IN THE SUPREME COURT OF
THE STATE OF NEVADA

COPY

KEITH MATHAHS, S.Ct. No._____

Petitioner,

vs.

HONORABLE VALERIE ADAIR,
EIGHTH JUDICIAL DISTRICT COURT JUDGE,

Respondent
_____/

STATE OF NEVADA,

Real Party in Interest
_____/

APPENDIX

VOLUME 2

IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS

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CERTIFICATE OF SERVICE

The undersigned, an employee of Gordon Silver, hereby certifies that on the 20th day of July, 2012, she served a copy of Defendant, Mathaths' Appendix, Volume 2, in Support of Petition for Writ of Mandamus, by placing said copy in an envelope addressed as follows:

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

BEFORE THE GRAND JURY IMPANELED BY THE AFORESAID DISTRICT COURT

THE STATE OF NEVADA,

Plaintiff,

vs.

DIPAK KANTILAL DESAI, RONALD ERNEST LAKEMAN, KEITH H. MATHAHS,

Defendants.

COPY

No. 09BGJ049ABC

C245107

Taken at Las Vegas, Nevada

Thursday, March 11, 2010

8:33 a.m.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

VOLUME 1

Reported by: Danette L. Antonacci, C.C.R. No. 222

GRAND JURORS PRESENT ON MARCH 11, 2010

PAM YOUNG, Foreperson
JOSEPH WILLOUGHBY, Deputy Foreperson
LOUISE ZUNIGA, Secretary
SHELLEY SALAMANOUFOULUS, Assistant Secretary
SVEN BRADLEY
CONSTANCE CABILES
LISA CAMP
CHRISTINE LYONAIS
AGNES PARKER
YOLANDA PARKER
BIANCA ROBERSON
BOB ROSE
STEVE SHLIKER
ALICE SZURAN
MICHAEL THOMPSON
TOM UHRHAN
ANNE ZARATE

FILED

JUN 08 2010

CLERK OF COURT

Also present at the request of the Grand Jury:
Michael Staudaher & Scott Mitchell,
Deputy District Attorneys

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EXAMINATION

BY MR. MITCHELL:

Q. Sir, what is your profession?

A. I am a medical doctor, a gastroenterologist.

Q. Would you please outline your professional background as far as your academic —

A. Academic background, I attended Rio Grande City High School in Rio Grande City, Texas. I graduated in 1972. I thereafter attended the University of Texas at Austin in Austin, Texas. I graduated in 1976 with a B.A. in zoology. Thereafter I went to Southwestern Medical School in Dallas, Texas, and that was from 1976 to 1980. I graduated with a medical degree. I did a one year internship in internal medicine at St. Paul Medical Center in Dallas, Texas. I did a two year residency in internal medicine at St. Paul Medical Center in Dallas, Texas, that ended in 1983. I did a two year fellowship in gastroenterology at Maricopa Medical Center in Phoenix, Arizona from 1983 to 1985.

Q. Thank you. So your specialty as a medical doctor is what?

A. Gastroenterology.

Q. How long have you been practicing in Las

Vegas?

A. I came to Las Vegas in 1985 at the conclusion of my training and I have been in Las Vegas since that time.

Q. Now before we get into anything more about your medical practice, you have been granted immunity in this matter in order to testify for the State; is that right?

A. That's my understanding, yes.

Q. And so there is an agreement between you and our office that you are not going to be prosecuted in this matter in which you're testifying; is that right?

A. Yes, that is correct.

Q. And your only obligation under this agreement is to tell the truth in your testimony; is that right?

A. Yes.

Q. Okay. Now the experience you got when you came to Las Vegas, you set up your practice here and this is where you've practiced medicine ever since you got out of medical school and finished your residency?

A. Yes, this is where I've been all along.

Q. Did you meet a Dr. Dipak Desai at some point?

A. Yes, I did.

Q. When was that?

A. It was in the 1980s. It was, initially I met him at an Indian restaurant in about 1987. I had gone there to have dinner and someone paid for my meal, I asked the waiter who had paid for it and he pointed out Dr. Desai and I went over and said thank you to him. When I initially came to Las Vegas I worked with Physicians Medical Center, Dr. Sol Sobol, Dr. Frank Nemec was a gastroenterologist affiliated with that group and I was working with Dr. Nemec out of his office. Dr. Nemec left that practice I believe in 1987 and he joined Dr. Desai's practice and after a period of time Dr. Nemec called me and invited me to come interview with them for an employment opportunity and I did meet Dr. Desai again at that point.

Q. Okay. Eventually did you go to work for Dr. Desai?

A. Yes, I was an employee physician for a period of time.

Q. Did that relationship, that professional relationship as an employee physician change at some point?

A. Yes, I became a partner in the practice in about 1990, 1991.

Q. Okay. And up through 2007 did you remain in that capacity as a partner in the practice with Dr. Desai?

A. I remained a partner in that practice, however my role was diminished at the end of 2006 where I was made percentage wise in terms of the profit and loss of the business less of a partner. And that had to do with withdrawal from night call responsibilities, that's what that coincided with.

Q. Okay. So when you decided at the end of '06 not to be on call for night availability then your percentage take in the partnership was diminished somewhat?

A. Yes, it went from 10 percent to 6.4 percent.

Q. Whose decision was that?

A. That was Dr. Desai's.

Q. From the very beginning through the time that you no longer worked with Desai was he over you in that you were subordinate to him in some way?

A. Yes, he was the managing partner for all the businesses affiliated with Gastroenterology Center of Nevada, so of course Gastro Center, and he was the boss, everyone else was subordinate to him.

Q. Okay. I'm going to ask you a little bit

about that business entity that you worked for. What was the name of the business that you first came to work for? And explain if it changed at some point and how many businesses were owned and run by Desai.

A. Gastroenterology Center is the business I came to work for. There were multiple revisions over the years of the Gastroenterology Center and of course that was over a 20 year period of time. That had to do with new doctors coming into the practice in part, also it had to do with efforts that Desai made in order to protect his position as the manager of the business. There were other businesses, specifically there was an Endoscopy Center of Nevada in the 1990s, it went through until 2002. At that time the Endoscopy Center of Nevada was closed and it was supplanted by the Endoscopy Center of Southern Nevada. There was an Endoscopy Center of Southern Nevada 2, also known as the Desert Shadow Endoscopy Center. That was located on Burnham. I don't know the exact dates on that one but it was from about 2000 to about 2008. Also there was a new center on Oquendo and Rainbow that had been started I believe in 2006, 2007, and that one never really got going because it was closed down shortly after it was started. I don't know much about that one because I was never involved in that one. Also there was a business that

was being set up at Centennial Hospital by Dr. Desai and a couple of the other doctors. I don't think that one ever got off the ground either but that was supposed to be a business that would provide hospitalists to Centennial Hospital, in other words doctors who would take care of patients at that facility. That one practice would have been outside the realm of gastroenterology. Dr. Desai was involved in many other ventures, real estate ventures being prominent among those.

Q. Okay.

A. And I can tell you the names of some of those.

Q. That's fine.

A. Okay.

Q. Now the business entity where you did most of your work up through 2007, what was that one; is that the Endoscopy Center of Southern Nevada?

A. There were two. I did patient consultation and follow-up at the Gastroenterology Center of Nevada, I did endoscopic procedures at the Endoscopy Center of Southern Nevada.

Q. Those both are located in Clark County?

A. Both are at 700 Shadow Lane. Gastro was Suite 105A, Endo was Suite 165B.

Q. Okay. Now explain what gastroenterology is.

A. It is the treatment, diagnosis and treatment of diseases of the gastrointestinal or digestive track.

Q. Okay. And when you do the actual procedure what is it? What are those procedures that you do? Explain what your physical action is in doing one of those procedures.

A. We do endoscopic exams. An endoscope is an instrument that has a fiber bundle within it, it's flexible and it's covered with an impermeable sheath. At the end of it is a video chip which basically functions as a camera. The back end of the endoscope plugs into a computer processer which recreates an image and colorizes it and displays it on a television monitor and what we do is examine the upper gastrointestinal tract, to do that we would pass a scope through the mouth to look at the esophagus, the stomach, the first part of the small intestine, duodenum. We also do colonoscopies where a different instrument but similar design is passed through the rectum and throughout the large bowel to examine it. If we find abnormalities we can take tissue samples, biopsies, if we find polyps generally we can remove them right through the scope at

the time of the procedure.

Q. Okay. Is there some sort of mechanism that's part of this instrument that you're using that can actually snatch tissue when you identify something that you want to test or look at?

A. Yes, there is. It is called the channel of the endoscope and basically it is a hollowed channel that runs the entire length of the instrument. Through that channel you can pass a long biopsy forcep, the forcep is actually a long wire with a pinch mechanism at the end of it and a handle on the back end which activates the pinchers to open or close, or you can pass a snare, a snare is a wire device that's sheathed in plastic, it's passed through the channels -- the end of the, at the end of the device, the snare can be protruded, it forms a small lasso and you can use that to grasp polyps, you then pass an electrical current through that wire device in order to cut and coagulate tissue.

Q. Okay. And this is your specialty, right?

A. Yes, that is correct.

Q. Okay. Now when somebody receives an endoscopy procedure or a colonoscopy procedure, are they sedated?

A. Yes, they are sedated.

Q. And if you were to place an average time on what it takes you to do a colonoscopy, let's say an unremarkable colonoscopy, what would you say is your average time to do that procedure?

A. At least 20 minutes.

Q. And explain what portion of it takes what amount of time and, you know, what you do at the beginning of it and what you do at the end.

A. Specific to colonoscopy, initially interview the patient and examine them and look at their medical history, they are then sedated by the anesthetist or anesthesiologist, the colonoscope is passed through the rectum into the large intestine.

Q. That's done by you —

A. Yes, that's correct.

Q. — that part right there?

A. It takes a variable length of time to accomplish that because there are multiple factors that come into play: The quality of the bowel preparation, some people do clean their bowels out very well, others are pretty cavalier about it; the anatomy of the large intestine itself, some people have a lot more bowel than others, their bowels are longer, they may have a lot of bends or turns in the bowel and there may be other complicating factors. Once the end of the bowel is

reached then the scope is withdrawn carefully looking for any lesions that might be present within the bowel. Any abnormalities are then treated either by biopsy for diagnosis or in the case of a polyp which is amenable to removal with a snare, removal of the polyp and recovery of the tissue for analysis.

Q. Okay. When you're inserting the scope into the bowel are you watching the procedure on the monitor, the TV monitor as you're doing that?

A. Yes. You're pretty much fixated on the monitor the whole time. The reason for that being that you have to be very careful about advancing or withdrawing the scope because of the risk of bowel perforation. It's not difficult to push a scope through the bowel wall so you have to maintain constant surveillance in order to prevent that from happening or to lessen that risk. Also you're looking for any lesions that might be there, you don't want to miss something. From time to time, at least my routine, my practice was to look at the patient and see how they were doing and to look at the vital sign monitors and they would typically be hooked up to an EKG monitor that tells you about the heart rate, they would be hooked up to a pulse oximeter that tells you the oxygen content of the blood.

Q. Now during this procedure that you're following where you're watching closely the monitor you've got somebody by you that's assisting you doing something else; is that correct?

A. Yes, a technician.

Q. Okay. What is the technician doing?

A. They do several things. When a third hand is needed they will be called upon to hold a scope while I manipulate the instrument. The instrument has two wheels, an up and down control and a right and left control. That is one way of controlling the direction that the tip of the instrument is deflected. Another is by torquing the shaft of the instrument either right or left. Sometimes two hands is not sufficient to accomplish the control necessary and the technician would be called upon to hold the scope in a stable position. Also when it is necessary to do a biopsy or some other therapeutic intervention such as a polypectomy they would be called upon to get the equipment necessary for that procedure. So what they will do is they will pick it up, hand the end of the polypectomy snare device or hand the end of the biopsy device to the operator, to the doctor, who would then pass it down the channel of the scope. They may be asked to withdraw the device once it has been used,

although sometimes the doctor does that, sometimes the technician will do that.

Q. Now while all these things are happening to the patient is the patient aware of any of this?

A. Theoretically no, they're asleep.

Q. And who is monitoring the sedation aspect of the patient while you're doing your procedure?

A. Yes. The anesthetist or the anesthesiologist.

Q. What is the difference there?

A. An anesthetist is a nurse, a registered nurse with advanced training and registered nurses with advanced training would be nurse practitioners or CRNAs depending on what they do. Nurse practitioners deal more with clinical medicine, treating patients, whereas a CRNA specializes in anesthesia services, or an anesthesiologist of course.

Q. And a CRNA, that stands for?

A. Certified registered nurse anesthetist.

Q. How much training and, specialized training does a CRNA have?

A. I don't know exactly. I would think about two years or so after nursing school.

Q. Okay. So would that mean they have typically a bachelor's degree in nursing and then two

years of specialized training?
A. I believe you get a bachelor of science degree in nursing and then you get an advanced nursing degree.
Q. So they would have maybe the equivalent of what we would call a master's degree because it's two years beyond a college degree?
A. I think that's fair enough to say.
Q. Okay. An anesthesiologist in turn is what?
A. An anesthesiologist is a medical doctor or a DO. They would have gone through four years of medical school and then they would have done a residency in anesthesiology, typically about three years.
Q. Okay. So whether it's a CRNA, certified registered nurse anesthetist, or an anesthesiologist with an actual medical degree, they are considered specialists both of which can do the sedation aspect of this procedure while you're doing your thing?
A. Yes.
Q. Now working there at the Endoscopy Center of Southern Nevada, did you -- who ran the Endoscopy Center of Southern Nevada?
A. Dr. Desai was the medical director.
Q. Okay. Did he share authority with anybody or was he pretty much the sole person in charge?

A. No, he was the person in charge.
Q. All right. And did he employ anesthesiologists or CRNAs to do the sedation aspect of these procedures while you did, while the doctors did the actual colonoscopy or endoscopy?
A. He employed and supervised the CRNAs.
Q. Okay. When you say that he supervised the CRNAs, to what extent did he supervise them?
A. He would employ them, he would meet with them and review their procedures and obviously at times he was present in the clinic and looking at the operation to see how it functioned.
Q. Was Dr. Desai a gastroenterologist himself?
A. Yes, he is a gastroenterologist.
Q. So he did procedures there at the Endoscopy Center of Southern Nevada as well?
A. Yes, he did.
Q. So the extent of his supervision would consist of doing procedures in the presence of a CRNA and then meeting with them in meetings where he would instruct them or do whatever he did; is that right?
A. Yes, that is correct.
Q. Were you ever in these meetings that Dr. Desai would have with CRNAs?
A. No.

Q. So were you ever in charge of supervising the CRNAs or instructing them on procedures that you wanted them to follow generally as part of the clinics?
A. No, that was a role that Dr. Desai played.
Q. During the time that you were doing a procedure is the CRNA there during the entire time that you are there?
A. Yes. Well, they sometimes precede me into the room. Sometimes I'll get there before they get there. So there may be initially a period of time where one or the other is in the room but not both simultaneously. But as the procedure is starting and throughout the duration of the procedure, yes, both are in the room.
Q. Okay. Now even though you're not in charge of the CRNAs, not supervising them, can you explain what it is they do from start to finish in a typical procedure?
A. Yes. They interview the patient, they ask pertinent medical, they ask questions pertinent to the medical history as far as what their concerns are, they prepare the medications to be administered to the medication, they may or may not start an IV access at that time, it's possible it would have been started in the pre-op area, if not then the CRNA will start the IV,

they administer medication to sedate the patient and they inform the doctor of when the patient is adequately sedated so that the procedure may commence, they monitor the patient throughout the procedure, in particular they monitor the vital signs and overall patient status.
Q. And I'm going to ask you to back up a little bit. You mentioned that they may start the IV or it may be started by somebody else in the pre-op area?
A. Yes. Generally they were started in the pre-op area but every now and then a patient would get back to the procedure room and didn't have an IV because it hadn't been started in the pre-op area or because it was a difficult stick and the CRNA might have more facility with starting an IV so that would be the situation where that would occur.
Q. Would it ever be somebody else who started the IV?
A. Yes, generally a nurse would have started it in the pre-op area.
Q. Okay. Now the purpose of the IV is to facilitate the actual sedative going into the body to put the person under?
A. Yes. The IV, and actually it was an intravenous catheter, not fluids running through it, but the purpose of the intravenous catheter was to allow

Q. What about the bite blocks?
A. Bite blocks also come in reusable and disposable varieties.
Q. Okay. If you reuse it do you sanitize it somehow before it's reused?
A. Yes.
Q. How is that done?
A. It must be manually cleaned and then it is treated with a disinfecting solution.
Q. Okay. And if it's not that kind that can be reused it's just thrown in the trash?
A. They were on occasion reused at the Endoscopy of Southern Nevada.
Q. Even the kind that were not supposed to be?
A. That's correct.
Q. Was that with your approval or somebody else's?
A. That was Dr. Desai's instruction. That occurred for a period of time. Dr. Carrol was very upset about the reuse of these as were the other doctors. Dr. Carrol took it up with Dr. Desai and the practice stopped.
Q. You became aware of the practice after the fact or were you aware it was going on during that?
A. I was aware it was going on. None of us

were happy about it and Dr. Carrol put a stop to it.
Q. Even when disposable items were being reused were they being cleaned in some way before they were reused or what was the practice that Dr. Carrol objected to so much?
A. The reuse of the bite blocks because even though it's not a risky thing my understanding of FDA regulations is that if a medical device does not invade the body tissue such as a bite block of course, it's not actually piercing the skin or the surfaces of the gastrointestinal track, it may be cleaned, sterilized and reused if necessary. Generally though it's not a practice that is carried, that is followed in the community and they are generally disposed of immediately after use.
Q. Were you ever aware as a doctor any policy or practice of reusing propofol vials for more than one patient?
A. No.
Q. If you had been aware that that was happening would you have voiced an objection?
A. I would have reported it.
Q. And to whom would you have reported it?
A. I would have reported it to management, to Dr. Desai, and if necessary I would have reported it to

the Health District.
Q. Okay. And why would you do that in my hypothetical?
A. Hypothetically because it is a practice that puts patients at risk.
Q. All right. And the risk that they are exposed to because of that practice would be what?
A. Primarily infection.
Q. Okay. If you were aware that syringes were being reused for more than one patient what would have been your reaction?
A. If I were aware of the fact that syringes were being used in an inappropriate fashion, that means anything not consistent with aseptic technique, I would have talked to the individual about stopping that activity, whoever it may have been, that was engaging in it and I would have reported it to management of the facility.
Q. Were you ever, during the time you were working at the Endoscopy Center of Southern Nevada, aware that syringes were being reused for more than one patient?
A. No, I was not.
Q. And the risk of reuse of syringes, would that be the same risk that reuse of propofol vials would

entail?
A. Both could result in a similar outcome and that would be an infection being passed from one patient to a subsequent patient.
Q. Okay. You mentioned that while the procedure is going on that a CRNA is keeping a record of something, that they're writing something down. What is it that they're writing down during a procedure?
A. An anesthesia record and what an anesthesia record documents is vital signs so there is a documentation of patient status prior to, during and immediately after the procedure. Sometimes that's extended out into the recovery area. They would also document administration of medication, times and quantities of medication administered.
Q. Would they also keep track of how long the procedure lasted from start to finish?
A. They keep an anesthesia time and that is the time that they start interacting with the patient to the time that they end their interaction with the patient.
Q. Okay.
A. I don't know that they would specifically note the actual procedure itself. Although sometimes I suppose they do procedure started, procedure ended might

be noted on a chart.
Q. But primarily they are charting their own interaction with the patient?
A. Their own time, yes.
Q. When they start interviewing them to the time that they leave their side to come back to the procedure room?
A. Yes.
Q. Okay. And if anything irregular happens they need to write that down; is that right?
A. Yes, they do.
Q. If somebody's blood pressure spikes or if their heart rate spikes or anything like that, that needs to be noted by the CRNA?
A. Yes.
Q. Why is it important to keep an accurate record even after the fact of how a patient reacted to the propofol and the sedation during the procedure, how is that information used?
A. I'm not sure I understand your question.
Q. Okay. Let me give you a hypothetical. If somebody is coming in to receive say a colonoscopy —
A. Uh-huh.
Q. — but they have already had a colonoscopy in the past, would the record kept by the CRNA ever be

consulted of the prior colonoscopy in doing the subsequent colonoscopy?
A. If it were available, yes, but they would look for things like drug allergies, they would like to see what medications and what quantity of medication had been administered previously, they would want to know if there had been any adverse reaction to the medications that were used, obviously if there were they might pick a different agent.
Q. Okay. So would it be fair to say that it is extremely important to keep accurate records of how the patient reacted to the propofol or whatever was used?
A. Yes.
Q. In fact it is medical information about that own patient's tolerance to propofol; is that right?
A. To propofol or whatever anesthetic agent or whatever medication was employed, yes.
Q. Okay. Given that fact would it be ever consistent with good medical practice to pre-fill out a chart by the CRNA before the procedure actually took place?
A. Certain information might be entered ahead of time, for example known drug allergies would be entered, patient age, indication for the procedure,

things of that nature can be entered ahead of time and typically are.
Q. But vital signs?
A. Vital signs, you record an initial set of vital signs, vital signs through the procedure and ending, and recovery vital signs.
Q. Okay. So none of these things could be filled out on a chart ahead of time, nothing like that?
A. You would have no way of knowing what somebody's blood pressure would be in the future so no you wouldn't fill that in ahead of time.
Q. And what if the rationale for doing such a thing was used that it saves time to fill out the vital signs ahead of time, would that be a good reason to do it?
A. No.
Q. And the danger to the patient in doing it would be what?
A. Well, you're obviously putting misleading information or incorrect information on the chart.
Q. Okay. Information upon which a subsequent doctor may be relying on?
A. Yes.
Q. Now when you worked at the Endoscopy Center during the years that you've testified to, did the

Endoscopy Center typically handle what you would characterize as a large case load, medium size case load, small case load?
A. It was a very heavy case load.
Q. Okay. And what does that mean in terms of raw numbers? How many patients say would the center see in a typical day?
A. Somewhere between 60 to 70, 70 being an especially busy day.
Q. And is that actual number of patients receiving a procedure, an endoscopy or colonoscopy?
A. Yes.
Q. So that's one place handling 60 to 70 people that are all going through the procedure that you already described?
A. Yes.
Q. And you know that that is heavy in comparison with others, with other like centers in town or nationwide or what are you comparing to?
A. I compare that to what a person can do comfortably and do well. There were some issues, for example Dr. Desai would insist on scheduling the first four patients at 7:00 a.m. and that immediately would cause a backlog because there were only two procedure rooms so there would only be two 7:00 a.m. patients you

could treat at that time, the other two would have to sit and wait. I would say that the volume was probably pushing people to their limit in terms of what they could do.

Q. Were you in favor of lessening the patient load?

A. Yes.

Q. Did you ever express that to Dr. Desai during the time you worked?

A. Yes. And it also carried over into the gastroenterology side too because I would be given say four hours to see patients and I would be overbooked. Many times I would go to Audrey who was Tonya Rushing's assistance and who oversaw the office downstairs and I would say Audrey, listen 15, 16, 17 patients I can do in four hours but more than that is not, Audrey would make adjustments in my schedule to limit it to those numbers and then Dr. Desai would at some point come down, talk to the secretaries individually and ask them to add more patients on because he didn't think those numbers were adequate.

Q. And to back up, you mentioned a Tonya Rushing. Who was Tonya Rushing?

A. Tonya was listed as the chief operations officer. She was an employee of Dr. Desai and the

Gastroenterology Center of Nevada. She was in charge of human resources, management, in other words looking after the employees, making sure they were doing their job as needed. She was also in charge of billing, and by that I mean processing billings that were submitted to her. So she basically had several groups of people, she had the people on the fourth floor of the 700 building who did the billing, there were the clinical people on the first floor who did patient intake, took down insurance information, collected copays, showed the patients back, took their vital signs, those would be medical assistants, there were the people in the Endoscopy Center who would submit their billings, those of course would go to the fourth floor for processing.

Q. Okay. So all these people were supervised by Tonya Rushing?

A. By Tonya Rushing and by Audrey, and I'm blanking on Audrey's last name. Audrey was her assistant, but Audrey only looked at the front desk to make sure the secretaries were doing what they were supposed to be doing there.

Q. Tonya Rushing not a doctor herself?

A. No, she's not a clinical person.

Q. Okay. And whom did she answer to?

A. Dr. Desai.

Q. Okay. Did he have complete authority over her?

A. Yes, he did.

Q. How would you characterize the way he used her as a subordinate?

A. I think he was a bit overbearing, at times he was inappropriate, he would refer to her as the RB or the Royal Bitch, I don't know why, he would use her to help organize social events such as his daughter's wedding reception, such as political fundraisers, which was probably outside the realm of her job description, so he used her to accomplish just about every task that was necessary and I know she worked very long hours.

Q. Did she have to do uncomfortable things aside from the ones you've already —

A. Yes. Whenever someone needed to be fired from the business, an employee, even though that decision would have been made by Dr. Desai, he would have Tonya do that for him.

Q. Now you mentioned that Dr. Desai would come down and give you more patients after you had already arranged to have less because he said that they, that the number that you had gotten lessened was inadequate. What did inadequate mean?

A. He was very focused on productivity of

individual physicians.

Q. And why did productivity benefit him or why did he care about that?

A. Because of the bottom line, the income to the practice.

Q. So was that an emphasis of his was maximizing the profits of the —

A. He was very concerned with that, yes.

Q. Okay. Is that the justification that was used for the heavy patient load?

A. I would say yes. Obviously you know patients do need to be seen but he based that on physician productivity.

Q. Okay. Did he express his desire to see as many patients as possible?

A. Yes, many times.

Q. Okay. And what would be the setting in which he would express this wish?

A. Oh, he would stop me, an individual doctor, and say look, you're not seeing enough patients, you need to add more to your schedule.

Q. Okay.

A. In terms of the endoscopic procedures very frequently he would berate me for being too slow in doing procedures, he would tell me that I needed to pick

up my speed in terms of doing procedures. He also equated self-confidence with speed telling me that if I wasn't doing procedures as fast as he was or as fast as someone else was that there was a problem with my self-confidence and that I needed to work on that.

Q. Okay. When he would criticize you in that way would that alter the way you did your job?

A. No, I told him I would take as long as necessary to do a procedure completely and safely. And the same was true for patient consultation.

Q. Okay. The danger in seeing too many patients in a day was what to you, why would you resist his --

A. Because you might miss something that would be important to the welfare of a particular patient by not spending enough time taking a history, by not spending enough time doing a procedure.

Q. Okay. Did your reaction to Dr. Desai's urging to go faster, did it end up being reflected in the amount of money you were paid?

A. I know he paid bonuses to some doctors and I don't know what the rationale for that was but I do believe it did affect it to some extent.

Q. And what was the effect on you?

A. The effect was I took home less money than

say for example doctors who were receiving bonuses or doctors who had a larger percentage of the Gastro Center ownership.

Q. Were these decisions on how much money you made and how much money other doctors made solely decisions of Dr. Desai?

A. Yes.

Q. Now did the dynamic that you described strain your relationship with Dr. Desai?

A. Yes, it did.

Q. Was it a problem that was ongoing over a number of years?

A. Yes, it was.

Q. Would he mention your slowness in doing procedures in front of other doctors?

A. Yes, he did.

Q. On how many occasions?

A. More than one, multiple occasions.

Q. You've mentioned that you would not be in the meetings that Dr. Desai would have with the CRNAs so you didn't know what he would say to them. But did you ever become indirectly aware of instructions that appeared to have been given to them by him that you didn't agree with?

A. Yes. There was one occasion where I was

doing a procedure on a patient, the CRNA was Ronald Lakeman, I went through the usual sequence of events, monitor, looking at the patient, looking at the vital signs, and it seemed to me the patient was uncomfortable. I asked Ron, Mr. Lakeman, if it were possible, if it were safe to give the patient more medication and he said yes, and I said well could we please give the patient more medication, and he said that Dr. Desai didn't want them giving more than 200 milligrams of propofol to the patients. And so I said to him Ron, it doesn't matter what Dr. Desai wants, do what's right for the patient. And he did, he gave the patient more medication at that point.

Q. But he was refraining from giving him more prior to that because of what he reported to be Dr. Desai's instructions?

A. Yes.

Q. Okay. The name Ronald Lakeman that you mentioned just now, he is a CRNA?

A. He is a CRNA.

Q. Are you familiar with a Keith Mathahs?

A. Yes, he's a CRNA also.

Q. Okay. So if the proposed Indictment in this matter has Dr. Desai's name and Keith Mathahs and Ronald Lakeman, that's one doctor and two CRNAs; is that

right?

A. Yes, that is correct.

Q. Okay. Did you work with those CRNAs during your time at the Endoscopy Center of Southern Nevada?

A. Yes, I worked with both of them as well as others.

Q. All right. With respect to what other doctors are doing while you're working, are you able to tell what other doctors are doing when you're doing a procedure yourself?

A. When I'm physically in the procedure room?

Q. Right.

A. No, I don't know what's happening outside the procedure room.

Q. All right. And there are two procedure rooms?

A. Yes.

Q. So typically when you were doing a procedure would there be another doctor in another procedure room --

A. Yes.

Q. -- doing their own procedure?

All right. And that would go the same way as you described it went with you, the other doctor has a CRNA with them and a tech?

A. Yes, an identical set up.
Q. Okay. So if you're slower or faster than anybody else you wouldn't necessarily know it; is that right?
A. It was brought to my attention multiple times.
Q. Okay. And Dr. Desai would tell you that you were slower than other people?
A. Yes.
Q. Did the Endoscopy Center of Southern Nevada make a lot of money?
A. Yes.
Q. Were you aware of any other methods that were suggested by Dr. Desai to enhance the bottom line, the profit margin of the Endoscopy Center?
A. Yes. At a meeting in 2007 he discussed limiting use of propofol in order to do two things, enhance patient, or shorten I should say, patient turnover time because they wouldn't be sleepy for quite as long and also the fact that less propofol would be used resulting in a net savings.
Q. Is propofol expensive?
A. Not in my opinion.
Q. Okay. Did it appear that he thought it was too expensive?

A. Very much so.
Q. So during this meeting who else was present when he urged the using of less propofol and the hastening of procedures themselves?
A. It was a general meeting where all the doctors who were affiliated with the group were present.
Q. Okay. When he expressed those opinions or that directive or whatever you would characterize it as did you follow his instruction or his urging to use less propofol?
A. No. And case in point being that one particular case where Mr. Lakeman had said enough and that's our directive, and I said no, that's not acceptable.
Q. Okay. Did it surprise you that Dr. Desai said in a meeting that he actually wanted to use less propofol?
A. No, because he was a skinflint, he was very stingy.
Q. Did you observe the reactions of other doctors at the time when he said that?
A. Not that I recall but I'm sure most of them didn't think a lot of that suggestion.
Q. Did he suggest an alternative to using as much propofol as had been --

A. Yes, he said that a strategy had been recommended to him by Dr. Nayyar, Dr. Nayyar was a doctor who worked with the group, Dr. Nayyar would treat patients at the VA, sometimes during the procedure apparently patients would be awake enough to request additional medication and rather than give them more propofol the anesthetist or anesthesiologist would give them saline and Dr. Desai suggested that that was something that would be, that could save the practice a lot of money and he held Dr. Nayyar up as an example of someone who was working to improve the profitability of the practice.
Q. Now he was quoting Dr. Nayyar at this meeting but Dr. Nayyar did not say this?
A. No, Dr. Nayyar did not say that, that was a quote attributed to Dr. Nayyar by Dr. Desai.
Q. So he was recommending this supposedly efficient VA practice of using saline instead of propofol?
A. Yes.
Q. And saline is not a pain killer; is that correct?
A. No, not at all, it's salt water if you will matched to the body's chemical composition, but not a pain killer, definitely not.

Q. Okay. So saline could never accomplish the same thing as propofol?
A. No.
MR. MITCHELL: Just a moment.
We'll take a break now I believe.
THE FOREPERSON: Fifteen minute break.
(Recess.)
MR. MITCHELL: Back on the record.
We should make it a matter of record that since Dr. Carrol has been testifying he's had the accompaniment of Tom Pitaro his lawyer sitting next to him in the proceedings and Tom Pitaro has been present throughout, as well as Mike Staudaher of the District Attorney's office with me.
Q. Dr. Carrol, you mentioned the scheduling and how that was under the control of Dr. Desai. When he would talk to you about shortening your procedures would he give you a suggested time how long he thought they should take?
A. No, he didn't give a specific parameter.
Q. Were there others that had authority to do something in Dr. Desai's absence?
A. Theoretically Dr. Carrol, who was the non-operations manager of the Endoscopy Center of Southern Nevada as opposed to Dr. Desai who was the

A. Dipak Desai.
Q. Dipak Desai. Okay. At this meeting that you attended was Dipak Desai there?
A. Yes, he was.
Q. And did it appear to you that he was fully in charge even though he had this —
A. Yes, he was.
Q. Okay. As far as you could see did any other members of that executive committee exercise any power or authority?
A. No one had any constructive power.
Q. Okay. Now was there a time when Dr. Desai claimed to be physically disabled in some way and unable to run the Endoscopy Center?
A. He never claimed to be unable to run the business, any aspect of it. He was disabled for a period of time after having suffered a stroke and he had problems with one of his arms and hands in terms of strength or sensation, I don't know specifically what it was, but for a short period of time he was not able to do endoscopic exams. He recovered completely from that and returned to doing his duties completely.
Q. When was that that he had this stroke if you could estimate?
A. If I could estimate I'd say 2006 perhaps.

Q. Okay. When he was not actively doing the procedures because of his temporary disability did somebody take over management of the Endoscopy Center of Southern Nevada?
A. Dr. Carrol had some role during that time.
Q. What was that role?
A. That role was management in general, however that was still followed very closely by Dr. Desai, he kept an eye on things even though he was purportedly disabled.
Q. And how did you know that Dr. Desai was still basically running the show?
A. It seemed that Carrol had moved to lessen the number of procedures but eventually it went back up again. Also Desai was very much in evidence at the office, it wasn't like he was staying home, he did come into work.
Q. Okay. So even though Dr. Carrol had this title of non-operations manager, there was little apparent authority that went with that title?
A. He was a figurehead and I think that the position was created in order to hold Dr. Carrol's ambitions in check a bit. So, you know, want to make the guy feel important, give him a title, right?
Q. Did there come a time when it was decided

somehow that Dr. Carrol would not be the successor to Dr. Desai in running the clinic?
A. Dr. Desai — Dr. Carrol would have succeeded Dr. Desai at the Endoscopy Center of Southern Nevada. At one time an election was held with the doctors of the group, that election was to elect a person to head Gastroenterology Center of Nevada and the practice as a whole as the CEO or medical director upon Dr. Desai's retirement and Dr. Sharma was elected to that role.
Q. So Dr. Desai had made it clear that he eventually was going to retire at some point?
A. It wasn't clear in the sense that no timetable had been set for that, however obviously everyone retires sooner or later and I think he wanted to have a plan of succession in place for that eventuality.
Q. Okay. Was it understood that when he retired he was going to relinquish a financial stake in the business or was he just going to retire as the guy in charge of every day?
A. My assumption is that he would have been bought out of the business. There were clauses in the contract that included a formula for determining how much of a buy out should occur based on accounts

receiveable. There was also a formula for determining how a buy out would occur based on number of units owned at the endoscopy centers and there were the three facilities that were present.
Q. While you worked there did that ever happen, did Dr. Desai ever relinquish any role at all?
A. Oh, no, not at all.
Q. Now you alluded to an incident where you found out that Dr. Carrol didn't really have much authority at all. Was that the one that you have just described or was that a different one?
A. Yes, this was after the Bureau of Licensing and Certification had investigated the centers. They had drawn up a list of problems to be addressed, a plan of correction had been put together I assume by the governments of the center, I assume specifically Dr. Desai and Dr. Carrol, that had been accepted by the bureau and that was then put into effect at the centers. One of the CRNAs, a lady named Linda Hubbard who I happened to be working with at that point came into the procedure room, there was a second CRNA that walked in, and during a casual conversation between the two of them I overheard Linda telling the other CRNA, and I believe that was Vincent Mione, M-I-O-N-E, she made the exclamation, well, should I cut my wrists now, and Vince

practice.
Q. Okay. And ultimately that would be to whom?
A. That would benefit I assume everyone in the practice.
Q. And who would decide what happened with that money that came in?
A. Dr. Desai would.
Q. Okay. Now in being paid by the Endoscopy Center did you know how much other doctors were making in relationship to your salary?
A. I knew that other doctors made a little bit more than I did after, during 2006 and 2007 based on the gastroenterology portion of it. That based on percentage of ownership, my 6.4 percent as compared to say Dr. Carrol's or Dr. Wahid's 10 percent. Dr. Desai was also a partner of course but his percentage was larger, it was 20 percent of the Gastroenterology Center. In addition to that Dr. Desai or his management company would be paid a fee for managing the Gastro Center and for managing the Endoscopy Center.
Q. Okay. Was there something called a CRNA fund?
A. Yes, it was a Wells Fargo account.
Q. And what was the CRNA fund?

A. My understanding and belief is that all moneys generated by the anesthesiology services provided by the CRNAs would flow into that CRNA fund initially.
Q. Okay. And then Dr. Desai would determine who got paid out of that?
A. Yes.
Q. And did you ever ask Dr. Desai about why he was paying you or anybody else any particular amount of money? Did you ever have a conversation about that with him?
A. Yes. This occurred because at one of the group meetings he mentioned that he had paid certain bonuses to certain individuals and nothing was mentioned in terms of amounts of the bonuses nor the recipients. At his discretion. I later asked him about that and he told me that that wasn't any of my business and he used colorful language in telling me that, and he told me that I had no right to question his motives for what he did because what he did was for the benefit of the group and that was all that I needed to be aware of.
Q. The amount that was paid out of that CRNA fund depended on how much revenue the CRNAs were generating; is that right?
A. I'm sorry?
Q. I mean the money that was in the CRNA fund

to begin with was being generated by CRNAs?
A. Yes.
Q. But it was being used to give bonuses to selected individuals, whoever Desai decided was worthy of that; is that right?
A. My understanding is that some of it was used to that end, sometimes funds would be transferred from that account into the general accounts of the Gastro Center and then eventually distributed to partners based on their ownership percentages.
Q. Okay. Just a moment here.
With respect to controlling or enhancing the bottom line, the profit margin, can you think of any other examples where Dr. Desai complained about too much cost or recommended some adjustment to the way things were being done to save a little bit of money or a lot of money?
A. Yes. At one time he was pacing the floor in the recovery area of the Endoscopy Center of Southern Nevada and he was yelling at the nurses that they were using too much tape to secure IV lines to patients' arms and that they were costing him money by doing so.
Q. Is this tape that is used to tape the IV line to the arm, is it wildly expensive?
A. It's all relative I guess. Perhaps to Dr.

Desai it seemed so. No, it's not an expensive item at all.
Q. But you specifically remember him complaining about too much tape being used?
A. Too much tape and they were costing him money, yes.
Q. Was Dr. Desai a wealthy man?
A. He claimed to be worth from 150 to $200 million.
Q. Did he boost about that?
A. Yes, he was very proud of that, he bragged about it constantly. In fact there was a very ugly, in my opinion, episode that occurred at the 2005 American College of Gastroenterology meeting that was held here in Las Vegas. I believe it was at the Venetian. Dr. Desai came up to me, invited me to go have lunch with him and I said fine and we went to, the Venetian has these out — well, they're not outdoors, they're indoors but they've got these areas where they have restaurants that have like a patio outside, and we were sitting at one of those tables, there was a man who practices now I believe in Massachusetts named Charles Cohan, Charles had been a gastroenterologist here in Las Vegas for a period of time and at one time he had complained about Dr. Desai's medical practices, specifically I think he

I should have been more involved in the management of. They also assessed a fine of $10,000 to reimburse them for the cost of their investigation. So in total it was $25,000.

Q. This is the last question. For me. You mentioned when Dr. Sood tried to take action to try to expel Dr. Desai, what happened to Dr. Sood as a result of that effort?

A. He was removed from the group. The reason for his removal apparently was that several patients whom he treated at the Desert Shadow Endoscopy Center, which is also called Endoscopy Center of Southern Nevada 2, had suffered perforations of the bowel and that Dr. Sood had sent them to the hospital emergency room for treatment but had refused to attend the patients himself personally. That was the reason that was given for his firing. I assume there is some element of truth to that but I also know that Dr. Desai had a burning hatred for Dr. Sood after the attempt to put Desai out of the practice and that he was looking for any reason to get rid of Sood at that point.

Q. And it was Dr. Desai who made the decision to fire him; is that correct?

A. Yes. He got approval for the group based on the patient management issues, the high rate of

complications which was, if in fact the information we were given correct, it's more than it should have been and certainly more than anyone else had experienced, but really I think it was a personal vendetta by Dr. Desai against Dr. Sood for the most part.

Q. Did you know whether the information you were provided was true?

A. No, we weren't given documentation of that.

MR. MITCHELL: I have no further questions. If the members of the Grand Jury have any questions.

THE FOREPERSON: Are there any questions? Okay. Down there.

BY A JUROR:

Q. When you were talking originally in the beginning earlier on this morning you were talking about they had different types of multi-use vials, different medicines that were allowed to be multi-used with new syringes, right?

A. Saline which was used to flush the IV lines was a multi-use vial.

Q. Okay. So my question was are there any multi-use vials of propofol?

A. My understanding is that at one time there were multi-use vials of propofol but because of concerns over bacterial colonization of propofol as a drug

eventually it became available in single use vials only.

BY MR. MITCHELL:

Q. When do you think that happened?

A. When did that change occur with the manufacturer? I don't know.

Q. Was that a change that was made public so that every doctor knew that that change had been made?

A. No, no, it was not widely disseminated information.

Q. Okay. Did the Endoscopy Center have a rule, whether followed or not, that propofol was supposed to be single use only?

A. There was a rule, a very specific rule that was put in place in the policies and procedures manual and I believe that was put in there in January or so of 2008 and that would have postdated the investigation by the Bureau of Licensing and Certification. But prior to that there was no specific rule in place.

Q. Now if those rules had come out regarding propofol, that it was only supposed to be single use, would that be something that the CRNAs would be primarily in charge of?

A. Yes, they were handling the medications, they were handling the vials, they would be well aware of it in my opinion.

Q. Would it be marked on the container of propofol?

A. Yes, single use only. Generally those are.

MR. MITCHELL: Okay.

BY A JUROR:

Q. So in addition to that drug, to your knowledge is it safe to say they were reusing needles and syringes as well?

A. I don't have knowledge of reuse of needles or syringes. I have seen allegations to that effect but I don't have personal knowledge of that.

Q. Did they have any patients that ever complained about Dr. Desai's — apparently it seems like he was a fast performer of these procedures. Did any, were you aware of any patient complaints about any of his procedures on them, first hand that you know of?

A. Patients would have been asleep so I don't know that they would have had an appreciation for the length of time a procedure took. There was one patient in whom it was quite apparent that he missed a colon cancer and that was a medical doctor named Rafael Capiello, R-A-F-A-E-L, C-A-P-I-E-L-L-O, and Capiello had been my patient, he got his procedure done by Dr. Desai, he came back to see me, and I forget whether it was pain or anemia but there was something, he had some finding,

time.

Q. Thank you.

BY A JUROR:

Q. First in regards to the propofol single use vials, if a new syringe was used every time then that wouldn't expose an infection or wouldn't cause an infection between patients, correct?

A. If a new syringe and needle had been used each time that medication was withdrawn from the vial theoretically no it should not have occurred.

Q. In regards to a multi-use versus a single use vial, isn't the difference just a preservative that inhibits bacterial growth?

A. Yes, but propofol is kind of funny and I don't know if they can put the same preservatives in it because of the way the medication is as they do in other things. And that's one of the problems with it is it can become colonized with bacteria, the bacteria will grow in the propofol, produce toxins, and then should someone be injected with that, either another patient or even the same patient, those toxins can cause a fever in that individual and can cause them to get sick.

Q. So is the —

MR. MITCHELL: I just need to intercede something here. There will be subsequent testimony on

another day about the actual tracing of the cause and we'll have experts to deal with that specifically. So if that helps we'll deal with the actual transmission of Hepatitis C with other witnesses.

BY A JUROR:

Q. Well, I don't know, in regards to a single use vial doesn't it expire once the rubber stopper has been breached, isn't it just an expiration?

A. Yes, once it's breached that constitutes a use of it, so yes, the single use, it has been used.

Q. So it can be punctured once or it has to be used within like five hours of being punctured?

A. It can be punctured multiple times. I don't know what time frame it can be used and reused. I don't have the answer to that.

Q. And was the CRNA always the person that administered the propofol?

A. Yes, CRNA.

Q. And the 200 milligram limit of the propofol, was that a safety or a financial concern?

A. It was stated as both by Dr. Desai. My guess it was probably the latter.

Q. Okay. And how many mls of propofol is 200 milligrams?

A. Twenty mls.

Q. Okay. Was saline ever used instead of propofol for patients?

A. Not to my knowledge.

Q. Okay. And the 15 minute increment use for insurance billing, was that an insurance requirement or something that Dr. Desai --

A. No, no, those I think are standards that are in place for insurance billing and every anesthesiologist or anesthetist uses units and that's just a standard for their industry, their specialty.

Q. Okay. And my -- okay, second to last question is was the propofol drawn, did you ever witness the CRNA drawing the propofol or was that always drawn before?

A. I don't know exactly what they would do but I did at times see them withdrawing from a bottle which would be just prior to the case.

Q. Okay. And you had no, you did not know whether that had been —

A. No, I don't know if that had been used before or not.

Q. And then there was a policy or procedure manual in regards to, you know, use of items and how to draw the medications and stuff like that?

A. Uh-huh.

Q. And that was written. And so they would not follow the policy and procedures manual at times?

A. From my reading of the policy and procedure manual, which I read it initially back in 2002 I believe and subsequently to that a couple of times, there really weren't any things that weren't standard in that manual. I do know that a specific propofol policy was generated after these problems came to light and that was placed in the manual as an addendum.

Q. So were there verbal directions that were contrary to the policies and procedures manual?

A. I think that's the crux of the matter here and I have no personal knowledge of that. But if there were deviations from the standards it would have been someone who perhaps did that orally or verbally.

Q. And the only person who would have influence for those —

A. The only person I think could have done that would have been Desai.

THE FOREPERSON: Anybody else? All right.

BY A JUROR:

Q. Did you see in all those years that you were working with or did you have any knowledge of any people deviating from the, from the manual, operating without gloves?

A. Well, only he can answer his motivation and methods but I see why you would say that.

THE FOREPERSON: Okay. We have another question over here.

BY A JUROR:

Q. Yes. You were talking about the 20-milliliter versus 50-milliliter. When you're in the purchasing business would it be cost effective to buy the larger quantities versus the smaller?

A. I actually looked at that at one time and it seemed to me that milligram per milligram it wasn't much difference between a 200-milligram or 20 mil vial and a 500-milligram or 50 mil vial. They're roughly about the same.

Q. Okay. The next question is, is there a, I know you can't be specific, but is there a guideline or say a single use that falls somewhere in that frame of that's the amount you would normally use on a patient is 200; would you normally use that amount or would some instances you exceed it?

A. I would say most patients typically require 150, 200, 250 milligrams. There is a wide variable in terms of what an individual can tolerate, and in some cases very large quantities of medication are necessary. I have seen four or 500 milligrams given. Michael

Jackson died of a 25-milligram overdose supposedly so I mean there's just a huge variation.

Q. Okay.

BY MR. MITCHELL:

Q. Sir, if you've got somebody that is being treated and 20 mls has already been used up and it looks like they need more, then would the procedure be to open a second 20-milliliter vial?

A. Yes. Presumably so. Again I don't know that things could have, might have happened that I was not aware of, but yes.

Q. All right. Now if there was an attempt by the Endoscopy Center to use 50-milliliter vials so that when they were done with one patient and 20 mls had only been used they could use the rest of it in there on a second patient, that would be outside your knowledge?

A. It would be outside my knowledge, yes.

Q. Okay. And you don't know if that decision was ever made to do things that way?

A. No, I don't know of any decision to do that and I would never have condoned that. I don't think that's appropriate.

Q. And that was not your area of responsibility?

A. No, that would have been CRNA and

management that took care of those things.

THE FOREPERSON: Are there any further questions from the jury?

MR. MITCHELL: I do have one more.

THE FOREPERSON: Okay.

MR. MITCHELL: That's been raised here.

Q. You said that you didn't succumb to the suggestion that Dr. Desai was always giving you to speed up or to do anything better than, the way he liked. Although you didn't succumb to that pressure did you feel pressurized nevertheless?

A. Yes, I felt pressured nonetheless.

THE FOREPERSON: Yes.

BY A JUROR:

Q. Are you familiar with anybody else, be it the nurses or one of the anesthesiologists or one of the other doctors who was pressured and succumbed to doing what they should maybe not have done?

A. I wouldn't say succumb to it. I will tell you Dr. Mukherjee told me that Dr. Desai was very concerned let's say about his speed of doing procedures. And Dr. Mukherjee's comment was I speak slowly, I move slowly, and I do endoscopies slowly and nothing he says is going to make me change my ways.

THE FOREPERSON: Yes.

BY A JUROR:

Q. Back to the billing for the anesthesia, the 15 minute increments. Theoretically more than eight hours could have been billed in a day; correct?

A. Yes, that seems to be the case.

Q. And that would have been ethical or unethical?

A. I think you have to look at it as to how it's structured on the face of it. Of course it looks unethical, but a patient in the recovery room is still the responsibility of the anesthetist or anesthesiologist and he may start a new case at that time. Really I don't think they should be doing that but there would be some overlap that could be explained on that basis. I have some concerns about that, yes.

Q. Okay.

THE FOREPERSON: Are there any further questions? Okay.

By law, these proceedings are secret and you are prohibited from disclosing to anyone anything that has transpired before us, including evidence and statements presented to the Grand Jury, any event occurring or statement made in the presence of the Grand Jury, and information obtained by the Grand Jury.

Failure to comply with this admonition is a

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

BEFORE THE GRAND JURY IMPANELED BY THE AFORESAID DISTRICT COURT

THE STATE OF NEVADA,

Plaintiff,

vs. CASE NO. 09BGJ049ABC

DIPAK KANTILAL DESAI,
RONALD ERNEST LAKEMAN,
KEITH H. MATHAHS,

Defendants.

/

FILE COPY

Taken at Las Vegas, Nevada
Thursday, March 11, 2010
12:14 p.m.

REPORTER'S TRANSCRIPT OF PROCEEDINGS
VOLUME 1-A

Reported by: MARCIA LEONARD, CCR 204

GRAND JURORS PRESENT ON THURSDAY, MARCH 11, 2010:

PAMELA YOUNG, FOREPERSON
JOSEPH WILLOUGHBY, DEPUTY FOREPERSON
LOUISE ZUNIGA, SECRETARY
SHELLY SALAMANDOULOS, ASSISTANT SECRETARY
SVEN BRADLEY
CONSTANCE CABILES
LISA CAMP
CHRISTINE LYONAIS
AGNES PARKER
YOLANDA PARKER (Present until 2:00 p.m.)
BIANCA ROBERSON
ROBERT ROSE
STEVEN SHLUKER (Present until 2:00 p.m.)
ALICE SZURAN
MICHAEL THOMPSON
THOMAS URBAN
ANNE ZARKIE

FILED
JUN 08 2010
CLERK OF COURT

Also present at the request of the Grand Jury:

SCOTT S. MITCHELL
Chief Deputy District Attorney

MICHAEL V. STAUDAHER
Deputy District Attorney

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driving in that type of condition.

So when I found an opportunity in the south, I was interested in that.

Q. When you came into the practice, did you immediately -- when you came to town, did you have your job already?

A. No, I did not. I came to town. I'd had an interview with Dr. Desai, and I met -- I went to one of the other offices at Shadow Lane, I believe, and I talked to Dr. Carrol. I met Dr. Mason. I met the practice manager, as well, Tonya Rushing, and I was there for about 24 hours, and then I came home.

And probably within the next two to four weeks after that is when I called back just to see how things were, and then they offered me a job at that point in time.

Q. At that point, did you then go to work for them?

A. No. That would have been in about three, four months before the end of the year. That might have been about September/October of 2003, and then I might have signed the contracts around say November/December.

And because I was coming from Canada, I had to come down here and get my social security number

and find a place to live and things like that that I didn't have before. And so that process took about three months.

At least, not before March, before I was able to start working. And even when I was able to start working, with getting privileges at the hospitals and insurance companies, I started working predominantly at North Vista initially, and then over a period of about maybe three or four or five months, I slowly began having privileges at other hospitals, so I began working more regularly.

Q. Now, in the practice that you were involved with, obviously you're working for Dr. Desai. Is he the main person?

A. Yes.

Q. Now, was it a hospital-based or clinic-based practice that you were involved with initially?

A. My first year was clinic based. I was working out of North Vista Hospital in the evenings and doing the consults and the in-patient procedures.

And during the daytime, they had a clinic that they worked out of for the Veterans Hospital. And that was by Pecos and Flamingo.

So in the morning, they would have

procedures at their outside office, and then they would have clinic patients in the afternoon, so I would do that during the daytime, and then go to North Vista Hospital during the evening.

And then subsequent to that, so in 2005 onwards, I began working at Sunrise Hospital, which was a full day. Because it's a larger hospital, there is a larger patient load, so most days I was at just Sunrise Hospital.

Q. So beside your hospital work at Sunrise and North Vista and you said where else?

A. The Veterans Clinic.

Q. Veterans Clinic, and those are facilities, correct? They are not -- they are not endoscopy centers that are tied in any way to Desai?

A. No. The Veterans Clinic was owned by the V.A., but it did have endoscopy facilities, and we did do procedures there, but it was run by the V.A.

Q. Right.

But it's not -- it wasn't a Desai-type clinic?

A. No.

Q. So it sounds like you're pretty much clinic or hospital based at this point?

A. No.

Q. You're not really going into the endoscopy centers or anything like that?

A. I would go to the endoscopy centers maybe once a week during the summertime when people, doctors were away and sort of fill in maybe three hours at a time, or two-and-a-half hours at a time once a week during say three or four months of summer when other doctors are away for a couple weeks at a time.

There are periods of time where they might have scheduled me to go once or twice a week for two or three months at a time to help out.

But because my day-to-day work was typically Sunrise Hospital, which is a full day in itself, I wasn't scheduled to work at the clinics or endoscopy centers on a regular basis.

Q. Now, were you actually doing endoscopy-type procedures in the hospitals?

A. Yes.

Q. So you are doing those at Sunrise and the V.A. Clinic and so forth; is that right?

A. Yes.

Q. When you went and relieved people, doctors, or did your one day a week or so in one of the clinics, and when I say the clinics, I'm talking about Desai's endoscopy clinics, did you go to a particular

one or did you go between them?
A. I went between them. I -- they -- when I first started, they had a small facility at Shadow Lane. They -- over the first year I was there, they expanded to the larger facility, and so initially I was going to Shadow Lane more.
But then as time progressed, they opened up another facility by Burnham Avenue, and so in the last year or two of practice, I began going to that facility more often.
Q. Okay. But primarily your focus was on the Shadow Lane facility?
A. Initially, yes.
Q. Now, when you're going there and doing procedures in the endoscopy center, and I'll just use the Shadow Lane as an example. You go there. You do this one or two days a week. You said you were relieving people, correct?
A. Correct.
Q. When you're at the Shadow Lane facility, are you seeing patients, or are you doing endoscopy procedures or a combination of the two?
A. Doing procedures.
Q. So you just went to those -- the endoscopy centers actually to do procedures?

A. Correct.
If I did clinics, I remember doing clinics, I might have done less than four or five clinics total ever at the Shadow Lane clinic.
Q. Okay. So is it fair to say that your involvement, when you went to those clinics, was just basically on the endoscopy side?
A. Yes.
Q. When you were at the endoscopy side, obviously you had been in the hospitals doing endoscopy work as well, correct?
A. Yes.
Q. When you went into the facility at Shadow Lane and you were doing endoscopies, was that a place where Dr. Desai was doing procedures?
A. At the clinic, yes.
Q. Did you notice a difference in the number of patients that was rolling through say the clinic, endoscopy center at Shadow Lane versus the hospital settings you worked at?
A. There was a larger volume at the clinic than at the -- what you would see at the hospital.
Q. Significantly larger?
A. Significantly larger.
Q. How many rooms were available for

endoscopies at the Shadow Lane facility?
A. Two.
Q. Would you go into just one room or would you go between the two rooms?
A. Most of the time, I would stay in one room. At the end of the day, sometimes if I was called -- most of the times I was there in the morning between 7:30 and 10:00 or 7:30 and 10:30.
Isolated cases I would go there in the afternoon to help someone finish up if they had something else to go to. So at the end of the day, like 4:00 o'clock, 4:30 time, I would be -- going between two rooms was not unusual.
Q. Okay. So that was something that happened regularly then? You might -- you would stay in one room primarily, but then you would necessarily go to the other room for --
A. For a couple of cases just to finish up the day, yes.
Q. So it was not unusual that a doctor would go from one room to the other even on the same day?
A. Not unusual, not something that went on for long, but not unusual.
Q. Now, did at any time when you were at the Shadow Lane clinic, and obviously you've been working

in the hospital and you're doing procedures at the hospital, did it kind of surprise you the level or the number of procedures that were going on at the Shadow Lane clinic?
A. It did initially, but you hear that there is a certain volume that goes on there, so you're prepared for it. And then when you come out of training, you don't really know what to expect, whether it's from a hospital facility or a surgery center.
It's definitely more than what I might expect, but I don't particularly remember having any preconceived notions of what would be normal or what would be abnormal.
Q. Okay. So you come out of your training and this is the first experience you have here locally; is that right?
A. Yes.
Q. Now, couple things, and I'm going to -- I want to get into now just ask you some questions about the procedures themselves. The ones you do.
Before I get to that, were you aware of other doctors that did procedures as well? Did you ever step in and watch them do procedures, for example, or were you aware of what they were doing at the facility?

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

BEFORE THE GRAND JURY IMPANELED BY THE AFORESAID DISTRICT COURT

THE STATE OF NEVADA,

Plaintiff,

vs.

DIPAK KANTILAL DESAI, RONALD ERNEST LAKEMAN, KEITH H. MATHAHS,

Defendants.

COPY

No. 09BGJ049ABC

0265107

Taken at Las Vegas, Nevada

Thursday, March 18, 2010

8:39 a.m.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

VOLUME 2

Reported by: Danette L. Antonacci, C.C.R. No. 222

GRAND JURORS PRESENT ON MARCH 18, 2010

PAM YOUNG, Foreperson
JOSEPH WILLOUGHBY, Deputy Foreperson
LOUISE ZUNIGA, Secretary
SHELLEY SALAMANCOPOULUS, Assistant Secretary
SVEN BRADLEY
CONSTANCE CABILES
LISA CAMP
CHRISTINE LYONAIS
AGNES PARKER
YOLANDA PARKER
BIANCA ROBERSON
BOB ROSE
STEVE SHLUKER
ALICE SZURAN
MICHAEL THOMPSON
TOM UHRHAN
ANNE ZARATE

FILED

JUN 0 8 2010

CLERK OF COURT

Also present at the request of the Grand Jury:
Michael Staudaher,
Deputy District Attorney

Scott Mitchell,
Deputy District Attorney (Enters at 10:40 a.m.)

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patient would stay in the room for several minutes to have vital signs recorded, to ensure the patient is stable and well before he or she would be moved out. That would take a few minutes. We had a series of vital signs that needed to be recorded before a patient left the room. And then the next patient would come in.

Q. So we're talking three to five minutes on either end?

A. Yes, I would say that's reasonable.

Q. And then the procedure times, and I'm talking about insertion and withdrawal, maybe irrigation and polyps, on average ten plus minutes for the procedure itself?

A. For the colonoscopies. For the upper endoscopies it could be less.

Q. Sure. Now let's go back a little bit to you coming into the practice. You said that you interviewed with Desai as well as others; correct?

A. That's correct.

Q. Did you ever have a meeting with Dipak Desai where he outlined his philosophy for the group so to speak or what he wanted you to do or not do or anything like that?

A. Well, when I first arrived there he interviewed me, he told me I would work hard, I had no

problem with that, he told me it was a busy practice, it was expanding and that it would be tough work and hard long work, but I had no problem with that. Moving my family out from the east to the west sight unseen, new place, I was ready to do the work, whatever it was.

Q. Did you have a idea of how the hierarchy was within the group, who was in charge, who was second in command, that kind of thing?

A. Yes, it was clear to me that Desai was in charge, it was his practice. At that time there were only a few others. There was Dr. Carrera, Dr. Faris and Dr. Sharma were the only other ones there at that time. I was the sixth person into the group. Dr. Sood came on at the same time as me and he was the fifth.

Q. So at the time limited number of doctors in that particular group?

A. Yes.

Q. And at that point you said Desai was the clear leader or the guy in charge?

A. Absolutely, yes.

Q. Was anybody else delegated to other authority within the group at that time?

A. No.

Q. Now over time — and you left the practice at what time?

A. I'm sorry?

Q. When did you actually leave the practice?

A. In 2008.

Q. Was that after the events —

A. Yes.

Q. — that you're here testifying about today?

A. Correct.

Q. From the time you came until the time you left did the number of doctors expand or contract?

A. Expanded.

Q. At the time you left what was the number of doctors roughly within the practice?

A. Fourteen.

Q. Who at that time was in charge?

A. Dr. Desai.

Q. Was there anybody relegated to secondary authority at that time when he was present in the group?

A. No.

Q. As far as — and we will get — there were times I assume that he was either out of town or incapacitated.

A. Correct.

Q. We'll get to that in just a minute.

But as far as from the beginning time when you first entered the group until the time that you

exited the group after these events took place, did the leader of the group ever really change?

A. No, the leader of the group never changed. There did come a time if I remember correctly in 2006 where Dr. Desai was seriously contemplating retirement and he told us that and he was considering who should take over the group if he were to retire. There was a vote within the doctors at the time as to who would succeed him if he retired and that vote took place and Dr. Sharma was considered the person who would most likely take over if he retired. That's the only change I ever saw.

Q. Were you considered also for that role at any time?

A. Yes, I was considered for that. Dr. Sharma and I were both considered for that because we were diligent and conscientious, worked hard, the group recognized that, but the group decided that Sharma would be a better person overall to manage the group.

Q. You mentioned group. Are you talking about the entire group at this point?

A. Yes.

Q. Were there individuals at various clinics who, the person that was primarily at that clinic though?

felt timid. So I left the office, but I believed to the best of my knowledge that actually we were able to succeed in keeping the numbers down because Jeff Krueger I think met with him the next day or the day after and said no, we cannot go back to this.

Q. Without getting into what Jeff Krueger said, were you aware that he met with Desai later on?

A. I believe I remember that.

Q. And based on that conversation did you also have a conversation with Jeff Krueger about that issue?

A. After?

Q. After your meeting with Desai.

A. I don't remember that. I may have had words with him. I don't remember having a formal meeting with him.

Q. You mentioned a number, I think 64 after that; correct?

A. Correct. What had been arranged or understood was there was never to be more ever than 64 on schedule.

Q. Was that your understanding of what the results of whatever meetings took place after your rebuke by Dr. Desai?

A. Yes.

Q. So 64 is the new number, not 60, 64, not

clearly 75; is that right?

A. That's right.

Q. Or more?

A. Or more.

Q. As far as Desai's role at that point, he came back to the office you said a couple weeks after his stroke and had this conversation with you, then did he go back home or go to rehabilitation or something along those lines?

A. What happened after that, he was not doing procedures but he had made a relatively quick recovery and it was now understood that he was back in his role as the leader and that he was back to make decisions. He would even start to see patients on the medical side but he was not ready to do procedures. So it was much earlier than we had thought.

Q. So how long were you in the role of person in charge before he assumed that role again?

A. I would say two weeks.

Q. So for the two week period that you were in charge you decreased the patient volumes?

A. Correct.

Q. As far as the patients themselves, the staff, yourself, the doctors, how was it going during that time?

A. It was, it went well. The patients were happier. The patients, we had almost if I recall no complaints from patients about wait times. Staff was much happier about the way the schedule was set up, it was much better and patients were happier, they didn't, they weren't waiting too long, the staff felt better how the schedule went, they weren't working overtime all the time. I thought and even Tonya Rushing told me that it was going much better.

Q. So the new number is 64. After a couple of weeks Desai isn't doing procedures but he has come back into the office?

A. Correct.

Q. Is he seeing patients at this point?

A. To the best of my recollection he is starting to see some patients on a limited basis.

Q. Now did the 64 number hold?

A. No, it didn't.

Q. Can you tell us about that?

A. As I was doing cases and others were doing cases we started to notice that patients were coming in for their procedures with their instructions and their scheduled times on their instruction sheet but they weren't on the actual printed schedule for that day. Which was odd. And as that was beginning to occur the

number of patients actually coming in for their procedures on the schedule was more than 64.

Q. So if I understand you correctly you got a schedule that has a maximum of 64 patients and then patients are showing up with an actual scheduled time, paperwork that says I've been scheduled for this date and this time and they weren't on your schedule?

A. Correct.

Q. Was this just one or two patients or was it more than that?

A. It was more than that. It was many patients like that over the days.

Q. Did that give you some concern?

A. That was concerning.

Q. Did you learn or look into that situation?

A. I did. I went to Audrey who was a person who helps schedule and I asked I thought there was a limit to this.

Q. And without getting into what Audrey actually said to you, based on that conversation did you have a belief that someone was involved with the increase in patients?

A. I had a belief, yes.

Q. Who was that person?

A. Dr. Desai.

Q. Was that an active change based on your inquiries?
A. Yes.
Q. A direct order or words from Desai?
A. That was my belief, yes.
Q. And you were seeing the results of those increase in patients; correct?
A. Yes.
Q. Did at any time you get the impression that it was just an employee that decided to do this on their own?
A. Never.
Q. Eventually did the numbers go back up to what they had been before Desai left?
A. Eventually numbers started to creep up into the high 60s or low 70s to the best of my recollection.
Q. Is that where they stayed or did they continue to inch up?
A. I think that's where they stayed. There would be times when the patient schedule would reflect 75 or 76 for the day. And again we always had cancellations. I believe the average, the actual number of procedures was much less than that per day.
Q. But certainly higher than what you had felt was reasonable when you took over?

A. Yes.
Q. Now as far as your role, did Desai come to you at some point and say you know what, I'm ready to take over again, you're not making decisions anymore; how did you transition out of your position?
A. There was no conversation like that. It was understood, he was back on the premises. After he said that to me, you don't make decisions without going through me first, I understood that I was no longer making decisions.
Q. Were there any times when Desai was working in the clinic that he would go across to the medicine side of things and demand patients from there be brought over to the clinic for procedures?
A. Yes, he did that many times. He would come over to the medical side where we had eight or nine medical rooms where we were seeing patients and he would either knock or sometimes not knock, and say I was in a room with a patient interviewing the patient, he would enter the room and say to me we need five or six more EGDs, the upper scopes, today. For some reason the case load was decreased or too many cancellations, he would usually be upset and angry about that and would ask me to make sure that I'm looking at patients and see if I could get any patients to have their scopes done that

day. I never did that.
Q. But he was doing that?
A. He did that frequently.
Q. Did you feel pressured to try and meet that even though you didn't do it?
A. Sure I felt pressured because he was coming in and demanding that. Again I would never do that because patients weren't ready for that, they weren't there to have a procedure, they weren't expecting that. Patients need to have someone to drive them home after sedation, they had usually eaten lunch or breakfast and it wasn't appropriate to do that.
Q. Was that a, did that appear to be a concern to him based on your observations of what he did?
A. No.
Q. He just wanted the numbers?
A. Correct.
Q. So even if you had cancellations dropping it down off the number that were scheduled that day he was trying to prop those numbers back up; is that fair to say?
A. That's fair to say.
Q. When did he fully take back over meaning he was doing endoscopy procedures as well as seeing patients in the clinic and running things?

A. When he came back, and I told you about that meeting he had with me about two weeks later, he started to see patients. He still had some effects of the stroke and he didn't physically feel ready to do colonoscopies. He felt somewhat physically ready to do upper endoscopies so he started doing some of those here and there. Because again like I told you they're much easier to do technically. But he, I remember him exercising to try to strengthen his right arm which had been affected by the stroke and I remember to the best of my recollection he was fully back doing procedures probably within five to six weeks from that meeting where he told us that he would be out for three to six months.
Q. This stroke that he had, did it ever affect his speech at all?
A. I never saw that personally.
Q. Did it ever affect his ability based on conversations -- let me strike that and I'll ask it, maybe too much of a multi-part question.
You had conversations with him; correct?
A. Correct.
Q. Following the stroke?
A. Correct.
Q. When you talked with him did he appear

try to appeal such a decision. So this was arranged for Desai to go down with attorneys from Lewis and Roka to try to get our license back. You may remember even newspaper articles about it. Desai wanted me to help him go down there and in a room just like this talk to them about getting our license back. Now we were getting ready to go down there and I said that I was afraid to go, I didn't want to go down there because I knew the media would be down there, there would be television cameras, and I was cowardly, I don't know, but I was afraid to go down there and I said this to Desai before we left, and he said I need you to help me do this, he said to me that we need a white guy to go down there to be with him, that that would help.

Q. He said a white guy?

A. Yes.

Q. And you were it?

A. That was it.

Q. Going back to Starbucks. You related a conversation you had with Dr. Desai there. Do you recall that?

A. Yes.

Q. At any time during that conversation, during the time you were with him in Starbucks, did the conversation turn to him telling you about selling the

practice or his potential sale of the practice?

A. Yes.

Q. Can you tell us about that?

A. During this conversation where I was just trying to get some emotional support through all of this he did say to me that he has no ego, that he has, he's not bothered by all this, he has no ego, and that this has cost him $100 million. He said that it cost him a hundred million dollars because certain bank stocks that he owned had plummeted, certain other investments that he had plummeted, but he also said to me that the practice, I lost something like $46 million because of the price that would have been paid for the sale of the endoscopy. And I didn't, none of the partners knew that there was even a sale for this practice but he said that he had lost money because the sale didn't go through.

Q. So he tells you that he was planning to sell the practice then?

A. Right, yes.

Q. For that amount of money?

A. Correct.

Q. You had mentioned at times you were, you know that he had essential say over everything at the facilities; correct?

A. Correct.

Q. And that his word was the word so to speak in the entire organization?

A. Yes.

Q. Were you ever concerned about him being vindictive or concerned for yourself in stepping up or speaking up against him?

A. Yes.

Q. And can you explain to us why?

A. Well, in my experience there he's a very powerful, strong leader, great business reputation, been on the Board of Medical Examiners, I remember though there were many events where he would yell and be angry at me or others.

I remember him berating Dr. Carrera over a vacation request, but not just simply saying we can't accommodate this vacation request, literally yelling at him at the top of his lungs that he cannot have this, he's affecting the practice.

I remember getting called for jury duty and walking toward this facility and Desai calling me on my cell and saying what's going on, why are you not at work, and I said D, you know I'm here at jury duty, you can't just write a letter, you have to come here to be excused, and he yelled at me on the phone and said you're more interested in helping, being part of the

jury system than being here at work.

He, there was a lawsuit that came when I was an employee physician about a complication from a procedure, and I wasn't named in that lawsuit because I was not a partner, and he sat me down in the room and I thought he was going to ask me about the case and what I thought of it, but he said many of the guys in the group think that you had something to do with this, that you got this lawsuit against us. I didn't know what to say. It was crazy that he was intimating that I somehow manipulated other people to bring a lawsuit against our own practice.

So these kinds of things occurred. So I was afraid of him. And he also made us sign certain documents that would not allow us to practice if we ever wanted to leave, it would force us to leave town for a period of time.

Q. What about the other employees, did you ever see or get a feeling that any of the employees were pressured or coerced to do things that he wanted done, implement his policies to the things that he was saying had to happen in the practice?

A. Yes, I remember him going to the area where the schedulers were and the phone operators were and pushing for more cases to be scheduled or looking at the

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

BEFORE THE GRAND JURY IMPANELED BY THE AFORESAID DISTRICT COURT

THE STATE OF NEVADA,

Plaintiff,

vs.

DIPAK KANTILAL DESAI, RONALD ERNEST LAKEMAN, KEITH H. MATHAHS,

Defendants.

COPY

No. 09BGJ049ABC

C245107

Taken at Las Vegas, Nevada

Thursday, April 22, 2010

8:53 a.m.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

VOLUME 4

Reported by: Danette L. Antonacci, C.C.R. No. 222

GRAND JURORS PRESENT ON APRIL 22, 2010

PAM YOUNG, Foreperson
JOSEPH WILLOUGHBY, Deputy Foreperson
LOUISE ZUNIGA, Secretary
SHELLEY SALAMANCOUPOULLIS, Assistant Secretary
SVEN BRADLEY
CONSTANCE CABILES
LISA CAMP
CHRISTINE LYONAIS
AGNES PARKER
YOLANDA PARKER
BIANCA ROBERSON
BOB ROSE
STEVE SHLIKER
ALICE SZURAN
MICHAEL THOMPSON
TOM UHRHAN
ANNE ZARATE

FILED

JUN 08 2010

CLERK OF COURT

Also present at the request of the Grand Jury:
Michael Staudaher,
Deputy District Attorney

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something about, okay, being medical director and this would be your, he just gave me like not definite numbers but anywhere from five to $10,000 per month being the medical director of Spanish Hills Surgery Center.

Q. When you're talking about he, are you talking about Dr. Desai?

A. Only Dr. Desai, I never talked to anybody else. So I told that's what it should contain, that letter. I did not make a copy. So when he interviewed me it was already after almost a year and a half after this incident.

Q. When you say he now you're talking about the detective?

A. The detective, yeah. So I forgot more like exactly what — I did not read it and then but I thought it should contain what we talk, like me and Dr. Desai, about Spanish Hills Surgery Center, being the medical director of the Spanish Hills Surgery Center, and ownership and pain, that's it.

Q. If Dr. Desai had said to you that I'm going to send over an agreement that I want you to sign so that you can be a supervisor for the CRNAs doing anesthesia at any location, if you had realized that would you have signed the agreement?

A. No, never.

Q. Did you realize at any time that he wanted you to supervise any CRNAs at any time, he being Dr. Desai?

A. I'm sorry, repeat your question please.

Q. Bad question. Did you know at any time whether Dr. Desai wanted you to supervise CRNAs at any location?

A. He never expressed it. I do not know what was he thinking, but we never even talked about anesthesia so if he was thinking I would supervise I do not know, but we never talked about it.

Q. Okay. I'm going to move on to a little bit of a different area then. One of the reasons I provide this to the Grand Jury and I asked you the questions about it is because the State is under an affirmative obligation if we know anything that tends to show, point away from somebody's guilt or whatever we have to provide that information as well. So that's the purpose of this being offered at this point and to allow you to explain it. But I want to ask you some specifics about your own personal use of anesthesia, in anesthesia regarding equipment and supplies and things like that. Okay?

A. Okay.

Q. Have you ever reused syringes between

patients?

A. Never.

Q. Would you ever do that?

A. No.

Q. If a doctor that you worked with, a referring doctor that you worked with told you he wanted you, he or she wanted you to do that, would you do that?

A. No.

Q. Why not?

A. Because it's not standard of care. Even — I don't know, it's beyond my imagination using a dirty syringe on somebody else.

Q. What about propofol, the drug propofol, are you familiar with that drug?

A. Yes, I am.

Q. Have you used it many times?

A. Thousands, hundreds and thousands of times.

Q. So over your career lots and lots of time?

A. Yes, sir.

Q. Single use or multi-use vials?

A. Single use.

Q. All of them?

A. Yes.

Q. What is the reason for that do you know?

A. It was availability in the operating room.

Usually they have those small vials and you use what is there in the operating room.

Q. Ever any issue of contamination of vials that you're concerned about?

A. No.

Q. Why not?

A. Because to begin with the whole vial is gone on one particular patient and secondly sometimes, you know, some patients need more, you may have to use two vials.

Q. What about in a situation where you had a big vial that you didn't use all of the propofol, what would you do with the rest of it?

A. Either you throw it or — there are two ways. This question was asked earlier also. If you have a big vial you can, if you're drawing syringes again it has nothing to do with this particular case, it's common sense thing, you can draw like, let's say you have, what, 50CC vial, you can draw them in like two or three different syringes, and now all those syringes are clean, I can use one on you, I can use one on myself, because those, so it is not the size of vial, it is the aseptic technique that is important.

Q. Let's talk about aseptic technique for a moment. Is it standard of care or proper technique to

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

BEFORE THE GRAND JURY IMPANELED BY THE AFORESAID DISTRICT COURT

COPY

THE STATE OF NEVADA,

Plaintiff,

vs.

No: 09BGJ049ABC

DIPAK KANTILAL DESAI, RONALD ERNEST LAKEMAN, KEITH H. MATHARS,

Defendants.

Taken at Las Vegas, Nevada

Thursday, April 29, 2010

9:19 a.m.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

VOLUME 5

Reported by: Danette L. Antonacci, C.C.R. No. 222

GRAND JURORS PRESENT ON APRIL 29, 2010

PAM YOUNG, Foreperson
JOSEPH WILLOUGHBY, Deputy Foreperson
SHELLEY SALAMANCOPOULUS, Assistant Secretary
LISA CAMP
CHRISTINE LYONAIS
AGNES PARKER (Leaves at 3:35 p.m.)
YOLANDA PARKER (Arrives at 10:07 a.m.)
BIANCA ROBERSON
BOB ROSE
ALICE SZURAN
MICHAEL THOMPSON
TOM UHRHAN
ANNE ZARATE

FILED
JUN 08 2010
CLERK OF COURT

Also present at the request of the Grand Jury:
Michael Staudaher,
Deputy District Attorney

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INDEX OF EXHIBITS

A. I'm director of operations for Health Care Partners. We are a third party administrator for Pacific Care. We pay their claims.
Q. Now Pacific Care is what, an insurance company?
A. Pacific Care is a HMO. We pay the HMO claims. It's an insurance company for HMO products. They have both a commercial and senior product.
Q. Can you tell us what the commercial product is called?
A. It's Pacific Care Commercial.
Q. What is the senior called?
A. Secure Horizon.
Q. If we see something called Secure Horizon that is in fact Pacific Care?
A. That is Pacific Care.
Q. Now directing your attention to — well, before I do that let me ask you just a couple more predicate questions regarding what your company does.
You say you take in claims and so forth and then pay those claims?
A. Yes, sir.
Q. How does that work? I mean you're sitting in your office or your company is and how does a claim come in, how does it get processed and then paid?

A. The provider submits the claim via mail, we receive hard copy claims, and then we process those claims, we take them in, date stamp them and then put them through a computer adjudication system that pays the claim.
Q. And when you pay the claim do you pay it back to that provider that sent it to you originally?
A. That's correct.
Q. I'm going to direct your attention to specific instances involving two patients. Let's start off with one, I believe it's a Secure Horizon product, it was an individual by the name of Rudolfo Means.
A. Yes.
Q. Is that one of the individuals that your company dealt with as far as dealing with the claim and payment for a claim?
A. Yes.
Q. Specifically I'm going to direct you to a time period of September 21st of 2007, a claim regarding that day. Did you have a chance to review any information in your company pertaining to that claim?
A. Yes, I have.
Q. Now I'm going to be showing you some documents specifically related to that particular person and that particular claim. They have been marked as

Grand Jury Exhibit Number 35. It's a six-page document. So if you are referring to this document during your testimony and you're referring to a specific page I ask that you identify which page of the exhibit you're referring to. Fair enough?
A. Yes.
Q. I'm going to hand that to you and ask you to flip through it generally at this time and just tell me if you recognize the document itself or series of document I guess.
A. Yes, I do.
Q. Okay. What are those series of documents? Let's start off with page 1, what is it?
A. That's a HCVA 1500, it's the name of the claim form that providers submit claims for professional services.
Q. Is that the claim that was submitted for that patient for the date of the 21st of September of 2007?
A. Yes, it is.
Q. Company received that. Did your company process that claim?
A. Yes, we did.
Q. After the claim was processed did you actually make a payment on that claim as it was

submitted to you?
A. Yes, we did.
Q. And do you have other documents that show what payment was made on that claim?
A. Yes.
Q. And you're referring now to another page of the document?
A. To page 2 of the exhibit, explanation of benefits.
Q. And how much money was paid on that particular claim?
A. $131.20.
Q. Now the amount that was actually submitted as a bill was greater than that was it not?
A. Yes, it was.
Q. What was the amount submitted initially?
A. $560.
Q. I'm going to take this claim form from you for a moment and the associated document and I'm going to display them for the Grand Jury and I'm going to ask you some specifics about what we're looking at.
Now at the top of the form it says 1500 insurance claim form. Is this where you get your designation of the HCVA 1500?
A. Yes, it is.

and I know you're familiar with them too so I'm just going to kind of run through the form.

Is this in fact, this is the first page of Grand Jury Exhibit Number 37, is this what you just designated as the 1500 claim form?

A. Yes, it is.

Q. Whose name is on the form?

A. Stacy Hutchison.

Q. I'm going to move down the form to I believe it's box 24, that column or that row going across, do you see that?

A. Yes, I do.

Q. Date of service is?

A. 9/21/2007.

Q. I'm looking at box D. Does that have a procedure code in it?

A. Yes.

Q. What kind of code is that?

A. It's an anesthesia procedure code.

Q. For a?

A. For a colonoscopy.

Q. If we move across to the charge for that, how much was billed to your company for that service?

A. $560.

Q. And what was the number of minutes or

whatever that are were listed there?

A. The number of minutes for this procedure that he billed us for were 31 minutes.

Q. Does that, do those numbers vary, I mean charges and minutes and so forth vary on typical charges that come in for procedures?

A. Yes, they can vary.

Q. Moving to the bottom, box 30, what is the entity that submitted this claim form to you?

A. Endoscopy — well, Ron Laksman is the entity that submitted it. And he performed it at the Endoscopy Center of Southern Nevada.

Q. Is that located at a particular address indicated on that form?

A. Yes.

Q. What is it?

A. 700 Shadow Lane.

Q. Here in Las Vegas?

A. Yes, here in Las Vegas.

Q. So if I understand you correctly that's the form that you get?

A. Yes, it is.

Q. Okay. Now on page 2 of this document still says, it's still another one of these HCVA 1500 forms?

A. Yes, it is.

Q. For Stacy Hutchison?

A. Yes.

Q. We go down to that same line in box 24, it says date of service on this particular one was 9/28 of '07; is that right?

A. Yes, it is.

Q. Same type of procedure, an endoscopy type procedure?

A. It's an endoscopy type procedure, yes.

Q. Under the billed amount the charge that was submitted to you?

A. $560.

Q. Now here I note that instead of 31 minutes it appears to be 32 minutes; is that correct?

A. Yes, it is.

Q. Is that what you refer to as sometimes variation in the amount of time that is submitted to you?

A. Yes.

Q. If somebody submitted a lower bill to you, for example like two minutes, would typically the amount billed under section F be charged at a lower amount? Would that typically show up as a billed amount which would be lower?

A. It should be because if it's a ten minute

or two minute procedure then yes the dollar should be lower.

Q. Okay. Now on the bottom, and I know that the CRNA here is Linda Hubbard I think you designated box 33; correct?

A. Yes.

Q. Does it still come from the Endoscopy Center of Southern Nevada?

A. Yes, it does.

Q. Now moving to what you described as the explanation of benefits form for the procedure for Stacy Hutchison on I think it's the 21st. And I'll zoom in on that a little bit because I know it's hard to read.

Is that the procedure — based on the explanation of benefits the payment for that procedure on the 21st?

A. Yes. No, that's the bill charge highlighted there, $560. And if you go over —

Q. Under the column indicating, and it's hard to read but it says description, what is described there?

A. Anesthesia intestinal endoscopy.

Q. Now I'm going to take you down to the lower right hand corner of the section where the billing occurs. Do you see a dollar amount there?

A. Yes.
Q. What is that dollar amount?
A. Are you speaking of the very last column?
Q. Yes.
A. That is the allowed amount, the amount we paid on this particular claim which is $90.
Q. I want to talk about that for just a minute. Now $90 as you say the amount you actually paid; correct?
A. Yes.
Q. Now before we go any further with that I want to go to the next page which is another EOB form I think; correct?
A. Yes, it is.
Q. And the date on this one is the 28th of 2007?
A. Yes.
Q. Description?
A. Anesthesia upper gastrointestinal.
Q. Same dollar amount billed?
A. Same dollar amount billed.
Q. But you pay the same amount; is that correct?
A. Yes, we did.
Q. Still $90?

A. Yes.
Q. In the payment, I know that the amount that was submitted to you was for either 32 or I think it was --
A. Thirty-one.
Q. Thirty-one minutes, 31 or 32 minutes, and the billed amount was $60 on both of those, but you paid the same amount on both; is that correct?
A. Yes, it is.
Q. If they had billed, or if they had billed out, I don't know, $120 for ten minutes of anesthesia time, how much would you have paid?
A. We would have still paid $90.
Q. So are you telling us that you paid a flat amount of $90 regardless of what was billed to you?
A. Yes, we did.
Q. So did it matter how many minutes were placed in the boxes?
A. It still matters but it wouldn't have in regard to the payment out the door it would not have changed it.
Q. So the dollar amount coming back to the Endoscopy Center would not have changed regardless of what they put in?
A. Correct.

Q. But is it important to get accurate information?
A. Absolutely.
Q. In some respects does, at the end of a -- I assume that you, you said the contracted amount or something along those lines; is that right?
A. Yes, it's a contracted amount.
Q. I know you're probably not involved in the actual contract negotiations; is that right?
A. No, I'm not.
Q. But is it your understanding or do you have knowledge of the fact that what a provider basically eventually says is what work they had to put in over a period of years or over a period of a year for certain services, that that might factor into what they contract out later on for how much you pay them?
A. Absolutely, the history of claims is looked at to renegotiate contracts.
Q. So when you say history of claims, is that stuff that is, or information that is contained on the 1500 claim form itself?
A. Yes, it is.
Q. So if somebody was doing a procedure for example that was only taking two minutes but they kept submitting bills for 30 or 31 or 32 minutes or something

along those lines, when it came to negotiate would that go into, be a factor, at least considered in whether or not to raise the reimbursement or lower the reimbursement?
A. Yes, it would.
Q. Okay. Now beside those two, or that patient, was there another one that you dealt with beside Miss or Mr. Hutchison?
A. Yes, there is a third.
Q. And who was that?
A. It's -- I need to pull this name out. It's Carole Grueskin.
Q. I'm showing you is what is marked as Grand Jury Exhibit 36. Just flip through both pages of it and tell me if you recognize what's there.
A. Yes, I do.
Q. What is that document?
A. It is the claim form again on a HCVA 1500, it is the explanation of benefits that we generate at the time of making the payment.
Q. Okay.
A. And this one looks a little bit different because this is one of our Senior Dimension members, the explanation of benefits.
Q. Got it. And I'll ask you about that in

Q. And ladies and gentlemen of the Grand Jury, the next portion of what he's about to say will probably be a hearsay statement. It is not offered for the truth of the matter asserted. We'll get to supporting that at a later time. I'm just having you at this time hear it for the context to show you why he went to the next step.

Go ahead.

A. May I ask you a question?

Q. Point of clarification you can ask but you can't ask me a question.

A. Point of clarification. Would it be appropriate to actually try to recall the conversation that my attorney had with me?

Q. You can do that if it it's appropriate to basically explain why you went and did the next step.

A. Okay. So my attorney was explaining to me about the deposition and he said that there had come a strange moment in the deposition about the timing of the anesthesia record and that there had been maybe a policy of 30 minute timing on the anesthesia record.

Q. Now before you go any further, was there a policy to your knowledge about anything related to the time on anesthesia records?

A. No.

Q. Was that surprising to you?

A. Very.

Q. Based on that information you had what did you do next?

A. I went to Dr. Desai's office where he was and I had told him about the conversation that just took place.

Q. So the very things that you just told the Grand Jury you actually told to Dr. Desai?

A. Yes, I did.

Q. Go forward and tell us what his response was to that.

A. I had asked him about that, I told him about the conversation and he told me that there was no billing issue at all.

Q. So you raised the issue of the 30 minute time period or the 30 minute plus time period and he discounts it so to speak?

A. Yes, he said there is no billing issue.

Q. Was that as far as it went?

A. At that time, yes. I took it that that was correct.

Q. What was the next thing related to this that happened?

A. To the best of my recollection about a week

or a week and a half later the attorney for the plaintiff in that case had submitted a request to the practice for all the endoscopy records for all the patients who had had a procedure on that day in 2005 that Mr. Rexford had his procedure. And he also requested every single anesthesia record sheet from that day.

Q. Now before you go any further, that's the request, we're talking about an event that occurred in 2005. Do you know when in 2005?

A. January of 2005.

Q. So January of 2005 and you know the events that we're talking about here relate to July 25th and September 21st of 2007; correct?

A. September 21st, July 25th.

Q. Did I say it wrong?

A. Yeah, you got it backwards.

Q. I'm sorry, July 25th, September 21st, of 2007.

A. Right.

Q. Go on.

A. I went to Desai's office again and I had told him that this request had come in and it was suggesting that maybe there was a billing issue here with the timing and I said is there a billing problem

here, he said there is no billing fraud.

Q. He said the word fraud?

A. He said the word fraud.

Q. Is no billing fraud his words?

A. His words, yes.

Q. Had you said billing fraud?

A. I don't remember saying fraud. I remember saying is there a billing issue here, is there a billing problem, I don't remember using the word fraud to the best of my recollection.

Q. Were you concerned by the request that came in based on what had happened in the deposition?

A. Yes.

Q. After he says that to you any further questions or conversation about that issue?

A. No. I again took it from him that there was no billing fraud or issue.

Q. So at this point you've raised this issue to him twice?

A. Correct.

Q. Did he tell you at any time that he would look into it, he would check on it, anything like that?

A. No.

Q. Did he seem surprised when you came in and talked to him?

You are advised that you are here today to give testimony in the investigation pertaining to the offenses of performance of act in reckless disregard of persons or property, criminal neglect of patients, insurance fraud, obtaining money under false pretenses, and racketeering, involving Dipak Kantilal Desai, Ronald Ernest Lakeman and Keith H. Mathahs.

Do you understand this advisement?

THE WITNESS: Yes.

THE FOREPERSON: Okay. Please state your first and last names spelling both for the record.

THE WITNESS: Patricia Gonzalez. P-A-T-R-I-C-I-A, Gonzalez, G-O-N-Z-A-L-E-Z.

THE FOREPERSON: Thank you.

PATRICIA GONZALEZ,

having been first duly sworn by the Foreperson of the Grand Jury to testify to the truth, the whole truth, and nothing but the truth, testified as follows:

EXAMINATION

BY MR. STAUDAHER:

Q. Miss Gonzalez, what do you do for a living?

A. I do contracting for Blue Cross Blue Shield. I'm the director of network management.

Q. In your job at Blue Cross Blue Shield do you deal or have access to claim forms, payment, EOB forms and things like that?

A. Yes.

Q. And just as we go forward on this if you can let me finish my question before you answer that will help the court reporter because she's taking down the words and it's difficult for her to take it down if we're talking over each other.

A. I understand.

Q. In that process of doing that work I assume you see that kind of form, you look at the claims, things like that; is that right?

A. Correct.

Q. I'm going to direct your attention to three specific patients and ask if they are associated in any way with your insurance company Blue Cross Blue Shield as far as members? The first one being Patty Aspinwall.

A. Yes.

Q. The second being Kennath Rubino.

A. Yes.

Q. And the third being Sharrieff Ziyad.

A. Yes.

Q. I'm going to start off with Sharrieff Ziyad and ask you some questions about him and some claims

that pertain to him. Is that okay?

A. Yes.

Q. Showing you what has been previously marked as Grand Jury Exhibit Number 31. It's a three page document. Just flip through that if you would and tell me if you recognize the forms that are contained in that exhibit.

A. Yes.

Q. Now I will display those momentarily here but before we do that I wanted to ask you a couple of things. The first page of that exhibit is a certain type of form. What do you call that form?

A. HCVA 1500.

Q. Is that typically the type of information that, or claim type information that is submitted to your company for payment for services rendered to a member?

A. Yes.

Q. And you said Mr. Ziyad was a member of Blue Cross Blue Shield; is that right?

A. Yes.

Q. This first page of the exhibit that's being displayed before the Grand Jury right now, is that the form that was submitted for Sharrieff Ziyad on the date in question?

A. Yes.

Q. And if we go down a little bit we can see the date I believe on box 24, line 1, do you see that?

A. Yes.

Q. What is the date that the service was rendered on this particular procedure?

A. 7/25 of '07.

Q. Okay. And if we go across to column D there is a procedure code listed there. Do you know what that's for?

A. Yes.

Q. And what is that?

A. Colonoscopy.

Q. The anesthesia for it a I assume?

A. Yes, the anesthesia for a colonoscopy.

Q. If we move across to column F there is a dollar amount listed. What is that dollar amount?

A. $560.

Q. And as far as the dollar amount is concerned, what is that? Is that how much is actually submitted by the entity to your insurance company for billing purposes?

A. That is correct.

Q. The charge so to speak?

A. Yes, the billed charges.

Q. I note that on the next column there is a number 8; is that correct?
A. Correct.
Q. Typically on procedures that are done, the anesthesia portion of procedures, do they get billed out in minutes or in units?
A. In minutes.
Q. And do you know what the difference is between minutes and units?
A. Yes.
Q. Go ahead.
A. Every 15 minutes equals one unit.
Q. As far as a base number of units do you start off with, for an endoscopy type procedure is there a base that you start with?
A. Yes.
Q. What is the base?
A. Five.
Q. The base of five and then additional time would then be added to that base of five in the term of increments of 15 minutes; is that correct?
A. That is correct.
Q. So if there was eight units billed would that be three units on top of the base?
A. Yes.

Q. For a total of eight?
A. Correct.
Q. We see the number 8 in that designation. Do you know if that was submitted as eight units or minutes? I'm not asking how you interpret it at this point but how you believe it was submitted based on the dollar amount you see billed for it.
A. Right, eight units.
Q. Looking at the bottom of the screen, I think we're on boxes, both in box 32 and 33, there are providers and locations of service; is that correct?
A. That is correct.
Q. And who are, who is designated as the provider who performed the service?
A. On box 33 Ron Lickman (sic).
Q. Lakeman?
A. Yes.
Q. And the location where the service took place?
A. The Endoscopy Center of Southern Nevada.
Q. Is that on 700 Shadow Lane in Las Vegas?
A. Yes, that is correct.
Q. And I'm going to turn to the next page. Actually the next two pages have I think similar information on them. I'll turn to the last page 3 first

and then we'll come back to the other one because I think it's a little bit easier to read. This is really small. I'll try to zoom in a little bit.
First of all what are we looking at? What form is this?
A. This is the explanation of payment.
Q. And I'm going to, I just zoomed into the portion of the line which is entitled anesthesia which is the top line of the two, the next line down is totals. Do you see what it said we paid at the top of that column?
A. Yes.
Q. Is that what you actually paid on this particular claim?
A. Yes.
Q. What is the dollar amount that you paid?
A. $206.82.
Q. And that's on a charge of $560 for what appears to be eight units; is that correct?
A. Correct.
Q. Now I'm going to flip back to the preceding page, a little bit easier to read. Does it have the same information on it?
A. Yes.
Q. On the left hand side of the column it says

anesthesia under description?
A. Correct.
Q. Billed charge is 560?
A. Yes.
Q. And it says service paid is $206.82?
A. Correct.
Q. Is that what you actually paid for the anesthesia billed to you at 560 on this particular patient?
A. Yes.
Q. I'm going to show you some others in just a moment but one of the things I wanted to ask you is this. If you received a payment, your company, if you received a billed amount minute wise for services, for anesthesia that were let's say the 31 minutes, you said already that that would be considered eight units; is that correct?
A. Yes, that is correct.
Q. If you had a claim come in that say was 22 minutes, how many units would that be?
A. Seven.
Q. Would you pay a lesser amount on that claim than you would on a 31 minute submitted bill?
A. Yes.
Q. Would that relate to the fact that you're

Q. When they were no longer taking care of the patients that they shouldn't been recording?
A. That is correct.
Q. Did you ever get any impression from any source that that was not the way it should be done?
A. Yes.
Q. And you said you got an impression that was not to be done that way?
A. Maybe I misunderstood.
Q. Bad question. Did you ever get the impression from any source that recording it, recording the anesthesia time from start to stop contact, that is was the way it was supposed to be done?
A. Yes, I got that information.
Q. Now after -- let's go back in time a bit to that time that you see the anesthesia record already filled out before you start a procedure.
A. Okay.
Q. Are you with me?
A. Yes.
Q. What did you do when you saw that?
A. I asked the CRNA why did he do that, why was he recording this time before I even started the procedure. He said well, we were told it has to be 30 minutes or we wouldn't get paid. I said who told you

that he said you know who said that, but he didn't say anybody's name.
Q. And again that statement, ladies and gentlemen, is not offered for the truth of the matter. It's just to give you context about what he's testifying about and what comes next.
Did at any time you have an impression as to who that person was?
A. My impression was it was Dr. Desai because he was the manager of the group.
Q. What did you do after that information came out?
A. I went to Dr. Desai's office again, I sat down in his office, heart sort of pounding, and I said to him sitting right next to him, the end time has to be the end time, it has to be changed. He sort of agreed with me and said okay, I understand, and he gave me instructions on what to do.
Q. Okay. Now I just want to, the reason that I'm asking you about that this right now, this little conversation you're having with Dr. Desai, was that corroborative of what you heard from the nurse, did he act surprised when you walked in there and talked about the times for example?
A. No, he wasn't surprised.

Q. Did he acknowledge that that had been done at least like that?
A. Yes.
Q. Did he agree at that time with you to change the practice to put down the correct time?
A. Did Dr. Desai?
Q. Yes.
A. Yes.
Q. So he adopted what the person, the anesthesia CRNA you talked to was saying?
A. Correct.
Q. Essentially you confronted him with that information?
A. I confronted him with that information.
Q. Now you're in the room, he agrees to, okay, from this point forward we'll put down the correct time; is that fair to say?
A. That's my impression, yes.
Q. Any other conversations about that with him?
A. Well, he told me, he said specifically, but don't tell, don't go to the CRNAs yourself, go to Tonya Rushing and ask her to make this change.
Q. Now did you go to Tonya Rushing?
A. Yes, I called her immediately.

Q. Did you go at any time up with her with any of the CRNAs?
A. To the best of my recollection I called Tonya on the phone from the Endoscopy Center, I told her that she must meet with every CRNA, that there is an issue about the times they're recording and that the end time has to be the end time, I told her that I just met with D and he agreed, that she must meet with them and tell them that the end times must be the correct end times. She sounded shocked about this and said she would. Now to the best of my recollection I think I did go upstairs with one of the CRNAs to Tonya's office, sat him down and I did leave the office, I did not stay for the conversation.
Q. You said that she acted surprised by this information?
A. Correct.
Q. When you say surprised, did you have any impression that she had any before knowledge that this was being done this way?
A. My impression was that she had no knowledge of that.
Q. Did she understand what you were talking about?
A. Yes.

try to appeal such a decision. So this was arranged for Desai to go down with attorneys from Lewis and Roka to try to get our license back. You may remember even newspaper articles about it. Desai wanted me to help him go down there and in a room just like this talk to them about getting our license back. Now we were getting ready to go down there and I said that I was afraid to go, I didn't want to go down there because I knew the media would be down there, there would be television cameras, and I was cowardly, I don't know, but I was afraid to go down there and I said this to Desai before we left, and he said I need you to help me do this, he said to me that we need a white guy to go down there to be with him, that that would help.

Q. He said a white guy?

A. Yes.

Q. And you were it?

A. That was it.

Q. Going back to Starbucks. You related a conversation you had with Dr. Desai there. Do you recall that?

A. Yes.

Q. At any time during that conversation, during the time you were with him in Starbucks, did the conversation turn to him telling you about selling the

practice or his potential sale of the practice?

A. Yes.

Q. Can you tell us about that?

A. During this conversation where I was just trying to get some emotional support through all of this he did say to me that he has no ego, that he has, he's not bothered by all this, he has no ego, and that this has cost him $100 million. He said that it cost him a hundred million dollars because certain bank stocks that he owned had plummeted, certain other investments that he had plummeted, but he also said to me that the practice, I lost something like $46 million because of the price that would have been paid for the sale of the endoscopy. And I didn't, none of the partners knew that there was even a sale for this practice but he said that he had lost money because the sale didn't go through.

Q. So he tells you that he was planning to sell the practice then?

A. Right, yes.

Q. For that amount of money?

A. Correct.

Q. You had mentioned at times you were, you know that he had essential say over everything at the facilities; correct?

A. Correct.

Q. And that his word was the word so to speak in the entire organization?

A. Yes.

Q. Were you ever concerned about him being vindictive or concerned for yourself in stepping up or speaking up against him?

A. Yes.

Q. And can you explain to us why?

A. Well, in my experience there he's a very powerful, strong leader, great business reputation, been on the Board of Medical Examiners, I remember though there were many events where he would yell and be angry at me or others.

I remember him berating Dr. Carrera over a vacation request, but not just simply saying we can't accommodate this vacation request, literally yelling at him at the top of his lungs that he cannot have this, he's affecting the practice.

I remember getting called for jury duty and walking toward this facility and Desai calling me on my cell and saying what's going on, why are you not at work, and I said D, you know I'm here at jury duty, you can't just write a letter, you have to come here to be excused, and he yelled at me on the phone and said you're more interested in helping, being part of the

jury system than being here at work.

He, there was a lawsuit that came when I was an employee physician about a complication from a procedure, and I wasn't named in that lawsuit because I was not a partner, and he sat me down in the room and I thought he was going to ask me about the case and what I thought of it, but he said many of the guys in the group think that you had something to do with this, that you got this lawsuit against us. I didn't know what to say. It was crazy that he was intimating that I somehow manipulated other people to bring a lawsuit against our own practice.

So these kinds of things occurred. So I was afraid of him. And he also made us sign certain documents that would not allow us to practice if we ever wanted to leave, it would force us to leave town for a period of time.

Q. What about the other employees, did you ever see or get a feeling that any of the employees were pressured or coerced to do things that he wanted done, implement his policies to the things that he was saying had to happen in the practice?

A. Yes, I remember him going to the area where the schedulers were and the phone operators were and pushing for more cases to be scheduled or looking at the

room?
A. Right.
Q. And I wouldn't want you to speculate as to how, what he brought with him or didn't bring with him or whatever, but at least we have the CRNA, if I understand you correctly, we have the CRNA where the source patient originates and infected patients after that in that same room?
A. Yes.
Q. And then we have around the time that the infection start in the second room we have evidence that shows that Mr. Mathahs is the CRNA that moves to that room at least for a period of time?
A. That's correct.
Q. Now was there any indication that he in fact had been involved in any way with Stacy Hutchison's procedure?
A. Not according to the records. And the records that I used were the ones that were generated and signed off on in the procedure files.
Q. But you said not according to the records. Did you have any other source of information that led you to a different conclusion?
A. One of the depositions I read in the civil litigation that's going on.

Q. And I don't want to get into specifics about what other people said, but were you able to follow-up on any information based on any deposition that you read?
A. Well, the information that I got made this a little clearer for me.
Q. Okay.
A. The person that was deposed said that when they started the computer-generated report they had a drop down list and they would click off who was in the room and I noticed on some of these reports that the person that was listed on the report was not the person who signed off.
Q. And ladies and gentlemen of the Grand Jury, that information is not offered for the truth of the matter and I would ask you not to consider that hearsay statement in your deliberation, just for why this individual, this particular witness was analyzing the things as she did in this particular case.
That being said, did you, you obviously had indication that at least right at the time that Stacy Hutchison's procedure is either finished or sometime within the procedure that Mr. Mathahs moves from the room he was in to the second procedure room?
A. Yes.

Q. Is that correct?
A. Yes.
Q. So we at least have movement and infections follow from thereon after?
A. Yes.
Q. And if I need to leave this up here I can. But I'm talking about the exhibit again, Exhibit 42 if you still need to refer to that.
But the patients that follow in that room, the second room, those patients, the anesthesiologist or the anesthesia person, the nurse anesthetist at least of record for those three procedures was who?
A. Ronald Lakeman.
Q. So Mr. Mathahs at least according to the records had returned back to his room at some point?
A. Yes, but he shows up again.
Q. Go ahead.
A. We were told that they covered each other for lunch.
Q. Okay. And again that's not offered for the truth of the matter.
Based on that information did you see anything that reflected that kind of thing in the records that you reviewed?
A. Well, Keith Mathahs is in this room, in

room 1 until noon, about noon, 11:57, when Ronald Lakeman took this procedure and then Keith Mathahs is back. And then in the other room Keith Mathahs shows up for this procedure after Stacy Hutchin -- Renate Blemings at 10:13, then he comes back again at 11:34.
Q. Did that look like it was around a lunch break then?
A. That's what it looked like to me.
Q. So the prior time when he's actually moved over to that room you don't know why he came over?
A. No.
Q. And he's only over there for one recorded procedure; is that right?
A. Yes.
Q. And that procedure immediately follows Stacy Hutchison's procedure?
A. Yes.
Q. So you don't know if he came in there before Stacy Hutchison or during the procedure at all?
A. No.
Q. Any other information related to this exhibit?
A. On my comments, the last column, I call it comment, and that's what I use for myself to make notes or to notice something that is interesting. So we have

THE WITNESS: Yes, I do.
THE FOREPERSON: Thank you. You may be excused.
THE WITNESS: Thank you.
THE FOREPERSON: You're welcome.
MR. STAUDAHER: One second ladies and gentlemen.
Ladies and gentlemen, that concludes it. Thank you for coming over. I will have one witness after — they are going to present that case. So it's probably going to be about two hours for them to present it, I believe they're coming back at 1:30 or thereabouts. I know we went over a little bit so I'll let you decide when you want to come back. I know it's an important case for them. They anticipate two hours. I have one witness who is relatively short like the morning witness after that so we should be finished relatively early. So I know they'll be back here at 1:30.
(Recess.)
(Juror Agnes Parker exits the proceedings.)
MR. STAUDAHER: Ladies and gentlemen of the Grand Jury, we're back in case 09BGJ049A-C, Dipak Kantilal Desai, Ronald Ernest Lakeman, Keith H. Mathahs, State versus those individuals. We have one additional

witness to provide to you after you had your break earlier today. I'll call that witness in now.
THE FOREPERSON: Please raise your right hand. Thank you.
You do solemnly swear the testimony you are about to give upon the investigation now pending before this Grand Jury shall be the truth, the whole truth, and nothing but the truth, so help you God?
THE WITNESS: Yes, ma'am.
THE FOREPERSON: Thank you. You may be seated.
THE WITNESS: Thank you.
THE FOREPERSON: You are advised that you are here today to give testimony in the investigation pertaining to the offenses of performance of act in reckless disregard of persons or property, criminal neglect of patients, insurance fraud, obtaining money under false pretenses, and racketeering, involving Dipak Kantilal Desai, Ronald Ernest Lakeman and Keith H. Mathahs.
Do you understand this advisement?
THE WITNESS: Yes, ma'am.
THE FOREPERSON: Could you please state both your first and last names spelling them for the record.

THE WITNESS: First name is Joanne, J-O-A-N-N-E, last name Sams, S-A-M-S.
THE FOREPERSON: Thank you.
THE WITNESS: You're welcome.

JOANNE SAMS,

having been first duly sworn by the Foreperson of the Grand Jury to testify to the truth, the whole truth, and nothing but the truth, testified as follows:

EXAMINATION

BY MR. STAUDAHER:

Q. Miss Sams, what do you do for a living?
A. I'm a certified coder for the Veterans Administration.
Q. What do you do as a coder for them?
A. What I do is I take medical documentation and I turn it into codes for billing and for reporting purposes.
Q. Okay. In that process do you receive forms called HCVA 1500 forms from different providers?
A. Yes, sir.
Q. Do you take the information off that form and then base — I assume that's a claim coming in; correct?

A. Yes, sir.
Q. Do you then formulate what you would reimburse based off that claim?
A. That's correct.
Q. And then go through the process of actually paying out the vendor?
A. And validating that the codes are verified by the documentation submitted.
Q. Okay. I'm going to show you what has been marked as Grand Jury Exhibit Number 44, ask you to just flip through that document and tell me if you recognize it.
A. Yes, I do recognize this.
Q. Look at all the pages. I think there are five or six pages.
A. Yes.
Q. Five page document.
A. Yes, sir.
Q. What is this document, ma'am?
A. This is a sample of a HCVA 1500 form.
Q. Page 1.
A. Page 1. Page 2 is a payment history for a veteran.
Q. And who is that veteran?
A. Michael Washington.

Third page is the operative report for a procedure performed on Michael at the endoscopic center. The fourth page is a spreadsheet that I created that provides a description of services and definitions of what the modifiers on the claim form and the time indicated on the claim form as well. The fifth page is an overview, it's an expanded view of the claims history from page 3.

Q. Okay. So the first page, this HCVA form is not filled out; is that correct?

A. That's correct.

Q. In this particular case were you able to find the actual form that was submitted on that claim?

A. No, we were not.

Q. Do you normally get claim forms like this?

A. Yes, we do.

Q. Now you had said that the succeeding pages of this exhibit though contain information that's in your computers that was basically inputted from that information form?

A. That's correct, yes.

Q. Is that correct?

A. Yes, sir.

Q. So even though you don't have the actual HCVA form you have the information that was inputted

from the form?

A. Absolutely, that's correct.

Q. Have you gone back and looked at this information to see if it conformed or if it matched this operative report that was provided as well?

A. Yes, I have.

Q. Does it?

A. Yes, it does, it does match.

Q. I notice on page 3 of this document there is an operative report from the Endoscopy Center of Southern Nevada; is that correct?

A. Yes.

Q. I'll show it to you right here. And again we're still looking for the record at Exhibit 44.

Is that a requirement from the Veterans Administration that they provide an operative report of the procedure done and the dates and times and all that stuff associated with it?

A. Yes, it's for continuity of care and to validate that the services were in fact rendered to a particular patient, yes.

Q. Who was the information pertaining to on that particular form?

A. This is for the patient Michael Washington.

Q. Who was the doctor who actually performed

the procedure?

A. Dr. Desai.

Q. Dipak Desai?

A. Dipak Desai, yes.

Q. Who was the individual who performed the anesthesia services?

A. Anesthesia was provided by Ronald Lakeman, CRNA.

Q. What procedure was performed?

A. A colonoscopy.

Q. What was the procedure date?

A. 7/25/2007.

Q. Now beside that information on the operative report, you mentioned on page 4 that this was information pertaining to this specific claim; is that correct?

A. That's correct.

Q. What information is on that page?

A. The CPT code which is the procedure code, the description of that code, the modifiers that the provider billed us with the anesthesia time and the units billed.

Q. Okay. I'm going to display this for the Grand Jury so that we know what we're talking about as we follow along.

I'm going to go back to page — we'll start off with page 1. And this is just, I think you said just the blank —

A. It's the sample form, yes, sir.

Q. Page 2. And I note that up in the left hand corner, upper left hand corner is Michael Washington's name; is that correct?

A. That's correct.

Q. What is the information on this form showing us?

A. It is showing us, the first entry is the surgical center that they billed for the services, for the use of their facility, vendor identified as Endoscopic Center of Southern Nevada. The second entry is the vendor, the Gastroenterology Center, it is an office call, the date of service is 2/1/08.

Q. And I think what I'd like to do is move down to the actual date for the procedure.

A. The 7/25?

Q. Yes, the 7/25 date.

A. The highlighted 7/25/07 is the, 00810 is the anesthesia code.

Q. For what?

A. For the colonoscopy performed on that day.

Q. Let's move to the next page. I know you've

EIGHTH JUDICIAL DISTRICT COURT

COUNTY OF CLARK, STATE OF NEVADA

BEFORE THE GRAND JURY IMPANELED BY THE AFORESAID DISTRICT COURT

COPY

STATE OF NEVADA

Plaintiff,

vs.

CASE NO. 09BGJ049A-C

DIPAK KANTILAL DESAI,
RONALD ERNEST LAKEMAN,
KEITH MATHAHS,

Defendants.

CJ65107

Taken at Las Vegas, Nevada

Thursday, May 6, 2010

2:00 P.M.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

VOLUME 6

REPORTED BY: LISA BRENSKE, CCR #186

GRAND JURORS PRESENT ON THURSDAY, MAY 6, 2010:

PAMELA YOUNG, Foreperson
JOSEPH WILLOUGHBY, Assistant Foreperson
LOUISE ZUNIGA, Secretary
SVEN BRADLEY
CONSTANCE CABILES
LISA CAMP
AGNES PARKER
YOLANDA PARKER
BIANCA ROBERSON
ROBERT ROSE
STEVEN SHLIKER
ALICE SZURAN
MICHAEL THOMPSON
THOMAS UHRAN
ANNE ZARATE

FILED
JUN 08 2010
CLERK OF COURT

ALSO PRESENT AT THE REQUEST OF THE GRAND JURY:

MICHAEL STAUDAHER, ESQ.,
Deputy District Attorney

JEFFREY SEGAL, ESQ.,
(On behalf of the witness)

WITNESSES

	EXAMINED
ANN MARIE LOBIONDO	8

LAS VEGAS, NEVADA, THURSDAY, MAY 6, 2010

* * * * * *

LISA BRENSKE,

having been first duly sworn to faithfully and accurately transcribe the following proceedings to the best of her ability.

MR. STAUDAHER: On the record again in the case of state of Nevada versus Dipak Kantilal Desai, Ronald Ernest Lakeman and Keith H. Mathahs, grand jury case number 09BGJ049A through C.

Ladies and gentlemen, as in the previous presentations that have been before the Grand Jury I have to tell you two things or I have to at least discuss two issues with you. First of all for those of you who were not here during any portion of the prior proceedings it is incumbent upon you prior to deliberating -- and you will not be asked to deliberate today -- but prior to deliberating in order to deliberate all of you must have read all the transcripts or been present for the entirety of the Grand Jury proceeding. Is that understood?

THE JURY MEMBERS: Yes.

Q. Would you consider him a micromanager of the practice at all?
A. Yes.
Q. And you know what I mean by that?
A. He's in every detail.
Q. Yes. Is that a fair assessment?
A. Yes.
Q. I am going to ask you some questions about some specific things. Was there ever a discussion, I'm talking about specific discussions or communications or interactions with Dr. Desai on this, was there ever an issue about the use of alcohol wipes for example?
A. He would always tell me not to use so many alcohol wipes or not to use another alcohol wipe.
Q. What are you using them for, what's the purpose?
A. If you're putting in an IV, you are going to clean the patient's skin vigorously with an alcohol wipe and if you're wiping off a port or a bottle or something.
Q. So it was for aseptic technique essentially?
A. Yes.
Q. Trying to prevent infection?
A. Trying to prevent infection. Bacteria

static.
Q. He was saying you shouldn't use so many of those?
A. Yes.
Q. Are they big expensive items?
A. That's what I said to him. I said it's just pennies. And I would laugh.
Q. Did that seem to matter though?
A. No.
Q. To him?
A. No.
Q. What about masks and gowns, things like that?
A. He would not like us using a lot of any masks or gowns and there was one physician who used to use them every time and he would always --
Q. When you say "he", are you talking about Dr. Desai?
A. Dr. Desai would always kind of reprimand him for that.
Q. Are these gowns that would get stuff on them like fecal material and things like that?
A. Yes, that's why that doctor used them.
Q. What about things called Chux?
A. Chux, blue pads that they put under the

patient.
Q. If I understand you correctly, just so I know what these are for the Grand Jury, are they a square-type pad that is plastic on one side and absorbent on the other side?
A. Yes.
Q. What was the issue related to those?
A. He thought we were using too many of those so he would have someone cut them in half with the scissors so he could use less.
Q. What about propofol, the drug?
A. Well, I mean you knew that -- he would say he didn't want you to use a lot, just sometimes he'd tell you how much to use on each patient, but he didn't want you to use a lot on each patient. You knew that that was a cost issue.
Q. Was there any issue about wasting that drug?
A. I don't remember him ever telling me to -- he would say don't waste it but not to reuse it and if he did, I don't know if anyone would listen to that.
Q. Was there pressure not to waste the drug?
A. Yes.
Q. Now, did you feel comfortable if you were in a room and let's say you had a 500C bottle of the

drug and you hadn't done your five syringe thing that you talked about and you drew up some and you never re-entered the bottle, you use it on a patient and gosh, there's 30 or 400Cs left, would you feel comfortable while he was in the room discarding that?
A. No.
Q. What would you do typically if you were in a situation like that?
A. If I had to disregard it I would do it after he left the room.
Q. Is that because you didn't want him to see you discard it?
A. Yes.
Q. What about bite blocks?
A. Initially when I worked there he would reuse bite blocks. I think they did the whole time. I don't know if that ever changed, but they would wash them or sterilize them, the techs would be in charge of that. But they were reused.
Q. They would go into the room where the scopes were and be cleaned?
A. Washed, cleaned.
Q. And then what about forceps, I'm talking about disposable type forceps?
A. Again during the first years of my

didn't on an average?
A. I tried to keep the peace with him. I tried not to, you know, go against what he said. He was very intimidating and he was brutal and he was just a difficult person to work with. But you try to do your best and take care of the patients first and I would say that that's what I tried to do. And that's why I always didn't enjoy working there.
THE FOREPERSON: Lisa.
BY A JUROR:
Q. Were you aware that CRNAs are required to be supervised by a medical doctor that is on site and available during procedures?
A. Well, I believe there's something called captain of the ship doctrine where the doctor in the facility is in charge, whether they were all MDs performing the procedures, it's either an MD or a surgeon and that I think satisfies that requirement.
Q. And at this facility that you worked at as a CRNA was there an MD anesthesiologist on site supervising the CRNAs?
A. No, not always. Actually I've worked in other states and it's -- each state can have their own rules regarding that and in California we could work independently. Of course like I said there is an MD

performing the procedure in the room with you, but we could work independently in California and in New York. I don't know if the laws have changed since I've been practicing there, but — and also in Las Vegas.
Q. So Dr. Desai, other than the cost of the propofol, he may have a good reason for not letting you inject a patient with more propofol, correct? There could be medical reasons that he said do not inject the patient?
A. Well, I would never touch a patient, go near a patient, put an IV in a patient without talking to them, getting a history, finding out what medications they're on, what underlying conditions that they have, what diseases they have, how they've reacted to anesthesia in the past. I take vital signs before I'm monitoring them, during the procedure I at least have oxygen tubing on them and I'm administering oxygen and I wouldn't — that's what I've spent all these years learning and doing. So I wouldn't be there unless I was taking all this into account before I wanted to give a patient more medication. And if a patient is moving and they're complaining and they're starting to speak and complain that something hurts, I'm there as the patient's advocate and I am taking into account all these conditions. If their blood

pressure is dropping, then I can't give them more, even if they are moving. Or if something — if their vital signs are changing, then I can't give them more, but in those situations if I've made my assessment that's why I wanted to give the patient more.
Q. You said then Dr. Desai, for example, is the MD supervising you at this point, correct?
A. Right.
Q. And if the MD that's supervising you said do not give a patient more propofol, then since he's the doctor we should listen to the doctor or -- because he may have a medical reason, correct, other than cost?
A. Again, if I'm the one that assessed the patient and spent so much time with a preop interview and if I'm the one watching the patient during the procedure while he's watching the scope and the camera and the video and looking at the patient's colon, then I'm the one -- I'm there for the patient. I've made my assessment. I'm in this position and I have this --
MR. STAUDAHER: Let me interrupt and ask one additional follow-up and maybe it'll help with that.
BY MR. STAUDAHER:
Q. If you follow the advice and give additional anesthetic, at that point does that mean the

patient is going to be in the room longer?
A. Yeah, it would take longer.
Q. So the patient's going to at least be anesthetized to some degree and it'll take longer for them to recover and leave the room; is that correct?
A. Definitely. And I think that was why he didn't want me to give more because it would take longer and then time is money.
Q. Let's follow up with that. In the instances when he said he didn't want you to give more, did he ever voice a medical reason for not doing that?
A. No, because -- no. If there were medical reasons I'd be aware of it too. If a patient is debilitated or frail and, you know, it's clear you're just going to give a little bit, but then I wouldn't be wanting to give the patient more in that case. I mean I'm talking about a healthy individual who is clearly uncomfortable.
BY A JUROR:
Q. We can't read Dr. Desai's mind to know whether or whether or not that was the case, correct?
A. Yeah, I can't argue with that statement.
BY MR. STAUDAHER:
Q. Let me follow up one last thing on that. Did you ever see Dr. Desai himself give propofol to a

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

BEFORE THE GRAND JURY IMPANELED BY THE AFORESAID DISTRICT COURT

THE STATE OF NEVADA,
Plaintiff,
vs.
DIPAK KANTILAL DESAI, RONALD ERNEST LAKEMAN, KEITH H. MATHAHS,
Defendants.

COPY

No. 09BGJ049ABC

C246107

Taken at Las Vegas, Nevada
Thursday, May 13, 2010
1:03 p.m.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

VOLUME 7

Reported by: Danette L. Antonacci, C.C.R. No. 222

GRAND JURORS PRESENT ON MAY 13, 2010

PAM YOUNG, Foreperson
JOSEPH WILLOUGHBY, Deputy Foreperson
LOUISE ZUNIGA, Secretary
SHELLEY SALAMANOUPOULUS, Assistant Secretary
SVEN BRADLEY
CONSTANCE CABILES
LISA CAMP (Arrives at 8:42 a.m.)
AGNES PARKER
YOLANDA PARKER
BIANCA ROBERSON
STEVE SHLUKER
ALICE SZURAN
MICHAEL THOMPSON
TOM UHRHAN
ANNE ZARATE

FILED
JUN 08 2010
CLERK OF COURT

Also present at the request of the Grand Jury:
Michael Staudaher,
Deputy District Attorney

Pam Weckerly,
Deputy District Attorney

INDEX OF WITNESSES

LAS VEGAS, NEVADA, MAY 13, 2010

* * * * * * *

DANETTE L. ANTONACCI,
having been first duly sworn to faithfully and accurately transcribe the following proceedings to the best of her ability.

MR. STAUDAHER: Ladies and gentlemen of the Grand Jury, my name is Michael Staudaher. I'm the deputy district attorney, or one of them, assigned to prosecute the case of State of Nevada versus Dipak Kantilal Desai, Ronald Ernest Lakeman and Keith H. Mathahs. This is the continuation of the Grand Jury presentation in Grand Jury case number 09BGJ049A-C. Present in the Grand Jury beside myself is chief deputy district attorney in the back of the courtroom, if you could please stand up and give your name for the record and spell it for us.

MS. WECKERLY: Hi. My name is Pam Weckerly and I work for the District Attorney's Office as well. W-E-C-K-E-R-L-Y.

MR. STAUDAHER: And with that we'll call our first witness.

THE FOREPERSON: Would you raise your right

that's pretty much the standard practice to do it immediately after the procedure.

Q. We were talking about time frames. So how much would that add? Because we were trying to narrow down how much time a procedure takes. So you went through the actual procedure. Now the paperwork part of it is going to take another minute or two for you to do that part of the paperwork or how long do you think it takes?

A. Probably two or three minutes to enter in the data and to print it out and do anymore tasks that that patient needs to have. But the rate limiting step between these procedures is not me generating the report, it's the staff getting the patient out, cleaning the room, and it takes at least eight minutes from when the last patient left the room before the next patient is even allowed in the room because you have to have, because of our concerns regarding blood born transmission of infections you need to make sure that all the syringes have been disposed of, that there's nothing left, there's one last check of the room before the next patient even comes in to make absolutely certain there isn't an inadvertent reuse of a syringe or propofol or an instrument or a biopsy forceps, and it also helps to make sure we don't have any confusion with

pathology specimens. If you start having a bunch of different patient bottles floating around people start getting confused. So everything is put away before the next patient is even allowed in the room and there's, we push our staff to be as efficient as possible but we can't get it done less than eight minutes. And that's with two guys. If it's only one technician it's going to be a little longer. So the best you can do is eight minutes from when the last patient left before the next patient can even get in the room. So we have more than enough time to do our procedure and that's generally, I complete my procedure report, I usually go in and talk about the findings with the patient I had done before, they're now fully recovered and can remember what I'm talking about, and then by the time I'm done talking to that patient I can return to the room and the next patient is ready.

Q. Okay. One other question. In your practice, your specific practice, do you have CRNAs or who does the anesthesia?

A. We have both CRNAs and anesthesiologists. Eighty percent of our procedures are done by CRNAs.

Q. We've had some previous testimonies from them. Is it acceptable in your practice, say, we talked about the 50 on the propofol, if, I know it's not

recommended to reuse syringes, reuse needles, but we've heard testimony where a 50, that you'd be able to take maybe five different individual withdrawals and be able to use those on individual patients. Would that be something that you would recommend, would concern you, what?

A. I have seen in the hospital where anesthesiologists will pre-load syringes and then use those syringes throughout the day. They'll have a whole bag full of these syringes and then use it for the patients throughout the day. So that, yes, I have seen that done.

Q. Is that more common in the hospital than a outpatient setting or is it the same?

A. I think it's the same. I have seen anesthesiologists come to the facility with multiple preloaded syringes. Now you have to understand that since this whole thing happened we've all changed our protocols and I think there has been a high sensitivity towards, you know, these types of errors and mistakes so that practice is no longer done even in the hospital.

Q. Today?

A. Correct. But it was common to pre-load the syringes, yes, I would say that was a common practice.

Q. Thank you.

THE FOREPERSON: Any further questions?

BY A JUROR:

Q. We had testimony that in some cases there was, because of speed there was a splatter, in pulling out the endoscope there might be some mess on the aprons or on the floor or whatever. Is that common?

A. Yes, it is. You know these are dirty procedures. A lot of the patients have inadequate preps. Yeah, I mean it's fairly common.

BY THE FOREPERSON:

Q. I have a question about, a couple questions about the cognitive impact. You described how not only the disease Hepatitis C can bring on cognitive deficiencies but also the side effects of some of the meds. Involving the meds, when they are finally off the meds do their cognitive abilities return to previous levels?

A. Yes.

Q. Okay. If they are having the cognitive deficiencies due to the toxins in the blood can that be corrected if they respond to the medication?

A. Just as a point of clarification, the only time you see cognitive impairment due to Hepatitis C, not the treatment, is either early on with an acute Hepatitis C where the patients are delirious in the same

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

BEFORE THE GRAND JURY IMPANELED BY THE AFORESAID DISTRICT COURT

THE STATE OF NEVADA,

Plaintiff,

vs.

DIPAK KANTILAL DESAI, RONALD ERNEST LAKEMAN, KEITH H. MATHAHS,

Defendants.

COPY

No. 09BGJ049ABC

C246107

Taken at Las Vegas, Nevada

Thursday, May 20, 2010

8:45 a.m.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

VOLUME 8

Reported by: Danette L. Antonacci, C.C.R. No. 222

GRAND JURORS PRESENT ON MAY 20, 2010

JOSEPH WILLOUGHBY, Deputy Foreperson
LOUISE ZUNIGA, Secretary
SHELLEY SALAMANOUPOULUS, Assistant Secretary
CONSTANCE CABILES
LISA CAMP
AGNES PARKER (Leaves at 3:30 p.m.)
YOLANDA PARKER
BIANCA ROBERSON
BOB ROSE
STEVE SHLUKER
ALICE SZURAN
MICHAEL THOMPSON
TOM URRHAN
ANNE ZARATE

FILED

JUN 0 8 2010

CLERK OF COURT

Also present at the request of the Grand Jury:
Michael Staudaher,
Deputy District Attorney

Pamela Weckerly, (Morning only.)
Deputy District Attorney

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later that we would get out.
Q. As far as the patients themselves having procedures, how long, when would those kind of end during the day?
A. I don't remember.
Q. To the best of your estimate or recollection.
A. 4:00 or 4:30 maybe.
Q. But before 5 o'clock typically? The patients I'm talking about.
A. I'm not certain. I can't remember. But if you want me to guess.
Q. Well, I'm not asking you to guess per se. But you worked there at the facility for a number of months doing these procedures; correct?
A. Years ago.
Q. I know. It was back in 2007.
A. Uh-huh.
Q. And it spilled over into 2008.
A. Right.
Q. So a couple of years ago; correct?
Is that right?
A. That's right.
Q. So the best of your recollection when you were getting off at the day, whether it was at 5 o'clock

or 6 o'clock, obviously the patients would be done at that point?
A. Yes.
Q. And they had been done based on your statement for about an hour; is that correct?
A. Yes.
Q. And you said that sometimes you would get off later in the day but typically it was mostly around 5 o'clock you thought; is that right?
A. I believe.
Q. Now let's go back to the propofol use. You said that there were times you saw it move from room to room during the end of the day if one room had some left and the other room still had patients going on; correct?
A. Yes.
Q. Beside the fact that you didn't, I assume you weren't looking to see if these were full vials or partial vials or anything like that?
A. That's correct, yes.
Q. Did you ever see any propofol or any syringes reused on patients in the procedure rooms when you were there?
A. No.
Q. Were you looking at what was going on with what the nurse anesthetist may or may not be doing?

A. No.
Q. Were you focused primarily on your paperwork at that time?
A. That's right, yes.
Q. Who was the one in charge of the facilities to the best of your knowledge?
A. Dr. Desai.
Q. Was he just one of the people in charge or was he the guy that really called the shots?
A. It was Dr. Desai.
Q. Was that made pretty clear to you?
A. Yes.
Q. And you say that with emphasis. Who made it clear to you or did he ever talk to you about this?
A. He did not talk to me about it, but it was very common knowledge that he was the one in charge and watch out for him.
Q. Was there ever issues that you came across about wasting supplies or rather not wasting materials, supplies, things like that?
A. Yes.
Q. Was that general knowledge as well that you didn't want to do that kind of thing?
A. Yes.
Q. Was there a reason why?

A. I was told because it would make Dr. Desai mad.
Q. And ladies and gentlemen, I'm going to ask you to disregard that statement. It was a hearsay statement at this point.
You didn't hear this from Dr. Desai I assume; correct?
A. I did not.
Q. Was it general knowledge that you did not want to though waste material around Dr. Desai?
A. At all.
Q. At all. Okay. Now can you think of any specific instances of items that you knew that were, I don't know, sort of cost-cutting issues in the facility?
A. Yes.
Q. Can you tell us about those?
A. I was cautioned about the amount of tape that I was using, to make sure that I didn't use any more than necessary.
Q. Was that something that would be of concern to you if Dr. Desai happened to be there and you were taping down an IV site for example?
A. Yeah. I just watched myself all the time, not just when he was there because I had been told that.
Q. So your belief was that you had to watch

three surgical trays, they'll have three units in there.
Q. I see. So the next box over is line 24, it looks like 33: is that correct?
A. Correct.
Q. And it's entitled anesthesia time?
A. Correct.
Q. What is the time in that window?
A. Thirty-one minutes.
Q. And then anything else related to that line?
A. No.
Q. Now is there an indication on this form, and I'm going to zoom back out, as to where the procedure took place?
A. Yes. Box number 32 is where the services were rendered which would be the Endoscopy Center of Southern Nevada.
Q. Located on 700 Shadow Lane?
A. Correct.
Q. Does it indicate who the provider of the services was?
A. It does. Box 33 is the servicing physician so this would be, or the CRNA in this case which was Ron Lakeman.
Q. Now beside this form, is that the general

information that is submitted to you for the claim?
A. Yes.
Q. So this doesn't indicate anywhere on here that payment was actually made?
A. No.
Q. The things that we looked at, for example the charges were in error or the minute time was in error, would that be something that would kick out the claim and not allow it to be paid if it was a problem?
A. If we knew it, yes.
Q. Now let's talk about that for just a minute. We'll get to the reimbursement amount. But before we go on and even get into the further documents were you the primary, your company, was it the primary provider or primary insurance payer on this particular case?
A. Yes, it was.
Q. What is the difference between a primary payer and a secondary payer?
A. The primary payer is going to be the insurance company that is initially responsible for the medical claims that come in. And generally they will pay either all or a portion thereof, the claim.
Q. So if I have, for example let's just take the average person walks in and they have a single

insurance company.
A. Yes.
Q. Bill gets submitted, they're the primary payer; correct?
A. Correct.
Q. There wouldn't be a secondary payer in that case; is that right?
A. That's correct.
Q. If that same person walked through the door of a doctor and they had two different insurances, maybe their own from their employment and maybe their spouse's, they were covered under that policy as well, and they had two insurance companies paying for things that needed to be done, would there be a primary and secondary payer in that case?
A. There would. The easiest way I know to explain this, as an example my daughter has two insurances, one under me, one under her father. We submit the claims under my insurance, my insurance pays, the portion that my insurance does not pay then gets submitted with our explanation of benefits under her father's insurance and then they make a determination of what they're going to pay of that leftover. So that way if we can get things covered at a hundred percent if need be.

Q. So in this particular case we have a $560 charge; is that correct?
A. Yes, that's correct.
Q. So if there is two payers in this particular case, and we'll get to the actual dollar amount in just a moment, but for illustration purpose let's say your entity decided to pay $250 of that.
A. Okay.
Q. You pay that amount of money?
A. Correct.
Q. There would be, in this case it would be, what, 200, no, $330 that had not been paid?
A. Correct.
Q. So of the $330 would that then get submitted to the second payer?
A. Correct.
Q. And then they would make whatever payment they were going to make on that amount?
A. Correct.
Q. And then the patient would be responsible for the remainder?
A. Correct.
Q. So in that case, is that what happened in this particular case?
A. I do not know what the secondary insurance

EIGHTH JUDICIAL DISTRICT COURT

COUNTY OF CLARK, STATE OF NEVADA

BEFORE THE GRAND JURY IMPANELED BY THE AFORESAID DISTRICT COURT

STATE OF NEVADA

Plaintiff,

vs.

CASE NO. 09BGJ049A-C

DIPAK KANTILAL DESAI,
RONALD ERNEST LAKEMAN,
KEITH MATHAES,

Defendants.

C246107

Taken at Las Vegas, Nevada

Thursday, June 3, 2010

2:30 P.M.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

VOLUME 10

REPORTED BY: LISA BRENSKE, CCR #186

GRAND JURORS PRESENT ON JUNE 3, 2010

JOSEPH WILLOUGHBY, Foreperson
LOUISE ZUNIGA, Secretary
SHELLEY SALAMANOUPOULOS, Assistant Secretary
SVEN BRADLEY
CONSTANCE CABILES
LISA CAMP
MICHAEL CONNELL
AGNES PARKER
YOLANDA PARKER
BIANCA ROBERSON
BOB ROSE
STEVE SHLUKER
MICHAEL THOMPSON
TOM UHRHAN
ANNE ZARATE

Also present at the request of the Grand Jury:
Michael Staudaher, Esq.,
Deputy District Attorney

Patricia A. Palm, Esq.
(On behalf of Jeffrey Krueger)

Louis Schneider, Esq.
(On behalf of Tonya Rushing)

W I T N E S S E S

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shows that if proper cleaning is not done that it is a source of contamination. So we met with our Olympus rep -- and when I say "we", Tonya Rushing -- I shouldn't say speaking for the company, but Tonya Rushing and myself initially met with the Olympus rep and then Tonya Rushing established a contract with Olympus to provide us with biopsy forceps and snares to be set up as a par or set up for delivery. Every 15th of the month we would get so many cases of these supplies in which were all disposable biopsy forceps and stuff.

Q. So the forceps that you were talking to him about, were those disposable ones that were being reused?

A. Correct.

Q. When you confronted him about that did he ever say anything like okay, okay, anything like that, or make any kind of acknowledgment that he wouldn't do it in the future?

A. I told him -- I said he cannot ask the staff to reuse these instruments and that they will come to me and alert me to this so to stop immediately. And when I informed the technician at that time too, with Katie Maley there also, was that the technician, even if instructed to, to not reuse it, to take it

directly to the Sharps container and dispose of it after the case.

Q. So did Desai at least acknowledge that he wouldn't do this in the future?

A. That's what he said. Okay, okay, I won't do that.

Q. Was that in relation to the bite blocks as well?

A. Correct.

Q. So you asked him about both of those items?

A. Correct.

Q. As far as the items themselves, whether they be Chux or bite blocks or forceps, was there a general feeling that Desai was concerned about saving money in the practice?

A. Absolutely.

Q. Was that part of the reason why you believe or he told you that he wanted the cost breakdown of what it actually cost for each portion of the procedure?

A. I really didn't question him as to why or question why he was asking for it. I could assume that he was trying to do a cost breakdown. And through experience now that I've gained and knowledge and stuff

that I've gained past my employment there --

Q. I am going to ask you not to go into that. Just things that you directly observed or that you knew at the time.

A. Okay.

Q. Did you feel that cost was an issue with Dr. Desai as far as how much things cost or how much money was being spent on patient care or whatever in the facility?

A. Yes.

Q. Would you classify Dr. Desai as being an easy going person or demanding or how?

A. Very demanding. Very controlling.

Q. Intimidating at all?

A. Very intimidating.

Q. And I am not just talking about the staff, to other physicians as well, did you ever notice that?

A. Yes.

Q. Was there ever any issue of trying to flush propofol from that little heplock that may have gotten caught down there with saline syringes during procedures?

A. Yes.

Q. And was Desai involved in that?

A. Dr. Desai and Dr. Nayyar.

Q. What do you mean by their involvement?

A. Well, there was a discussion that they were talking to the CRNAs asking them after the initial propofol administration to follow that with a saline flush.

Q. And was that instituted sort of across the board or how did that go?

A. It was verbalized to the CRNAs by Dr. Desai and Dr. Nayyar.

Q. So he was directly involved in that then?

A. Correct.

Q. Let's move away from that for a moment. I want to get into some issues of billing and anesthesia records and things like that. Did you have any interaction with or deal with the anesthesia records after procedures were done?

A. After the procedure was completed the CRNA would present the anesthesia record that they used during the procedure to the nurse in the room.

Q. Would that be you if you were in the room?

A. I was in the room, yes.

Q. What would you do with that?

A. I would take it and put it with the chart and I would transfer the amount of medication administered during the procedure onto my record.

business, if you don't f'n like it, then you know what, it's my company. Get Katie, get Jeff and then they would bring Katie in there. And most of the time he would never really yell too much at Jeff, but mostly at Katie because he always thought that she was trying to spend money and she was the director of nursing.

Q. So any time money was involved was Desai involved?

A. Oh, yeah.

Q. Now, let's talk about money for a minute and you've mentioned the CRNA account. Did you end up yourself with a business related to billing for CRNA anesthesia time?

A. Yes, I did.

Q. Can you tell us about how that happened and how you got involved with it?

A. Yes. Dr. Desai had a friend named Rebecca Duty who had a billing company and he was very unhappy with the other two billing companies that we had prior to Health Care Business Solutions being formed. He came, he spoke to me, he said Rebecca knows how to do anesthesia billing, this is what she does for Dr. Nemec and I want you and her to team up and develop a billing company because he said he trusted me and he knew that I wouldn't overlook stuff and make sure things didn't

get missed, to start a billing company for that. And so initially Rebecca and him made a contract, Health Care Business was formed with Rebecca as 10 percent, me as 90 percent and we just formed this billing company and it just went to her office where she already had existing billers.

Q. So now the office where it was done, that was your business essentially, correct?

A. It was my business. Her employees and her location initially.

Q. You said initially. Did that change?

A. Yes, it did.

Q. What happened?

A. About two years or a year into it, I can't remember the exact dates, Rebecca emailed me, said that she was going under some stress, some staffing issues and she would no longer be able to perform the anesthesia billing for Health Care Business Solutions CRNA accounts.

Q. And so did you take it over completely at that point?

A. It took me about 20 days, 30 days because I talked to Dr. Desai and he said you better find a place, you better find employees, I want you to finish this billing. So he said that we could use his medical

manager system and he had a billing manager named Ida Hansen that would help me set it up and through his medical manager -- because we already had a medical manager for the practices and for the endoscopies and everything. So it was just set up as a different data base in his system. And in 20 days I found a little two-room place, hired some billers, I hired Ida Hansen to help teach them how to bill and do the CRNA billing. So yes, I did.

Q. Had you ever done the billing yourself?

A. No.

Q. So you just ran the business or owned it?

A. Yes.

Q. Now, typically on an anesthesia billing business, I mean how do you make your money?

A. We make it as a percentage of whatever we collect.

Q. So if you collect a hundred dollars on something, you as the billing company get a percentage of that?

A. Correct.

Q. And what is the general percentage?

A. It can range -- we started at 9 percent, I think we went up to 10 percent.

Q. Tell me how it works. For anesthesia,

let's talk about that.

A. Specifically -- because I still have that company. So specifically for Dr. Desai's account the cash and everything would go to Dr. Desai's billing office at his office at 700 Shadow Lane, Ida Hansen and their billers would do all of the deposits of the checks, copy all the EOBs and everything, bag them up. I had employed a runner that would come to the office and pick up the daily batches, copies of the checks so they can apply the checks to the accounts and then at the end of the month we would tally it out, he would get a report of how many charges, how many write-offs, how much we collected. So if we collected a hundred thousand dollars and we got 10 percent of a hundred thousand dollars.

Q. So the office where this was done, is this where you kept your office?

A. Yes, I opened up mine before it was Rebecca's office over off of Sunset and then I opened a little one off of Smoke Ranch.

Q. So during the day that's where you typically would be?

A. No. I was at gastro.

Q. They're not located next to each other?

A. Oh, no. Gastro was on 700 Shadow Lane and

then we had six different locations and mine was just over on 700.

Q. So primarily where did you spend your time?

A. During the days I always spent my time at gastro.

Q. Did you work for Desai at night as well?

A. If there was a party or a dinner or a P.R. piece or public relations piece, yes.

Q. So during the day if I understand you correctly your business is kind of running with the people that you've staffed it with and you are at Desai's clinics?

A. Correct.

Q. Were you still doing the same type of job with Desai that you did before?

A. From when I first initially started?

Q. No. After you became kind of the office person, the personal assistant, that kind of individual.

A. Yeah, I've always done that.

Q. So as far as the day to day operations have you ever done the billing yourself all the way through from start to finish from taking the anesthesia record all the way through the forms to actually

billing it out to getting the money back, have you ever walked through that whole process yourself?

A. No, I don't have to.

Q. So you employed people to do that?

A. Uh-huh.

Q. Now, let's talk about charting and records, for example, in the practice and I'm not talking about at your business but within the gastroenterology center.

A. In the gastro or the endoscopy?

Q. We'll talk about each one. Let's talk endoscopy first. Were you aware at any time that there was any kind of an issue with regard to precharting of times on anesthesia records?

A. On anesthesia records, no.

Q. What about other records?

A. There was a time I want to say 2006 or something like that that it was brought to my attention by either a nurse or somebody that the nursing — they were doing precharting and I believe Jeff and Katie was taken care of right away and I believe that was done at the direction of Dr. Desai.

Q. Did you ever talk to him about that issue?

A. Me directly I don't believe so.

Q. Were you present when that was discussed

where he was talking about it or being talked to about it?

A. I believe I was present when I think it was Jeff spoke to him about it.

Q. When that happened what was his response or what did he do or say as a result of that?

A. I can't remember.

Q. Was he surprised or shocked by what they were telling him?

A. No.

Q. Did it have to do with the things that you had mentioned or at least there was an acknowledgment that he understood or he acknowledged what they were talking about?

A. If I had to interpret facial or whatever, probably. He knew everything that went on.

Q. Now, with regard to other charting issues were there ever times when, for example, on the anesthesia records and things that information was left off, start times, stop times, vital signs, whatever it was, on anesthesia records by the CRNAs?

A. Yeah.

Q. What would happen to a chart with missing information?

A. You mean if we got it at the billing

office?

Q. Yes.

A. It would go back to the endoscopy center the next day when the runner had to — because they would come every day, come over, they'd bring an envelope and it would say missing and it would be highlighted and it would go back downstairs or to Desert Springs, the front office of the endoscopy unit would pull the chart, give it to the CRNA.

Q. Would you ever be directly involved in that process?

A. I could be.

Q. As far as the actual handing the things to the anesthesia people, the CRNAs?

A. Oh, yeah.

Q. Now, did you ever direct them to fabricate information on those charts?

A. No.

Q. Now, let's talk about that for a minute. We talked about some of the precharting issues, that's not what I'm referring to at this point at least with regard to the nurses and Dr. Desai and that interaction. Let's move forward in time a little bit. Do you remember the Rexford lawsuit?

A. Yes, I do.

that drug?
A. I can't say that I'm aware of that.
Q. After Dr. Desai had the stroke that happened before the outbreak occurred but there was a second stroke that he had later on; do you recall that?
A. Yes.
Q. Let's take it step by step. After the clinics closed did you ever do any work for Dr. Desai?
A. I was in charge — because we got everybody — we closed down the clinics and we had a satellite office over off of Redwood to finish closing everything down, closing the vendors, everything that I could possibly get closed down and go over to storage and meanwhile over at the Redwood Ida and the billers were still billing and collecting whatever they possibly could to pay the bills.
Q. So how long did you continue to have some association with Dr. Desai as far as his business is concerned?
A. I believe I was the last one to tie it all up.
Q. When did you finally leave?
A. Just 2009.
MR. STAUDAHER: I have nothing further from this witness, ladies and gentlemen.

THE FOREPERSON: Any questions?
BY A JUROR:
Q. When did you hire your first attorney and why?
A. Upon the investigation Mr. Charles Kelly actually was the gastroenterology center employees' attorney but all the employees had been gone. Dr. Desai gave me the money because he told me that I would need a criminal attorney. So never being in this position before I hired Mr. Kelly.
Q. With the money that Dr. D gave you?
A. Correct. He gave Mr. Kelly the retainer.
THE FOREPERSON: Any other questions?
BY A JUROR:
Q. How are billing companies paid?
A. All billing — I shouldn't say all. Most billing companies get paid on a percentage of whatever they collect for whatever specialty or practice. It can vary from 5 to 10 depending on how old the accounts are and some -- I still have a company now so I charge higher for large amounts.
Q. So you benefited then from having the time element longer thus a higher billing than what was actually done; is that correct?
A. Yes, sir.

Q. How did you feel about that, that you were taking money in that regard?
A. Truthfully I felt horrible. I mean the whole thing — I felt used if you want to know the truth. I felt betrayed and I felt horrible. Not only am I the administrator but I'm also a patient and so is my family members.
THE FOREPERSON: Any other questions?
BY A JUROR:
Q. Did you have any idea that you were overbilling in the beginning till you got that meeting?
A. No, but I should have. I should have.
THE FOREPERSON: Any other questions?
By law these proceedings are secret and you are prohibited from disclosing to anyone anything that has transpired before us, including evidence and statements presented to the Grand Jury, any event occurring or statement made in the presence of the Grand Jury, and information obtained by the Grand Jury.
Failure to comply with this admonition is a gross misdemeanor punishable by a year in the Clark County Detention Center and a $2,000.00 fine. In addition, you may be held in contempt of court punishable by an additional $500.00 fine and 25 days in the Clark County Detention Center.

Do you understand this admonition?
THE WITNESS: Yes.
THE FOREPERSON: You may be excused.
MR. STAUDAHER: Ladies and gentlemen of the Grand Jury, that concludes the presentation in this case. At this point we are going to take a break. I know that you have to redeliberate or we have to deliberate on another matter that is unrelated to the endoscopy case. After that we can have a short break, but I would ask you to review any information that you need to have because we are going to submit it to you for deliberation this evening. You can tell me when I come back from the break on the other matter whether or not you need additional time. I don't want to shortchange anybody so if there's any additional time you need to review transcripts or any evidence -- and I know you've done this in the past -- but if you need additional time we can put this off and let you deliberate on another occasion. So at this point we are going to go off the record for you to deal with the other matter and then we'll be back on the record in our case.
(Off the record from 4:35 to 5:17.)
MR. STAUDAHER: Back on the record in case number 09BGJ049A through C.

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05/16/2012 10:48:24 AM

CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

STATE OF NEVADA, Plaintiff, vs. DIPAK KANTILAL DESAI, KEITH H. MATHAHS, Defendants.	CASE NO. C265107-1 CASE NO. C265107-3 DEPT. NO. XXI **Transcript of Proceedings**

BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE

DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS
DEFENDANT'S JOINDER TO PETITION FOR WRIT OF HABEAS CORPUS AND ALTERNATIVE MOTION TO DISMISS INDICTMENT

THURSDAY, MAY 10, 2012

APPEARANCES:

FOR THE STATE: PAM WECKERLY, ESQ.
MICHAEL V. STAUDAHER, ESQ.
Chief Deputy District Attorneys

FOR THE DEFENDANTS: RICHARD A. WRIGHT, ESQ.
MARGARET M. STANISH, ESQ.
MICHAEL V. CRISTALLI, ESQ.
FREDERICK A. SANTACROCE, ESQ.

RECORDED BY: JANIE OLSEN, COURT RECORDER
TRANSCRIBED BY: JULIE POTTER, TRANSCRIBER

JRP TRANSCRIPTION

LAS VEGAS, NEVADA, THURSDAY, MAY 10, 2012, 11:16 A.M.

* * * * *

THE COURT: All right. We are -- and Dr. Desai is present and we have a joinder filed as well. And this is the time for the hearing on the habeas petition, as well as the motion to dismiss.

And I have viewed everything, and just a couple of preliminary comments, I guess, which may or may not help to focus and direct the arguments. I have read everything with respect to the issues as to the sufficiency of the evidence that were raised by way of the petition. I believe that those matters have to be raised by way of petition, and I'm concerned that, in fact, they are time-barred.

With respect to the issues regarding the pleading in the amended indictment and the sufficiency of the notice and what have you, I agree that those could be raised by way of a motion to dismiss and so the Court is comfortable entertaining argument on that.

However, as I said, in terms of sufficiency of the evidence with respect to the presentation before the grand jury, I think that that has to be raised by way of petition, and I don't see a justification for being outside the window that the defense has given. So that's where we are.

Mr. Wright, if you want to address the timing issue as to the sufficiency you may do so. As I said, you know, I

think you can raise the other claims by way of a motion to dismiss and so I'm perfectly comfortable hearing and litigating that portion of your argument at this time.

MR. WRIGHT: Okay. I'll -- I'll start on the timeliness or the time frame for the writ.

THE COURT: Right. Which, again, only, in my view, concerns the evidence and the sufficiency there before the grand jury.

MR. WRIGHT: Well, the --

THE COURT: Not -- and obviously we can consider that separately as it goes to the notice and whether or not the State needs to amend, and if they do need to amend, whether or not they should be given that opportunity. So that's a different issue and we certainly can look to the transcript for that issue.

MR. WRIGHT: Okay. On the timeliness I think it was just laid out and the Court can rule on it. I'm not going to belabor it. The indictment, I think, was June 4th the way I recall it. By June 22nd I had discussed with Mr. Staudaher an extension of time to file a writ. And I talked to him June 22, 2010, I think, and he agreed to an extension of about 60 days which I confirmed to him by email. And then on June 22nd Dr. Desai was referred to competency court.

THE COURT: Right. And that --

MR. WRIGHT: And pursuant --

THE COURT: -- stayed everything.

MR. WRIGHT: -- to statute, the way I read it, everything is suspended as to him.

THE COURT: And I agree.

MR. WRIGHT: Okay. And then he remained in competency court, oh -- or -- or he remained suspended, for lack of a better word, the proceedings against him until he was adjudicated competent. That was February 2nd, I think, this year.

THE COURT: Right.

MR. WRIGHT: And then, to me, if you add the 60 days that was agreed to end of February 2nd because he was unavailable, and then I came before this Court, I think around March 2nd, or March, it took a month. Judge Mosley retired --

THE COURT: Right.

MR. WRIGHT: -- and it was reassigned. And I told the Court I'd be filing writs and motions to this mess because they had not been filed in a couple of weeks, and I filed it in a couple of weeks. So I -- and -- and I raised it with Judge Mosley on a couple of occasions just to confirm that I wasn't doing the writ and everything was stayed as to Dr. Desai.

THE COURT: Are you saying you confirmed it with Judge Mosley that you didn't have an obligation to count the days from the time Dr. Desai was returned from mental health

court -- I'm sorry, was found competent?

Because I would count that that would be the date that we would start counting, regardless of the fact that Judge Mosley was retiring and you knew the case had to be assigned because regardless of where the case was assigned, you knew that you were going to be filing a writ.

So, to me, you look to the day that Dr. Desai was found -- when the case again begins, for lack of a better word, when Dr. Desai is found to be competent even though you knew Judge Mosley wouldn't be hearing it. To me, that has no impact on the timing. You agree?

MR. WRIGHT: Yeah.

THE COURT: Okay. All right. So basically what you're saying is you started counting the 60 days and you felt that the 60 days would begin anew based on your discussions with Mr. Staudaher. Is that essentially what you're saying?

MR. WRIGHT: Correct. When I spoke with him I said about 60 days. That's what I said in my email. He agreed with that and he says he wouldn't be a stickler about it.

THE COURT: Mr. Staudaher, do you want to respond on the --

MR. STAUDAHER: Certainly, Your Honor.

THE COURT: -- timing issue?

MR. STAUDAHER: On the timing issue. To -- to a large degree he is correct that back then he had asked me

early on for some additional time. I agreed to that. I said I wouldn't -- I wouldn't be -- you know, give him a hard time about that.

However, what he failed to mention is that we were in court when he raised the issue of staying the entire case. And I -- it was the State's position at that time that even though he -- or Dr. Desai was going to go up to Lake's Crossing potentially, or at least we were going to shift it over to competency court before that ever was contemplated, that that was not a reason to stay a determination of whether or not there was probable cause at the grand jury.

I made it very clear that at that point that I felt that we should be going forward. I did not extend any additional 60-day window or say that he could then have his 60 days start when he returned once a determination was made in competency court. At that point I felt that we should go forward.

He was successful before Judge Mosley in having the entirety of the case stayed, but I don't think there was any question that I wanted it to move forward within that window and that I wasn't saying that I would give him two years and then give him another 60 days or 70 days or whatever he wanted.

After Dr. Desai was returned from Lake's Crossing, he never contacted me again to ask me for any extension or to

have a specific date by which he -- he could reply. I would not at that time granted that given the time period in question that we had gone through up to that point and at least where we had been in the case.

So I think that he is correct at the time that things started that there was an offer of an extension for a period of time, but that long expired and certainly I believe he was aware of it in court when we discussed the matter.

THE COURT: All right.

Mr. Wright, anything else on that point?

MR. WRIGHT: No.

THE COURT: All right. It seems to me that given the history of the case and the fact that there was no further communication between the defense and the State when Dr. Desai was returned from competency court granting another extension of 60 days, and based on the fact that an objection had been made by the State in front of Judge Mosley and the State had indicated their desire to go forward with adjudicating the issue of the sufficiency of the evidence and the presentation before the grand jury, it seems to me that at that point it would've been clear that the time started running, the 21 days from the time that Dr. Desai was returned and found to be competent in front of Judge Mosley.

And we're not talking about a week of time here, just a few days difference. It was a relatively substantial

amount of time between when the writ was filed and -- it's not one or two days or three days is what the Court's saying. So I think that in view of the history of the case as I understand it, it seems that you largely agree on what happened.

I think it is time-barred as to, again, the one issue that would've had to be raised by petition. With respect to the other issues, as I said at the outset, you can bring those by way of a motion to dismiss at any time. So the Court is perfectly comfortable hearing those issues and entertaining argument and ruling on that today.

MR. WRIGHT: Okay.

THE COURT: All right? So you may proceed, this being your motion.

MR. WRIGHT: Okay. Going forward it really doesn't change my motion. I mean, because the State, as I read their reply, concedes that -- talking about the criminal negligence counts, that the only two there was evidence of would be number one and number two, and the other five allegations there was no evidence of.

THE COURT: Right. And that's -- I guess I had a question for the State. I mean, it -- and I'm sorry to cut you off, but -- and I -- I think I alluded to this when we were first in here on this on the charging. It seemed pretty clear that it was the use of the propofol that led to the

infection and that was the theory and everything.

So why in the charging document are we getting into all of these other things? I mean, wasn't the State pretty much aware of what the theory of transmission was? And so why are we adding all of these other things to potentially create confusion?

MR. STAUDAHER: It's not -- the reason that the other areas were added, Your Honor, is not to create confusion specifically, but because --

THE COURT: Well, I know that wasn't the intent, but I think that may be the result.

MR. STAUDAHER: Well --

THE COURT: And I --

MR. STAUDAHER: -- in a large part I will tell the Court that predominantly we believe the mode of transmission in this case came through the syringes, needles, propofol, that -- that mode. We believe there's support for that. That's what the conclusions of the CDC were.

However, in going through the case beforehand, the -- how the case was at least initially brought to authorities and how the case was actually investigated thereafter, there were other areas of potential transmission that the CDC and the health district investigated.

Now, they concluded at the time that those were not valid means of transmission because it did not cover all of

the patients in question. The issue is whether or not some of the -- some of the patients, I think, at least from the defense, because there has been a telegraphing at some point early on of where the defense would be from the civil side of things.

And part of it was, hey, look, it wasn't the propofol, it was these other forms of transmission. And because they were the other forms of transmission, despite what the health district said, we think we can prove that. This all came from essentially the civil -- civil litigation that's going on.

THE COURT: Right. Because obviously the drug manufacturers who are involved in --

MR. STAUDAHER: Correct.

THE COURT: -- trying the cases that have gone to trial in the civil arena are going to say that because, you know, they're going to try to deflect transmission away from anything involving the propofol.

MR. STAUDAHER: Correct. And so because there were other areas tested or other potential areas of transmission, all of it goes to the underlying conduct and how the pressure under all these actors were playing at the time, how they were affected and how they treated patients and the -- and the mechanism, the sort of cattle car mentality that was going on within the clinic relates to those other areas that were

potential.

And because there were other potential modes of transmission that were actually investigated, that were used as a defense, that we believe that regardless of what it ends up being, we think we know which one it is and we think we can prove that.

But if the defense was successful at arguing that, hey, it was not this, it was another method, it does not negate the fact that the reason that we're here is because of what was going on in general in the clinic, and that's where the racketeering charge comes in. It was an economic motivation to do things within the clinic to make money at the expense of the -- of the insurance companies and that the result was harm to the patients, which was foreseeable.

So in this instance those alternatives are pled because they are -- they are essentially putting the defense on notice that, hey, look, this is what we think it is, but if you believe and if you think you're going to try and confuse the jury by arguing it's something else, you're on notice that any one of these things, it doesn't matter which one it is, we don't have to prove one or the other specifically, we just have to prove one, that you're on notice of each one that we think is proper.

THE COURT: I mean, I guess one of the things, you know, the defense has to be prepared to defend --

MR. STAUDAHER: Certainly.

THE COURT: -- against all of these things. And in each of the criminal neglect counts you're talking about different patients. And so, you know, it looks like, well, it's -- the syringes in everything and/or the needles, but then are you also saying, well, for everybody it could've been the forceps or it could've been the bit blocks as well? Or what -- what is the State saying?

MR. STAUDAHER: Well, again --

THE COURT: You know what I'm saying? Because, you know, maybe you could have narrowed it down according to each patient. Well, in this patient forceps were used, in this patient, you know, a bit block was used in addition. Do you understand what I'm asking?

MR. STAUDAHER: Exactly. It's -- it's not just that we're saying that in every single patient all of those things happened. Obviously they did not.

THE COURT: Right.

MR. STAUDAHER: But in -- in a sense every patient that comes through, some of them had some of those things added to them and some of them did not.

However, putting -- the purpose of the charging document is to put the defense on notice of the potential areas that the State may try to bring forth evidence to support the -- the elements of the crimes charged and the

factual averments that we put in to show that is to put them on notice of things that they might have to defend, not just with one patient, but with multiple patients. Clearly a bit block was not used on a person who just had a colonoscopy.

THE COURT: Right.

MR. STAUDAHER: But one who used -- who had an upper endoscopy and a colonoscopy or just an upper endoscopy had a bite block used. It's to put those patients on notice, or not the patients, but the defendant on notice of what he is potentially exposed to as far as the factual basis under which the State intends to prove the elements of the crimes charged.

Not specifically saying that this particular method -- and that's why, Your Honor, even in -- I know that counsel has an argument about the methods unknown for the -- as a -- as an averment, so to speak. Although, the Supreme Court has said in certain instances, and we believe this is one of those, where that is appropriate you can do that. That's not an end all for the State. I mean, if the Court felt that that was something that needed to be withdrawn or struck, we don't have an opposition to that necessarily.

The issue is to put them on notice that we believe essentially that the environment that was essentially put forth by this man with his staff in this particular case caused the harm and that these are the things that are

essentially the facts that go to support that. This whole mentality of action and harm against the patients which resulted -- which the harm which resulted was due to what they were doing in the clinic and why.

THE COURT: All right. Thank you.

Mr. Wright?

MR. WRIGHT: Yes, Your Honor. I -- I think his explanation explains the deficiency in the indictment about leaving them -- allowing them to switch theories as the case evolves. Either they -- they -- and I say they, the grand jury found something happened, and that is their case, meaning the grand jury's, and that is the limits of the case or they don't.

I've never heard of the theory where the State is saying I don't have evidence to support certain allegations, but in the events it pops up or the defense contends it, I'm going to throw it into the indictment anyway even though we contend it didn't occur that way.

That's like I'm charged with murder and they're going to say but if this guy is going to say someone else did it, I'm going to charge him with aiding and abetting even though there's no evidence of that.

THE COURT: Well, I don't think that's what the State is saying. I think what the State is conceding is they used sort of -- I don't want to say stock language, but they

used the same pleading language for each patient even though they recognized that some patients, by way of whatever procedure was performed wouldn't have had all of the same tools.

But it's their -- and they kind of expect that everybody would be of a mutual understanding as to that because for certain procedures, such as a colonoscopy, you're going to be using different -- you're not going to use a bite block as Mr. Staudaher pointed out just a moment ago.

MR. WRIGHT: All of them were colonoscopies.

THE COURT: I'm sorry?

MR. WRIGHT: All of them were colonoscopies.

MR. STAUDAHER: Actually, some patients had --

THE COURT: Dual.

MR. STAUDAHER: -- upper endoscopies as well.

MR. WRIGHT: One the day before where it wasn't a transmission.

THE COURT: Well, in any event, so I don't -- I think that's what, you know, he's saying. And he's conceding that, well, they could've maybe pled this in a tighter fashion in terms of only referring to those instrumentalities that were actually used on specific patients. But I don't think they're saying they willy-nilly are going to be changing their theory.

And I think what the State is saying is that there

was a -- according to them there was a pattern in practice of insufficient sterilization and negligent things regarding not just the vials, but regarding forceps and the bite blocks and other things in this as part of a money saving scheme, if you will.

Is that essentially, Mr. Staudaher, your argument?

MR. STAUDAHER: It is, Your Honor. It goes -- it's not just to say that the -- that the actual negligent act was a specific act of -- of propofol reuse or needle reuse or syringe reuse or bite block reuse or whatever.

It's to say that the reason under the negligence portion of this that we have a transmission caused by, let's say, the propofol in this case, that the reason that that's such an issue is because of all of this other action that was going on within the clinic that essentially set up a circumstance by which that would've happened.

And it shows essentially giving the defense notice that we're going to -- we intend to raise these other issues to show what the atmosphere was, what the actions and inactions that were taken by their staff were which all led to what happened to these patients, and that this man, Desai, orchestrated and, through his nurses that are charged in this case, actually caused harm to those patients.

THE COURT: I think what they're trying to say, Mr. Wright, is that it's a part of a pattern in practice of

neglect of, you know, standard procedures that cut across patients and -- and that that's what this is all evidence of. That it wasn't an isolated thing, that this was, as Mr. Staudaher said, the atmosphere and the pattern and the practice of -- of essentially neglecting sanitary procedures and -- and their standard of care and what they needed to do to preclude transmission from patient to patient.

Is that what you're saying, Mr. Staudaher?

MR. STAUDAHER: Yes, Your Honor, and I think --

THE COURT: All right.

MR. STAUDAHER: -- that's a fair characterization.

THE COURT: I'm sorry?

MR. STAUDAHER: I think that's a fair characterization.

THE COURT: All right. Mr. Stau -- I'm sorry, Mr. Wright, continue. I just tried to focus on some of the things --

MR. WRIGHT: Okay.

THE COURT: -- the Court --

MR. WRIGHT: Well, we aren't arguing --

THE COURT: -- noted. Yes.

MR. WRIGHT: I'm sorry.

THE COURT: Go ahead.

MR. WRIGHT: We aren't arguing about the admissibility of evidence by which --

THE COURT: No, I understand.

MR. WRIGHT: -- they may prove their case. We're arguing about -- I mean, to me, the -- the entire case falls on one sentence of 173.075. The indictment must be a plain, concise, and definite written statement of the essential facts constituting the offense charged. What does definite mean? Clearly defined, precise, having fixed limits, and certain.

If -- if you read count one, start with it, the racketeering indictment, see if that is a definite fixed certain giving notice as to what the two predicate acts are within that 35-month period. There has to be two predicate acts, they have to be pled, that means by element, like one of the elements of -- of [indecipherable] under false pretenses is in excess of $250. The element isn't even pled.

And then if the elements were pled in count one, you then have to allege the facts definitely, what date, what patient, what amount of money. Not during 35 months there were two. And I'm being generous by saying I'm relying on their response to presume that the two predicate acts were obtaining money under false pretenses and insurance fraud. I don't see that in that indictment.

That's not a plain, concise statement of the elements of a RICO count with the two predicate acts pled out and it is not a definite statement, meaning precise, limiting, giving me notice of which billing, which patient. We are

speculating in here. The Court and the State have been speculating about which the grand jury found. It isn't --

THE COURT: I haven't speculated about anything, Mr. Wright.

MR. WRIGHT: I thought when you were saying I think the State is saying this or that --

THE COURT: Oh, I'm saying the State is saying --

MR. WRIGHT: That's --

THE COURT: -- that Mr. Staudaher's --

MR. WRIGHT: -- speculating to me.

THE COURT: -- argument are -- no, I'm saying let me make sure I understand the State's argument.

MR. WRIGHT: Okay.

THE COURT: I -- I already said I'm not -- you know, in terms of, again, the evidence for each count, I've already said, you know, with respect to whether or not the counts can be amended, that's something we need to consider. With respect to whether or not the proof was sufficient, that's -- I've already found that to be time-barred. So I haven't said anything to indicate --

MR. WRIGHT: Okay.

THE COURT: -- that I'm speculating as to what the grand jury found or didn't find. What I'm saying is I understand what Mr. Staudaher --

MR. WRIGHT: Okay.

THE COURT: -- and the State's argument is, that they are pleading this as part of an overall pattern and practice to show negligent care of these patients that resulted in the infection and that's why they've pled it the way they have.

MR. WRIGHT: Okay. I -- I withdraw the speculating of the Court.

In count one, by necessity one would have to speculate as to what the -- which predicate acts offenses they are talking about, which patient, which billing, which amount of money, which is over $250, which one do I -- which am I defending against?

THE COURT: Well, Mr. Wright, isn't it fair to assume that the insurance fraud is all of the counts that are pled in the indictment? Because you can read the indictment as a whole. And, you know, to me --

MR. WRIGHT: Only if you --

THE COURT: -- it's pretty clearly referring to counts two, count five of insurance fraud that do set that out.

MR. WRIGHT: Well, then why does it say for 35 months when those all occurred on two specific dates? And you're telling me what you're sure the grand jury found when they didn't incorporate by reference any other count.

THE COURT: Well, Mr. Wright --

MR. WRIGHT: I don't know.

THE COURT: -- what I'm telling you is what I think a reasonable person reading this indictment would believe they're talking about for insurance fraud, that they're talking about the insurance fraud counts that have actually been pled here.

To me, a reasonable person looking at this would say, well, okay, they're saying that the pattern and practice of RICO is insurance fraud. So what insurance fraud are we talking about? It's the insurance fraud that's pled actually here in the indictment in the subsequent pages.

I don't think I need to infer anything about what the grand jury may or may not have thought. I think, you know, again, a reasonable person reading this, to me, that's what that -- that would mean and suggest.

MR. WRIGHT: Well, if that's what it means and suggests under 173.075 they're supposed to incorporate by reference. Because each count stands on its own unless it is incorporated. You're to take this and lay out 28 counts as 28 separate indictments unless I incorporate by reference the other counts, and I'm allowed to do that if I plead it. And it has not been pled and the grand jury did not so find.

When we -- when we go to -- when I start --

THE COURT: Well, Mr. Wright, certainly you're not suggesting that in the insurance fraud that, well, maybe it's

counts two and counts five, but not, you know, a subsequent count, a count 12 of insurance fraud. I mean, to me, it would -- you know, whatever count -- whatever insurance fraud they want to --

MR. WRIGHT: Read -- read count one to the exclusion of the other counts --

THE COURT: No, I understand what you're saying.

MR. WRIGHT: Okay.

THE COURT: It doesn't --

MR. WRIGHT: And then what --

THE COURT: -- specifically say --

MR. WRIGHT: -- am I to conclude?

THE COURT: -- as more specifically alleged in count number two, for instance.

MR. WRIGHT: Correct.

THE COURT: It clearly --

MR. WRIGHT: That's what you're allowed to plead.

THE COURT: It clearly does not say that. You're right.

MR. WRIGHT: Okay. Right. I understand it's 35 months is the time frame in the racketeering count. And so I -- I don't -- I read that and -- and I've read it over and over until I start taking any indictment and dissect it by the elements and try to figure out what is my client charged with and is he -- because they have charged in this principal,

accomplice, aider and abettor, liability, plus conspirator. Which is he and what act am I defending against in count one?

And so in count one is Dr. Desai the principal, aider and abettor, conspirator, and what did he do, on which acts for the two predicate acts? Two that I have to have notice of and should've been pled in -- in the racketeering count. I don't know what they are and I can't find any way of learning it.

And I'm supposed to -- this is a pretrial motion to dismiss indictment. I'm not even to look at the grand jury transcript to learn it because that's irrelevant. It's either on the face of the pleading or it isn't, and I don't see it.

When I move to the 14 criminal negligence counts, I -- I have the same problem manifestly when I charted out, figuring out, okay, take a criminal negligence, a given patient on a given date, and the criminal negligence means I had to have done some act, me, meaning the defendant, and it had to have been negligent to such a degree that it's beyond the pale of what an ordinary person would do in the circumstances and I was conscious of all of that and consciously disregard it knowing there was a risk of life anyway. I mean, that's essentially what the offenses are.

And so I think, okay, what -- what did Dr. Desai do? If you start with count four, is he a principal? I mean, because someone has to be a principal if there's aiders and

abettors. You cannot have an aider and abettor without a principal. The principal need not be convicted. He could've died or he could've been unknown. Or unless it's a corporate entity where you can mix and match the elements, you have to have a principal.

I read count four and try to figure out who's the principal the State is alleging in there? Is it Mr. Lakeman, Mr. Mathahs, and Dr. Desai is an aider and abettor? That's what Ms. Weckerly in her response, the return to the pleadings, said we're contending that Mathahs, the way I read the response, and Lakeman injected the propofol, double -- double dipping of the vial, and that was the proximate cause, and Dr. Desai is an aider and abettor.

The amazing part is I had read count four over and over and there -- the State is doing in their response exactly what they're prohibited from doing in an indefinite indictment. They are changing theories from what the grand jury found. If you read the indictment, count four of the acts, that the negligent acts are all listed.

And trying to figure out who is the principal, who is the aider and abettor, I think we ended up understanding that only -- I'm on page 8 of my petition. I mean, on page 8 I laid out the eight acts of negligence that came out of count four. And so I -- I think the State conceded that there was only evidence on number one and number two, and not three

through seven, and of course eight is the mystery one.

But if I read one and two, and the way I had read it, the act isn't injecting propofol. The only act alleged is directly or indirectly instructing employees to do it, or number two, creating an employment environment where they were pressured to do it. Okay. That's what the grand jury alleges is the offense, the negligent act.

Well, who would've instructed employees or created the environment? I thought they were alleging Dr. Desai was the principal, they, meaning the grand jury, and then instructed or had created this negligent environment and Lakeman and Mathahs were aiders and abettors.

But now the state in their response say, no, we're -- we're charging injection by Mathahs and Lakeman and aiding and abetting by Desai. In a criminal medical negligence, neglect of patients counts, there is no act alleged of injection of the propofol, nowhere in the eight unless that's one of the unknown methods.

And the whole purpose of having a definite certain indictment so I know if I'm defending an aider and abettor or a conspirator or a principal, it's so that they can't waffle and switch theories and so that I can prepare to defend the case. I read this over and over, these counts, and I can't determine the -- I think I can determine the acts the State is now contending, meaning the -- the two propofol allegations,

and the others were -- I don't even know what you'd call them.

Accusations for which the evidence refuted them is what those accusations are. But then when you get to the catchall unknown means, I mean, that's impossible to me on a criminal negligence count because a criminal negligence is saying you, Mr. Defendant, engaged in a negligent act which you knew you were doing that act, knew it was beyond the pale of standard practice, and you were able to reasonably foresee that death could come from it and you did that unknown act.

How -- how can you defend that? How can the State bring a case of unknown act? How -- how do we know what the grand jury found? By reading the indictment. And so they found an unknown act. Where did they find one and two, or number six? This goes to the issue of trying to salvage this indefinite pleading.

Can we simply read the -- ask the State what -- what do you all really intend to do, and strike things as surplusage? Not without going back to the grand jury. That's -- that's what the case is. Once -- once the State opted to go and present the case to the grand jury, that was their choice. They could've done it by prelim. We could've argued about it in justice court. The court could've said I find this, this, this, and this, bind it over and that's the information.

But they went the grand jury route. They don't get

to change the document. This isn't an issue of erroneous omission of a citation which we can correct by amendment under paragraph three of 175 -- or 173.075. That -- in fact, the indictment we have is an amended indictment because it was amended because of -- properly because of mis -- either date or citation or something.

THE COURT: Right.

MR. WRIGHT: But on those negligence counts, I -- I don't know how. If this was an information, different story. But this is a grand jury indictment and are Nevada Supreme Court cases, just like the U.S. Supreme Court cases, due process, the right, to me, have the case specifically, definitively pled, and then only tried on what the grand jury found and to be locked into that.

And this idea that we don't want to get locked in so we're just going to throw everything in, plus unknown, and if something pops up during the trial, then that's what we'll utilize, that violates due process. And in my opinion, one plus the -- count one plus the 14 counts of criminal negligence are deficient, and I can't even tell if I'm an aider and abettor or principal or conspirator.

Thank you, Your Honor.

THE COURT: All right. State?

MR. STAUDAHER: I'll go back in, I think, the order that Mr. Wright had some of his arguments. The first one

related to the racketeering if you do go to count one, and I will concede that there is not relation back to the specific counts. I think that that is certainly something that counsel is correct on. The Court has even pointed that out.

However, on -- if the Court goes to the second page of the indictment, which is the racketeering count, on both lines 13 and 14 the State does specifically put in that racketeering count the two predicate crimes that we're talking about, insurance fraud and obtaining money under false pretenses.

Clearly from the indictment as a whole, the actual obtaining money under false pretenses and insurance fraud that are referred to in the racketeering count are the ones that were pled. Certainly at this point, if the Court and counsel wishes to, we can certainly move to amend to refer back to the specific ones that we're referring to, but it's not to say that they were not included in here.

In addition, on page, I believe it is 25 of the return by the State, the actual transcript of the testimony -- or of the instruction to the grand jury pertaining to the predicate crimes and the racketeering count is laid out.

It is, I believe, completely clear from that that the grand jury had to, as a first step in even making a determination as to whether they were going to consider racketeering as a possibility, that they had to find, one,

that there were two acts, separate acts, meaning an obtaining money under false pretenses or a racketeering or an insurance fraud act, that we had shown them evidence of those or multiple acts of, one, insurance fraud, or two, obtaining money under false pretenses or combinations thereof.

If, and only if, those factual information -- or that factual information came before the grand jury and they found that there was probable cause on those two specific predicate crimes did they ever even get to the analysis of the racketeering. And clearly they're instructed on that not once, not twice, but multiple times and throughout the entirety of the presentation. At almost every instance, and there were multiple presentations.

As I -- as I think the Court is aware, they're -- the grand jury is asked specifically about any questions they have regarding the racketeering accounts, regarding the law, regarding anything that was presented to them. They were provided with the entirety of the statutes, of each one of the charged statutes in this case, as well as had specific instruction on them, and not only were those specific enumerated crimes listed in the racketeering account, but they were directly, specifically instructed on finding -- of findings of those two crimes before they could even get to the racketeering account.

Now, with regard to whether or not Dr. Desai is a

principle or an aider and abettor or conspirator, he's all of those. It depends on what aspect of the case you're talking about.

I mean, the fact that he is potentially directing someone to then tell staff to do a certain act or emails are sent out or saying that they are going to get the times for various anesthesia record times and other things by taking a certain time, subtracting certain number of minutes to get to the next time, adding a certain number of minutes to get to the next time in a memo form in his practice, even if he was not the one who actually physically offered that, does not mean that he is not involved in the process.

He is the one who was running the show. He was the one who was directing certain people. The fact that we have a nurse or someone down in the trenches actually doing a procedure who may or may not have heard him come in and directly claim we're going to commit fraud today, I want you to reuse propofol today on that particular occasion doesn't mean that, one, it didn't happen earlier, or, two, didn't happen through other people.

He is an aider and abettor, he is a principal, he is a conspirator in these crimes. And the reason that all three are alleged is because we are required to do so if we are going to proceed under one or more of those theories.

His crimes are not clean crimes in the sense -- and

when I say that, his crimes are not something where he walks into a convenient store, we've got him on video pulling out a gun and robbing the attendant. These are something -- these are crimes where the activity, his specific role in each overlaps with other persons, with the way his -- his setup was in the organization, and how patients were treated.

Because of that, he is all of those things, and that's why he is charged in various counts with either aiding and abetting or conspiring or as a principal. The way that we lay out those factual averments for those various crimes are important and we feel that they can be supported, but they are to put the defense on notice of what crimes he has -- or at least the defendant is subject to in this particular case.

Now, I think that there was one other issue. He had mentioned that if we -- for some reason, if the Court felt that we needed to strike certain portions of -- of the crimes, to take surplusage out, which would be a request of the defense, the State can't just, you know, laterally do that.

That has to be the defense asking for certain things to be removed if we got to that stage. That is not something that's required to go back to the grand jury. That is something the Court can do, the counsel and the State can do in agreement without going back to the grand jury because there's no additional facts or circumstances that are being alleged.

There's no additional crimes that are being proffered in the case against the defendant in all of these cases whether we refer back to crimes that are already pled in this case in the racketeering count to make it more defined for counsel despite the fact that they are in the racketeering count in the first place, none of that adds to, alters, enhances one of the pled crimes in this particular case.

We're not adding anything, we're not enhancing anything, hence, there is no reason to go back before the grand jury. There is only a reason to amend if that is the order of the Court to do so. And we should have leave of the Court to amend if, in fact, we need to do so on any one or multiple counts.

THE COURT: All right. Thank you.

Mr. Wright, anything else?

MR. WRIGHT: Yes. As I understand it, if I want a clear, plain, definite indictment of the allegation I'm supposed to say, State, flesh it out for me. We'll be happy to amend it, and we, the prosecutors, will plug in the way we want to do it. That -- that isn't what is the posture of this case. This is an indictment by the grand jury.

For all I know from the confusing evidence that was presented, the grand jurors all agree with number eight, that in an unknown manner people got hepatitis, and so, therefore, we're indicting because clearly it happened at the clinics on

those dates, but we don't know how it happened, so it's an unknown.

That's not surplusage; that is what the grand jury found. How do we know that? It's in the indictment. This isn't something about the State getting to clean it up. The State is going to the transcript and talking about the evidence. The cases that I cited state you look at the face of the indictment. Where on -- I agree this isn't a clean, simple case like a guy going into a liquor store because that can be pled and I'm on notice.

When it's not a clean, clear case, factually and by theory of liability, it's all the more reason for clear pleading as opposed to saying, well, you're everything. You're an aider and abettor, you're a principal, you're a conspirator for our theories. Where are the facts pled in the indictment, not the evidence presented to the grand jury, in the indictment on each of those as to my client? They're not there.

Thank you.

THE COURT: All right. Anything else, Mr. Staudaher?

MR. STAUDAHER: No, Your Honor.

THE COURT: All right. I agree with the defense in one respect, that this could've been pled better. It could've been pled tighter. Given the fact that the State knew what it

was going to be presenting to the grand jury and I don't think they had to plead this, you know, well, it could've been something else, it could've been this or that, particularly when they knew for certain patients, as the Court pointed out at the beginning, you know, bite blocks weren't even used. So why not plead it in a cleaner fashion, more specifically directing the information to those particular patients.

However, the standard here is notice pleading and whether a person of ordinary intelligence could read this and understand what the allegations are that the State is making. While agreeing that the pleading could've certainly been much tighter, it could've been much better, the Court does find that the State has met statutory, as well as constitutional notice requirements.

With respect to the racketeering and the obligation on count number one to incorporate by reference, they should've done that. However, the grand jury did find probable cause as to the subsequent counts of insurance fraud. And for that reason I don't think it's reasonable to assume, well, they may have found this one is a predicate act but not that one is a predicate act. That just doesn't make any sense.

I mean, I think, Mr. Wright, you make a good point. You know, again, they could've been more specific with the dates and whatnot. But looking at the totality of the

indictment, notwithstanding that deficiency, I think that it's clear what they're charging.

And the reason I said, well, they did find probable cause for the other counts of insurance fraud, if the Court were to order them to amend to incorporate by reference, I don't think this is one of those situations where we would have to conjecture as to what the grand jury's finding was or where they found evidence.

And I agree with you, Mr. Wright, we can't do that. We can't -- if it requires the Court to go back and try to conjecture what was the grand jury thinking, that would be inappropriate. In this case, though, I don't think it's reasonable to think, well, maybe they found this one was a predicate act, but not that one was a predicate act. And so, you know, there's -- they found insurance fraud on numerous counts.

And for that reason, again, I think that they've met their burden with respect to the notice and the indictment. So it's denied on the motion to dismiss grounds. As I said, on the petition grounds, I think that that was time-barred, and so that is denied as well on that reason without considering the sufficiency of the evidence and other things that, as I've said, had to be raised by way of petition and could not be raised by way of motion to dismiss.

Mr. Wright?

MR. WRIGHT: Yes. I'm not going to argue with you, I just want to make clear on the record on the unknown, on the criminal medical -- on the criminal neglect of patients, I mean, to me it's also -- it's not only procedural due process, it's substantive due process. I don't believe I can charge someone with a crime, an unknowing act of negligence. And so I just don't know how you can scope around that with due process substantive -- substantively as well as --

THE COURT: No, I --

MR. WRIGHT: -- procedurally.

THE COURT: -- understand what you're saying. You're saying, well, what if the grand jury didn't find that the means of transmission was through one or more of these methods charged, meaning the reuse of the propofol without observing appropriate sanitory -- sanitary, excuse me, measures, or reusing the, you know, bite blocks or what have you, that they just said, well, there was transmission, therefore, it had to have been.

Mr. Staudaher, finally on the record do you want to say anything regarding that? Again, you know --

MR. STAUDAHER: Well, I know that we don't get into the factual issues, but there were -- there was a lot of testimony and a lot of evidence presented to the grand jury.

Again, we've offered to -- if counsel feels that he doesn't want to have to deal with that at trial, to strike

that particular portion out of those counts, that unknown, but we feel that the grand jury had, based on the evidence presented to them, and at least the way it was pled for -- for different factual averments that we were seeking to go forward on, that there was plenty of evidence presented to them, and we believe that their findings were -- were a result of that.

I don't think that there's any basis to think that anybody who came in and testified said that, you know, we just know what happened kind of thing.

THE COURT: Right, or that the grand jury said, well, it must've been this. I mean, I think if you look at the transcript and everything, it was very clear what the State was presenting and -- and what they wanted the grand jury to find.

MR. STAUDAHER: And there was not a single question from a grand juror that indicated that there was some confusion on that point as well. And the grand jury asked a number of questions throughout the presentations.

THE COURT: And I understand, Mr. Wright, you're saying is that -- you know, that that forces us to conjecture into what the minds of the grand jury may have been. Is that essentially what you want to say --

MR. WRIGHT: Yeah, what I'm saying --

THE COURT: -- without just saying, well, obviously there was abundant evidence and so it had to have been -- had

to have been through one or more of the devices that they presented evidence on, specifically the propofol.

MR. WRIGHT: Well, I understand the State is saying there was sufficient evidence before the grand jury to charge that it was unknown methods. And that's exactly my point. You can't charge an unknown criminal negligence act count.

And the State is saying there was sufficient evidence there to support it. And, of course, they keep acknowledging we can't look at the transcripts, we can't talk about the evidence that was there, but in the courtroom between the Judge and the prosecutor we talk about the abundance of evidence that was before the grand jury, which is exactly what we cannot do, but that's what we've done here.

And so what -- what's clear from looking at the indictment is that there's a substantive charge of negligence by unknown means. I think that violates due process.

THE COURT: All right. Thank you.

MR. WRIGHT: Thank you.

THE COURT: Mr. --

MR. STAUDAHER: Just one last --

THE COURT: You indicated you were --

MR. STAUDAHER: -- point on that -- on that. I know that we're short on time, but I --

THE COURT: Well, we're not short on time. I have all day.

MR. STAUDAHER: As far as that issue, that single issue there, it's not just that with regard to the counts where -- where there is an unknown element there, it is the contention of the State the -- what was presented not only to the grand jury in the evidence, and I'm not talking about that specifically, but what's averred in the actual pleading itself that it was essentially the negligence results from what the actual atmosphere that was created by this -- by this man and how he conducted his operation, which leads into all of the things that came before the grand jury. That's -- that's the issue.

And because of that atmosphere, it sets up the fact that you can have people that cut corners and do things that create risk and that that is known by the defendant based on the evidence that came in.

So the information is there to show that we've got -- we're pleading by the staff being pressured by the general atmosphere of the -- of the organization, how they ran patients through the clinic, what risks were put upon the patients, and then we end up with patients being harmed as a result.

And we believe we have presented evidence that shows what -- how that transmission occurred, but we also feel that it's not the transmission by itself that is the negligent act. It is all the accoutrements around that actual transmission

act that are part of what is charged in this case.

THE COURT: All right. And just a final comment from the Court. I think it's obvious that they're charging that these people were infected as a result of their treatment at the facility and as a result of the facility's ongoing failure and disregard of appropriate medical and sanitary practices. And I think that that's quite obvious.

They're not -- you know, it's not an inference, well, this person was treated there and had hepatitis, and then you were treated and you got hepatitis, therefore, it must've been. I mean, I think it's quite clear from the indictment itself that it is as a direct result of this pattern and practice according to the State that was in place at the time. These patients were treated at the facility that caused the infection.

And so reading the totality of the negligence counts I think clearly puts the defendant on notice as I said before, and I don't think creates the opportunity for the fact finder in this case, the grand jury to have made some sort of conjecture, oh, well, we don't know what it is, it must've been something.

So if you read it in the totality, it was the failure to utilize accepted practices and the disregard of patient safety and whatnot that the State is alleging permeated, if you will, the facility. So for that reason I

think that the pleading does not violate substantive due process requirements either.

And I believe that that covers everything. Thank you.

-oOo-

ATTEST: I hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

JULIE POTTER
TRANSCRIBER

ORIGINAL

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA, Plaintiff, vs. RONALD E. LAKEMAN, KEITH H. MATHAHS, Defendants.	CASE NO. C265107-2 C265107-3 DEPT NO. XXI **TRANSCRIPT OF PROCEEDINGS**

BEFORE THE HONORABLE VALERIE P. ADAIR, DISTRICT COURT JUDGE

MOTIONS

TUESDAY, MAY 22, 2012

APPEARANCES:

For the State:	PAMELA WECKERLY, ESQ. Chief Deputy Distict Attorney MICHAEL V. STAUDAHER, ESQ. Chief Deputy District Attorney
For Defendant Lakeman:	FREDERICK A. SANTACROCE, ESQ.
For Defendant Mathahs:	MICHAEL V. CRISTALLI, ESQ.

RECORDED BY JANIE OLSEN, COURT RECORDER
TRANSCRIBED BY: KARR Reporting, Inc.

LAS VEGAS, NEVADA, TUESDAY, MAY 22, 2012, 9:57 A.M.

THE COURT: State versus Ronald Lakeman, who joined in the motion, and Keith Mathahs, who -- whose motion this is. It is the defendant's motion to dismiss, and we do have the defendants for Mathahs present. All right. I've reviewed everything.

MR. CRISTALLI: I understand, and I know that the Court has an understanding on the arguments. Whether or not the Court agrees with the arguments are another story in its entirety.

THE COURT: Well, I mean, I would agree with you on -- I mean, I've already said I think it could have been pled much better. And I think that, you know, I think in a way it's a more compelling argument as to your client than it is to Dr. Desai. You know, the State doesn't really try to distinguish why the argument applies to the nurse clients, you know.

Here's the thing. I mean, as I understand it. I mean, basically they're saying, oh, well, it's all part of a conspiracy, so everybody's on the hook for everything.

MR. CRISTALLI: Right. And that's the only way that they obviously can make the case the way that they have pled it. So we understand that that's certainly the argument that they're going to continue to foster.

I mean, first of all, if we just look at the

racketeering charge first and foremost as it's pled in the indictment, if you look at the unlawful acts as it's articulated in the NRS 207.400, it says, "It is unlawful for a person who has with criminal intent received any proceeds derived, directly or indirectly, from racketeering activity to use or invest, whether directly or indirectly, any part of the proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of."

Okay. In the indictment, it doesn't have that final portion of the language contained in the statute, Judge. It just says, To use or invest, whether directly or indirectly, any part of the proceeds. The important part of that is, if you continue on, after the acquisition of it says, "Number 1. Any title to or any right, interest or equity in real property; or Number 2. Any interest in or the establishment or operation of any enterprise."

I think on its face the way that the racketeering charge is pled in the indictment, number one, is deficient because it doesn't properly put forth all of the language contained within the statute, which they absolutely have to do.

But if you do read on, as the language is contained in the NRS 207.400, it fails miserably as it relates to Mr. Mathahs, because they cannot squeeze Mr. Mathahs or the conduct alleged against Mr. Mathahs into the elements of that

racketeering statute.

So on its face, just looking at the racketeering, forget about the predicate acts, the way it's pled it's deficient. And if it's not deficient and it becomes inclusive, it still fails. Because they can't make the case as it relates to Mr. Mathahs with regard to those particular elements.

THE COURT: Well, let's set aside two issues. I mean, right now we're on a motion to dismiss. We're looking at the sufficiency of a pleading. We're not looking at well, what did they prove and did they prove everything at the grand jury. Because that, you know --

MR. CRISTALLI: I understand.

THE COURT: -- that horse has left the barn. That was already, you know, that you -- that was a different judge, but that was, you know, denied.

So all we're looking at, not whether or not they can prove it or not. We can't look at that. All we can look at is well, what do they have to prove. Are they alleging sufficiently putting him on notice as to what they have to prove? And obviously, you know, if they go forward with their case in chief and at the conclusion of that they don't have any evidence and they haven't met that, then you move, you know, you can make a motion to dismiss at that time.

So let's, you know -- I mean, and again, just to

reiterate, we have to focus on not what they're able to prove or not what evidence they presented, but just on the sufficiency of the pleading. And you know, I think we all kind of bring into our analysis of that what we already know, what we know everybody's role is.

And but, you know, really it's notice and, you know, are they putting him -- is this sufficient to tell him what they need to prove. And you know, again, if they don't prove it, if they don't present any evidence of that, forget prove it beyond a reasonable doubt, but if there is no evidence then, you know, the time at the conclusion of their case in chief, you know, is to move for dismissal.

MR. CRISTALLI: And I understand that, and that was the secondary part of my argument. But it doesn't eliminate -- if we're just talking about on its face, in the four corners of the indictment, if you look at the statute, if you look at NRS 207.400, if you look at how it's pled in the indictment, there is a significant omission with regard to a portion of the unlawful provision as it relates to racketeering under A.

Okay. It stops when it goes to whether directly or indirectly any part of the proceeds, and it does not go on to include or the proceeds derived from the investment or use thereof, in the acquisition of, "Number 1, any title to or any right, interest or equity in real property, or Number 2, any

interest in or the establishment or operation of any enterprise."

The failure or the omission as it relates to the content of that statute certainly is a problem as far as our ability to defend against the charges alleged against Mr. Mathahs. It doesn't exist. They didn't put it in the content.

Whether or not you want to assume that it's in there, and you don't want to then go into an analysis and say, oh, my gosh, how does this apply to Mr. Mathahs, it doesn't really seem to based on the theory of prosecution by the State, based on his involvement in the centers. But just on its face, the language and the omission of pertinent portions of the statute is material to our ability to defend.

And certainly that should have been presented in its entirety in front of the grand jury. Just not a portion of it, but in its entirety. I mean, the grand jury has to make a determination as to a racketeering charge against Mr. Mathahs. They'd have to be informed as it relates to the entirety of the law, and not to mention the fact that we have to within the indictment understand what we're being charged with, and it's not clear.

That's just on racketeering. Not talking about the predicate acts right now. I do have some things to say about that, if you want me to continue.

THE COURT: Well, I mean, you know, I read everything. I understand what your arguments are. I mean, again -- oh, go ahead.

MR. CRISTALLI: As far as the fraud, I mean, you have insurance fraud. Not talking about what happened during the course of the grand jury and the evidence presented, but the individuals that Mr. Mathahs treated who are in the indictment, or who he billed are in the indictment are one, two, three people; Miana [phonetic], Rubino [phonetic] and Rivera [phonetic].

The other counts for which he's charged with as it relates to fraud are Counts 1, 2, 3, 4, 5, 7, 8, 9, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26 and 27. He never treated or billed for any of those patients, yet he's charged in the fraud as it relates to them. I mean, certainly there's nothing contained within the indictment to suggest why we're charged with that, with those charges.

There's no information contained within the indictment to put us on notice to defend against as it relates to the evidence when it comes in with regard to the billing fraud. What am I going to do when they get up there? Sit on my hands, say we didn't treat them? I would assume that's what I'm going to do.

THE COURT: I would assume so. I mean, here's the thing. You know, had this been, you know, more specifically

so and so treated this patient on this day and by using the Propofol, you know, by re-using it thereby infected him, blah, blah, blah, yes. And I said that last time.

The thing is, I mean, I think what they're -- I mean, isn't -- to me it's relatively clear. No, we don't know from the indictment all of that. But it's relatively clear on the theories of liability, to me, that what they're saying is they were all part of this overall over-reaching conspiracy where -- and I get it, you know, you're saying, well, what's the benefit.

I mean, to me that goes to their defense, that they don't prove an individual benefit to either of -- either your client or Mr. Santacroce's client. But I mean, if you read, doesn't it put you on notice that this is their idea, that they're a part of this conspiracy with Dr. Desai that they'll make for the clinic extra money to -- by, you know, re-using this stuff, or double dose, double-dipping, I guess, if you will.

MR. CRISTALLI: The unfortunate part of this is that there is -- this is -- and this is, you know, ignoring the big huge elephant in the room, is that we know why they're here and sitting here. It's not because they engaged in some type of conspiracy or racketeering organization with Mr. Mathahs.

It's because Keith Mathahs treated the source patient on the day in question. That's why they're there. I mean, we

know that. The physicians that profited millions of dollars in this organization or associated organizations are not here. They didn't treat the source patient.

As far as the fraud is concerned, there is a number of fraud charges contained in this indictment that we don't believe have been pled with particularity, and we don't believe that they should be alleged against Mr. Mathahs. Why is he being charged with a myriad of counts as it relates to patients he never even saw or billed? I mean, and I understand it's a little more tenuous in terms of the fraud argument, and we'll switch gears.

Because the reason why we're here, as far as my representation of Mr. Mathahs, is because of the fact he treated the source patient. That's why we're here. So the biggest and most important thing for us is we need to know what the jury returns a verdict on. Okay. If it's an adverse verdict. We need to know what the grand jury made a determination on as it relates to evidence with regard to the injury counts. We don't know that. Even if you -- we don't know that.

Okay. If the theory against Mr. Mathahs is that he re-used Propofol inconsistent with aseptic techniques, which ultimately caused the infections associated with these days in question, or this day in question -- there's another day that he's being charged which he wasn't even on, as far as the

infection counts were concerned. But then they should plead that. They should plead it that way.

I should know from the grand jury that the grand jury reviewed that evidence as it relates to the Propofol charge, related to the Propofol allegations, and we should have an indictment that the jury will read and look at as it relates to those allegations. And then when they come back with a verdict on a concise and properly pled indictment, then we are then on notice of what the returned verdict is for.

The way that it's pled now, and it's stipulated by the State, because they made the argument because they have to as it relates to Desai on the injury counts, that this is not -- there's a myriad of alternative theories, because we need it to be that way in case the jury doesn't believe that Desai knew what happened as far as the contamination was concerned on that date.

So we need to make it look like there's a myriad of problems associated with this organization, which led to aseptic techniques within the organization. But in reality, as the charge and the theory of the case goes for Mr. Mathahs and Mr. Lakeman, is that there was -- there was a failure to use aseptic techniques as it related to the Propofol on that day in question, which led to an infection. That's it.

Why do I have to defend against bite block allegations? Why do I have to defend about scope allegations?

Why do I have to defend against hours being too long and too arduous? Why do I have to defend about there was a policy and procedure in place to cut corners, when I represent a salaried employee who at the time -- who's 76 years of age now, at the time was only a part-time employee?

THE COURT: Well, I think that's your best argument, truthfully, Mr. Cristalli. But you know, I mean, I think, again, getting to what they're putting him on notice of, to me it's pretty clear that they're saying --

I mean, it's just like, you know, you can take it in a simple case of a robbery or something like that, where everybody wears masks and they're linked to the robbery but, you know, it's never quite established who was who, you know, who's wearing which mask so to speak. But we know they were all part of it. Maybe somebody's a getaway driver. Maybe somebody, you know, is the lookout person. Somebody's actually doing it.

And the State doesn't -- you know, to look at it in a simple thing, I think maybe that's what they're saying. You know, this is complicated. But the idea is that they're all involved in this conspiracy, and sometimes it's your client that's using the unsanitary practices. And sometimes, you know, it's another employee who's using the unsanitary practices. It was part of the culture of that organization.

And I think some of the thing -- I mean, I think

you've made -- like I said, I think your best point is it's so broad that, you know, do you have to separate each and every thing. I think some of the things that you're saying really don't go to the sufficiency of the pleading. They go to your defense.

You know, why would he be involved in this conspiracy. He's a part-time 76-year-old salaried employee. That goes to the defense and what you want to introduce to the jury. Why is he doing this when he's not making any money, you know. I mean, that's all defense issues. That's not stuff that they, as you know, they need to plead, you know.

MR. CRISTALLI: No. But we shouldn't ignore it either. We shouldn't live in a bubble on it.

THE COURT: Well, I'm just saying, you know --

MR. CRISTALLI: We have to look at it in its entirety, I think.

THE COURT: Does the State want to respond?

MR. STAUDAHER: Your Honor, I think that we made our arguments last time. We also believe that all the arguments that have been made now were essentially made last time, and my argument that he joined in. So I think he's actually precluded from bringing those back before the Court. And even though --

THE COURT: Well, I don't think -- I mean, he can join in the other motion and say he agrees with that and he

thinks it ought to be dismissed, and he's entitled to bring separate and unique arguments for his own client --

MR. STAUDAHER: But I haven't heard it.

THE COURT: -- even though it was a joinder.

Well, I've heard different arguments. You know, with all due respect to the State, I've heard different arguments from Mr. Cristalli today about, you know, the unique position and that, you know, Dr. Desai is kind of the umbrella of this thing but, you know, he wants to focus just on the patients that his client actually handled. I mean, I think those are different arguments.

But I think, you know, again, some of this goes to proof issues. You know, is the State going to be able to prove that this was all a big conspiracy involving nurses who apparently had no financial motivation. Are they really conspiring to be part of this whole agreement. Are they really aiding and abetting and encouraging other people to -- because that's what you pled, to observe less than antiseptic practices.

And those to me are proof issues which again, you know, that's already been ruled on by a different judge. And so I think a lot of this goes to well, how believable is the theory with respect to, you know, what we're dealing with today, Mr. Cristalli's client.

You know, they can throw out just factually, which

isn't really what we're dealing with, well, maybe he did it to make his employer happy. Maybe he did it so he'd continue to work and work the shifts he wanted to work.

I mean, there's a lot of motivations people may have to engage in a conspiracy which may seem, you know, not that great to us, but that to the person, you know, they feel that that is of benefit to them even though they're not making millions of dollars like the physician, Dr. Desai, allegedly was making.

So I think a lot of this goes to proof issues, which the State, they pled it. Now they got to prove it this way. And I think just on the issue of the sufficiency of the notice, could it have been better? Certainly. I think they've met the threshold. And so, Mr. Cristalli, it's denied as to your claim as well the joinder is denied.

MR. CRISTALLI: Yes.

THE COURT: All right. Thank you.

MR. CRISTALLI: Thank you, Your Honor.

MR. STAUDAHER: [Inaudible] Mr. Santacroce [inaudible]?

THE COURT: Right. Exactly. To my knowledge that would be the only joinder that was filed.

(Hearing concluded at 10:17 a.m.)

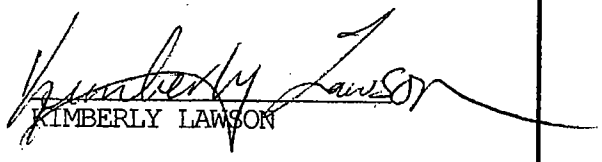
CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

KARR REPORTING, INC.
Aurora, Colorado



KIMBERLY LAWSON

VERIFICATION

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

Eunice M. Morgan, Esq., being first duly sworn according to law, deposes and says: That he is submitting this petition on behalf of Petitioner, Keith Mathahs, that he has read the foregoing Petition for Writ of Mandamus and knows the contents thereof; that the same is true tp the best of his own knowledge, except as to those matters stated on information and belief, and as to those matters herein contained which are stated on information and believes them to be true as well.

EUNICE M. MORGAN, ESQ.

SUBSCRIBED AND SWORN to before me
this 20th day of ~~June~~ July, 2012.

NOTARY PUBLIC in and for said
County and State

CYNTHIA M. JACOBSEN
Notary Public-State of Nevada
APPT. NO. 04-89302-1
My App. Expires May 18, 2016

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