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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

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9 Saguaro Medical Associates, P.C., an )  
10 Arizona professional corporation; and )  
Rakesh Malhotra, M.D., )

No. CV-08-1386 PHX-DGC

11 Plaintiffs, )

**ORDER**

12 vs. )

13 Banner Health, an Arizona corporation, )  
14 d/b/a Banner Thunderbird Medical )  
Center, )

15 Defendant. )  
16 \_\_\_\_\_ )

17 On August 3, 2009, Defendant Banner Health moved to intervene in an unrelated case,  
18 *AAA Arizona, Inc. v. American Commerce Insurance Co.*, CV 05-1426-PHX-SMM, to gain  
19 access to sealed documents that it hoped to use to impeach Plaintiffs’ expert witness in this  
20 case. *See* CV 05-1426-PHX-SMM, Dkt. #217. Judge McNamee denied the request, stating  
21 that “[d]iscovery in the underlying case before Judge Campbell is over pursuant to the Case  
22 Management Order” and that “[a]ny request to intervene to obtain the expert reports and  
23 deposition testimony of Dr. Clarke should have occurred during the designated discovery  
24 period.” CV 05-1426-PHX-SMM, Dkt. #228 at 2-3. Judge McNamee further stated that  
25 “Banner Health had knowledge while discovery was still ongoing that Dr. Clarke was  
26 retained as an expert by the opposing side” and that it had “sufficient time” to conduct  
27 discovery on this issue before the discovery deadline passed. *Id.* at 3. Judge McNamee  
28 stated, however, that if Judge Campbell decided “that the requested information is

1 discoverable at this stage in the proceedings,” the Court would unseal the reports. *Id.* at 3.  
2 Banner Health now asks this Court to enter an order stating that “the release of these  
3 documents would not violate any order of this Court.” Dkt. #135. The Court will deny this  
4 request.

5 The discovery deadline in this case has long since passed, the Court has ruled on  
6 dispositive motions, and motions *in limine* have been filed. A final pretrial conference will  
7 be held next week. Banner Health knew as of April 17, 2009 that Dr. Clarke would serve as  
8 an expert for Plaintiffs, yet waited almost four months to request the sealed documents from  
9 Judge McNamee. Dkt. #85. After obtaining Judge McNamee’s order of November 5, 2009,  
10 Banner Health waited another month before filing this request. The discovery period is  
11 closed.

12 **IT IS ORDERED** that Banner Health’s request for access to sealed documents  
13 (Dkt. #135) is **denied**.

14 DATED this 22nd day of January, 2010.

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19 David G. Campbell  
20 United States District Judge  
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