enhanc[ing] the truth-seeking function of trials." *United States v. Mezzanatto*, 513 U.S. 196, 204 (1995).

If, rather than placing the exhibits under seal, the defendant is actually seeking to keep the government from using the exhibits at trial, the defendant can file a motion for a protective order or a motion in limine. As currently requested, however, defendant's motion to seal exhibits is denied without prejudice.

IT IS SO ORDERED this 2nd day of November, 2004.

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DIANE K. VESCOVO  
UNITED STATES MAGISTRATE JUDGE