

EXHIBIT 13

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1 **AIND**

2 **STEVEN B. WOLFSON**
3 **Clark County District Attorney**
4 **Nevada Bar #001565**
5 **MICHAEL V. STAUDAHER**
6 **Chief Deputy District Attorney**
7 **Nevada Bar #008273**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

DISTRICT COURT
CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,

11 Plaintiff,

12 -vs-

13 **DIPAK KANTILAL DESAI,**
14 **#1240942**
15 **RONALD ERNEST LAKEMAN,**
16 **#2753504**

Defendant(s).

CASE NO: 10C265107-1

DEPT NO: XXI

**THIRD AMENDED
INDICTMENT**

17 STATE OF NEVADA }
18 COUNTY OF CLARK } ss.

19 The Defendant(s) above named, DIPAK KANTILAL DESAI and RONALD
20 ERNEST LAKEMAN accused by the Clark County Grand Jury of the crime(s) of
21 **INSURANCE FRAUD (Category D Felony - NRS 686A.2815); PERFORMANCE OF**
22 **ACT IN RECKLESS DISREGARD OF PERSONS OR PROPERTY RESULTING IN**
23 **SUBSTANTIAL BODILY HARM (Category C Felony - NRS 0.060, 202.595);**
24 **CRIMINAL NEGLIGENCE OF PATIENTS RESULTING IN SUBSTANTIAL BODILY**
25 **HARM (Category B Felony - NRS 0.060, 200.495); THEFT (Category B Felony - NRS**
26 **205.0832, 205.0835); OBTAINING MONEY UNDER FALSE PRETENSES (Category**
27 **B Felony - NRS 205.265, 205.380) and MURDER (SECOND DEGREE) (Category A**
28 **Felony - NRS 200.010, 200.020, 200.030, 200.070, 202.595, 200.495), committed at and**

1 within the County of Clark, State of Nevada, on or between June 3, 2005, and April 27,
2 2012, as follows:

3 COUNT 1 - INSURANCE FRAUD

4 Defendants and KEITH MATHAHS did on or about July 25, 2007, knowingly and
5 willfully present, or cause to be presented a statement as a part of, or in support of, a claim
6 for payment or other benefits under a policy of insurance issued pursuant to Title 57 of the
7 Nevada Revised Statutes, knowing that the statement concealed or omitted facts, or
8 contained false or misleading information concerning a fact material to said claim; and/or
9 did assist, abet, solicit or conspire to present or cause to be presented a statement to an
10 insurer, a reinsurer, a producer, a broker or any agent thereof, knowing that said statement
11 concealed or omitted facts, or did contain false or misleading information concerning a fact
12 material to a claim for payment or other benefits under such policy issued pursuant to Title
13 57 of the Nevada Revised Statutes, by falsely representing to ANTHEM BLUE CROSS –
14 BLUE SHIELD that the billed anesthesia time and/or charges for the endoscopic procedure
15 performed on SHARRIEFF ZIYAD were more than the actual anesthetic time and/or
16 charges, said false representation resulting in the payment of money to the Defendants and
17 KEITH MATHAHS and/or their medical practice and/or the racketeering enterprise which
18 exceeded that which would have normally been allowed for said procedure; Defendants and
19 KEITH MATHAHS being responsible under one or more of the following principles of
20 criminal liability, to wit: (1) by directly committing said acts; and/or (2) aiding or abetting
21 each other in the commission of the crime by directly or indirectly counseling, encouraging,
22 hiring, commanding, inducing, or procuring each other, and/or others to commit said acts,
23 Defendants and KEITH MATHAHS acting with the intent to commit said crime, and/or (3)
24 pursuant to a conspiracy to commit this crime.

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COUNT 3 - PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS
OR PROPERTY RESULTING IN SUBSTANTIAL BODILY HARM

Defendants and KEITH MATHAHS did on or about July 25, 2007, then and there willfully and unlawfully perform acts in willful or wanton disregard of the safety of persons or property resulting in substantial bodily harm to MICHAEL WASHINGTON, to wit: transmitting the Hepatitis C virus to MICHAEL WASHINGTON, in the following manner, to wit: by directly or indirectly using and/or introducing contaminated medical instruments, supplies, and/or drugs upon or into the body of MICHAEL WASHINGTON which were contaminated with the Hepatitis C virus; Defendants and KEITH MATHAHS being responsible under one or more of the following principles of criminal liability, to wit: (1) by directly committing said acts; and/or (2) aiding or abetting each other in the commission of the crime by directly or indirectly counseling, encouraging, hiring, commanding, inducing, or procuring each other, and/or others to utilize a patient care delivery system which directly or indirectly limited the use of medical instruments, and/or supplies, and/or drugs; scheduled and/or treated an unreasonable number of patients per day, and/or rushed patients or patient procedures, Defendants and KEITH MATHAHS acting with the intent to commit said crime in order to fraudulently increase the insurance billing and/or money reimbursement for the medical procedure performed on the said MICHAEL WASHINGTON; specifically, as to DEFENDANT DESAI, that he directly or indirectly both instructed DEFENDANT LAKEMAN, and KEITH MATHAHS and said others to perform said acts and created a work environment where DEFENDANT LAKEMAN, and KEITH MATHAHS and others were pressured to commit the said acts described above; specifically, as to DEFENDANT LAKEMAN, engaging in conduct against universally accepted standards of medical care, that he limited the use of medical supplies, and/or drugs and rushed patients, and/or patient procedures which in turn allowed DEFENDANT DESAI to directly or indirectly treat and/or perform an unreasonable number of patient procedures in a single day all at the expense of patient safety and well being, and which resulted in substandard care and jeopardized the safety of MICHAEL WASHINGTON and/or (3) pursuant to a conspiracy to commit this

1 crime, Defendants and KEITH MATHAHS acting in concert throughout.

2 COUNT 4 - CRIMINAL NEGLECT OF PATIENTS RESULTING IN SUBSTANTIAL
3 BODILY HARM

4 Defendants and KEITH MATHAHS on or about July 25, 2007, being professional
5 caretakers of MICHAEL WASHINGTON, did act or omit to act in an aggravated, reckless
6 or gross manner, failing to provide such service, care or supervision as is reasonable and
7 necessary to maintain the health or safety of said MICHAEL WASHINGTON, resulting in
8 substantial bodily harm to MICHAEL WASHINGTON, to wit: transmitting the Hepatitis C
9 virus to MICHAEL WASHINGTON, said acts or omissions being such a departure from
10 what would be the conduct of an ordinarily prudent, careful person under the same
11 circumstances that it is contrary to a proper regard for danger to human life or constitutes
12 indifference to the resulting consequences, said consequences of the negligent act or
13 omission being reasonably foreseeable; said danger to human life not being the result of
14 inattention, mistaken judgment or misadventure, but the natural and probable result of said
15 aggravated reckless or grossly negligent act or omission, to wit: by directly or indirectly
16 using and/or introducing contaminated medical instruments, supplies, and/or drugs upon or
17 into the body of MICHAEL WASHINGTON which were contaminated with the Hepatitis C
18 virus; Defendants and KEITH MATHAHS being responsible under one or more of the
19 following principles of criminal liability, to wit: (1) by directly committing said acts; and/or
20 (2) aiding or abetting each other in the commission of the crime by directly or indirectly
21 counseling, encouraging, hiring, commanding, inducing, or procuring each other, and/or
22 others to utilize a patient care delivery system which directly or indirectly limited the use of
23 medical instruments, and/or supplies, and/or drugs; scheduled and/or treated an unreasonable
24 number of patients per day, and/or rushed patients or patient procedures, Defendants and
25 KEITH MATHAHS acting with the intent to commit said crime in order to fraudulently
26 increase the insurance billing and/or money reimbursement for the medical procedure
27 performed on the said MICHAEL WASHINGTON; specifically, as to DEFENDANT
28 DESAI, that he directly or indirectly both instructed DEFENDANT LAKEMAN, and

1 KEITH MATHAHS and said others to perform said acts and created a work environment
2 where DEFENDANT LAKEMAN, and KEITH MATHAHS and others were pressured to
3 commit the said acts described above; specifically, as to DEFENDANT LAKEMAN,
4 engaging in conduct against universally accepted standards of medical care, that he limited
5 the use of medical supplies, and/or drugs and rushed patients, and/or patient procedures
6 which in turn allowed DEFENDANT DESAI to directly or indirectly treat and/or perform an
7 unreasonable number of patient procedures in a single day all at the expense of patient safety
8 and well being, and which resulted in substandard care and jeopardized the safety of
9 MICHAEL WASHINGTON and/or (3) pursuant to a conspiracy to commit this crime,
10 Defendants and KEITH MATHAHS acting in concert throughout.

11 COUNT 5 - INSURANCE FRAUD

12 Defendants and KEITH MATHAHS did on or about July 25, 2007, knowingly and
13 willfully present, or cause to be presented a statement as a part of, or in support of, a claim
14 for payment or other benefits under a policy of insurance issued pursuant to Title 57 of the
15 Nevada Revised Statutes, knowing that the statement concealed or omitted facts, or
16 contained false or misleading information concerning a fact material to said claim; and/or
17 did assist, abet, solicit or conspire to present or cause to be presented a statement to an
18 insurer, a reinsurer, a producer, a broker or any agent thereof, knowing that said statement
19 concealed or omitted facts, or did contain false or misleading information concerning a fact
20 material to a claim for payment or other benefits under such policy issued pursuant to Title
21 57 of the Nevada Revised Statutes, by falsely representing to VETERANS
22 ADMINISTRATION that the billed anesthesia time and/or charges for the endoscopic
23 procedure performed on MICHAEL WASHINGTON were more than the actual anesthetic
24 time and/or charges, said false representation resulting in the payment of money to
25 Defendants and KEITH MATHAHS and/or their medical practice and/or the racketeering
26 enterprise which exceeded that which would have normally been allowed for said procedure;
27 Defendants and KEITH MATHAHS being responsible under one or more of the following
28 principles of criminal liability, to wit: (1) by directly committing said acts; and/or (2) aiding

1 or abetting each other in the commission of the crime by directly or indirectly counseling,
2 encouraging, hiring, commanding, inducing, or procuring each other, and/or others to
3 commit said acts, Defendants and KEITH MATHAHS acting with the intent to commit said
4 crime, and/or (3) pursuant to a conspiracy to commit this crime.

5 COUNT 6 - INSURANCE FRAUD

6 Defendants and KEITH MATHAHS did on or about September 21, 2007, knowingly
7 and willfully present, or cause to be presented a statement as a part of, or in support of, a
8 claim for payment or other benefits under a policy of insurance issued pursuant to Title 57 of
9 the Nevada Revised Statutes, knowing that the statement concealed or omitted facts, or
10 contained false or misleading information concerning a fact material to said claim; and/or
11 did assist, abet, solicit or conspire to present or cause to be presented a statement to an
12 insurer, a reinsurer, a producer, a broker or any agent thereof, knowing that said statement
13 concealed or omitted facts, or did contain false or misleading information concerning a fact
14 material to a claim for payment or other benefits under such policy issued pursuant to Title
15 57 of the Nevada Revised Statutes, by falsely representing to ANTHEM BLUE CROSS
16 AND BLUE SHIELD that the billed anesthesia time and/or charges for the endoscopic
17 procedure performed on KENNETH RUBINO were more than the actual anesthetic time
18 and/or charges, said false representation resulting in the payment of money to Defendants
19 and KEITH MATHAHS and/or their medical practice and/or the racketeering enterprise
20 which exceeded that which would have normally been allowed for said procedure;
21 Defendants and KEITH MATHAHS being responsible under one or more of the following
22 principles of criminal liability, to wit: (1) by directly committing said acts; and/or (2) aiding
23 or abetting each other in the commission of the crime by directly or indirectly counseling,
24 encouraging, hiring, commanding, inducing, or procuring each other, and/or others to
25 commit said acts, Defendants and KEITH MATHAHS acting with the intent to commit said
26 crime, and/or (3) pursuant to a conspiracy to commit this crime.

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COUNT 7 - PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS
OR PROPERTY RESULTING IN SUBSTANTIAL BODILY HARM

Defendants and KEITH MATHAHS did on or about September 21, 2007, then and there willfully and unlawfully perform acts in willful or wanton disregard of the safety of persons or property resulting in substantial bodily harm to STACY HUTCHINSON, to wit: transmitting the Hepatitis C virus to STACY HUTCHINSON, in the following manner, to wit: by directly or indirectly using and/or introducing contaminated medical instruments, supplies, and/or drugs upon or into the body of STACY HUTCHINSON which were contaminated with the Hepatitis C virus; Defendants and KEITH MATHAHS being responsible under one or more of the following principles of criminal liability, to wit: (1) by directly committing said acts; and/or (2) aiding or abetting each other in the commission of the crime by directly or indirectly counseling, encouraging, hiring, commanding, inducing, or procuring each other, and/or others to utilize a patient care delivery system which directly or indirectly limited the use of medical instruments, and/or supplies, and/or drugs; scheduled and/or treated an unreasonable number of patients per day, and/or rushed patients or patient procedures, Defendants and KEITH MATHAHS acting with the intent to commit said crime in order to fraudulently increase the insurance billing and/or money reimbursement for the medical procedure performed on the said STACY HUTCHINSON; specifically, as to DEFENDANT DESAI, that he directly or indirectly both instructed DEFENDANT LAKEMAN, and KEITH MATHAHS and said others to perform said acts and created a work environment where DEFENDANT LAKEMAN, and KEITH MATHAHS and others were pressured to commit the said acts described above; specifically, as to DEFENDANT LAKEMAN, engaging in conduct against universally accepted standards of medical care, that he limited the use of medical supplies, and/or drugs and rushed patients, and/or patient procedures which in turn allowed DEFENDANT DESAI to directly or indirectly treat and/or perform an unreasonable number of patient procedures in a single day all at the expense of patient safety and well being, and which resulted in substandard care and jeopardized the safety of STACY HUTCHINSON and/or (3) pursuant to a conspiracy to commit this crime,

Defendants and KEITH MATHAHS acting in concert throughout.

COUNT 8 - CRIMINAL NEGLECT OF PATIENTS RESULTING IN SUBSTANTIAL BODILY HARM

Defendants and KEITH MATHAHS on or about September 21, 2007, being professional caretakers of STACY HUTCHINSON, did act or omit to act in an aggravated, reckless or gross manner, failing to provide such service, care or supervision as is reasonable and necessary to maintain the health or safety of said STACY HUTCHINSON, resulting in substantial bodily harm to STACY HUTCHINSON, to wit: transmitting the Hepatitis C virus to STACY HUTCHINSON, said acts or omissions being such a departure from what would be the conduct of an ordinarily prudent, careful person under the same circumstances that it is contrary to a proper regard for danger to human life or constitutes indifference to the resulting consequences, said consequences of the negligent act or omission being reasonably foreseeable; said danger to human life not being the result of inattention, mistaken judgment or misadventure, but the natural and probable result of said aggravated reckless or grossly negligent act or omission, to wit: by directly or indirectly using and/or introducing contaminated medical instruments, supplies, and/or drugs upon or into the body of STACY HUTCHINSON which were contaminated with the Hepatitis C virus; Defendants and KEITH MATHAHS being responsible under one or more of the following principles of criminal liability, to wit: (1) by directly committing said acts; and/or (2) aiding or abetting each other in the commission of the crime by directly or indirectly counseling, encouraging, hiring, commanding, inducing, or procuring each other, and/or others to utilize a patient care delivery system which directly or indirectly limited the use of medical instruments, and/or supplies, and/or drugs; scheduled and/or treated an unreasonable number of patients per day, and/or rushed patients or patient procedures, Defendants and KEITH MATHAHS acting with the intent to commit said crime in order to fraudulently increase the insurance billing and/or money reimbursement for the medical procedure performed on the said STACY HUTCHINSON; specifically, as to DEFENDANT DESAI, that he directly or indirectly both instructed DEFENDANT LAKEMAN, and KEITH MATHAHS and said others to perform

1 said acts and created a work environment where DEFENDANT LAKEMAN, and KEITH
2 MATHAHS and others were pressured to commit the said acts described above; specifically,
3 as to DEFENDANT LAKEMAN, engaging in conduct against universally accepted
4 standards of medical care, that he limited the use of medical supplies, and/or drugs and
5 rushed patients, and/or patient procedures which in turn allowed DEFENDANT DESAI to
6 directly or indirectly treat and/or perform an unreasonable number of patient procedures in a
7 single day all at the expense of patient safety and well being, and which resulted in
8 substandard care and jeopardized the safety of STACY HUTCHINSON and/or (3) pursuant
9 to a conspiracy to commit this crime, Defendants and KEITH MATHAHS acting in concert
10 throughout.

11 COUNT 9 - INSURANCE FRAUD

12 Defendants and KEITH MATHAHS did on or about September 21, 2007, knowingly
13 and willfully present, or cause to be presented a statement as a part of, or in support of, a
14 claim for payment or other benefits under a policy of insurance issued pursuant to Title 57 of
15 the Nevada Revised Statutes, knowing that the statement concealed or omitted facts, or
16 contained false or misleading information concerning a fact material to said claim; and/or
17 did assist, abet, solicit or conspire to present or cause to be presented a statement to an
18 insurer, a reinsurer, a producer, a broker or any agent thereof, knowing that said statement
19 concealed or omitted facts, or did contain false or misleading information concerning a fact
20 material to a claim for payment or other benefits under such policy issued pursuant to Title
21 57 of the Nevada Revised Statutes, by falsely representing to HEALTH PLAN OF
22 NEVADA that the billed anesthesia time and/or charges for the endoscopic procedure
23 performed on STACY HUTCHINSON were more than the actual anesthetic time and/or
24 charges, said false representation resulting in the payment of money to Defendants and
25 KEITH MATHAHS and/or their medical practice and/or the racketeering enterprise which
26 exceeded that which would have normally been allowed for said procedure; Defendants and
27 KEITH MATHAHS being responsible under one or more of the following principles of
28 criminal liability, to wit: (1) by directly committing said acts; and/or (2) aiding or abetting

each other in the commission of the crime by directly or indirectly counseling, encouraging, hiring, commanding, inducing, or procuring each other, and/or others to commit said acts, Defendants and KEITH MATHAHS acting with the intent to commit said crime, and/or (3) pursuant to a conspiracy to commit this crime.

COUNT 10 - PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS
OR PROPERTY RESULTING IN SUBSTANTIAL BODILY HARM

Defendants and KEITH MATHAHS did on or about September 21, 2007, then and there willfully and unlawfully perform acts in willful or wanton disregard of the safety of persons or property resulting in substantial bodily harm to RUDOLFO MEANA, to wit: transmitting the Hepatitis C virus to RUDOLFO MEANA, in the following manner, to wit: by directly or indirectly using and/or introducing contaminated medical instruments, supplies, and/or drugs upon or into the body of RUDOLFO MEANA which were contaminated with the Hepatitis C virus; Defendants and KEITH MATHAHS being responsible under one or more of the following principles of criminal liability, to wit: (1) by directly committing said acts; and/or (2) aiding or abetting each other in the commission of the crime by directly or indirectly counseling, encouraging, hiring, commanding, inducing, or procuring each other, and/or others to utilize a patient care delivery system which directly or indirectly limited the use of medical instruments, and/or supplies, and/or drugs; scheduled and/or treated an unreasonable number of patients per day, and/or rushed patients or patient procedures, Defendants and KEITH MATHAHS acting with the intent to commit said crime in order to fraudulently increase the insurance billing and/or money reimbursement for the medical procedure performed on the said RUDOLFO MEANA; specifically, as to DEFENDANT DESAI, that he directly or indirectly both instructed DEFENDANT LAKEMAN, and KEITH MATHAHS and said others to perform said acts and created a work environment where DEFENDANT LAKEMAN, and KEITH MATHAHS and others were pressured to commit the said acts described above; specifically, as to DEFENDANT LAKEMAN, engaging in conduct against universally accepted standards of medical care, that he obtained the medical supplies, and/or drugs utilized in the treatment of KENNETH

1 RUBINO and RODOLFO MEANA which were subsequently contaminated with the
2 Hepatitis C virus and thereafter directly or indirectly shared, exchanged or transferred said
3 contaminated medical supplies, and/or drugs between himself and KEITH MATHAHS
4 and/or between treatment rooms before, during or after the endoscopic procedure performed
5 on KENNETH RUBINO which resulted in the transmission of the Hepatitis C virus into the
6 body of RODOLFO MEANA and others and/or (3) pursuant to a conspiracy to commit this
7 crime, Defendants and KEITH MATHAHS acting in concert throughout.

8 COUNT 11 - CRIMINAL NEGLECT OF PATIENTS RESULTING IN SUBSTANTIAL
9 BODILY HARM

10 Defendants and KEITH MATHAHS on or about September 21, 2007, being
11 professional caretakers of RUDOLFO MEANA, did act or omit to act in an aggravated,
12 reckless or gross manner, failing to provide such service, care or supervision as is reasonable
13 and necessary to maintain the health or safety of said RUDOLFO MEANA, resulting in
14 substantial bodily harm to RUDOLFO MEANA, to wit: transmitting the Hepatitis C virus to
15 RUDOLFO MEANA, said acts or omissions being such a departure from what would be the
16 conduct of an ordinarily prudent, careful person under the same circumstances that it is
17 contrary to a proper regard for danger to human life or constitutes indifference to the
18 resulting consequences, said consequences of the negligent act or omission being reasonably
19 foreseeable; said danger to human life not being the result of inattention, mistaken judgment
20 or misadventure, but the natural and probable result of said aggravated reckless or grossly
21 negligent act or omission, to wit: by directly or indirectly using and/or introducing
22 contaminated medical instruments, supplies, and/or drugs upon or into the body of
23 RUDOLFO MEANA which were contaminated with the Hepatitis C virus; Defendants and
24 KEITH MATHAHS being responsible under one or more of the following principles of
25 criminal liability, to wit: (1) by directly committing said acts; and/or (2) aiding or abetting
26 each other in the commission of the crime by directly or indirectly counseling, encouraging,
27 hiring, commanding, inducing, or procuring each other, and/or others to utilize a patient care
28 delivery system which directly or indirectly limited the use of medical instruments, and/or

1 supplies, and/or drugs; scheduled and/or treated an unreasonable number of patients per day,
2 and/or rushed patients or patient procedures, Defendants and KEITH MATHAHS acting
3 with the intent to commit said crime in order to fraudulently increase the insurance billing
4 and/or money reimbursement for the medical procedure performed on the said RUDOLFO
5 MEANA; specifically, as to DEFENDANT DESAI, that he directly or indirectly both
6 instructed DEFENDANT LAKEMAN, and KEITH MATHAHS and said others to perform
7 said acts and created a work environment where DEFENDANT LAKEMAN, and KEITH
8 MATHAHS and others were pressured to commit the said acts described above; specifically,
9 as to DEFENDANT LAKEMAN, engaging in conduct against universally accepted
10 standards of medical care, that he obtained the medical supplies, and/or drugs utilized in the
11 treatment of KENNETH RUBINO and RODOLFO MEANA which were subsequently
12 contaminated with the Hepatitis C virus and thereafter directly or indirectly shared,
13 exchanged or transferred said contaminated medical supplies, and/or drugs between himself
14 and KEITH MATHAHS and/or between treatment rooms before, during or after the
15 endoscopic procedure performed on KENNETH RUBINO which resulted in the
16 transmission of the Hepatitis C virus into the body of RODOLFO MEANA and others and/or
17 (3) pursuant to a conspiracy to commit this crime, Defendants and KEITH MATHAHS
18 acting in concert throughout.

19 COUNT 12 - INSURANCE FRAUD

20 Defendants and KEITH MATHAHS did on or about September 21, 2007, knowingly
21 and willfully present, or cause to be presented a statement as a part of, or in support of, a
22 claim for payment or other benefits under a policy of insurance issued pursuant to Title 57 of
23 the Nevada Revised Statutes, knowing that the statement concealed or omitted facts, or
24 contained false or misleading information concerning a fact material to said claim; and/or
25 did assist, abet, solicit or conspire to present or cause to be presented a statement to an
26 insurer, a reinsurer, a producer, a broker or any agent thereof, knowing that said statement
27 concealed or omitted facts, or did contain false or misleading information concerning a fact
28 material to a claim for payment or other benefits under such policy issued pursuant to Title

1 57 of the Nevada Revised Statutes, by falsely representing to SECURE HORIZONS and/or
2 PACIFICARE that the billed anesthesia time and/or charges for the endoscopic procedure
3 performed on RUDOLFO MEANA were more than the actual anesthetic time and/or
4 charges, said false representation resulting in the payment of money to Defendants and
5 KEITH MATHAHS and/or their medical practice and/or the racketeering enterprise which
6 exceeded that which would have normally been allowed for said procedure; Defendants and
7 KEITH MATHAHS being responsible under one or more of the following principles of
8 criminal liability, to wit: (1) by directly committing said acts; and/or (2) aiding or abetting
9 each other in the commission of the crime by directly or indirectly counseling, encouraging,
10 hiring, commanding, inducing, or procuring each other, and/or others to commit said acts,
11 Defendants and KEITH MATHAHS acting with the intent to commit said crime, and/or (3)
12 pursuant to a conspiracy to commit this crime.

13 COUNT 13 - PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS
14 OR PROPERTY RESULTING IN SUBSTANTIAL BODILY HARM

15 Defendants and KEITH MATHAHS did on or about September 21, 2007, then and
16 there willfully and unlawfully perform acts in willful or wanton disregard of the safety of
17 persons or property resulting in substantial bodily harm to PATTY ASPINWALL, to wit:
18 transmitting the Hepatitis C virus to PATTY ASPINWALL, in the following manner, to wit:
19 (1) by directly committing said acts; and/or (2) aiding or abetting each other in the
20 commission of the crime by directly or indirectly counseling, encouraging, hiring,
21 commanding, inducing, or procuring each other, and/or others to utilize a patient care
22 delivery system which directly or indirectly limited the use of medical instruments, and/or
23 supplies, and/or drugs; scheduled and/or treated an unreasonable number of patients per day,
24 and/or rushed patients or patient procedures, Defendants and KEITH MATHAHS acting
25 with the intent to commit said crime in order to fraudulently increase the insurance billing
26 and/or money reimbursement for the medical procedure performed on the said PATTY
27 ASPINWALL; specifically, as to DEFENDANT DESAI, that he directly or indirectly both
28 instructed DEFENDANT LAKEMAN, and KEITH MATHAHS and said others to perform

1 said acts and created a work environment where DEFENDANT LAKEMAN, KEITH
2 MATHAHS and others were pressured to commit the said acts described above; specifically,
3 as to DEFENDANT LAKEMAN, engaging in conduct against universally accepted
4 standards of medical care, that he limited the use of medical supplies, and/or drugs and
5 rushed patients, and/or patient procedures which in turn allowed DEFENDANT DESAI to
6 directly or indirectly treat and/or perform an unreasonable number of patient procedures in a
7 single day all at the expense of patient safety and well being, and which resulted in
8 substandard care and jeopardized the safety of PATTY ASPINWALL and/or (3) pursuant to
9 a conspiracy to commit this crime, Defendants and KEITH MATHAHS acting in concert
10 throughout.

11 COUNT 14 - CRIMINAL NEGLECT OF PATIENTS RESULTING IN SUBSTANTIAL
12 BODILY HARM

13 Defendants and KEITH MATHAHS on or about September 21, 2007, being
14 professional caretakers of PATTY ASPINWALL, did act or omit to act in an aggravated,
15 reckless or gross manner, failing to provide such service, care or supervision as is reasonable
16 and necessary to maintain the health or safety of said PATTY ASPINWALL, resulting in
17 substantial bodily harm to PATTY ASPINWALL, to wit: transmitting the Hepatitis C virus
18 to PATTY ASPINWALL, said acts or omissions being such a departure from what would be
19 the conduct of an ordinarily prudent, careful person under the same circumstances that it is
20 contrary to a proper regard for danger to human life or constitutes indifference to the
21 resulting consequences, said consequences of the negligent act or omission being reasonably
22 foreseeable; said danger to human life not being the result of inattention, mistaken judgment
23 or misadventure, but the natural and probable result of said aggravated reckless or grossly
24 negligent act or omission, to wit: (1) by directly committing said acts; and/or (2) aiding or
25 abetting each other in the commission of the crime by directly or indirectly counseling,
26 encouraging, hiring, commanding, inducing, or procuring each other, and/or others to utilize
27 a patient care delivery system which directly or indirectly limited the use of medical
28 instruments, and/or supplies, and/or drugs; scheduled and/or treated an unreasonable number

1 of patients per day, and/or rushed patients or patient procedures, Defendants and KEITH
2 MATHAHS acting with the intent to commit said crime in order to fraudulently increase the
3 insurance billing and/or money reimbursement for the medical procedure performed on the
4 said PATTY ASPINWALL; specifically, as to DEFENDANT DESAI, that he directly or
5 indirectly both instructed DEFENDANT LAKEMAN, and KEITH MATHAHS and said
6 others to perform said acts and created a work environment where DEFENDANT
7 LAKEMAN, and KEITH MATHAHS and others were pressured to commit the said acts
8 described above; specifically, as to DEFENDANT LAKEMAN, engaging in conduct against
9 universally accepted standards of medical care, that he limited the use of medical supplies,
10 and/or drugs and rushed patients, and/or patient procedures which in turn allowed
11 DEFENDANT DESAI to directly or indirectly treat and/or perform an unreasonable number
12 of patient procedures in a single day all at the expense of patient safety and well being, and
13 which resulted in substandard care and jeopardized the safety of PATTY ASPINWALL
14 and/or (3) pursuant to a conspiracy to commit this crime, Defendants and KEITH
15 MATHAHS acting in concert throughout.

16 COUNT 15 - INSURANCE FRAUD

17 Defendants and KEITH MATHAHS did on or about September 21, 2007, knowingly
18 and willfully present, or cause to be presented a statement as a part of, or in support of, a
19 claim for payment or other benefits under a policy of insurance issued pursuant to Title 57 of
20 the Nevada Revised Statutes, knowing that the statement concealed or omitted facts, or
21 contained false or misleading information concerning a fact material to said claim; and/or
22 did assist, abet, solicit or conspire to present or cause to be presented a statement to an
23 insurer, a reinsurer, a producer, a broker or any agent thereof, knowing that said statement
24 concealed or omitted facts, or did contain false or misleading information concerning a fact
25 material to a claim for payment or other benefits under such policy issued pursuant to Title
26 57 of the Nevada Revised Statutes, by falsely representing to ANTHEM BLUE CROSS
27 AND BLUE SHIELD that the billed anesthesia time and/or charges for the endoscopic
28 procedure performed on PATTY ASPINWALL were more than the actual anesthetic time

1 and/or charges, said false representation resulting in the payment of money to Defendants
2 and KEITH MATHAHS and/or their medical practice and/or the racketeering enterprise
3 which exceeded that which would have normally been allowed for said procedure;
4 Defendants and KEITH MATHAHS being responsible under one or more of the following
5 principles of criminal liability, to wit: (1) by directly committing said acts; and/or (2) aiding
6 or abetting each other in the commission of the crime by directly or indirectly counseling,
7 encouraging, hiring, commanding, inducing, or procuring each other, and/or others to
8 commit said acts, Defendants and KEITH MATHAHS acting with the intent to commit said
9 crime, and/or (3) pursuant to a conspiracy to commit this crime.

10 COUNT 16 - INSURANCE FRAUD

11 Defendants and KEITH MATHAHS did on or about September 21, 2007, knowingly
12 and willfully present, or cause to be presented a statement as a part of, or in support of, a
13 claim for payment or other benefits under a policy of insurance issued pursuant to Title 57 of
14 the Nevada Revised Statutes, knowing that the statement concealed or omitted facts, or
15 contained false or misleading information concerning a fact material to said claim; and/or
16 did assist, abet, solicit or conspire to present or cause to be presented a statement to an
17 insurer, a reinsurer, a producer, a broker or any agent thereof, knowing that said statement
18 concealed or omitted facts, or did contain false or misleading information concerning a fact
19 material to a claim for payment or other benefits under such policy issued pursuant to Title
20 57 of the Nevada Revised Statutes, by falsely representing to UNITED HEALTH
21 SERVICES that the billed anesthesia time and/or charges for the endoscopic procedure
22 performed on PATTY ASPINWALL were more than the actual anesthetic time and/or
23 charges, said false representation resulting in the payment of money to Defendants and
24 KEITH MATHAHS and/or their medical practice and/or the racketeering enterprise which
25 exceeded that which would have normally been allowed for said procedure; Defendants and
26 KEITH MATHAHS being responsible under one or more of the following principles of
27 criminal liability, to wit: (1) by directly committing said acts; and/or (2) aiding or abetting
28 each other in the commission of the crime by directly or indirectly counseling, encouraging,

1 hiring, commanding, inducing, or procuring each other, and/or others to commit said acts,
2 Defendants and KEITH MATHAHS acting with the intent to commit said crime, and/or (3)
3 pursuant to a conspiracy to commit this crime.

4 COUNT 17 - PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS
5 OR PROPERTY RESULTING IN SUBSTANTIAL BODILY HARM

6 Defendants and KEITH MATHAHS did on or about September 21, 2007, then and
7 there willfully and unlawfully perform acts in willful or wanton disregard of the safety of
8 persons or property resulting in substantial bodily harm to SONIA ORELLANA-RIVERA,
9 to wit: transmitting the Hepatitis C virus to SONIA ORELLANA-RIVERA, in the following
10 manner, to wit: by directly or indirectly using and/or introducing contaminated medical
11 instruments, supplies, and/or drugs upon or into the body of SONIA ORELLANA-RIVERA
12 which were contaminated with the Hepatitis C virus; Defendants and KEITH MATHAHS
13 being responsible under one or more of the following principles of criminal liability, to wit:
14 (1) by directly committing said acts; and/or (2) aiding or abetting each other in the
15 commission of the crime by directly or indirectly counseling, encouraging, hiring,
16 commanding, inducing, or procuring each other, and/or others to utilize a patient care
17 delivery system which directly or indirectly limited the use of medical instruments, and/or
18 supplies, and/or drugs; scheduled and/or treated an unreasonable number of patients per day,
19 and/or rushed patients or patient procedures, Defendants and KEITH MATHAHS acting
20 with the intent to commit said crime in order to fraudulently increase the insurance billing
21 and/or money reimbursement for the medical procedure performed on the said SONIA
22 ORELLANA-RIVERA; specifically, as to DEFENDANT DESAI, that he directly or
23 indirectly both instructed DEFENDANT LAKEMAN, and KEITH MATHAHS and said
24 others to perform said acts and created a work environment where DEFENDANT
25 LAKEMAN, and KEITH MATHAHS and others were pressured to commit the said acts
26 described above; specifically, as to DEFENDANT LAKEMAN, engaging in conduct against
27 universally accepted standards of medical care, that he obtained the medical supplies, and/or
28 drugs utilized in the treatment of KENNETH RUBINO and SONIA ORELLANA-RIVERA

1 which were subsequently contaminated with the Hepatitis C virus and thereafter directly or
2 indirectly shared, exchanged or transferred said contaminated medical supplies, and/or drugs
3 between himself and KEITH MATHAHS and/or between treatment rooms before, during or
4 after the endoscopic procedure performed on KENNETH RUBINO which resulted in the
5 transmission of the Hepatitis C virus into the body of SONIA ORELLANA-RIVERA and
6 others and/or (3) pursuant to a conspiracy to commit this crime, Defendants and KEITH
7 MATHAHS acting in concert throughout.

8 COUNT 18 - CRIMINAL NEGLECT OF PATIENTS RESULTING IN SUBSTANTIAL
9 BODILY HARM

10 Defendants and KEITH MATHAHS on or about September 21, 2007, being
11 professional caretakers of SONIA ORELLANA-RIVERA, did act or omit to act in an
12 aggravated, reckless or gross manner, failing to provide such service, care or supervision as
13 is reasonable and necessary to maintain the health or safety of said SONIA ORELLANA-
14 RIVERA, resulting in substantial bodily harm to SONIA ORELLANA-RIVERA, to wit:
15 transmitting the Hepatitis C virus to SONIA ORELLANA-RIVERA, said acts or omissions
16 being such a departure from what would be the conduct of an ordinarily prudent, careful
17 person under the same circumstances that it is contrary to a proper regard for danger to
18 human life or constitutes indifference to the resulting consequences, said consequences of
19 the negligent act or omission being reasonably foreseeable; said danger to human life not
20 being the result of inattention, mistaken judgment or misadventure, but the natural and
21 probable result of said aggravated reckless or grossly negligent act or omission, to wit: by
22 directly or indirectly using and/or introducing contaminated medical instruments, supplies,
23 and/or drugs upon or into the body of SONIA ORELLANA-RIVERA which were
24 contaminated with the Hepatitis C virus; Defendants and KEITH MATHAHS being
25 responsible under one or more of the following principles of criminal liability, to wit: (1) by
26 directly committing said acts; and/or (2) aiding or abetting each other in the commission of
27 the crime by directly or indirectly counseling, encouraging, hiring, commanding, inducing,
28 or procuring each other, and/or others to utilize a patient care delivery system which directly

1 or indirectly limited the use of medical instruments, and/or supplies, and/or drugs; scheduled
2 and/or treated an unreasonable number of patients per day, and/or rushed patients or patient
3 procedures, Defendants and KEITH MATHAHS acting with the intent to commit said crime
4 in order to fraudulently increase the insurance billing and/or money reimbursement for the
5 medical procedure performed on the said SONIA ORELLANA-RIVERA; specifically, as to
6 DEFENDANT DESAI, that he directly or indirectly both instructed DEFENDANT
7 LAKEMAN, and KEITH MATHAHS and said others to perform said acts and created a
8 work environment where DEFENDANT LAKEMAN, and KEITH MATHAHS and others
9 were pressured to commit the said acts described above; specifically, as to DEFENDANT
10 LAKEMAN, engaging in conduct against universally accepted standards of medical care,
11 that he obtained the medical supplies, and/or drugs utilized in the treatment of KENNETH
12 RUBINO AND SONIA ORELLANA-RIVERA which were subsequently contaminated with
13 the Hepatitis C virus and thereafter directly or indirectly shared, exchanged or transferred
14 said contaminated medical supplies, and/or drugs between himself and KEITH MATHAHS
15 and/or between treatment rooms before, during or after the endoscopic procedure performed
16 on KENNETH RUBINO which resulted in the transmission of the Hepatitis C virus into the
17 body of SONIA ORELLANA-RIVERA and others and/or (3) pursuant to a conspiracy to
18 commit this crime, Defendants and KEITH MATHAHS acting in concert throughout.

19 COUNT 19 - INSURANCE FRAUD

20 Defendants and KEITH MATHAHS did on or about September 21, 2007, knowingly
21 and willfully present, or cause to be presented a statement as a part of, or in support of, a
22 claim for payment or other benefits under a policy of insurance issued pursuant to Title 57 of
23 the Nevada Revised Statutes, knowing that the statement concealed or omitted facts, or
24 contained false or misleading information concerning a fact material to said claim; and/or
25 did assist, abet, solicit or conspire to present or cause to be presented a statement to an
26 insurer, a reinsurer, a producer, a broker or any agent thereof, knowing that said statement
27 concealed or omitted facts, or did contain false or misleading information concerning a fact
28 material to a claim for payment or other benefits under such policy issued pursuant to Title

57 of the Nevada Revised Statutes, by falsely representing to CULINARY WORKERS HEALTH FUND that the billed anesthesia time and/or charges for the endoscopic procedure performed on SONIA ORELLANA-RIVERA were more than the actual anesthetic time and/or charges, said false representation resulting in the payment of money to Defendants and KEITH MATHAHS and/or their medical practice and/or the racketeering enterprise which exceeded that which would have normally been allowed for said procedure; Defendants and KEITH MATHAHS being responsible under one or more of the following principles of criminal liability, to wit: (1) by directly committing said acts; and/or (2) aiding or abetting each other in the commission of the crime by directly or indirectly counseling, encouraging, hiring, commanding, inducing, or procuring each other, and/or others to commit said acts, Defendants and KEITH MATHAHS acting with the intent to commit said crime, and/or (3) pursuant to a conspiracy to commit this crime.

COUNT 20 - PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS OR PROPERTY RESULTING IN SUBSTANTIAL BODILY HARM

Defendants and KEITH MATHAHS did on or about September 21, 2007, then and there willfully and unlawfully perform acts in willful or wanton disregard of the safety of persons or property resulting in substantial bodily harm to CAROLE GRUESKIN, to wit: transmitting the Hepatitis C virus to CAROLE GRUESKIN, in the following manner, to wit: (1) by directly committing said acts; and/or (2) aiding or abetting each other in the commission of the crime by directly or indirectly counseling, encouraging, hiring, commanding, inducing, or procuring each other, and/or others to utilize a patient care delivery system which directly or indirectly limited the use of medical instruments, and/or supplies, and/or drugs; scheduled and/or treated an unreasonable number of patients per day, and/or rushed patients or patient procedures, Defendants and KEITH MATHAHS acting with the intent to commit said crime in order to fraudulently increase the insurance billing and/or money reimbursement for the medical procedure performed on the said CAROLE GRUESKIN; specifically, as to DEFENDANT DESAI, that he directly or indirectly both instructed DEFENDANT LAKEMAN, and KEITH MATHAHS and said others to perform

1 said acts and created a work environment where DEFENDANT LAKEMAN, and KEITH
2 MATHAHS and others were pressured to commit the said acts described above; specifically,
3 as to DEFENDANT LAKEMAN, engaging in conduct against universally accepted
4 standards of medical care, that he limited the use of medical supplies, and/or drugs and
5 rushed patients, and/or patient procedures which in turn allowed DEFENDANT DESAI to
6 directly or indirectly treat and/or perform an unreasonable number of patient procedures in a
7 single day all at the expense of patient safety and well being, and which resulted in
8 substandard care and jeopardized the safety of CAROLE GRUESKIN and/or (3) pursuant to
9 a conspiracy to commit this crime, Defendants and KEITH MATHAHS acting in concert
10 throughout.

11 COUNT 21- CRIMINAL NEGLECT OF PATIENTS RESULTING IN SUBSTANTIAL
12 BODILY HARM

13 Defendants and KEITH MATHAHS on or about September 21, 2007, being
14 professional caretakers of CAROLE GRUESKIN, did act or omit to act in an aggravated,
15 reckless or gross manner, failing to provide such service, care or supervision as is reasonable
16 and necessary to maintain the health or safety of said CAROLE GRUESKIN, resulting in
17 substantial bodily harm to CAROLE GRUESKIN, to wit: transmitting the Hepatitis C virus
18 to CAROLE GRUESKIN, said acts or omissions being such a departure from what would be
19 the conduct of an ordinarily prudent, careful person under the same circumstances that it is
20 contrary to a proper regard for danger to human life or constitutes indifference to the
21 resulting consequences, said consequences of the negligent act or omission being reasonably
22 foreseeable; said danger to human life not being the result of inattention, mistaken judgment
23 or misadventure, but the natural and probable result of said aggravated reckless or grossly
24 negligent act or omission, to wit: (1) by directly committing said acts; and/or (2) aiding or
25 abetting each other in the commission of the crime by directly or indirectly counseling,
26 encouraging, hiring, commanding, inducing, or procuring each other, and/or others to utilize
27 a patient care delivery system which directly or indirectly limited the use of medical
28 instruments, and/or supplies, and/or drugs; scheduled and/or treated an unreasonable number

1 of patients per day, and/or rushed patients or patient procedures, Defendants and KEITH
2 MATHAHS acting with the intent to commit said crime in order to fraudulently increase the
3 insurance billing and/or money reimbursement for the medical procedure performed on the
4 said CAROLE GRUESKIN; specifically, as to DEFENDANT DESAI, that he directly or
5 indirectly both instructed DEFENDANT LAKEMAN, and KEITH MATHAHS and said
6 others to perform said acts and created a work environment where DEFENDANT
7 LAKEMAN, and KEITH MATHAHS and others were pressured to commit the said acts
8 described above; specifically, as to DEFENDANT LAKEMAN, engaging in conduct against
9 universally accepted standards of medical care, that he limited the use of medical supplies,
10 and/or drugs and rushed patients, and/or patient procedures which in turn allowed
11 DEFENDANT DESAI to directly or indirectly treat and/or perform an unreasonable number
12 of patient procedures in a single day all at the expense of patient safety and well being, and
13 which resulted in substandard care and jeopardized the safety of CAROLE GRUESKIN
14 and/or (3) pursuant to a conspiracy to commit this crime, Defendants and KEITH
15 MATHAHS acting in concert throughout.

16 COUNT 22 - INSURANCE FRAUD

17 Defendants and KEITH MATHAHS did on or about September 21, 2007, knowingly
18 and willfully present, or cause to be presented a statement as a part of, or in support of, a
19 claim for payment or other benefits under a policy of insurance issued pursuant to Title 57 of
20 the Nevada Revised Statutes, knowing that the statement concealed or omitted facts, or
21 contained false or misleading information concerning a fact material to said claim; and/or
22 did assist, abet, solicit or conspire to present or cause to be presented a statement to an
23 insurer, a reinsurer, a producer, a broker or any agent thereof, knowing that said statement
24 concealed or omitted facts, or did contain false or misleading information concerning a fact
25 material to a claim for payment or other benefits under such policy issued pursuant to Title
26 57 of the Nevada Revised Statutes, by falsely representing to HEALTH PLAN OF
27 NEVADA that the billed anesthesia time and/or charges for the endoscopic procedure
28 performed on CAROLE GRUESKIN were more than the actual anesthetic time and/or

1 charges, said false representation resulting in the payment of money to Defendants and
2 KEITH MATHAHS and/or their medical practice and/or the racketeering enterprise which
3 exceeded that which would have normally been allowed for said procedure; Defendants and
4 KEITH MATHAHS being responsible under one or more of the following principles of
5 criminal liability, to wit: (1) by directly committing said acts; and/or (2) aiding or abetting
6 each other in the commission of the crime by directly or indirectly counseling, encouraging,
7 hiring, commanding, inducing, or procuring each other, and/or others to commit said acts,
8 Defendants and KEITH MATHAHS acting with the intent to commit said crime, and/or (3)
9 pursuant to a conspiracy to commit this crime.

10 COUNT 23 - PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS
11 OR PROPERTY RESULTING IN SUBSTANTIAL BODILY HARM

12 Defendants and KEITH MATHAHS did on or about September 21, 2007, then and
13 there willfully and unlawfully perform acts in willful or wanton disregard of the safety of
14 persons or property resulting in substantial bodily harm to GWENDOLYN MARTIN, to wit:
15 transmitting the Hepatitis C virus to GWENDOLYN MARTIN, in the following manner, to
16 wit: (1) by directly committing said acts; and/or (2) aiding or abetting each other in the
17 commission of the crime by directly or indirectly counseling, encouraging, hiring,
18 commanding, inducing, or procuring each other, and/or others to utilize a patient care
19 delivery system which directly or indirectly limited the use of medical instruments, and/or
20 supplies, and/or drugs; scheduled and/or treated an unreasonable number of patients per day,
21 and/or rushed patients or patient procedures, Defendants and KEITH MATHAHS acting
22 with the intent to commit said crime in order to fraudulently increase the insurance billing
23 and/or money reimbursement for the medical procedure performed on the said
24 GWENDOLYN MARTIN; specifically, as to DEFENDANT DESAI, that he directly or
25 indirectly both instructed DEFENDANT LAKEMAN, and KEITH MATHAHS and said
26 others to perform said acts and created a work environment where DEFENDANT
27 LAKEMAN, and KEITH MATHAHS and others were pressured to commit the said acts
28 described above; specifically, as to DEFENDANT LAKEMAN, engaging in conduct against

1 universally accepted standards of medical care, that he obtained the medical supplies, and/or
2 drugs utilized in the treatment of KENNETH RUBINO and GWENDOLYN MARTIN
3 which were subsequently contaminated with the Hepatitis C virus and thereafter directly or
4 indirectly shared, exchanged or transferred said contaminated medical supplies, and/or drugs
5 between himself and KEITH MATHAHS and/or between treatment rooms before, during or
6 after the endoscopic procedure performed on KENNETH RUBINO which resulted in the
7 transmission of the Hepatitis C virus into the body of GWENDOLYN MARTIN and others
8 and/or (3) pursuant to a conspiracy to commit this crime, Defendants and KEITH
9 MATHAHS acting in concert throughout.

10 COUNT 24 - CRIMINAL NEGLECT OF PATIENTS RESULTING IN SUBSTANTIAL
11 BODILY HARM

12 Defendants and KEITH MATHAHS on or about September 21, 2007, being
13 professional caretakers of GWENDOLYN MARTIN, did act or omit to act in an aggravated,
14 reckless or gross manner, failing to provide such service, care or supervision as is reasonable
15 and necessary to maintain the health or safety of said GWENDOLYN MARTIN, resulting in
16 substantial bodily harm to GWENDOLYN MARTIN, to wit: transmitting the Hepatitis C
17 virus to GWENDOLYN MARTIN, said acts or omissions being such a departure from what
18 would be the conduct of an ordinarily prudent, careful person under the same circumstances
19 that it is contrary to a proper regard for danger to human life or constitutes indifference to
20 the resulting consequences, said consequences of the negligent act or omission being
21 reasonably foreseeable; said danger to human life not being the result of inattention,
22 mistaken judgment or misadventure, but the natural and probable result of said aggravated
23 reckless or grossly negligent act or omission, to wit: (1) by directly committing said acts;
24 and/or (2) aiding or abetting each other in the commission of the crime by directly or
25 indirectly counseling, encouraging, hiring, commanding, inducing, or procuring each other,
26 and/or others to utilize a patient care delivery system which directly or indirectly limited the
27 use of medical instruments, and/or supplies, and/or drugs; scheduled and/or treated an
28 unreasonable number of patients per day, and/or rushed patients or patient procedures,

1 Defendants and KEITH MATHAHS acting with the intent to commit said crime in order to
2 fraudulently increase the insurance billing and/or money reimbursement for the medical
3 procedure performed on the said GWENDOLYN MARTIN; specifically, as to
4 DEFENDANT DESAI, that he directly or indirectly both instructed DEFENDANT
5 LAKEMAN, and KEITH MATHAHS and said others to perform said acts and created a
6 work environment where DEFENDANT LAKEMAN, and KEITH MATHAHS and others
7 were pressured to commit the said acts described above; specifically, as to DEFENDANT
8 LAKEMAN, engaging in conduct against universally accepted standards of medical care,
9 that he obtained the medical supplies, and/or drugs utilized in the treatment of KENNETH
10 RUBINO and GWENDOLYN MARTIN which were subsequently contaminated with the
11 Hepatitis C virus and thereafter directly or indirectly shared, exchanged or transferred said
12 contaminated medical supplies, and/or drugs between himself and KEITH MATHAHS
13 and/or between treatment rooms before, during or after the endoscopic procedure performed
14 on KENNETH RUBINO which resulted in the transmission of the Hepatitis C virus into the
15 body of GWENDOLYN MARTIN and others and/or (3) pursuant to a conspiracy to commit
16 this crime, Defendants and KEITH MATHAHS acting in concert throughout.

17 COUNT 25 - INSURANCE FRAUD

18 Defendants and KEITH MATHAHS did on or between September 20, 2007 and
19 September 21, 2007, knowingly and willfully present, or cause to be presented a statement
20 as a part of, or in support of, a claim for payment or other benefits under a policy of
21 insurance issued pursuant to Title 57 of the Nevada Revised Statutes, knowing that the
22 statement concealed or omitted facts, or contained false or misleading information
23 concerning a fact material to said claim; and/or did assist, abet, solicit or conspire to present
24 or cause to be presented a statement to an insurer, a reinsurer, a producer, a broker or any
25 agent thereof, knowing that said statement concealed or omitted facts, or did contain false or
26 misleading information concerning a fact material to a claim for payment or other benefits
27 under such policy issued pursuant to Title 57 of the Nevada Revised Statutes, by falsely
28 representing to PACIFIC CARE that the billed anesthesia time and/or charges for the

1 endoscopic procedure performed on GWENDOLYN MARTIN were more than the actual
2 anesthetic time and/or charges, said false representation resulting in the payment of money to
3 Defendants and KEITH MATHAHS and/or their medical practice and/or the racketeering
4 enterprise which exceeded that which would have normally been allowed for said procedure;
5 Defendants and KEITH MATHAHS being responsible under one or more of the following
6 principles of criminal liability, to wit: (1) by directly committing said acts; and/or (2) aiding
7 or abetting each other in the commission of the crime by directly or indirectly counseling,
8 encouraging, hiring, commanding, inducing, or procuring each other, and/or others to
9 commit said acts, Defendants and KEITH MATHAHS acting with the intent to commit said
10 crime, and/or (3) pursuant to a conspiracy to commit this crime.

11 COUNT 26 – THEFT

12 Defendants and KEITH MATHAHS did between July 25, 2007 and December 31,
13 2007, then and there knowingly, feloniously, and without lawful authority, commit theft by
14 obtaining personal property in the amount of \$250.00, or more, lawful money of the United
15 States, from STACY HUTCHINSON, KENNETH RUBINO, PATTY ASPINWALL,
16 SHARRIEFF ZIYAD, MICHAEL WASHINGTON, CAROLE GRUESKIN and RODOLFO
17 MEANA, and/or ANTHEM BLUE CROSS AND BLUE SHIELD, HEALTHCARE
18 PARTNERS OF NEVADA, UNITED HEALTH SERVICES, VETERANS
19 ADMINISTRATION and SECURED HORIZONS, by a material misrepresentation with
20 intent to deprive those persons of the property, in the following manner, to-wit: by falsely
21 representing that the billed anesthesia time and/or charges for the endoscopic procedure
22 performed on STACY HUTCHINSON, KENNETH RUBINO, PATTY ASPINWALL,
23 SHARRIEFF ZIYAD, MICHAEL WASHINGTON, CAROLE GRUESKIN and RODOLFO
24 MEANA, were more than the actual anesthetic time and/or charges, said false representation
25 resulting in the payment of money to Defendants and KEITH MATHAHS and/or their
26 medical practice and/or the racketeering enterprise, which exceeded that which would have
27 normally been allowed for said procedure, thereby obtaining said personal property by a
28 material misrepresentation with intent to deprive them of the property, Defendants and

1 KEITH MATHAHS being responsible under one or more of the following principles of
2 criminal liability, to wit: (1) by directly committing said acts; and/or (2) aiding or abetting
3 each other in the commission of the crime by directly or indirectly counseling, encouraging,
4 hiring, commanding, inducing, or procuring each other, and/or others to commit said acts,
5 Defendants and KEITH MATHAHS acting with the intent to commit said crime, and/or (3)
6 pursuant to a conspiracy to commit this crime.

7 COUNT 27 - OBTAINING MONEY UNDER FALSE PRETENSES

8 Defendants and KEITH MATHAHS did on or between September 20, 2007, and
9 December 31, 2007, with intent to cheat and defraud, wilfully, unlawfully, feloniously,
10 knowingly, designedly, and by use of false pretenses, obtain \$250.00, or more, lawful money
11 of the United States from GWENDOLYN MARTIN and/or PACIFICARE, within Las
12 Vegas, Clark County, Nevada, in the following manner, to-wit: by falsely representing that
13 the billed anesthesia times and/or charges for the endoscopic procedures performed on
14 GWENDOLYN MARTIN were more than the actual anesthetic times and/or charges, said
15 false representation resulting in the payment of money to Defendants and KEITH
16 MATHAHS and/or the medical practice and/or the racketeering enterprise, which exceeded
17 that which would have normally been allowed for said procedures Defendants and KEITH
18 MATHAHS being responsible under one or more of the following principles of criminal
19 liability, to wit: (1) by directly committing said acts; and/or (2) aiding or abetting each other
20 in the commission of the crime by directly or indirectly counseling, encouraging, hiring,
21 commanding, inducing, or procuring each other, and/or others to commit said acts,
22 Defendants and KEITH MATHAHS acting with the intent to commit said crime, and/or (3)
23 pursuant to a conspiracy to commit this crime.

24 COUNT 28 - OBTAINING MONEY UNDER FALSE PRETENSES

25 Defendants and KEITH MATHAHS did on or between September 21, 2007, and
26 December 31, 2007, with intent to cheat and defraud, wilfully, unlawfully, feloniously,
27 knowingly, designedly, and by use of false pretenses, obtain \$250.00, or more, lawful money
28 of the United States from SONIA ORELLANA-RIVERA and/or CULINARY WORKERS

1 HEALTH FUND, within Las Vegas, Clark County, Nevada, in the following manner, to-wit:
2 by falsely representing that the billed anesthesia times and/or charges for the endoscopic
3 procedures performed on SONIA ORELLANA-RIVERA were more than the actual
4 anesthetic times and/or charges, said false representation resulting in the payment of money
5 to Defendants and KEITH MATHAHS and/or the medical practice and/or the racketeering
6 enterprise, which exceeded that which would have normally been allowed for said
7 procedures Defendants and KEITH MATHAHS being responsible under one or more of the
8 following principles of criminal liability, to wit: (1) by directly committing said acts; and/or
9 (2) aiding or abetting each other in the commission of the crime by directly or indirectly
10 counseling, encouraging, hiring, commanding, inducing, or procuring each other, and/or
11 others to commit said acts, Defendants and KEITH MATHAHS acting with the intent to
12 commit said crime, and/or (3) pursuant to a conspiracy to commit this crime.

13 COUNT 29 – MURDER (SECOND DEGREE)

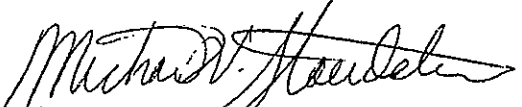
14 Defendants and KEITH MATHAHS did on or between September 21, 2007 and April
15 27, 2012, then and there willfully, feloniously, without authority of law, and with malice
16 aforethought, kill RODOLFO MEANA, a human being, by introducing Hepatitis C virus
17 into the body of RODOLFO MEANA, based upon the following principles of criminal
18 liability, to-wit: (1) by the killing occurring under circumstances showing an abandoned and
19 malignant heart; and/or (2) during the commission of an unlawful act, to-wit: criminal
20 neglect of patients, and/or performance of an unlawful act in reckless disregard of persons or
21 property, which in its consequences, naturally tends to destroy the life of a human being;
22 and/or (3) the killing being committed in the prosecution of a felonious intent, to-wit:
23 criminal neglect of patients, and/or performance of an act in reckless disregard of persons or
24 property, which in its consequences, naturally tends to destroy the life of a human being, by
25 directly or indirectly using and/or introducing contaminated medical instruments, supplies,
26 and/or drugs upon or into the body of RODOLFO MEANA which were contaminated with
27 the Hepatitis C virus; Defendants and KEITH MATHAHS being responsible under one or
28 more of the following principles of criminal liability, to wit: (1) by directly committing said

1 acts; and/or (2) by aiding or abetting each other and/or others including uncharged
2 confederates in the commission of the crime(s) of criminal neglect of patients, and/or
3 performance of an act in reckless disregard of persons or property by directly or indirectly
4 counseling, encouraging, hiring, commanding, inducing, or procuring each other, and/or
5 others to utilize a patient care delivery system which directly or indirectly limited the use of
6 medical instruments, and/or supplies, and/or drugs; scheduled and/or treated an unreasonable
7 number of patients per day, and/or rushed patients or patient procedures all at the expense of
8 patient safety and/or well being, and which resulted in substandard care and/or jeopardized
9 the safety of RODOLFO MEANA, Defendants and KEITH MATHAHS acting with the
10 intent to commit the crime(s) of criminal neglect of patients, and/or performance of an act in
11 reckless disregard of persons or property; and/or (3) pursuant to a conspiracy to commit the
12 crime(s) of criminal neglect of patients, and/or performance of an act in reckless disregard of
13 persons or property, Defendants and KEITH MATHAHS acting in concert throughout.

14 DATED this 6TH day of February, 2013.

15 STEVEN B. WOLFSON
16 DISTRICT ATTORNEY
Nevada Bar #001565

17
18 BY


19 MICHAEL V. STAUDAHER
20 Chief Deputy District Attorney
21 Nevada Bar #008273
22
23
24
25
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27
28

1 Names of witnesses testifying before the Grand Jury:
2 ARMOUR, PATRICIA, NV. HEALTH DISTRICT
3 ASPINWALL, PATTY
4 BAGANG, MAYNARD, LVMPD
5 CAMPBELL, LYNETTE, RN
6 CAROL, CLIFFORD
7 CARRERA, HILARIO
8 CERDA, RYAN, HEALTH CARE BUSINESS SOLUTIONS
9 DESAI, SAEHAL
10 DROBENINE, JAN, CDC LAB SUPERVISOR
11 DUENAS, YERENY, INSURANCE CLAIMS
12 GONZALES, PATRICIA, BLUE CROSS DIRECTOR DEPT.
13 GRUESKIN, CAROLE
14 HAWKINS, MELVIN
15 HUTCHINSON, STACY
16 KALKA, KATIE, UNITED HEALTH GROUP INV.
17 KHUDYAKOV, YURY, CDC
18 KRUEGER, JEFFREY ALEN, RN
19 LABUS, BRIAN, NV HEALTH DISTRICT
20 LANGLEY, GAYLE, CDC PHYSICIAN
21 LOBIANBO, ANNAMARIE, CRNA
22 MARTIN, GWENDOLYN
23 MEANA, RODOLFO
24 MYERS, ELAINE, CLAIMS DIRECTOR
25 NEMEC, FRANK, GASTROENTEROLOGIST
26 OLSON, ALANE, MEDICAL EXAMINER
27 RIVERA, SONIA ORELLONO
28 RUBINO, KENNETH

1 RUSHING, TONYA, OFFICE MGR.
2 SAGENDORF, VINCENT, CRNA
3 SAMPSON, NANCY, LVMPD
4 SAMS, JOANNE, VET ADMIN. CODER
5 SCHAEFER, MELISSA, CDC PHYSICIAN
6 SHARMA, SATISH, ANESTHESIOLOGIST
7 SIMS, DOROTHY, BUREAU OF LICENSING AND CERTIFICATION
8 SPAETH, CORRINE, CLAIMS DIRECTOR
9 VANDRUFF, MARION, MEDICAL ASSISTANT
10 WASHINGTON, MICHAEL
11 YEE, THOMAS, ANESTHESIOLOGIST
12 YOST, ANNE, NURSE
13 ZIYAD, SHARRIEFF
14
15 Additional witnesses known to the District Attorney at time of filing the Indictment:
16 ALFARO-MARTINEZ, SAMUEL
17 ANWAR, JAVAID, 3006 MARYLAND PKWY #400, LVN 89109
18 ARBOREEN, DAVE, LVMPD
19 ARMENI, PAOLA
20 ARNONE, ANTHONY, LVMPD
21 ASHANTE, DR.
22 BAILEY, PAULINE, 3416 MONTE CARLO DR., LVN 89121
23 BARCLAY, DR. ROBERT
24 BIEN, KATHY, 3800 DALECREST DR. #1117, LVN 89129
25 BLEMINGS, RENATE, 2100 PLAIN ST., PAHRUMP, NV 89060
26 BROWN, DAVID
27 BUI, DR.
28 BUNIN, DANIEL

1 BURKIN, JERALD, FBI SA
2 CALVALHO, DANIEL CARRERA
3 CARAWAY, ANTOINETTE, 1407 BAREBACK CT., HNV 89014
4 CARRERA, ELADIO, 612 CANYON GREENS DR., LVN 89144
5 CARROLL, CLIFFORD, 10313 ORKINEY DR., LVN 89144
6 CASTLEMAN, DR. STEPHANIE
7 CAVETT, JOSHUA, 7829 TATTERSALL FLAG ST., LVN 89139
8 CHAFFEE, ROD, 9303 GILCREASE #1080, LVN 89149
9 CLEMMER, DANA MARIE, 4913 FERRELL ST., NLVN 89034
10 COE, DANIEL, LVMPD
11 COHAN, DR. CHARLES, POB 4144, SAYLORSBURG, PA
12 COOK, KATIE, FBI S/A
13 COOPER, DOUG, CHIEF INV., NV. ST. BOARD OF ME
14 CRANE, AUSA
15 CREMEN, FRANK
16 DESAI, DIPAK, 3093 RED ARROW, LVN 89135
17 DESAI, KUSAM, MD
18 DIAZ, ALLEN, LVMPD INTERPRETER
19 DIBUDUO, CHARLES
20 DORAME, JOHN
21 DRURY, JANINE
22 ECKERT, PHYSICIAN ASST.
23 ELLEN, DIANE
24 FALZONE, LISA, 8024 PEACEFUL WOODS STREET, LVN 89143
25 FARIS, FRANK
26 FIGLER, DAYVID
27 FISHCHER, GAYLE, 1600 CLIFTON MAIL STOP #G37, ATLANTA, GA. 30333
28 FORD, MIKE, LVMPD

1 FRANKS, LISA, PHYSICIAN ASST.
2 GASKILL, SARA
3 GENTILE, DOMINIC
4 GLASS-SERAN, BARBARA, CRNA
5 GRAY, WARREN, LVMPD
6 GREER, MARY, 3462 SHAMROCK AVE., LVN 89120
7 GREGORY, MARTHA
8 HAHN, JASON, LVMPD
9 HANCOCK, L., LVMPD #7083
10 HANSEN, IDA
11 HARPER, TIFFANY
12 HARRIS, ORELENA (HOLLEMAN), 2816 DESERT SONG, LVN 89106
13 HERRERO, CARMELO, 1864 WOODHAVEN DR., HNV 89074
14 ~~HIGGINS, HEATHER, INV. NV. ST. BOARD OF ME~~
15 HIGUERA, LILIA, 3504 FLOWER, NLVN 89030
16 HITTI, DR. MIRANDA
17 HOWARD, NADINE, HEALTH FACILITIES SURVEYOR
18 HUBBARD, LINDA, 515 PARK ROYAL DR., NLVN 89031
19 HUGHES, LAURA, AG INV.
20 HUYNH, NGUYEN, 3004 HAZY MEADOW LN., LVN 89108
21 IRVIN, JOHNNA
22 JOHNSON, SHONNA S., 22 VIA DE LUCCIA, HNV 89074
23 JONES, LISA, CHIEF NSB OF LICENSURE AND CERTIFICATION (BLC)
24 JURANI, DR.
25 KIRCH, MARLENE
26 KAUL, DR.
27 KAUSHAL, DR. DHAN
28 KELLEY, J., LVMPD #3716

1 KHAN, IKRAM, 3006 S. MARYLAND PKWY, #465 LVN 89109
2 KNOWLES, DR.
3 KOSLOY, LESLEE, RN, HEALTH FACILITIES SURVEYOR
4 LAKEMAN, RONALD, 700 SHADOW LN #165B, LVN 89106
5 LATHROP, CAROL, 1741 AUGUSTA ST., PAHRUMP, NV 89048
6 LATHROP, WILLIAM
7 LEWIS, DR. DANIEL
8 LOBIONDA, CRNA
9 LOPEZ, J. JULIAN, 7106 SMOKE RANCH RD. #120 LVN 89128
10 LUKENS, JOHN
11 MAANO, PETER, RN
12 MALEY, KATIE, 4275 BURNHAM #101, LVN
13 MALMBERG, GEORGE
14 MANTHEI, PETER, 7066 AZURE BEACH AZURE ST., LVN 89148
15 MANUEL, DR. DAVID
16 MARTIN, LOVEY
17 MASON, ALBERT
18 MATHAHS, KEITH, 10220 BUTTON WILLOW DR., LVN 89134
19 MCDOWELL, RALPH, 388 SANTA CANDIDA ST., LVN 89138
20 MCGOWAN, SHANNON, 5420 CARNATION MEADOW ST., LVN 89130
21 MCILROY, ROBIN, FBI
22 MILLER, JAMES
23 MIONE, VINCENT, 2408 W. EL CAMPO GRANDE AVE., NLVN 89031
24 MOORE, DAVID
25 MUKHERJEE, RANADER, MD
26 MURPHY, MAGGIE, 10175 W. SPRING MTN RD. #2012 LVN 89117
27 NAYYAR, SANJAY, MD
28 NAZAR, WILLIAM

1 NAZARIO, DR. BRUNILDA
2 OM, HARI, LLC MGR
3 O'REILLY, JOHN
4 O'REILLY, TIM
5 PAGE-TAYLOR, LESLIE, CDC
6 PATEL, DR.
7 PENSAKOVIC, JOAN
8 PETERSON, KAREN, 2138 FT. SANDERS ST., HNV
9 PHELPS, LISA, 784 MORMON PEAK ST., OVERTON, NV 89040
10 POMERANZ, AUSA
11 PRESTON, LAWRENCE, 801 S. RANCHO DR., STE C-1, LVN
12 QUANNAH, LAKOTA
13 REXFORD, KEVIN
14 RICHVALSKY, KAREN, 3325 NIGUL WAY, LVN 89117
15 ROSEL, LINDA, FBI SA
16 RUSSOM, RUTA, 4854 MONTERREY AVE., LVN 89121
17 SAGENDORF, VINCENT
18 SAMEER, DR. SHEIKH
19 SAPP, BETSY, PHLEBOTOMIST
20 SCAMBIO, JEAN, 2920 YUKON FLATS CT., NLVN 89031
21 SCHULL, JERRY, 5413 SWEET SHADE ST., LVN
22 SENI, DR.
23 SHARMA, DR. SATISH
24 SHARMA, VISHVINDER, DR. 3212 CEDARDALE PL., LVN 89134
25 SHEFNOFF, NEIL, 755 E. MCDOWELL RD., PHOENIX, AZ 85006
26 SMITH, CHARNESSA
27 SOOD, RAJAT
28 STURMAN, GLORIA

1 SUKHDEO, DANIEL, 3925 LEGEND HILLS ST. #203, LVN 89129
2 TAGLE, PEGGY, RN
3 TERRY, JENNIFER, LVMPD INTERPRETER
4 TONY, DR.
5 VAZIRI, DR.
6 WAHID, SHAHID, MD
7 WEBB, KAREN, 1459 S. 14TH ST., OMAHA, NE
8 WHITAKER, GERALDINE, 701 CARPICE DR. #17B, BOULDER CITY, NV 89005
9 WHITELEY, R. LVMPD
10 WILLIAMS, SKLAR, RESIDENT AGENT, 8363 W. SUNSET RD. #300, LVN 89113
11 WISE, PATTY
12 YAMPOLSKY, MACE
13 ZIMMERMAN, MARILYN, 550 SEASONS PKWY, BELVIDERE, IL 89040

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27 09BGJ049A-C/10F03793A-C/09BGJ119A-C /sam-MVU
28 LVMPD EV #0802292576
(TK11)

EXHIBIT 12

EXHIBIT 12

COPY
DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

Alvin D. Lamm
CLERK OF THE COURT

THE STATE OF NEVADA,)	
)	
Plaintiff,)	CASE NO. C283381-3
)	C283381-1
vs.)	
)	
KEITH H. MATHAHS,)	DEPT NO. XXIII
)	
Defendant.)	TRANSCRIPT OF
)	PROCEEDINGS

BEFORE THE HONORABLE STEFANY MILEY, DISTRICT COURT JUDGE

ARRAIGNMENT (ALL)
DEFENDANT'S MOTION FOR BAIL ON ORDER SHORTENING TIME (MATHAHS)
DEFT'S MOTION TO STAY PROCEEDINGS PENDING RESOLUTION OF WRIT
PROCEEDINGS PURSUANT TO NRAP 8 (A)

WEDNESDAY, AUGUST 22, 2012

APPEARANCES:

For the State:	PAMELA WECKERLY, ESQ. MICHAEL V. STAUDAHER, ESQ. Chief Deputy District Attorneys
For Defendant Lakeman:	FREDERICK A. SANTACROCE, ESQ.
For Defendant Mathahs:	MICHAEL V. CRISTALLI, ESQ.
For Defendant Desai:	RICHARD A. WRIGHT, ESQ. MARGARET M. STANISH, ESQ.

RECORDED BY MARIA GARIBAY, COURT RECORDER
TRANSCRIBED BY: KARR Reporting, Inc.

KARR REPORTING, INC.

1 LAS VEGAS, NEVADA, WEDNESDAY, AUGUST 22, 2012, 9:59 A.M.

2 * * * * *

3 MR. CRISTALLI: Good morning, Your Honor. Attorney
4 Michael Cristalli appearing on behalf of Keith Mathahs.

5 MR. SANTACROCE: Frederick Santacroce for defendant
6 Ronald Lakeman.

7 MR. WRIGHT: Richard Wright and Margaret Stanish for
8 Dr. Dipak Desai.

9 THE COURT: All right. Good morning, counsel.

10 MR. STAUDAHER: Michael Staudaher and Pam Weckerly on
11 behalf of State, Your Honor.

12 THE COURT: Good morning. All right. So I have
13 several things on calendar this morning. Would you like to
14 address the motions first, because the one thing that is on
15 calendar is the district court arraignment; however, one of
16 the motions filed has to do with postponing the arraignment,
17 and, Mr. Cristalli, that is your motion?

18 MR. CRISTALLI: Your Honor, thank you. I did file a
19 motion to stay the proceedings and I appreciate the Court's
20 consideration. I know it was at the last minute, and the
21 State also was considerate enough to allow us to argue this
22 prior to the bail motion and going forward with the
23 arraignment.

24 As this Court understands, there is another matter
25 currently pending in front of Judge Adair. That has to do

1 with criminal neglect as well as -- an allegation of criminal
2 neglect as well as allegations of fraud and racketeering
3 amongst a few of the charges that are contained within that
4 indictment.

5 The defense filed both myself, Mr. Santacroce in
6 joining, and Mr. Wright filed petitions attacking the
7 sufficiency or the specificity and legality of the indictment,
8 and ultimately, have those issues currently pending in the
9 Nevada Supreme Court on a writ of mandamus.

10 The Supreme Court has instructed the State to answer
11 that writ and the State has just asked for an enlargement of
12 time to file the response. So that's kind of the procedural
13 posture in front of Judge Adair currently on that indictment.

14 The charge for which we're before Your Honor is a
15 charge of second-degree murder arising out of the death of Mr.
16 Meana who is charged in -- who is one of the named victims --
17 alleged named victims in the criminal complaint -- or criminal
18 indictment, I'm sorry, that is pending before Judge Adair.

19 He is contained in one of the indictments which is
20 the criminal neglect. In that charge as that particular
21 charge statutorily has a provision which increases the penalty
22 if death occurs subsequent to the allegations of neglect.

23 The indictment, the way it's pled in this case, is
24 identical to the way it's pled in the case in front of Judge
25 Adair as it relates to the criminal neglect. That issue is

1 currently up in front of the Nevada Supreme Court as it's
2 challenging the legality of that indictment and how that
3 indictment was pled.

4 So depending on what the Nevada Supreme Court does in
5 that case, meaning if they decide that we are correct and that
6 the indictment is flawed inherently and instruct the State
7 accordingly and dismiss that indictment or force the State to
8 go back before the grand jury and present evidence and get an
9 indictment returned according to the instructions of the
10 Nevada Supreme Court, that directly affects the indictment in
11 this case.

12 I don't see any argument that alters that theory as
13 to how this case will play out. So it's our request because
14 of the way that this indictment is pled, identical to the one
15 that's pled in front of Judge Adair that's currently pending
16 up in front of the Nevada Supreme Court, which ultimately will
17 be influenced by the determination of the Supremes, that these
18 proceedings be stayed.

19 Once there's a determination by the Nevada Supreme
20 Court as it relates to that indictment, those issues and that
21 directive will also influence this Court's determination on
22 the indictment that's currently pending before Your Honor.

23 So for those reasons, we're asking that all
24 proceedings be stayed until after there's been a determination
25 on the issue currently before the Nevada Supreme Court on the

1 writ of mandamus.

2 THE COURT: Okay. Anything else, Counsel?

3 MR. CRISTALLI: No, Your Honor.

4 THE COURT: Anything else by Mr. Wright or Mr.
5 Santacroce?

6 MR. WRIGHT: I would just join in it.

7 THE COURT: All right. By the State?

8 MR. STAUDAHER: Yes, Your Honor. May we be allowed
9 to respond orally since the untimely motions?

10 THE COURT: Yes. And it was -- it was -- it was only
11 placed on calendar with the understanding the State would be
12 allowed to respond orally because it was not timely. All
13 right.

14 MR. STAUDAHER: That being said, a couple of things
15 from the outset. First of all, we're here at initial
16 arraignment. There have -- the indictment as it's standing
17 here stands alone. It's not tied to the other case in the
18 sense that it is a superseding indictment or anything like
19 that. That's why it tracked to a different department, your
20 department.

21 The wording of the actual pleading within this
22 indictment, it's a completely different charge. There is no
23 similarity in actually how this is actually pled in comparison
24 with the indictment from the other case. So however the
25 Supreme Court makes the determination as to the

1 sufficiency/insufficiency of any particular count or counts
2 within that indictment in that case really does not affect
3 this particular matter.

4 This particular case here is, again, a second-degree
5 murder case. It is based on the way its pled the theories of
6 liability that the defendants are basically being charged
7 with, or at least under. As far as this case is concerned,
8 there is no basis or reason legally or otherwise to stay any
9 proceeding in this case, especially since there has been no
10 proceeding in this case to even appeal at this stage.

11 There has not been a writ brought the -- or sort of
12 challenging the sufficiency of either the charging document
13 itself or the probable cause that went into the grand jury's
14 determination in this particular matter. That would be
15 essentially the first step, depending on how the Court would
16 rule on that. There may be an appellate reason to go forward
17 to the Supreme Court at that point. So at this stage, there
18 is nothing right before the Court to allow the Court even, I
19 would submit, to stay the proceedings based on what may or may
20 not happen in a separate and unrelated case from this
21 particular matter.

22 Now, it is true that the victim in this case was a
23 victim in the other case, but there's no indication that the
24 State, even if we -- if we needed to, could not proceed on
25 dual prosecutions. Different cases, different charges up

1 until the time that jeopardy attaches.

2 So as far as that's concerned there is no basis at
3 this point for a stay in this matter because there's no matter
4 that could be appealed at this stage because the defendant
5 hasn't even been arraigned. And there's no stay -- and
6 actually -- and my counsel pointed out in the underlying case
7 which is before Judge Adair, the district court case that Mr.
8 Cristalli was referring to, he raised a motion or brought a
9 motion before the Court to stay those proceedings and that was
10 denied, so there's not even a stay in that district court
11 case.

12 I know that he has raised that with the Supreme Court
13 and asked for them to stay the district court proceedings in
14 that matter, but again, as of the present time, there's no
15 stay in either one of these cases.

16 THE COURT: Anything else?

17 MR. CRISTALLI: Yes, Your Honor. I mean, to say that
18 these two cases are unrelated is just denying the realities of
19 the current situation. All I can do is encourage the Court to
20 compare the two indictments. The language contained in those
21 indictments as far as the theory of liability are identical.
22 It is very unusual for the State to do procedurally what they
23 did. Do they have a right to do it? I don't know yet. We'll
24 have an opportunity to challenge that. But certainly, the
25 normal procedure for them would have been to get a superseding

1 indictment, supersede on the original indictment and amend it
2 to include a charge of second-degree murder.

3 They chose not to do that for reasons, I assume,
4 they're trying to push that first case along and to push --
5 put leverage on the defendants in this case. So be it. But
6 to deny the reality that they are identical and that the only
7 difference is the death of one of the alleged victims in a
8 particular count, of which, Your Honor, the statutory
9 provision of a criminal neglect has a provision if a defendant
10 -- if an alleged victim passes on. So there is no new
11 evidence associated with this case. The only difference is
12 the charging -- the charging offense.

13 The fact that Judge Adair denied a stay in the
14 district court is procedure. Obviously, Judge Adair believed
15 her determination on the petition or motion to dismiss was a
16 valid determination. The Nevada Supreme Court ultimately is
17 going to be the determining body to make a decision as far as
18 legitimacy of that particular indictment. Why is it
19 concerning right now? Well, for a number of reasons. We're
20 going to go forward with bail today. Right now, Mr. Mathahs
21 is out on half a million dollar bail. Once a bail setting is
22 made in this particular case, he will then have to post
23 another bail, okay, which is pretty onerous in terms of his
24 financial ability to do so.

25 Why am I raising that? Because if this indictment is

1 inherently flawed and is -- and the other one is dismissed,
2 which makes this one inherently flawed, and dismisses it, then
3 they're back to square one. They have to present the evidence
4 again to the grand jury. So my position is let's wait to see
5 what the Nevada Supreme Court does and see what ruling comes
6 down and then go forward with it. What harm is it to wait at
7 this particular point in time? There is none.

8 So you -- the Court certainly has the discretion to
9 stay these proceedings upon the determination by the Nevada
10 Supreme Court. I think the State's own concession is that
11 they believe that the Supremes are going to come back
12 relatively quickly on that determination. Whether or not
13 that's true or not, I don't know. But certainly, there is no
14 harm, no foul in continuing this, at the very least, matter to
15 wait to see what the Supreme Court does on the petition.

16 THE COURT: All right. I'm going to deny the request
17 for a stay. I believe with the State's position that there is
18 no legal basis for a stay in this particular case. So what
19 that means is today we're going to arraign these three
20 gentlemen, and also, we will discuss the issue of bail. I
21 know, Mr. Cristalli, I believe you also -- you're also the one
22 who filed a motion discussing bail, asking that no additional
23 bail be set.

24 MR. CRISTALLI: Yes, Your Honor. And just so the
25 Court is aware, so the record is clear, we're objecting to

1 going forward on the arraignment as well as on the bail. I
2 understand and certainly respect the Court's ruling, but we
3 believe that procedurally it's flawed to go forward with those
4 proceedings today.

5 THE COURT: Okay. You made your record, Counsel.
6 Would you like to argue bail before we arraign him, or do you
7 want to arraign him first? What would you like to do?

8 MR. CRISTALLI: Yes, Your Honor. I can go -- I can
9 go forward with the bail. I know the Court has had an
10 opportunity to read the bail motion. Mr. Mathahs sits before
11 you as a 76-year-old male, somebody who has had no criminal
12 history in his entire life, somebody who has been a caretaker
13 in this community and other communities for the last 40 years.
14 I don't think Mr. Mathahs even has a traffic ticket to be
15 perfectly honest with you, Your Honor.

16 We have continuously fought the allegations by the
17 State as it is alleged against Mr. Mathahs. He was an
18 employee of the centers and the -- associated with Dr. Desai.
19 There are a myriad of other employees associated with this
20 investigation and indictment of which a slew of were doctors
21 who profited from their association as owners in this
22 organization. You're charging Mr. Mathahs as a racketeer who
23 was an employee following directions of the centers. The
24 reason why he sits, I think, before Your Honor instead of
25 anybody else who are witnesses who presented testimony before

1 the grand jury is probably he didn't get to the table quick
2 enough, number one; and number two, it is alleged that Mr.
3 Mathahs treated one of the source patients.

4 Your Honor, another consideration is that Mr. Mathahs
5 has been out on half a million dollar bond for how long now?

6 MR. SANTACROCE: Over two years.

7 MR. CRISTALLI: Over two years with no incident. He
8 continuously comes before Judge Adair on all of the status
9 check hearings. He works with me directly on a daily basis in
10 my office. His wife and family are supporting him. His wife
11 of how many years?

12 MR. SANTACROCE: 53.

13 MR. CRISTALLI: 53 years is a caretaker as well in
14 this community, is a -- is a nurse in the community. He
15 remains out on half a million dollar bail. When this case was
16 -- well, not this case. When the -- when the other case was
17 before Judge Mosley, bail was set at a half million dollars.
18 Ultimately, Mr. Lakeman, who was represented by Mr.
19 Santacroce, petitioned the Court for a reduction of that bail.
20 They were successful. Rightfully so in our opinion, and that
21 bail was reduced to \$50,000.

22 When we petitioned the Court, we petitioned it when
23 the case was transferred from Judge Mosley to Judge Adair, and
24 we asked for a reduction consistent with the reduction that
25 Mr. Lakeman received, for which both defendants are placed in

1 identical situations in terms of the theory of liability
2 alleged by the State.

3 We were unsuccessful. Judge Adair said, well, I
4 don't feel that I need to do that right now. Revisit it at
5 the appropriate time. So not only do you have Mr. Mathahs out
6 on a half million dollar bail, who has complied completely
7 over the last two and a half years with all of courts -- all
8 of the court's directives, but also, you have a
9 disproportionate situation between codefendants, which is
10 inherently unfair. So that's one of the reasons why we ask
11 the Court to keep bail the way it is. It can --

12 THE COURT: Meaning no additional bail?

13 MR. CRISTALLI: Correct, no additional bail. I mean,
14 to ignore the fact that there is a half a million dollar bail
15 still pending against Mr. Mathahs, you know, is to ignore the
16 pink elephant in the room.

17 THE COURT: So you're saying Lakeman was originally
18 half a million as well and was reduced to 50,000 by Judge
19 Mosley?

20 MR. CRISTALLI: Yes, Your Honor.

21 THE COURT: All right.

22 MR. CRISTALLI: You know, and so we have a situation
23 where there's, you know, disproportionate bail settings, and
24 the fact that, you know, Mr. Mathahs is fighting for his life.
25 I mean, he is a nurse necessitatis. He certainly was not --

1 he was an employee of the organization, somebody who was not
2 benefiting from the profits associated with the organization
3 as the physicians were, as partners or owners of the
4 organization, so financially, he does not have the ability to
5 put the type of money up that he has previously put up, which
6 is a half a million dollars, unfortunately.

7 We do not want bail to be a punitive measure. That's
8 not what it's for. It's to secure the defendant's appearance
9 and to protect the community from harm. Certainly, the
10 community is protected as Mr. Mathahs no longer is in the
11 medical field. He doesn't have his licenses to do that and
12 he's no longer performing any services related to his
13 profession.

14 Certainly, we deny any allegations associated with
15 that, but if that was a concern, it shouldn't be one. As far
16 as flight, I don't know that Mr. Mathahs has -- he doesn't
17 have a passport. His family is here supporting him. They
18 continue to support him. He has made every court appearance
19 ordered by Judge Mosley and Judge Adair. He meets with me on
20 a weekly basis, so as far as those conditions are concerned,
21 the existing amount of half a million, I think, certainly
22 secures those two considerations, Your Honor.

23 So for all of those reasons, in addition to
24 acknowledging that we have attached I don't know how many
25 character letters on behalf of Mr. Mathahs from individuals

1 within the community, both in the professional community and
2 the community -- his church community and just friends and
3 acquaintances and family as well, that can attest for Mr.
4 Mathahs' character as an individual; so for all of those
5 reasons, we would ask that the Court not set a bail and
6 consider what has been posted in the case that currently is in
7 front of Judge Adair.

8 THE COURT: All right. We're kind of just holding
9 out of order, but we started on the bail issue so why don't I
10 just hear from Mr. Santacroce now.

11 MR. SANTACROCE: Yes, Your Honor. Thank you. The
12 Court's in a unique position here today because it has a track
13 record to go by. These defendants have been out on bail for
14 over two years. They have been model citizens during that
15 time period. They have made all of the required court
16 appearances. They haven't posed a flight risk. They're not a
17 danger to the community because, as Mr. Cristalli said, my
18 client as well has tendered his license and no longer
19 practices anywhere.

20 So those -- the Court is on some safe ground because
21 we have this track record, and I think the Court should take
22 that into consideration. With regard to my client, again,
23 65-year-old nurse with impeccable record all of his career, an
24 impeccable military career, practiced medicine for many, many
25 years without incident, until this incident where he finds

1 himself in a situation which he basically has no control over.
2 Unfortunately, he's charged in this case when we feel he
3 shouldn't be in the first place; and secondly, he's charged in
4 another indictment before this Court, which we feel is
5 completely improper, manipulative by the State, and forum
6 shopping based -- by the State. They already have these
7 charges pending in another court. I can't understand why
8 we're filing a new indictment in a different court when the
9 same charges are pending in another court.

10 Having said that, I think the Court should take that
11 into consideration because bail has been posted in that
12 previous case. As Mr. Cristalli said, my client was out on
13 half a million dollar bail for better than a year and a half.
14 Judge Mosley revisited that issue and thought that was absurd
15 and reduced the bail to \$50,000. And I'm asking you to not
16 increase his bail at this time, but if the Court decides to
17 increase that, to increase it marginally and allow him to post
18 a reasonable bail pursuant to the Eighth Amendment in the
19 United States Constitution.

20 THE COURT: All right. Mr. Wright, sir.

21 MR. WRIGHT: Yes, Your Honor. I agree with Mr.
22 Santacroce in the sense that it's my position that we are
23 already on bail on this charge. This is a de facto
24 superseding indictment. We know in the law that we look at
25 facts, not labels to determine what something is. Mr.

1 Staudaher can call a dog a pig, and we can look and see what
2 it is. This is truly a superseding indictment. This went
3 back to the same grand jury and they only heard two witnesses
4 for the indictment before this Court, and I am presuming
5 without having seen the transcript that the only additional
6 fact that was presented to the same grand jury was the fact
7 that Mr. Meana, who previously had substantial bodily injury
8 from having hepatitis C virus, died in the interim; so
9 therefore, they put on proof of Mr. Meana's death and both
10 probable evidence that it was caused by hepatitis C. Two
11 witnesses in, I think, an hour or so and they returned an
12 indictment.

13 It should have been what we call a superseding
14 indictment in the same case before the same judge. It's the
15 same facts, circumstances, transaction. The only addition is
16 the patient died, and when it's superseding, by statute the
17 bail applies to it. NRS 178.502, extension of bond or
18 undertaking to other proceedings, "Any bond or undertaking
19 must provide the bond or undertaking, extends to" -- and we go
20 down to (a) (2), "extends to any action or proceeding in
21 justice court, municipal court or district court arising from
22 a later charge which is substantially similar to the charge
23 upon which bail was given and is based upon the same act or
24 omission as the charge."

25 We are presently on Dr. Desai's \$1 million bail on

1 this same charge, and that bail in that court -- the other
2 court, it's my position which is where we should be, but that
3 bail by statute applies to these charges.

4 I presumed we were just having an arraignment. I
5 didn't receive any motion to increase bail on this case. Now,
6 whether this was motivated by forum shopping, as Mr.
7 Santacrocce suggested, or an effort to get out of the deficit
8 in the first pleading, which is up before the Supreme Court
9 now, I don't know why the State chose to pretend like this is
10 a brand new offense and case that these defendants committed
11 in the interim because it's purely a superseding indictment.

12 Dr. Desai, no record whatsoever charged in this case,
13 has posted his \$1 million bail a couple of years ago and then
14 was indicted federally for health care fraud arise -- it
15 actually duplicates the health care fraud already pled in this
16 case, but the feds indicted him. We appeared in -- they
17 indicted him in 2011 when he returned from Lakes Crossing. He
18 was arraigned in federal court. He was released on his own
19 recognizance, third-party custody because of his diminished
20 capacity.

21 His custodian, his wife, Dr. Kusum Desai, is by court
22 order the third-party custodian for pretrial services in the
23 federal system, and he is on federal pretrial services
24 supervision by which Dr. Desai and his custodian, Mrs. Desai,
25 appear once a month before a federal pretrial services

1 officer.

2 They -- I have informed the federal court and pre --
3 fed pretrial services of this superseding indictment and they
4 have no issue with his conditions of release because in the
5 federal system and in the state's system he has been
6 completely compliant, made all court appearances as requested,
7 and nothing has changed whatsoever in this case regarding
8 conditions of release other than Mr. Meana passed away. And
9 so I would ask that the bail remain as it is, and if the State
10 has some changed circumstances, they should file a motion to
11 increase bail and we can respond to it.

12 THE COURT: Okay. Anything else by defense counsel
13 and before the State responds to the bail issue?

14 MR. CRISTALLI: No, Your Honor.

15 THE COURT: Thank you. Mr. Staudaher, Ms. Weckerly?

16 MR. STAUDAHER: First of all, as far as forum
17 shopping is concerned, I think the Court's aware of how cases
18 are assigned in the Eighth Judicial District Court, that the
19 State doesn't have prior knowledge of nor any influence on how
20 that is done. That being said, this is not a superseding
21 indictment. This is a separate and distinct indictment before
22 a separate and distinct court beside whatever is [inaudible]
23 these defendants in another courtroom, Judge Adair's courtroom
24 specifically.

25 This is what we're here on. We're here on a murder

1 charge related to a single victim in this particular case
2 which all of the defendants are charged with. Now, Mr.
3 Cristalli indicated early on as to why they thought that their
4 clients were just kind of roped in, didn't get to the table
5 fast enough, why their clients were even part of this.

6 I mean, these are the two nurses that actually
7 infected the patients. That's why they're in part -- they're
8 involved with this. That's -- those are the allegations; the
9 reckless acts of all three defendants are what puts them here
10 in court today, and those reckless acts, those sort of taking
11 advantage of patients that essentially could not do for
12 themselves, what, they were putting their lives in the hands
13 of these individuals who then did what they did is why they're
14 here on this case.

15 The other case is separate and distinct as far as the
16 charges are concerned in that case. This particular matter,
17 the Court has one charge, one charge only, one victim, one
18 victim only at that point and that's what we're here to
19 decide. A murder case, we did give them the courtesy of a
20 summons, but when we come to court today, this is the time to
21 set bail in this particular matter. We are going to be asking
22 for a half a million dollars bail on Mr. Desai -- Dr. Desai.
23 We're going to be asking for a hundred thousand dollars each
24 on Mr. Lakeman and Mr. Mathahs, and the reasons behind the
25 disparity in those are twofold.

1 First of all, they do stand in a little bit different
2 position. Without relying on the other case, some information
3 from the other case and how bail was produced and so forth is
4 probably important for this Court's determination. In the
5 underlying case before Judge Adair, when Judge Mosley had that
6 matter before him -- he was the one who set the bail for all
7 defendants, by the way, the half a million for each one of the
8 defendants, nurses, and the million dollars for defendant
9 Desai.

10 In the -- in Desai's case, defendant Desai was able
11 to post a half -- or a million dollars cash over the weekend.
12 That's how he has access to funds and large quantities of
13 funds. That money is not even his. It is his sister's money
14 that was placed in bond for -- or not bond, but put -- was
15 posted for him.

16 So right now, he has no dog in the race as far as
17 money goes. He is -- has -- he's a physician. He has assets.
18 His wife is a physician and they have income. They have a
19 significantly different financial setting and situation than
20 do the other two, and the reason that we're asking for a
21 reduced bail amount for the other two is reflective of that
22 situation.

23 Now, whether or not Mr. Mathahs has a certain bail
24 and Mr. Lakeman has a different bail in a separate case is not
25 really an issue before this Court. It's whether or not

1 there's an appropriate amount of bail in this particular
2 matter for this particular charge is what this Court needs to
3 decide. If the defendants wish to have Judge Adair or --
4 bring this matter before Judge Adair based on what this Court
5 may have done in this particular charge or based on other
6 factors, that's for Judge Adair to determine and for them to
7 litigate that.

8 Mr. Cristalli brought a motion before Judge Adair for
9 a reduction in bail like Mr. Santacroce had. She denied that.
10 His bail remained at the half a million dollar amount. They
11 may revisit that down the road, but that doesn't affect what
12 this Court does as far as bail is concerned.

13 If, theoretically, that whole case for some reason
14 went away and this Court had set no bail, all three of these
15 individuals would be on no bail for a murder charge because
16 that case would certainly be before this Court still. That's
17 why we're here. We're here to set a reasonable bail based on
18 the nature of the charge and what they did.

19 This is not something where they're charged with
20 involuntary manslaughter or something where a person just died
21 as a result of some action that they did that they didn't have
22 some foreseeable way of seeing it would cause harm to a
23 patient. These people actually engaged in practices, which
24 they knowingly engaged in, and which resulted in an infection
25 of a patient which resulted in his death, and that's why we're

1 here today to argue this issue.

2 As far as the differences between the two, again, I
3 would just say that those are issues that they need to raise
4 with the District Court 21, department -- or rather, Judge
5 Adair, and it should not really factor into this Court's
6 calculus as to what is reasonable or not reasonable for bail.
7 We do know that they stand in different positions. That's why
8 we have asked for the different amounts. We feel that that's
9 a fair and reasonable amount for a murder case, and we feel
10 that that's what they should be posting.

11 THE COURT: Okay. We did this kind of out of order
12 in that we argued bail first. Let me go ahead -- unless you
13 want to say something --

14 MR. CRISTALLI: I do, Your Honor. I mean, I just
15 want to be able to respond just quickly. I mean, first of
16 all, to argue that this is a separate and distinct case is
17 just -- you know, you got to kind of throw away your reason.
18 I mean, these cases are the same case. They have the same
19 facts. There has been no new evidence presented before the
20 grand jury other than the fact the medical evidence associated
21 with the cause and more than of Mr. Meana's death. They are
22 identical, so for Mr. Staudaher to say that they are for some
23 reason separate and distinct is disingenuous. It is. It
24 doesn't pass the smell test.

25 As far as his statement that this is a murder case,

1 it's not an involuntary manslaughter case, well, factually,
2 you know, if you're going to make the allegations as it
3 relates to somebody passing on on a criminal neglect --
4 medical criminal neglect case as articulated statutorily in
5 the criminal neglect statute which increases the penalties
6 from a 1 to 6 to a 1 to 20 if death occurs, they shouldn't be
7 charged with anything more than an involuntary manslaughter
8 just based on the allegations. Second-degree murder is an
9 inflated charge, so if he wants to start debating the
10 sufficiency of the State's allegations as they relate to this
11 particular case, we certainly can do that.

12 For him to then say that that case could somehow go
13 away and then we'll be stuck with a murder charge in this
14 case, is also laughable. If that case goes away, Judge, this
15 case goes away because they go away on the same premise and on
16 the same basis because they are identical.

17 They have done this in an effort to put leverage on
18 the defendants. This would never normally happen. They would
19 supersede their indictment. They would amend the indictment
20 and they would charge an additional charge of murder. For
21 whatever reason, they have chosen to put on the dog-and-pony
22 show and to charge this case separately.

23 So I'm going to be put in a situation now where my
24 bail is absolutely going to be disproportionate and it
25 shouldn't be. What we have posted in a half a million dollars

1 in this case originally was unreasonable based on Mr. Mathahs'
2 involvement as well as his history in this community and his
3 character.

4 THE COURT: Then that's something you need to take up
5 with Judge Adair. I can only deal with Meana's case.

6 Is there anything to add by counsel on the bail
7 issue? Mr. Wright, sir.

8 MR. WRIGHT: Yes. I just -- I can't pass up to say
9 this isn't the same case. I don't know why we sat in this
10 courthouse deposing Mr. Meana, Rodolfo Meana, in the other
11 case because the other case was -- Rodolfo Meana was one of
12 the seven patients, and we deposed him until he stopped it.
13 Mr. Meana happened to have died presumably due -- and I say
14 presumably from the accusations in the indictment because I
15 have not seen the evidence, but presumably, from the hepatitis
16 C virus.
17 Mr. Meana we were deposing for the other case to
18 preserve his testimony for that case for that trial. Mr.
19 Meana elected to forego treatment. He is the only patient of
20 the group who would not take hepatitis C virus treatment and
21 he ultimately died. Now, that is the only changed
22 circumstance, and to argue here this is some new murder case
23 that came up, the facts of the bail in this case, it was set
24 by Judge Caddish. She set the \$1 million bail when the first
25 indictment was returned. That amount that was posted was

1 posted by his sister because I was required to show to the
2 court the source of the funds, because Dr. Desai and his
3 practices were in federal bankruptcy court at the time and so
4 he could not post any bail out of bankruptcy; and since then,
5 the bankruptcy has gone forward and he is individually
6 bankrupt, and so that's the explanation of where this million
7 dollars cash that he was able to post.

8 If -- that was posted and I provided all of the
9 information to Judge Caddish and to Mr. Staudaher as to the
10 source of the funds and where it came from, so it's a
11 mischaracterization to talk about Dr. Desai being a wash in
12 cash and could come up with a million dollars or something.
13 Thank you.

14 THE COURT: All right. Like I said, we did this kind
15 of out of order. Let me proceed in arraigning the
16 individuals, then I'll address bail amounts, if any.

17 Mr. Cristalli, you have Mr. Mathahs?

18 MR. CRISTALLI: Yes, Your Honor. And once again,
19 Your Honor, just so we're clear, this is over my objection.

20 THE COURT: I understand it's over your objection.

21 MR. CRISTALLI: Thank you.

22 THE COURT: Thank you. All right. Mr. Mathahs, what
23 is your full legal name, sir?

24 DEFENDANT MATHAHS: Keith Harry Mathahs.

25 THE COURT: And how old are you, sir?

1 DEFENDANT MATHAHS: 76 and a half.
2 THE COURT: What's your education, sir?
3 DEFENDANT MATHAHS: Well, college degree and went
4 into nursing. Got a degree in nursing, and also, anesthesia.
5 THE COURT: All right. Is it fair to say you read,
6 write, understand the English language?
7 DEFENDANT MATHAHS: Yes, I do.
8 THE COURT: And I have a copy of the indictment. The
9 indictment charged you with the crime of second-degree murder,
10 a Category A felony. Did you review the indictment?
11 DEFENDANT MATHAHS: Yes.
12 THE COURT: All right. Did you discuss with your
13 lawyer?
14 DEFENDANT MATHAHS: Yes.
15 THE COURT: And how are you going to plea, sir, to
16 this charge, guilty or not guilty?
17 DEFENDANT MATHAHS: Not guilty.
18 THE COURT: Thank you. In a moment we'll set you
19 guys for trial.
20 Okay. We have Mr. Lakeman next. Good morning, Mr.
21 Lakeman. What is your full legal name?
22 DEFENDANT LAKEMAN: Ronald Ernest Lakeman.
23 THE COURT: And how old are you, Mr. Lakeman?
24 DEFENDANT LAKEMAN: 65.
25 THE COURT: And what is your education, sir?

1 DEFENDANT LAKEMAN: I have a degree from the
2 University of Alabama in nursing and a degree in anesthesia
3 from George Washington University in Washington, D.C.

4 THE COURT: Is it fair to say you read, write,
5 understand the English language?

6 DEFENDANT LAKEMAN: Yes.

7 THE COURT: I have a copy of the indictment. The
8 indictment charges you with the crime of murder, second
9 degree, Category A felony. Did you read the indictment?

10 DEFENDANT LAKEMAN: Yes. It was read to me by my
11 attorney.

12 THE COURT: All right. And I didn't ask this of the
13 other gentleman. Do you waive the reading of the indictment?

14 MR. SANTACROCE: We do waive --

15 DEFENDANT LAKEMAN: Yes.

16 MR. SANTACROCE: -- Your Honor.

17 THE COURT: All right. And sir, with respect to the
18 charge of murder, second degree, Category A felony, how do you
19 want to plead, guilty or not guilty?

20 DEFENDANT LAKEMAN: Not guilty.

21 THE COURT: All right. Thank you, sir. And Mr.
22 Wright, Mr. Desai?

23 MR. WRIGHT: Yes, Your Honor. The -- I will be
24 asking the Court to enter a plea of not guilty on behalf of
25 Dr. Desai. I have read the indictment to Dr. Desai. Dr.

1 Desai, because of organic brain injury from a stroke, is my
2 judgment operating under diminished capacity in his cognitive
3 ability; and therefore, pursuant to Rule of Professional
4 Conduct 1.14 I am acting in his behalf to protect his
5 interests. That is his true name in the indictment. He does
6 not factually or legally comprehend or understand an
7 indictment when he discussed it with me this past week or when
8 I attempted to discuss it with him and so I would ask the
9 Court to enter a plea of not guilty on his behalf.

10 THE COURT: All right. I will accept that plea.
11 Counsel, bail is going to be set in this matter.

12 I'm going to render the following amounts for bail.
13 This takes into consideration the facts of this particular
14 case, the charge of this case as well as their compliance in
15 their additional court proceedings. I am going to order bail
16 at \$50,000 for Mr. Lakeman and Mr. Mathahs. I'm ordering bail
17 of \$250,000 for Mr. Desai. At this time I am going to have
18 these gentlemen remanded into custody. They will have to post
19 bail.

20 MR. CRISTALLI: And Your Honor, we do have bond --
21 Mr. Mathahs' bond company here. They're prepared to post, and
22 I know that we routinely have walk through --

23 THE COURT: If they have the money --

24 MR. CRISTALLI: Yeah.

25 THE COURT: -- then they can do the walk through.

1 MR. CRISTALLI: Yeah.

2 THE COURT: If they do not, they're going to have to

3 be remanded --

4 MR. CRISTALLI: Right. And they -- they can do the

5 walk through and I would like them to have an opportunity, and

6 I don't know that the State has an objection to allow us to do

7 the walk through under these circumstances.

8 THE COURT: So long as there's the money --

9 MR. CRISTALLI: Yeah.

10 THE COURT: -- you have all the money in court today

11 for all defendants.

12 MR. CRISTALLI: Well, the bondsman is here.

13 THE COURT: The bondsman's here, and what about --

14 MR. CRISTALLI: Yes.

15 THE COURT: -- for yours, Mr. Santacroce?

16 MR. SANTACROCE: My bondsman is right here and

17 they're prepared to --

18 MR. CRISTALLI: Yeah.

19 MR. SANTACROCE: -- write the bond.

20 MR. WRIGHT: I will get the funds.

21 THE COURT: All right. Then --

22 MR. CRISTALLI: Is there -- do we have to have them

23 in -- be shackled at this time. I'm not -- if we're prepared?

24 That's why we have them here today to post.

25 MR. WRIGHT: We will post it today.

1 MR. CRISTALLI: I mean, they're going to post right
2 now. I mean, I could -- you could put them under oath if you
3 would like and attest to that fact. I mean, they're on a half
4 a million dollars right now that they posted.

5 MR. WRIGHT: We are here on a summons and appeared, I
6 mean, as ordered, even last time before Judge Caddish. I
7 mean, we were allowed in that case four days, I mean, to post
8 the cash bail, but we will post the bail for a bond today and
9 so I would ask that we be given till 4:00 o'clock to do it or
10 turning themselves in at the jail.

11 THE COURT: I'll give you guys until -- your clients
12 until 4:00 o'clock today to post it; otherwise, they will be
13 remanded into custody and will have to bail --

14 MR. CRISTALLI: We'll have that taken care of, Your
15 Honor, and we could supply the Court with verification of that
16 once that process is completed. We'll certainly send it over
17 to Robert if you would like us to do that and we can handle
18 that immediately.

19 THE COURT: Yes. All right. Any questions, counsel?
20 And we're going to need to set you gentlemen for trial. Are
21 they going to invoke or are they going to waive?

22 MR. SANTACROCE: We're -- Lakeman is waiving.

23 MR. WRIGHT: I waive on behalf of Dr. Desai.

24 THE COURT: And Mr. Cristalli, are you waiving as
25 well?

1 MR. CRISTALLI: We do, Your Honor.

2 THE COURT: All right. We will give you a trial
3 date. Gentlemen and counsel, will -- counsel for the State,
4 have you discussed trial dates at this time? I understand
5 from Judge Adair, depending on what happens in the Supreme
6 Court, I know you're set for trial in October, but it could
7 possibly go later. Realistically in this case you're not
8 going to be until next year anyways, so did you discuss
9 possible dates?

10 MR. CRISTALLI: Your Honor, in light of the
11 circumstances associated with the other case, even though the
12 State denies the existence of one, I would like maybe to set a
13 status check to determine where we are at with that case
14 before setting trial on this case.

15 THE COURT: Okay. So last I read on the thing the
16 State had 30 days to file a response and I don't remember how
17 long -- or 20. I don't remember. I don't remember when that
18 response is due in Judge Adair's case.

19 MR. STAUDAHER: I know that there has been a request
20 for enlargement of time so I'm not sure how that affected that
21 date specifically or when the actual date for answer was.

22 THE COURT: The order directing answer, it looks
23 like --

24 MR. CRISTALLI: I have --

25 THE COURT: -- you had 20 days from August 6th. You

1 did an enlargement of time so you'll have additional time.
2 You want to set it on for a status in 45 days for the setting
3 of the trial date?

4 MR. STAUDAHER: Actually, the State, although I don't
5 have an issue with a specific date, we would like to have an
6 actual date set as soon as the Court can accommodate it on the
7 calendar.

8 THE COURT: Well, with that being said, you're
9 probably going to be -- well, as soon as possible is probably
10 going to be next year.

11 MR. STAUDAHER: That's fine.

12 THE COURT: Antoinette, what do you have?

13 MR. STAUDAHER: Just whenever the Court can --

14 THE CLERK: March --

15 MR. STAUDAHER: -- can do it.

16 THE CLERK: -- Your Honor.

17 THE COURT: March. March 2013, how is that for
18 defendants?

19 MR. SANTACROCE: I don't have my trial calendar in
20 front of me, Your Honor, unfortunately.

21 MR. CRISTALLI: Okay. I was just tapped and advised
22 I have a capital murder case going in March.

23 THE COURT: Okay. Then that puts where, Antoinette?

24 THE CLERK: That would be the end of May into early
25 June.

1 THE COURT: Thereafter it'd be August 2013.

2 MR. WRIGHT: Just for the record, I object to the
3 setting. I'm unclear where -- I will need to speak to Mr.
4 Pomerance in the federal court, with the prosecutor. We're
5 sort of by handshake --

6 THE COURT: Then why don't we do this.

7 MR. WRIGHT: -- implicitly awaiting the other case,
8 and then the federal case was going -- and of course, this
9 wasn't envisioned --

10 THE COURT: Okay.

11 MR. WRIGHT: -- and so he is awaiting trial in
12 federal court.

13 THE COURT: Why don't we do this. Why don't we set a
14 30-day status on trial setting. I need all counsel to please
15 look at their calendars between now and then, and when you
16 come in here, we will look at where we stand, or where you
17 guys stand with respect to what was the filings in Judge
18 Adair's department.

19 All right. 30-day date, please.

20 THE CLERK: September 19th, 9:30.

21 MR. SANTACROCE: September what?

22 THE CLERK: 19th.

23 MR. CRISTALLI: Thank you, Your Honor.

24 MR. SANTACROCE: And would you waive my client's
25 appearance, Your Honor, or does he need to be here for that?

1 THE COURT: I don't have any objections.

2 MR. STAUDAHER: There's only one person the State
3 has --

4 THE COURT: It's just a pretrial setting.

5 MR. STAUDAHER: -- an objection to not appearing at
6 every single hearing and that's Dr. Desai based on even the
7 representations in court today about his lack of capacity or
8 whatever. As the Court's probably aware, that was raised in
9 the underlying case that counsels were referring to in front
10 of Judge Adair. That defendant -- or Defendant Desai went up
11 to Lake's Crossing, was found to be malingering his symptoms
12 and because of that we feel it's important for the Court to
13 make its own assessment when he comes into court how he
14 handles himself, how he responds, things like that as we go
15 along. So he stands in a completely different position than
16 the others. We would submit it to the Court on Mr. Mathahs
17 and Mr. Lakeman.

18 THE COURT: Mr. Wright, are you asking to waive your
19 client's appearance at the next hearing or is he intending to
20 be present?

21 MR. WRIGHT: I would request to waive his appearance.
22 It creates a great imposition on his wife who is his custodian
23 who has to bring him here and she's a practicing physician.

24 THE COURT: All right. I waive the -- I'll waive the
25 appearances of the defendant since it is only going to be a

1 trial setting. All other substantive hearings their presence
2 will be required. Okay. We'll see you on the September date.

3 MR. SANTACROCE: One other issue, Your Honor, is that
4 I have not received discovery of the grand jury transcripts.
5 I'm asking for 21 days after I receive that information --

6 THE COURT: All right.

7 MR. SANTACROCE: -- to file a writ.

8 MR. CRISTALLI: We would join in that, Your Honor.

9 THE COURT: Okay. Anything by the State?

10 MR. WRIGHT: I join that.

11 MR. STAUDAHER: That's fine.

12 THE COURT: All right. ~~That'll be granted.~~ All
13 right. Any other additional matters?

14 MR. SANTACROCE: Not from Mr. Lakeman, Your Honor.
15 Thank you for your consideration.

16 THE COURT: All right. Thank you.

17 MR. WRIGHT: Thank you, Your Honor.

18 MR. CRISTALLI: Thank you, Your Honor.

19 THE COURT: Thank you.

20 (Court recessed at 10:46 a.m.)

21

22

23

24

25

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

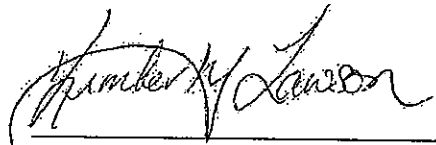
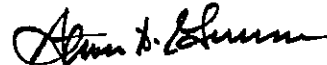

KIMBERLY LAWSON

EXHIBIT 11

EXHIBIT 11



CLERK OF THE COURT

ORDER

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
MICHAEL V. STAUDAHER
Chief Deputy District Attorney
Nevada Bar #008273
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

-vs-

DIPAK KANTILAL DESAI,
#1240942

Defendant.

CASE NO: 10C265107-1 /
C-12-283381-1

DEPT NO: XXI

ORDER DENYING DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS

DATE OF HEARING: 12/19/2012

TIME OF HEARING: 3:00 P.M.

THIS MATTER having come on for hearing before the above entitled Court on the 19th day of December, 2012, the Defendant not being present, represented by RICHARD WRIGHT, ESQ., the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through MICHAEL V. STAUDAHER, Chief Deputy District Attorney, and the Court having previously heard the arguments of counsel and good cause appearing therefor,

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1 IT IS HEREBY ORDERED that the Defendant's Petition for Writ of Habeas Corpus,
2 shall be, and it is DENIED.

3 DATED this 2nd day of January, 2013.

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5 
6 DISTRICT JUDGE 748

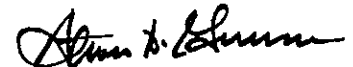
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8 STEVEN B. WOLFSON
9 Clark County District Attorney
Nevada Bar #001565

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11 MICHAEL V. STAUDAHER
12 Chief Deputy District Attorney
13 Nevada Bar #008273

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28 09BGJ049A/10F03793A/sam-MVU

EXHIBIT 10

EXHIBIT 10



CLERK OF THE COURT

1 RTRAN

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5 STATE OF NEVADA,

6 Plaintiff,

7 vs.

8 DIPAK KANTILAL DESAI, RONALD E
9 LAKEMAN, KEITH H. MATHAHS,

10 Defendants.

} CASE NO. C265107-1
} CASE NO. C265107-2
} CASE NO. C265107-3
} CASE NO. C283381-1
} CASE NO. C283381-2
} CASE NO. C283381-3

} DEPT. XXI

11
12 BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE

13 TUESDAY, DECEMBER 11, 2012

14 RECORDER'S TRANSCRIPT OF HEARING RE:
15 DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS (DESAI)(BOTH)
16 DEFENDANT KEITH MATHAHS' PETITION FOR WRIT OF HABEAS CORPUS OR
17 IN THE ALTERNATIVE, MOTION TO DISMISS INDICTMENT(BOTH)
DEFENDANT RONALD LAKEMAN'S PETITION AND JOINDER

18 APPEARANCES:

19 FOR THE STATE:

MICHAEL V. STAUDAHER, ESQ.
Chief Deputy District Attorney

21 FOR DEFENDANT DESAI:

RICHARD A. WRIGHT, ESQ.
MARGARET STANISH, ESQ.

22 FOR DEFENDANT LAKEMAN:

FREDERICK A. SANTACROCE, ESQ.

23
24
25 RECORDED BY: JANIE L. OLSEN, COURT RECORDER/TRANSCRIBER

1 LAS VEGAS, CLARK COUNTY, NV., TUES., DEC. 11, 2012

2
3 THE COURT: We'll call the Desai matter. Is everyone here on that, or do we
4 need a moment?

5 Ms. Stanish, will you be arguing this, or will Mr. Wright be arguing this?

6 MS. STANISH: I'll begin the argument, Your Honor.

7 THE COURT: All right. We've got Mr. Desai who's present, and we've also
8 got Mr. Santacroce on behalf of Mr. Lakeman. So we'll begin with Dr. Desai's
9 petition.

10 And, Ms. Stanish, anything that you would like to add to what's already
11 been provided to the Court?

12 MS. STANISH: Your Honor, if you would indulge me, I would like to confine
13 arguments to begin with to the four corners of the Indictment and discuss the
14 insufficiency of the Indictment.

15 In my reply brief, I tried to highlight for the Court the fact that the
16 Nevada Supreme Court has created essential elements to the second-degree felony
17 murder theories that must be contained in the Indictment. And this Indictment fails
18 for both due-process reasons and substantive due process.

19 Let me start with the substantive due process, Your Honor. As we
20 briefed, our main problem with the Indictment is the failure to allege the direct and
21 immediate causal relationship element in the Indictment, either state that element as
22 well as clearly allege facts to support that element.

23 To the contrary, the Indictment repeatedly uses the term that Dr. Desai
24 did something that was indirect to cause the transmission of the Hepatitis C. That in
25 and of itself creates a substantive due-process problem, Your Honor, that

1 contradicts the Nevada Supreme Court's direction that there must be a direct and
2 immediate cause between an individual defendant's actions and the death of the
3 patient.

4 The due-process problem is also connected to the use of the and/or
5 charging device that the State uses in the Indictment. That device again in
6 describing the means of the conduct, how the murder was carried out, again, as we
7 saw in the last Indictment, there's a lumping together of defendants. There's a
8 lumping together of various acts charged in the alternative using the term or, and I
9 cannot stress enough the Hidalgo case, Your Honor, that says when the State elects
10 to charge in the alternative, each and every phrase has to stand on its own in
11 supporting the conduct.

12 So, Your Honor, the way this Indictment is pled, second-degree murder,
13 is contrary to the Nevada Supreme Court's direct requirement of the -- what I'll call
14 an enhanced causal relationship and the need for specificity to draw that out.

15 THE COURT: You want to just respond to that part?

16 MR. STAUDAHER: At that point, sure, Your Honor.

17 THE COURT: I mean, you know, we went round and round about the
18 Indictment last time, but specifically now to talk about what Ms. Stanish has raised
19 with the requirement for second-degree murder.

20 MR. STAUDAHER: And, Your Honor, the State is not proceeding under just a
21 felony second-degree murder theory in this particular case. We have the
22 abandonment and malignant heart theory, obviously depraved indifference. The
23 actions that the defendant did through his employees are direct actions; whether he
24 directly was the one who administered the agent or ordered someone to do it, it's his
25 action.

1 Now, as far as the Supreme Court's requirement that the actual
2 language of what Ms. Stanish has just argued be within the Indictment, there's no
3 case about that. This language of this -- of the law comes directly out of statute. So
4 the statute is quoted in the Indictment, and that is all that has ever been required for
5 notice pleading in this state.

6 Now, I don't dispute that at the time of trial that we are required to
7 beyond a reasonable doubt prove this direct causal connection that Ms. Wright --
8 Ms. Stanish, rather, has referred to, but that is not what transpires before a grand
9 jury. It is a slight or marginal evidence standard at that level. We have to just show
10 that one of the --

11 THE COURT: Well, there's two issues. There's the pleading and there's the
12 burden of proof which is slight or marginal.

13 What Ms. Stanish is saying, I believe, is well, it doesn't matter what
14 your burden of proof is; you still in your Indictment have to allege what your theory is
15 and what the conduct is regardless of what the burden of proof is, and I -- you know,
16 it's two separate things.

17 MR. STAUDAHER: Sure.

18 THE COURT: You can't say, well, we can, you know, just allege, you know,
19 everything but the kitchen sink because it's slight or marginal evidence, and they
20 found slight or marginal evidence as to something.

21 Is that essentially what you're saying, Ms. Stanish?

22 MS. STANISH: That, Your Honor, plus it, you know, it's just the fundamental
23 due process that it must be concise. This for purposes of second-degree murder,
24 the Indictment on its face is lacking the immediate and direct causal relationship
25 between my client's conduct and the death of Mr. Meana.

1 And there is, by the way, Your Honor, case law to the effect that the
2 Indictment on its face must address the specific elements that are created by the
3 Supreme Court, and I cited in my reply brief, Your Honor, the Morris case for that
4 proposition, and, of course, just like the federal system, which is also a notice
5 pleading jurisdiction, when it comes to judicially created elements, due process both
6 substantive and procedural due process requires an articulation of the elements and
7 the facts that support those elements.

8 THE COURT: Mr. Staudaher.

9 MR. STAUDAHER: The law in Nevada for notice pleading regarding second-
10 degree murder, Your Honor, does not address what Ms. Stanish is saying. We have
11 outlined specifically that -- we've outlined the points that are in the statute, which are
12 that the theories of liability are an abandoned and malignant heart, 1, or the act
13 occurring during the commission of an unlawful act, or, 3, during the prosecution of
14 a felonious intent. That's what it says in the statute. That's what is included in the
15 actual Indictment itself in this particular case to put them on notice that they're on
16 not just a second-degree felony murder. That's not the only potential theory here.

17 It's just like when we plead open murder --

18 THE COURT: Right.

19 MR. STAUDAHER: -- which includes first degree, we don't go through all of
20 those. We just say, you know, open -- you're basically -- you get the entire
21 enchilada underneath that if you plead open murder. We have gone just below the
22 general open murder which is because we're not alleging premeditation, deliberation
23 in this case. But we're saying if you did it by felony second-degree murder, if you
24 did it by just deprived indifference murder, that that is second-degree murder by its
25 statutory definition. That's what's in the Indictment. So if we're just talking about the

1 Indictment at this point, they're on notice of the different theories that the State is
2 proceeding on.

3 What happens at the time of trial is a different story, but at least at this
4 stage they are on notice of those theories and how that is essentially brought forth in
5 this particular case by the factual averments that follow the actual quoting of the
6 statute.

7 It's never been required that you do more than actually provide the
8 statutory definitions or statutory language as to what laws the individual is breaking
9 or is alleged to have broken, and that's what we did in this case. There are three
10 separate portions that can come under second-degree murder. We've alleged all of
11 those so they're on notice of it.

12 THE COURT: All right. Ms. Stanish, any -- and you can go on to your other
13 points as well.

14 MS. STANISH: Your Honor, the State is missing the point. The fact that it
15 has in the past ignored judicially created elements doesn't verify that it can do so in
16 this case or any other case. The policy of the Supreme Court's creation of those
17 additional elements was specifically to prevent the State from overprosecuting
18 accidental, negligent conduct and to limit that authority and to prevent people like
19 Mr. Lakeman and Dr. Desai from being forced to go to trial to face second-degree
20 murder charges based on a document that's both substantively and procedurally
21 insufficient.

22 The fact that the State keeps referring to, Look, we've indicted three
23 alternative theories and that's good enough for government. It is not. That violates
24 the Supreme Court requirements and substantive and due-process law, Your Honor.

25 THE COURT: All right. And did you want to touch on any of your other

1 arguments?

2 MS. STANISH: The instructions to the grand jury, I've addressed this in my
3 reply brief because I also thought it was an important point to bring to the Court's
4 attention and somewhat relate it to this case to the due-process argument to the
5 extent that once again the government relies on the mere fact that it's provided the
6 statutes to the jury and that ought to be good enough. It is not good enough.

7 By statute the State is required to instruct the grand jury on the
8 essential elements of the offense. The case law that the State cited in its brief that
9 says to the contrary that there is no such requirement is wrong. It predates the
10 statutory right to have a grand jury sufficiently apprised of the elements of the crime,
11 especially in a case like this.

12 THE COURT: Yeah, I mean, typically the elements come directly from the
13 statute, and so by giving the statute, you are giving them the elements.

14 MS. STANISH: Right, but this, of course, is not typical because the Supreme
15 Court has specifically limited the application, created additional essential elements
16 of the offense, which must be both pled and instructed to the jury, and again, the
17 fact that the government has ignored that in the past doesn't really support the
18 violation that's before this Court today.

19 THE COURT: Mr. Staudaher, anything else?

20 MR. STAUDAHER: Well, I would submit that the law that I cited in my return
21 is good law in Nevada, and although there are not recent -- very recent published
22 cases on this that I could cite to, the theory -- what the Supreme Court has
23 addressed in the previous published cases has never been changed or altered in
24 their subsequent cases before the Supreme Court. Although we can't cite to those
25 obviously, that's why there's no additional case law beyond the dates that Ms.

1 Stanish has referred to, and the cases that were cited are good law.

2 You do not have to cite -- or you do not have to instruct on the specific
3 intricacies of the law related to a case or related to a crime before the grand jury.
4 They don't require it. They don't require you to instruct on premeditation, delib --
5 excuse me, on, you know, theories of what the defense may have, any theories that
6 they think may cut off liability. You're not required to do any of that kind of thing
7 before the grand jury.

8 So I don't understand completely what her reference is to us citing to
9 outdated law that is no longer in effect. That is not the case. It's good law in
10 Nevada, and it is the law in Nevada as to what we have to do and don't have to do
11 in pleading.

12 MS. STANISH: My reply brief specified which cases are no longer good law
13 in light of the amendment to the grand jury statute, Your Honor.

14 And the -- I think we just -- we're speaking at different levels. The
15 government thinks that by regurgitating the statute that that's adequate --

16 THE COURT: Well, Ms. Stanish --

17 MS. STANISH: -- when in fact the supreme court says otherwise.

18 THE COURT: All right. Mr. Santacroce, anything you'd like to add to your
19 brief you already provided?

20 MR. SANTACROCE: Yes. First of all, I want to join in Ms. Stanish's
21 argument, but I want to explain how these factors apply to my client, Mr. Lakeman.

22 First of all, if you look at the elements set forth in Ramirez, the second
23 element of the murder, felony-murder rule only applies when the defendant's act is
24 the immediate and direct cause of death.

25 Now, I remind the Court that Mr. Lakeman had nothing to do with Mr.

1 Meana. He didn't treat the source patient. He never treated Mr. Meana. He never
2 saw Mr. Meana. He had nothing to do with Mr. Meana. So the fact of the matter is
3 the Indictment against Mr. Lakeman for felony murder can't possibly go forward.
4 There's no nexus, no connection between Lakeman and Meana.

5 THE COURT: Isn't this similar, Mr. Staudaher, if you had, say, a ring -- I
6 mean, I'm going to make it real simple, which may make it a poor analogy -- but if
7 you had a ring of, say, robbers who are all conspiring to commit various robberies,
8 and you have some people participating in, you know, let's just say jewelry stores,
9 A, B and C, and one guy does the A and the B robberies, and it's the C robbery that
10 he's not involved with that results in death to somebody. To me it's kind of
11 analogous, well, they're part of the conspiracy for all of the robberies even though
12 they weren't actually involved in the C robbery. And by the C robbery, now, of
13 course, we're talking about the care of patient Mr. Meana.

14 Although there's an overarching conspiracy and conduct that's
15 benefiting the total, let's just call it criminal goal of, you know, in this case, say,
16 money, we're using products, things like that, which took various forms, you know,
17 according to the State's Indictment, the insurance fraud and various things, I mean, I
18 see that as sort of an analogy between how you've alleged the conduct against Mr.
19 Lakeman.

20 MR. STAUDAHER: Would you like me to address it, Your Honor?

21 THE COURT: Yeah.

22 MR. STAUDAHER: To a large extent you are correct. The hook or at least
23 the theory of criminal liability which has been pled in the Indictment what relation to
24 Mr. Lakeman brings him into criminal liability for that particular crime involving Mr.
25 Meana is through a conspiracy theory essentially, the aiding and abetting not so

1 much so, but the theory of conspiracy in this case.

2 Now, remember that on that day we're talking about the, you know, that
3 Mr. Lakeman is present at the location infecting other people. He's gotten the virus
4 from Mr. Mathahs who actually was the person who worked on the source patient,
5 which Mr. Meana --

6 THE COURT: Right, and worked on Mr. Meana.

7 MR. STAUDAHER: So he -- so Mr. Mathahs deals with the source patient
8 and Mr. Meana and then throughout -- through the mechanisms of how they worked
9 in the practice was showing the conspiracy active that day. This isn't a separate
10 robbery and a different occasion that they weren't aware of. They're working
11 together on that day transferring the virus from one room to another to other
12 patients. They're working together doing the same kinds of things.

13 So, yes, it is under a conspiracy theory for him, but I think it's a much
14 tighter, close-knit connection between the conspiracy and the infection related to
15 Mr. Meana and the hook that brings in Mr. Lakeman because of that. He cannot say
16 that he was unaware of something going on, it was a different day, he wasn't
17 working, he didn't have any issue or --

18 THE COURT: No, I mean, this is, I mean, according to your theory, it's an
19 ongoing conspiracy. So to me whether he was at work that day or not at work that
20 day, you know, or he took his coffee break at the time Mr. Meana -- you know, I
21 don't think that's really relevant.

22 The issue is did his role in the -- well, the issue is he wasn't directly
23 involved in the infection of Mr. Meana. I think that's what Mr. Santacrocce, that even
24 by being a part of this conspiracy his involvement didn't directly impact Mr. Meana,
25 that it was all Mr. Mathahs's conduct that directly impacted Mr. Meana, not Mr.

1 Lakeman's conduct.

2 Is that essentially what you're saying, Mr. Santacroce?

3 MR. SANTACROCE: That's correct, Your Honor, and if you accept the
4 State's argument, the mere presence of my client on that day is ridiculous because
5 by that theory you can indict the receptionist or the janitor if they were present and
6 part of this conspiracy because they were employees. That's a ridiculous argument.

7 The fact of the matter is that the Ramirez case sets forth that there has
8 to be a direct nexus, and there's -- there's other case law, the Labastida case which
9 was a felony child neglect that resulted in the death of a child, the Supreme Court
10 says you can't hold the girlfriend liable for felony murder when the direct causal
11 connection of the death was from the boyfriend's conduct.

12 And it's similar in this case. My client had nothing, nothing to do with
13 Mr. Meana, and to allow the Indictment to go forward is absolutely absurd. Now,
14 what the State wants you to believe is that we're -- we know he had nothing to do
15 with it, but we want to get him on this conspiracy theory. Because he's part of a
16 conspiracy then he's liable for felony murder.

17 But that -- that does not hold any weight either because one of the
18 grand jurors was very troubled by this, and one of the grand jurors says, How do we
19 hold Mr. Lakeman liable for this when he had nothing to do with it, and Mr.
20 Staudaher instructed that grand juror to look at this binder that he had provided to
21 them and said, Look at that, and if you can find the conspiracy, which you did in the
22 prior Indictment, then you can hold Mr. Lakeman liable for this felony murder.

23 But that's not correct instruction. What should have been instructed
24 was if you had a conspiracy and he was the direct causal nexus connection to the
25 death, then you can indict him for felony murder. That was not done.

1 I have no idea what was in the binder. I have no idea on what theory of
2 conspiracy I'm supposed to defend my client on as it relates to felony murder. I just
3 don't know, and that's patently wrong, and it's offensive, and it needs to be thrown
4 out, Your Honor.

5 MR. STAUDAHER: Your Honor, it was the conspiracy that caused the
6 infection to transmit and the death. It was the conspiracy even going back months
7 earlier to the 25th of July, not the 21st of September. Who was the actor involved in
8 that case? It was Mr. Lakeman. Mr. Lakeman was the one who had the source
9 patient, and Mr. Lakeman was the one who infected the secondary patient.

10 This was part of the reason why the conspiracy itself is the causal
11 connection to the actual transmission because but for their actions and agreement
12 between all of the parties, and we're talking about not the receptionist, but we're
13 talking about the people who were actually injecting patients with an infected agent
14 because those individuals agreed to do that and breached the protocols that are
15 universally accepted across the country, we had not only people getting infected but
16 people dying. And that's because when they did that it was -- there was a
17 foreseeable, direct relationship to their actions and the harm that befell these
18 patients.

19 He can't get away from that, and that's why he's brought in under a
20 theory of conspiracy and why the conspiracy itself is the action which caused the
21 infection to occur.

22 THE COURT: All right. Anything else?

23 MR. SANTACROCE: No, I'll submit it, Your Honor. I don't know if Ms.
24 Stanish has something else.

25 MS. STANISH: It's not a but-for standard as the State just stated, and, you

1 know, we shouldn't have to guess who was the direct and immediate cause of the
2 transmission of the -- of the virus. It needs to be clearly stated in the Indictment,
3 and it's not.

4 THE COURT: All right. I'm going to go through some of these arguments that
5 we haven't had today that I consider to be, and I think by virtue of the fact you didn't
6 highlight them you considered them also to be the less compelling argument.

7 Okay. Number 1, I find the State didn't introduce inadmissible hearsay
8 during the grand jury by relying on Mr. Meana's prior testimony or any other records
9 of the prior proceedings. The fact that Mr. Meana didn't continue his treatment I
10 don't think that that's exculpatory evidence. I don't think that the State was required
11 to do more than they did in that regard. I would just sort of note that without some
12 additional expert testimony that in and of itself is sort of meaningless, and I don't
13 think lay people could really even evaluate that to determine whether or not that --
14 what kind of an impact, if any, it had on Mr. Meana's ultimate passing.

15 Again, the consideration of the testimony, the exhibits of the prior grand
16 jury was fine. The impanelment of -- or sort of re-impanelment was also fine and
17 that was allowable.

18 On the issues that I think are kind of tied together between Mr.
19 Lakeman and Dr. Desai on the four corners of the Indictment, I'm going to consider
20 that further.

21 And on the instructions themselves and whether when Mr. Staudaher,
22 you know, made his responses that that was sufficient or whether Mr. Staudaher
23 should have provided additional clarification and further instruction to the grand jury.

24 So I will consider those what I consider remaining sort of two issues
25 that I think are the better, more compelling issues, and look for something Monday

1 on just basically those two remaining issues.

2 All right. Thank you.

3 MS. STANISH: Thank you, Your Honor.

4 MR. STAUDAHER: Is that a hearing or a minute order or what is that?

5 THE COURT: It will just be a minute order.

6 -oOo-

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8 MR. STAUDAHER: Thank you, Your Honor.

9 THE COURT: And I think that disposes of all of the arguments that have
10 been made.

11 MR. STAUDAHER: Thank you.

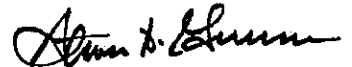
12 -oOo-

13 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video
14 proceedings in the above-entitled case.

15 
16 JANIE L. OLSEN
Recorder/Transcriber

EXHIBIT 9

EXHIBIT 9



CLERK OF THE COURT

1 **AIND**

2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565

5 MICHAEL STAUDAHER
6 Chief Deputy District Attorney
7 Nevada Bar #008273

8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,

13 Plaintiff,

14 -vs-

CASE NO: 10C265107-1

DEPT NO: XXI

15 **DIPAK KANTILAL DESAI,**
16 **#1240942**

17 **RONALD ERNEST LAKEMAN,**
18 **#2753504**

19 **KEITH H. MATHAHS,**
20 **#2753191**

21 Defendant(s).

**SECOND AMENDED
INDICTMENT**

22 STATE OF NEVADA }
23 COUNTY OF CLARK } ss.

24 The Defendant(s) above named, DIPAK KANTILAL DESAI, RONALD ERNEST
25 LAKEMAN and KEITH H. MATHAHS accused by the Clark County Grand Jury of the
26 crime(s) of **RACKETEERING (Category B Felony - NRS 207.350, 207.360, 207.370,**
27 **207.380, 207.390, 207.400); INSURANCE FRAUD (Category D Felony - NRS**
28 **686A.2815); PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS**
OR PROPERTY (Category C Felony - NRS 0.060, 202.595); CRIMINAL NEGLECT
OF PATIENTS (Category B Felony - NRS 0.060, 200.495); THEFT (Category B Felony
- NRS 205.0832, 205.0835); OBTAINING MONEY UNDER FALSE PRETENSES
(Category B Felony - NRS 205.265, 205.380) and MURDER (SECOND DEGREE)

1 (Category A Felony - NRS 200.010, 200.020, 200.030, 200.070, 0.060, 202.595, 200.495),
2 committed at and within the County of Clark, State of Nevada, on or between June 3, 2005,
3 and April 27, 2012, as follows:

4 COUNT 1 - RACKETEERING

5 Defendants, did on or between June 3, 2005, and May 5, 2008, then and there, within
6 Clark County, Nevada knowingly, willfully and feloniously while employed by or associated
7 with an enterprise, conduct or participate directly or indirectly in racketeering activity
8 through the affairs of said enterprise; and/or with criminal intent receive any proceeds
9 derived, directly or indirectly, from racketeering activity to use or invest, whether directly or
10 indirectly, any part of the proceeds from racketeering activity; and/or through racketeering
11 activity to acquire or maintain, directly or indirectly, any interest in or control of any
12 enterprise; and/or intentionally organize, manage, direct, supervise or finance a criminal
13 syndicate; and/or did conspire to engage in said acts, to-wit: by directly or indirectly causing
14 and/or pressuring the employees and/or agents of the Endoscopy Center of Southern Nevada
15 to falsify patient anesthesia records from various endoscopic procedures; and/or to commit
16 insurance fraud by directly or indirectly submitting said false anesthesia records to various
17 insurance companies for the purpose of obtaining money under false pretenses from said
18 insurance companies and/or patients; said fraudulent submissions resulting in the payment of
19 monies to Defendants and/or their medical practice and/or the enterprise, which exceeded the
20 legitimate reimbursement amount allowed for said procedures; Defendants being responsible
21 under one or more of the following principles of criminal liability, to wit: (1) by directly
22 committing said acts; and/or (2) aiding or abetting each other in the commission of the crime
23 by directly or indirectly counseling, encouraging, hiring, commanding, inducing, or
24 procuring each other, and/or others to commit said acts, Defendants acting with the intent to
25 commit said crime.

26 COUNT 2 - INSURANCE FRAUD

27 Defendants, did on or about July 25, 2007, knowingly and willfully present, or cause
28 to be presented a statement as a part of, or in support of, a claim for payment or other

1 benefits under a policy of insurance issued pursuant to Title 57 of the Nevada Revised
2 Statutes, knowing that the statement concealed or omitted facts, or contained false or
3 misleading information concerning a fact material to said claim; and/or did assist, abet,
4 solicit or conspire to present or cause to be presented a statement to an insurer, a reinsurer, a
5 producer, a broker or any agent thereof, knowing that said statement concealed or omitted
6 facts, or did contain false or misleading information concerning a fact material to a claim for
7 payment or other benefits under such policy issued pursuant to Title 57 of the Nevada
8 Revised Statutes, by falsely representing to ANTHEM BLUE CROSS - BLUE SHIELD
9 that the billed anesthesia time and/or charges for the endoscopic procedure performed on
10 SHARRIEFF ZIYAD were more than the actual anesthetic time and/or charges, said false
11 representation resulting in the payment of money to Defendants and/or their medical practice
12 and/or the racketeering enterprise which exceeded that which would have normally been
13 allowed for said procedure; Defendants being responsible under one or more of the
14 following principles of criminal liability, to wit: (1) by directly committing said acts; and/or
15 (2) aiding or abetting each other in the commission of the crime by directly or indirectly
16 counseling, encouraging, hiring, commanding, inducing, or procuring each other, and/or
17 others to commit said acts, Defendants acting with the intent to commit said crime, and/or
18 (3) pursuant to a conspiracy to commit this crime.

19 COUNT 3 - PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS
20 OR PROPERTY

21 Defendants, did on or about July 25, 2007, then and there willfully and unlawfully
22 perform acts in willful or wanton disregard of the safety of persons or property resulting in
23 substantial bodily harm to MICHAEL WASHINGTON, in the following manner, to-wit: by
24 Defendants performing one or more of the following acts: (1) by directly administering
25 and/or directly or indirectly instructing employees of the Endoscopy Center of Southern
26 Nevada, (ECSN) to administer one or more doses of the anesthetic drug Propofol from a
27 single use vial to more than one patient contrary to the express product labeling of said drug
28 and in violation of universally accepted safety precautions for the administration of said

1 drug; and/or (2) by creating an employment environment in which said employees were
2 pressured to administer one or more doses of the anesthetic drug Propofol from a single use
3 vial to more than one patient contrary to the express product labeling of said drug and in
4 violation of universally accepted safety precautions for the administration of said drug;
5 and/or (3) by directly reusing and/or directly or indirectly instructing said employees, and/or
6 creating an employment environment in which said employees were pressured to reuse
7 syringes and/or needles and/or biopsy forceps and/or snares and/or bite blocks contrary to
8 the express product labeling of said items, and/or in violation of universally accepted safety
9 precautions for the use of said items; and/or (4) by directly limiting and/or directly or
10 indirectly instructing said employees, and/or creating an employment environment in which
11 said employees were pressured to limit the use of medical supplies necessary to conduct safe
12 endoscopic procedures; and/or (5) by falsely precharting patient records and/or rushing
13 patients through said endoscopy center and/or rushing patient procedures at the expense of
14 patient safety and/or well being and/or directly or indirectly instructing said employees,
15 and/or creating an employment environment in which said employees were pressured to
16 falsely prechart patient records and/or rush patients through said endoscopy center and/or
17 rush patient procedures at the expense of patient safety and/or well being; and/or (6) by
18 directly or indirectly scheduling and/or treating an unreasonable number of patients per day
19 which resulted in substandard care and/or jeopardized the safety and/or well being of said
20 patients; and/or (7) by directly failing to adequately clean and/or prepare endoscopy scopes,
21 contrary to the express manufacturers guidelines for the handling and processing of said
22 endoscopy scopes, and/or in violation of universally accepted safety precautions for the use
23 of said scopes and/or directly or indirectly instructing said employees, and/or creating an
24 employment environment in which said employees were inadequately trained and/or
25 pressured to provide endoscopy scopes for patient procedures that were not adequately
26 cleaned and/or prepared contrary to the express manufacturers guidelines for the handling
27 and processing of said endoscopy scopes, and/or in violation of universally accepted safety
28 precautions for the use of said scopes; Defendants being responsible under one or more of

1 the following principles of criminal liability, to wit: (1) by directly committing said acts;
2 and/or (2) aiding or abetting each other in the commission of the crime by directly or
3 indirectly counseling, encouraging, hiring, commanding, inducing, or procuring each other,
4 and/or others to commit said acts, Defendants acting with the intent to commit said crime,
5 and/or (3) pursuant to a conspiracy to commit this crime.

6 COUNT 4 - CRIMINAL NEGLIGENCE OF PATIENTS

7 Defendants, on or about July 25, 2007, being professional caretakers of MICHAEL
8 WASHINGTON, did act or omit to act in an aggravated, reckless or gross manner, failing to
9 provide such service, care or supervision as is reasonable and necessary to maintain the
10 health or safety of said MICHAEL WASHINGTON, resulting in substantial bodily harm to
11 MICHAEL WASHINGTON, said acts or omissions being such a departure from what would
12 be the conduct of an ordinarily prudent, careful person under the same circumstances that it
13 is contrary to a proper regard for danger to human life or constitutes indifference to the
14 resulting consequences, said consequences of the negligent act or omission being reasonably
15 foreseeable; said danger to human life not being the result of inattention, mistaken judgment
16 or misadventure, but the natural and probable result of said aggravated reckless or grossly
17 negligent act or omission, by performing one or more of the following acts: (1) by directly
18 or indirectly instructing employees of the Endoscopy Center of Southern Nevada, (ECSN) to
19 administer one or more doses of the anesthetic drug Propofol from a single use vial to more
20 than one patient contrary to the express product labeling of said drug and in violation of
21 universally accepted safety precautions for the administration of said drug; and/or (2) by
22 creating an employment environment in which said employees were pressured to administer
23 one or more doses of the anesthetic drug Propofol from a single use vial to more than one
24 patient contrary to the express product labeling of said drug and in violation of universally
25 accepted safety precautions for the administration of said drug; and/or (3) by directly or
26 indirectly instructing said employees, and/or creating an employment environment in which
27 said employees were pressured to reuse syringes and/or needles and/or biopsy forceps and/or
28 snares and/or bite blocks contrary to the express product labeling of said items, and/or in

1 violation of universally accepted safety precautions for the use of said items; and/or (4) by
2 directly or indirectly instructing said employees, and/or creating an employment
3 environment in which said employees were pressured to limit the use of medical supplies
4 necessary to conduct safe endoscopic procedures; and/or (5) by directly or indirectly
5 instructing said employees, and/or creating an employment environment in which said
6 employees were pressured to falsely prechart patient records and/or rush patients through
7 said endoscopy center and/or rush patient procedures at the expense of patient safety and/or
8 well being; and/or (6) by directly or indirectly scheduling and/or treating an unreasonable
9 number of patients per day which resulted in substandard care and/or jeopardized the safety
10 and/or well being of said patients; and/or (7) by directly or indirectly instructing said
11 employees, and/or creating an employment environment in which said employees were
12 inadequately trained and/or pressured to provide endoscopy scopes for patient procedures
13 that were not adequately cleaned and/or prepared contrary to the express manufacturers
14 guidelines for the handling and processing of said endoscopy scopes, and/or in violation of
15 universally accepted safety precautions for the use of said scopes; and/or (8) by methods
16 unknown; for the purpose of enhancing the financial profit of ECSN, said act(s) or
17 omission(s) causing the transmission of Hepatitis C virus from patient SHARRIEFF ZIYAD
18 to patient MICHAEL WASHINGTON, who was not previously infected with the Hepatitis
19 C virus; Defendants being responsible under one or more of the following principles of
20 criminal liability, to wit: (1) by directly committing said acts; and/or (2) aiding or abetting
21 each other in the commission of the crime by directly or indirectly counseling, encouraging,
22 hiring, commanding, inducing, or procuring each other, and/or others to commit said acts,
23 Defendants acting with the intent to commit said crime, and/or (3) pursuant to a conspiracy
24 to commit this crime.

25 COUNT 5 - INSURANCE FRAUD

26 Defendants, did on or about July 25, 2007, knowingly and willfully present, or cause
27 to be presented a statement as a part of, or in support of, a claim for payment or other
28 benefits under a policy of insurance issued pursuant to Title 57 of the Nevada Revised

1 Statutes, knowing that the statement concealed or omitted facts, or contained false or
2 misleading information concerning a fact material to said claim; and/or did assist, abet,
3 solicit or conspire to present or cause to be presented a statement to an insurer, a reinsurer, a
4 producer, a broker or any agent thereof, knowing that said statement concealed or omitted
5 facts, or did contain false or misleading information concerning a fact material to a claim for
6 payment or other benefits under such policy issued pursuant to Title 57 of the Nevada
7 Revised Statutes, by falsely representing to VETERANS ADMINISTRATION that the
8 billed anesthesia time and/or charges for the endoscopic procedure performed on MICHAEL
9 WASHINGTON were more than the actual anesthetic time and/or charges, said false
10 representation resulting in the payment of money to Defendants and/or their medical practice
11 and/or the racketeering enterprise which exceeded that which would have normally been
12 allowed for said procedure; Defendants being responsible under one or more of the
13 following principles of criminal liability, to wit: (1) by directly committing said acts; and/or
14 (2) aiding or abetting each other in the commission of the crime by directly or indirectly
15 counseling, encouraging, hiring, commanding, inducing, or procuring each other, and/or
16 others to commit said acts, Defendants acting with the intent to commit said crime, and/or
17 (3) pursuant to a conspiracy to commit this crime.

18 COUNT 6 - INSURANCE FRAUD

19 Defendants, did on or about July 25, 2007, knowingly and willfully present, or cause
20 to be presented a statement as a part of, or in support of, a claim for payment or other
21 benefits under a policy of insurance issued pursuant to Title 57 of the Nevada Revised
22 Statutes, knowing that the statement concealed or omitted facts, or contained false or
23 misleading information concerning a fact material to said claim; and/or did assist, abet,
24 solicit or conspire to present or cause to be presented a statement to an insurer, a reinsurer, a
25 producer, a broker or any agent thereof, knowing that said statement concealed or omitted
26 facts, or did contain false or misleading information concerning a fact material to a claim for
27 payment or other benefits under such policy issued pursuant to Title 57 of the Nevada
28 Revised Statutes, by falsely representing to ANTHEM BLUE CROSS AND BLUE

1 SHIELD that the billed anesthesia time and/or charges for the endoscopic procedure
2 performed on KENNETH RUBINO were more than the actual anesthetic time and/or
3 charges, said false representation resulting in the payment of money to Defendants and/or
4 their medical practice and/or the racketeering enterprise which exceeded that which would
5 have normally been allowed for said procedure; Defendants being responsible under one or
6 more of the following principles of criminal liability, to wit: (1) by directly committing said
7 acts; and/or (2) aiding or abetting each other in the commission of the crime by directly or
8 indirectly counseling, encouraging, hiring, commanding, inducing, or procuring each other,
9 and/or others to commit said acts, Defendants acting with the intent to commit said crime,
10 and/or (3) pursuant to a conspiracy to commit this crime.

11 COUNT 7 - PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS
12 OR PROPERTY

13 Defendants, did on or about September 21, 2007, then and there willfully and
14 unlawfully perform acts in willful or wanton disregard of the safety of persons or property
15 resulting in substantial bodily harm to STACY HUTCHINSON, in the following manner, to-
16 wit: by Defendants performing one or more of the following acts: (1) by directly
17 administering and/or directly or indirectly instructing employees of the Endoscopy Center of
18 Southern Nevada, (ECSN) to administer one or more doses of the anesthetic drug Propofol
19 from a single use vial to more than one patient contrary to the express product labeling of
20 said drug and in violation of universally accepted safety precautions for the administration of
21 said drug; and/or (2) by creating an employment environment in which said employees were
22 pressured to administer one or more doses of the anesthetic drug Propofol from a single use
23 vial to more than one patient contrary to the express product labeling of said drug and in
24 violation of universally accepted safety precautions for the administration of said drug;
25 and/or (3) by directly reusing and/or directly or indirectly instructing said employees, and/or
26 creating an employment environment in which said employees were pressured to reuse
27 syringes and/or needles and/or biopsy forceps and/or snares and/or bite blocks contrary to
28 the express product labeling of said items, and/or in violation of universally accepted safety

1 precautions for the use of said items; and/or (4) by directly limiting and/or directly or
2 indirectly instructing said employees, and/or creating an employment environment in which
3 said employees were pressured to limit the use of medical supplies necessary to conduct safe
4 endoscopic procedures; and/or (5) by falsely precharting patient records and/or rushing
5 patients through said endoscopy center and/or rushing patient procedures at the expense of
6 patient safety and/or well being and/or directly or indirectly instructing said employees,
7 and/or creating an employment environment in which said employees were pressured to
8 falsely prechart patient records and/or rush patients through said endoscopy center and/or
9 rush patient procedures at the expense of patient safety and/or well being; and/or (6) by
10 directly or indirectly scheduling and/or treating an unreasonable number of patients per day
11 which resulted in substandard care and/or jeopardized the safety and/or well being of said
12 patients; and/or (7) by directly failing to adequately clean and/or prepare endoscopy scopes,
13 contrary to the express manufacturers guidelines for the handling and processing of said
14 endoscopy scopes, and/or in violation of universally accepted safety precautions for the use
15 of said scopes and/or directly or indirectly instructing said employees, and/or creating an
16 employment environment in which said employees were inadequately trained and/or
17 pressured to provide endoscopy scopes for patient procedures that were not adequately
18 cleaned and/or prepared contrary to the express manufacturers guidelines for the handling
19 and processing of said endoscopy scopes, and/or in violation of universally accepted safety
20 precautions for the use of said scopes; Defendants being responsible under one or more of
21 the following principles of criminal liability, to wit: (1) by directly committing said acts;
22 and/or (2) aiding or abetting each other in the commission of the crime by directly or
23 indirectly counseling, encouraging, hiring, commanding, inducing, or procuring each other,
24 and/or others to commit said acts, Defendants acting with the intent to commit said crime,
25 and/or (3) pursuant to a conspiracy to commit this crime.

26 COUNT 8 - CRIMINAL NEGLECT OF PATIENTS

27 Defendants, on or about September 25, 2007, being professional caretakers of
28 STACY HUTCHINSON, did act or omit to act in an aggravated, reckless or gross manner,

1 failing to provide such service, care or supervision as is reasonable and necessary to
2 maintain the health or safety of said STACY HUTCHINSON, resulting in substantial bodily
3 harm to STACY HUTCHINSON, said acts or omissions being such a departure from what
4 would be the conduct of an ordinarily prudent, careful person under the same circumstances
5 that it is contrary to a proper regard for danger to human life or constitutes indifference to
6 the resulting consequences, said consequences of the negligent act or omission being
7 reasonably foreseeable; said danger to human life not being the result of inattention,
8 mistaken judgment or misadventure, but the natural and probable result of said aggravated
9 reckless or grossly negligent act or omission, by performing one or more of the following
10 acts: (1) by directly or indirectly instructing employees of the Endoscopy Center of
11 Southern Nevada, (ECSN) to administer one or more doses of the anesthetic drug Propofol
12 from a single use vial to more than one patient contrary to the express product labeling of
13 said drug and in violation of universally accepted safety precautions for the administration of
14 said drug; and/or (2) by creating an employment environment in which said employees were
15 pressured to administer one or more doses of the anesthetic drug Propofol from a single use
16 vial to more than one patient contrary to the express product labeling of said drug and in
17 violation of universally accepted safety precautions for the administration of said drug;
18 and/or (3) by directly or indirectly instructing said employees, and/or creating an
19 employment environment in which said employees were pressured to reuse syringes and/or
20 needles and/or biopsy forceps and/or snares and/or bite blocks contrary to the express
21 product labeling of said items, and/or in violation of universally accepted safety precautions
22 for the use of said items; and/or (4) by directly or indirectly instructing said employees,
23 and/or creating an employment environment in which said employees were pressured to limit
24 the use of medical supplies necessary to conduct safe endoscopic procedures; and/or (5) by
25 directly or indirectly instructing said employees, and/or creating an employment
26 environment in which said employees were pressured to falsely prechart patient records
27 and/or rush patients through said endoscopy center and/or rush patient procedures at the
28 expense of patient safety and/or well being; and/or (6) by directly or indirectly scheduling

1 and/or treating an unreasonable number of patients per day which resulted in substandard
2 care and/or jeopardized the safety and/or well being of said patients; and/or (7) by directly or
3 indirectly instructing said employees, and/or creating an employment environment in which
4 said employees were inadequately trained and/or pressured to provide endoscopy scopes for
5 patient procedures that were not adequately cleaned and/or prepared contrary to the express
6 manufacturers guidelines for the handling and processing of said endoscopy scopes, and/or
7 in violation of universally accepted safety precautions for the use of said scopes; and/or (8)
8 by methods unknown; for the purpose of enhancing the financial profit of ECSN, said act(s)
9 or omission(s) causing the transmission of Hepatitis C virus from patient KENNETH
10 RUBINO to patient STACY HUTCHINSON, who was not previously infected with the
11 Hepatitis C virus; Defendants being responsible under one or more of the following
12 principles of criminal liability, to wit: (1) by directly committing said acts; and/or (2) aiding
13 or abetting each other in the commission of the crime by directly or indirectly counseling,
14 encouraging, hiring, commanding, inducing, or procuring each other, and/or others to
15 commit said acts, Defendants acting with the intent to commit said crime, and/or (3)
16 pursuant to a conspiracy to commit this crime.

17 COUNT 9 - INSURANCE FRAUD

18 Defendants, did on or about September 21, 2007, knowingly and willfully present, or
19 cause to be presented a statement as a part of, or in support of, a claim for payment or other
20 benefits under a policy of insurance issued pursuant to Title 57 of the Nevada Revised
21 Statutes, knowing that the statement concealed or omitted facts, or contained false or
22 misleading information concerning a fact material to said claim; and/or did assist, abet,
23 solicit or conspire to present or cause to be presented a statement to an insurer, a reinsurer, a
24 producer, a broker or any agent thereof, knowing that said statement concealed or omitted
25 facts, or did contain false or misleading information concerning a fact material to a claim for
26 payment or other benefits under such policy issued pursuant to Title 57 of the Nevada
27 Revised Statutes, by falsely representing to HEALTH PLAN OF NEVADA that the billed
28 anesthesia time and/or charges for the endoscopic procedure performed on STACY

HUTCHINSON were more than the actual anesthetic time and/or charges, said false representation resulting in the payment of money to Defendants and/or their medical practice and/or the racketeering enterprise which exceeded that which would have normally been allowed for said procedure; Defendants being responsible under one or more of the following principles of criminal liability, to wit: (1) by directly committing said acts; and/or (2) aiding or abetting each other in the commission of the crime by directly or indirectly counseling, encouraging, hiring, commanding, inducing, or procuring each other, and/or others to commit said acts, Defendants acting with the intent to commit said crime, and/or (3) pursuant to a conspiracy to commit this crime.

COUNT 10 - PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS OR PROPERTY

Defendants, did on or about September 21, 2007, then and there willfully and unlawfully perform acts in willful or wanton disregard of the safety of persons or property resulting in substantial bodily harm to RUDOLFO MEANA, in the following manner, to-wit: by Defendants performing one or more of the following acts: (1) by directly administering and/or directly or indirectly instructing employees of the Endoscopy Center of Southern Nevada, (ECSN) to administer one or more doses of the anesthetic drug Propofol from a single use vial to more than one patient contrary to the express product labeling of said drug and in violation of universally accepted safety precautions for the administration of said drug; and/or (2) by creating an employment environment in which said employees were pressured to administer one or more doses of the anesthetic drug Propofol from a single use vial to more than one patient contrary to the express product labeling of said drug and in violation of universally accepted safety precautions for the administration of said drug; and/or (3) by directly reusing and/or directly or indirectly instructing said employees, and/or creating an employment environment in which said employees were pressured to reuse syringes and/or needles and/or biopsy forceps and/or snares and/or bite blocks contrary to the express product labeling of said items, and/or in violation of universally accepted safety precautions for the use of said items; and/or (4) by directly limiting and/or directly or

1 indirectly instructing said employees, and/or creating an employment environment in which
2 said employees were pressured to limit the use of medical supplies necessary to conduct safe
3 endoscopic procedures; and/or (5) by falsely precharting patient records and/or rushing
4 patients through said endoscopy center and/or rushing patient procedures at the expense of
5 patient safety and/or well being and/or directly or indirectly instructing said employees,
6 and/or creating an employment environment in which said employees were pressured to
7 falsely prechart patient records and/or rush patients through said endoscopy center and/or
8 rush patient procedures at the expense of patient safety and/or well being; and/or (6) by
9 directly or indirectly scheduling and/or treating an unreasonable number of patients per day
10 which resulted in substandard care and/or jeopardized the safety and/or well being of said
11 patients; and/or (7) by directly failing to adequately clean and/or prepare endoscopy scopes,
12 contrary to the express manufacturers guidelines for the handling and processing of said
13 endoscopy scopes, and/or in violation of universally accepted safety precautions for the use
14 of said scopes and/or directly or indirectly instructing said employees, and/or creating an
15 employment environment in which said employees were inadequately trained and/or
16 pressured to provide endoscopy scopes for patient procedures that were not adequately
17 cleaned and/or prepared contrary to the express manufacturers guidelines for the handling
18 and processing of said endoscopy scopes, and/or in violation of universally accepted safety
19 precautions for the use of said scopes; Defendants being responsible under one or more of
20 the following principles of criminal liability, to wit: (1) by directly committing said acts;
21 and/or (2) aiding or abetting each other in the commission of the crime by directly or
22 indirectly counseling, encouraging, hiring, commanding, inducing, or procuring each other,
23 and/or others to commit said acts, Defendants acting with the intent to commit said crime,
24 and/or (3) pursuant to a conspiracy to commit this crime.

25 COUNT 11 - CRIMINAL NEGLECT OF PATIENTS

26 Defendants, on or about September 21, 2007, being professional caretakers of
27 RUDOLFO MEANA, did act or omit to act in an aggravated, reckless or gross manner,
28 failing to provide such service, care or supervision as is reasonable and necessary to

1 maintain the health or safety of said RUDOLFO MEANA, resulting in substantial bodily
2 harm to RUDOLFO MEANA, said acts or omissions being such a departure from what
3 would be the conduct of an ordinarily prudent, careful person under the same circumstances
4 that it is contrary to a proper regard for danger to human life or constitutes indifference to
5 the resulting consequences, said consequences of the negligent act or omission being
6 reasonably foreseeable; said danger to human life not being the result of inattention,
7 mistaken judgment or misadventure, but the natural and probable result of said aggravated
8 reckless or grossly negligent act or omission, by performing one or more of the following
9 acts: (1) by directly or indirectly instructing employees of the Endoscopy Center of
10 Southern Nevada, (ECSN) to administer one or more doses of the anesthetic drug Propofol
11 from a single use vial to more than one patient contrary to the express product labeling of
12 said drug and in violation of universally accepted safety precautions for the administration of
13 said drug; and/or (2) by creating an employment environment in which said employees were
14 pressured to administer one or more doses of the anesthetic drug Propofol from a single use
15 vial to more than one patient contrary to the express product labeling of said drug and in
16 violation of universally accepted safety precautions for the administration of said drug;
17 and/or (3) by directly or indirectly instructing said employees, and/or creating an
18 employment environment in which said employees were pressured to reuse syringes and/or
19 needles and/or biopsy forceps and/or snares and/or bite blocks contrary to the express
20 product labeling of said items, and/or in violation of universally accepted safety precautions
21 for the use of said items; and/or (4) by directly or indirectly instructing said employees,
22 and/or creating an employment environment in which said employees were pressured to limit
23 the use of medical supplies necessary to conduct safe endoscopic procedures; and/or (5) by
24 directly or indirectly instructing said employees, and/or creating an employment
25 environment in which said employees were pressured to falsely prechart patient records
26 and/or rush patients through said endoscopy center and/or rush patient procedures at the
27 expense of patient safety and/or well being; and/or (6) by directly or indirectly scheduling
28 and/or treating an unreasonable number of patients per day which resulted in substandard

1 care and/or jeopardized the safety and/or well being of said patients; and/or (7) by directly or
2 indirectly instructing said employees, and/or creating an employment environment in which
3 said employees were inadequately trained and/or pressured to provide endoscopy scopes for
4 patient procedures that were not adequately cleaned and/or prepared contrary to the express
5 manufacturers guidelines for the handling and processing of said endoscopy scopes, and/or
6 in violation of universally accepted safety precautions for the use of said scopes; and/or (8)
7 by methods unknown; for the purpose of enhancing the financial profit of ECSN, said act(s)
8 or omission(s) causing the transmission of Hepatitis C virus from patient KENNETH
9 RUBINO to patient RUDOLFO MEANA, who was not previously infected with the
10 Hepatitis C virus; Defendants being responsible under one or more of the following
11 principles of criminal liability, to wit: (1) by directly committing said acts; and/or (2) aiding
12 or abetting each other in the commission of the crime by directly or indirectly counseling,
13 encouraging, hiring, commanding, inducing, or procuring each other, and/or others to
14 commit said acts, Defendants acting with the intent to commit said crime, and/or (3)
15 pursuant to a conspiracy to commit this crime.

16 COUNT 12 - INSURANCE FRAUD

17 Defendants, did on or about September 21, 2007, knowingly and willfully present, or
18 cause to be presented a statement as a part of, or in support of, a claim for payment or other
19 benefits under a policy of insurance issued pursuant to Title 57 of the Nevada Revised
20 Statutes, knowing that the statement concealed or omitted facts, or contained false or
21 misleading information concerning a fact material to said claim; and/or did assist, abet,
22 solicit or conspire to present or cause to be presented a statement to an insurer, a reinsurer, a
23 producer, a broker or any agent thereof, knowing that said statement concealed or omitted
24 facts, or did contain false or misleading information concerning a fact material to a claim for
25 payment or other benefits under such policy issued pursuant to Title 57 of the Nevada
26 Revised Statutes, by falsely representing to SECURE HORIZONS and/or PACIFICARE that
27 the billed anesthesia time and/or charges for the endoscopic procedure performed on
28 RUDOLFO MEANA were more than the actual anesthetic time and/or charges, said false

1 representation resulting in the payment of money to Defendants and/or their medical practice
2 and/or the racketeering enterprise which exceeded that which would have normally been
3 allowed for said procedure; Defendants being responsible under one or more of the
4 following principles of criminal liability, to wit: (1) by directly committing said acts; and/or
5 (2) aiding or abetting each other in the commission of the crime by directly or indirectly
6 counseling, encouraging, hiring, commanding, inducing, or procuring each other, and/or
7 others to commit said acts, Defendants acting with the intent to commit said crime, and/or
8 (3) pursuant to a conspiracy to commit this crime.

9 COUNT 13 - PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS
10 OR PROPERTY

11 Defendants, did on or about September 21, 2007, then and there willfully and
12 unlawfully perform acts in willful or wanton disregard of the safety of persons or property
13 resulting in substantial bodily harm to PATTY ASPINWALL, in the following manner, to-
14 wit: by Defendants performing one or more of the following acts: (1) by directly
15 administering and/or directly or indirectly instructing employees of the Endoscopy Center of
16 Southern Nevada, (ECSN) to administer one or more doses of the anesthetic drug Propofol
17 from a single use vial to more than one patient contrary to the express product labeling of
18 said drug and in violation of universally accepted safety precautions for the administration of
19 said drug; and/or (2) by creating an employment environment in which said employees were
20 pressured to administer one or more doses of the anesthetic drug Propofol from a single use
21 vial to more than one patient contrary to the express product labeling of said drug and in
22 violation of universally accepted safety precautions for the administration of said drug;
23 and/or (3) by directly reusing and/or directly or indirectly instructing said employees, and/or
24 creating an employment environment in which said employees were pressured to reuse
25 syringes and/or needles and/or biopsy forceps and/or snares and/or bite blocks contrary to
26 the express product labeling of said items, and/or in violation of universally accepted safety
27 precautions for the use of said items; and/or (4) by directly limiting and/or directly or
28 indirectly instructing said employees, and/or creating an employment environment in which

1 said employees were pressured to limit the use of medical supplies necessary to conduct safe
2 endoscopic procedures; and/or (5) by falsely precharting patient records and/or rushing
3 patients through said endoscopy center and/or rushing patient procedures at the expense of
4 patient safety and/or well being and/or directly or indirectly instructing said employees,
5 and/or creating an employment environment in which said employees were pressured to
6 falsely prechart patient records and/or rush patients through said endoscopy center and/or
7 rush patient procedures at the expense of patient safety and/or well being; and/or (6) by
8 directly or indirectly scheduling and/or treating an unreasonable number of patients per day
9 which resulted in substandard care and/or jeopardized the safety and/or well being of said
10 patients; and/or (7) by directly failing to adequately clean and/or prepare endoscopy scopes,
11 contrary to the express manufacturers guidelines for the handling and processing of said
12 endoscopy scopes, and/or in violation of universally accepted safety precautions for the use
13 of said scopes and/or directly or indirectly instructing said employees, and/or creating an
14 employment environment in which said employees were inadequately trained and/or
15 pressured to provide endoscopy scopes for patient procedures that were not adequately
16 cleaned and/or prepared contrary to the express manufacturers guidelines for the handling
17 and processing of said endoscopy scopes, and/or in violation of universally accepted safety
18 precautions for the use of said scopes; Defendants being responsible under one or more of
19 the following principles of criminal liability, to wit: (1) by directly committing said acts;
20 and/or (2) aiding or abetting each other in the commission of the crime by directly or
21 indirectly counseling, encouraging, hiring, commanding, inducing, or procuring each other,
22 and/or others to commit said acts, Defendants acting with the intent to commit said crime,
23 and/or (3) pursuant to a conspiracy to commit this crime.

24 COUNT 14 - CRIMINAL NEGLECT OF PATIENTS

25 Defendants, on or about September 21, 2007, being professional caretakers of
26 PATTY ASPINWALL, did act or omit to act in an aggravated, reckless or gross manner,
27 failing to provide such service, care or supervision as is reasonable and necessary to
28 maintain the health or safety of said PATTY ASPINWALL, resulting in substantial bodily

1 harm to PATTY ASPINWALL, said acts or omissions being such a departure from what
2 would be the conduct of an ordinarily prudent, careful person under the same circumstances
3 that it is contrary to a proper regard for danger to human life or constitutes indifference to
4 the resulting consequences, said consequences of the negligent act or omission being
5 reasonably foreseeable; said danger to human life not being the result of inattention,
6 mistaken judgment or misadventure, but the natural and probable result of said aggravated
7 reckless or grossly negligent act or omission, by performing one or more of the following
8 acts: (1) by directly or indirectly instructing employees of the Endoscopy Center of
9 Southern Nevada, (ECSN) to administer one or more doses of the anesthetic drug Propofol
10 from a single use vial to more than one patient contrary to the express product labeling of
11 said drug and in violation of universally accepted safety precautions for the administration of
12 said drug; and/or (2) by creating an employment environment in which said employees were
13 pressured to administer one or more doses of the anesthetic drug Propofol from a single use
14 vial to more than one patient contrary to the express product labeling of said drug and in
15 violation of universally accepted safety precautions for the administration of said drug;
16 and/or (3) by directly or indirectly instructing said employees, and/or creating an
17 employment environment in which said employees were pressured to reuse syringes and/or
18 needles and/or biopsy forceps and/or snares and/or bite blocks contrary to the express
19 product labeling of said items, and/or in violation of universally accepted safety precautions
20 for the use of said items; and/or (4) by directly or indirectly instructing said employees,
21 and/or creating an employment environment in which said employees were pressured to limit
22 the use of medical supplies necessary to conduct safe endoscopic procedures; and/or (5) by
23 directly or indirectly instructing said employees, and/or creating an employment
24 environment in which said employees were pressured to falsely prechart patient records
25 and/or rush patients through said endoscopy center and/or rush patient procedures at the
26 expense of patient safety and/or well being; and/or (6) by directly or indirectly scheduling
27 and/or treating an unreasonable number of patients per day which resulted in substandard
28 care and/or jeopardized the safety and/or well being of said patients; and/or (7) by directly or

1 indirectly instructing said employees, and/or creating an employment environment in which
2 said employees were inadequately trained and/or pressured to provide endoscopy scopes for
3 patient procedures that were not adequately cleaned and/or prepared contrary to the express
4 manufacturers guidelines for the handling and processing of said endoscopy scopes, and/or
5 in violation of universally accepted safety precautions for the use of said scopes; and/or (8)
6 by methods unknown; for the purpose of enhancing the financial profit of ECSN, said act(s)
7 or omission(s) causing the transmission of Hepatitis C virus from patient KENNETH
8 RUBINO to patient PATTY ASPINWALL, who was not previously infected with the
9 Hepatitis C virus; Defendants being responsible under one or more of the following
10 principles of criminal liability, to wit: (1) by directly committing said acts; and/or (2) aiding
11 or abetting each other in the commission of the crime by directly or indirectly counseling,
12 encouraging, hiring, commanding, inducing, or procuring each other, and/or others to
13 commit said acts, Defendants acting with the intent to commit said crime, and/or (3)
14 pursuant to a conspiracy to commit this crime.

15 COUNT 15 - INSURANCE FRAUD

16 Defendants, did on or about September 21, 2007, knowingly and willfully present, or
17 cause to be presented a statement as a part of, or in support of, a claim for payment or other
18 benefits under a policy of insurance issued pursuant to Title 57 of the Nevada Revised
19 Statutes, knowing that the statement concealed or omitted facts, or contained false or
20 misleading information concerning a fact material to said claim; and/or did assist, abet,
21 solicit or conspire to present or cause to be presented a statement to an insurer, a reinsurer, a
22 producer, a broker or any agent thereof, knowing that said statement concealed or omitted
23 facts, or did contain false or misleading information concerning a fact material to a claim for
24 payment or other benefits under such policy issued pursuant to Title 57 of the Nevada
25 Revised Statutes, by falsely representing to ANTHEM BLUE CROSS AND BLUE
26 SHIELD that the billed anesthesia time and/or charges for the endoscopic procedure
27 performed on PATTY ASPINWALL were more than the actual anesthetic time and/or
28 charges, said false representation resulting in the payment of money to Defendants and/or

1 their medical practice and/or the racketeering enterprise which exceeded that which would
2 have normally been allowed for said procedure; Defendants being responsible under one or
3 more of the following principles of criminal liability, to wit: (1) by directly committing said
4 acts; and/or (2) aiding or abetting each other in the commission of the crime by directly or
5 indirectly counseling, encouraging, hiring, commanding, inducing, or procuring each other,
6 and/or others to commit said acts, Defendants acting with the intent to commit said crime,
7 and/or (3) pursuant to a conspiracy to commit this crime.

8 COUNT 16 - INSURANCE FRAUD

9 Defendants, did on or about September 21, 2007, knowingly and willfully present, or
10 cause to be presented a statement as a part of, or in support of, a claim for payment or other
11 benefits under a policy of insurance issued pursuant to Title 57 of the Nevada Revised
12 Statutes, knowing that the statement concealed or omitted facts, or contained false or
13 misleading information concerning a fact material to said claim; and/or did assist, abet,
14 solicit or conspire to present or cause to be presented a statement to an insurer, a reinsurer, a
15 producer, a broker or any agent thereof, knowing that said statement concealed or omitted
16 facts, or did contain false or misleading information concerning a fact material to a claim for
17 payment or other benefits under such policy issued pursuant to Title 57 of the Nevada
18 Revised Statutes, by falsely representing to UNITED HEALTH SERVICES that the billed
19 anesthesia time and/or charges for the endoscopic procedure performed on PATTY
20 ASPINWALL were more than the actual anesthetic time and/or charges, said false
21 representation resulting in the payment of money to Defendants and/or their medical practice
22 and/or the racketeering enterprise which exceeded that which would have normally been
23 allowed for said procedure; Defendants being responsible under one or more of the
24 following principles of criminal liability, to wit: (1) by directly committing said acts; and/or
25 (2) aiding or abetting each other in the commission of the crime by directly or indirectly
26 counseling, encouraging, hiring, commanding, inducing, or procuring each other, and/or
27 others to commit said acts, Defendants acting with the intent to commit said crime, and/or
28 (3) pursuant to a conspiracy to commit this crime.

COUNT 17 - PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS
OR PROPERTY

Defendants, did on or about September 21, 2007, then and there willfully and unlawfully perform acts in willful or wanton disregard of the safety of persons or property resulting in substantial bodily harm to SONIA ORELLANA-RIVERA, in the following manner, to-wit: by Defendants performing one or more of the following acts: (1) by directly administering and/or directly or indirectly instructing employees of the Endoscopy Center of Southern Nevada, (ECSN) to administer one or more doses of the anesthetic drug Propofol from a single use vial to more than one patient contrary to the express product labeling of said drug and in violation of universally accepted safety precautions for the administration of said drug; and/or (2) by creating an employment environment in which said employees were pressured to administer one or more doses of the anesthetic drug Propofol from a single use vial to more than one patient contrary to the express product labeling of said drug and in violation of universally accepted safety precautions for the administration of said drug; and/or (3) by directly reusing and/or directly or indirectly instructing said employees, and/or creating an employment environment in which said employees were pressured to reuse syringes and/or needles and/or biopsy forceps and/or snares and/or bite blocks contrary to the express product labeling of said items, and/or in violation of universally accepted safety precautions for the use of said items; and/or (4) by directly limiting and/or directly or indirectly instructing said employees, and/or creating an employment environment in which said employees were pressured to limit the use of medical supplies necessary to conduct safe endoscopic procedures; and/or (5) by falsely precharting patient records and/or rushing patients through said endoscopy center and/or rushing patient procedures at the expense of patient safety and/or well being and/or directly or indirectly instructing said employees, and/or creating an employment environment in which said employees were pressured to falsely prechart patient records and/or rush patients through said endoscopy center and/or rush patient procedures at the expense of patient safety and/or well being; and/or (6) by directly or indirectly scheduling and/or treating an unreasonable number of patients per day

1 which resulted in substandard care and/or jeopardized the safety and/or well being of said
2 patients; and/or (7) by directly failing to adequately clean and/or prepare endoscopy scopes,
3 contrary to the express manufacturers guidelines for the handling and processing of said
4 endoscopy scopes, and/or in violation of universally accepted safety precautions for the use
5 of said scopes and/or directly or indirectly instructing said employees, and/or creating an
6 employment environment in which said employees were inadequately trained and/or
7 pressured to provide endoscopy scopes for patient procedures that were not adequately
8 cleaned and/or prepared contrary to the express manufacturers guidelines for the handling
9 and processing of said endoscopy scopes, and/or in violation of universally accepted safety
10 precautions for the use of said scopes; Defendants being responsible under one or more of
11 the following principles of criminal liability, to wit: (1) by directly committing said acts;
12 and/or (2) aiding or abetting each other in the commission of the crime by directly or
13 indirectly counseling, encouraging, hiring, commanding, inducing, or procuring each other,
14 and/or others to commit said acts, Defendants acting with the intent to commit said crime,
15 and/or (3) pursuant to a conspiracy to commit this crime.

16 COUNT 18 - CRIMINAL NEGLECT OF PATIENTS

17 Defendants, on or about September 21, 2007, being professional caretakers of SONIA
18 ORELLANA-RIVERA, did act or omit to act in an aggravated, reckless or gross manner,
19 failing to provide such service, care or supervision as is reasonable and necessary to
20 maintain the health or safety of said SONIA ORELLANA-RIVERA, resulting in substantial
21 bodily harm to SONIA ORELLANA-RIVERA, said acts or omissions being such a
22 departure from what would be the conduct of an ordinarily prudent, careful person under the
23 same circumstances that it is contrary to a proper regard for danger to human life or
24 constitutes indifference to the resulting consequences, said consequences of the negligent act
25 or omission being reasonably foreseeable; said danger to human life not being the result of
26 inattention, mistaken judgment or misadventure, but the natural and probable result of said
27 aggravated reckless or grossly negligent act or omission, by performing one or more of the
28 following acts: (1) by directly or indirectly instructing employees of the Endoscopy Center

1 of Southern Nevada, (ECSN) to administer one or more doses of the anesthetic drug
2 Propofol from a single use vial to more than one patient contrary to the express product
3 labeling of said drug and in violation of universally accepted safety precautions for the
4 administration of said drug; and/or (2) by creating an employment environment in which
5 said employees were pressured to administer one or more doses of the anesthetic drug
6 Propofol from a single use vial to more than one patient contrary to the express product
7 labeling of said drug and in violation of universally accepted safety precautions for the
8 administration of said drug; and/or (3) by directly or indirectly instructing said employees,
9 and/or creating an employment environment in which said employees were pressured to
10 reuse syringes and/or needles and/or biopsy forceps and/or snares and/or bite blocks contrary
11 to the express product labeling of said items, and/or in violation of universally accepted
12 safety precautions for the use of said items; and/or (4) by directly or indirectly instructing
13 said employees, and/or creating an employment environment in which said employees were
14 pressured to limit the use of medical supplies necessary to conduct safe endoscopic
15 procedures; and/or (5) by directly or indirectly instructing said employees, and/or creating an
16 employment environment in which said employees were pressured to falsely prechart patient
17 records and/or rush patients through said endoscopy center and/or rush patient procedures at
18 the expense of patient safety and/or well being; and/or (6) by directly or indirectly
19 scheduling and/or treating an unreasonable number of patients per day which resulted in
20 substandard care and/or jeopardized the safety and/or well being of said patients; and/or (7)
21 by directly or indirectly instructing said employees, and/or creating an employment
22 environment in which said employees were inadequately trained and/or pressured to provide
23 endoscopy scopes for patient procedures that were not adequately cleaned and/or prepared
24 contrary to the express manufacturers guidelines for the handling and processing of said
25 endoscopy scopes, and/or in violation of universally accepted safety precautions for the use
26 of said scopes; and/or (8) by methods unknown; for the purpose of enhancing the financial
27 profit of ECSN, said act(s) or omission(s) causing the transmission of Hepatitis C virus from
28 patient KENNETH RUBINO to patient SONIA ORELLANA-RIVERA, who was not

1 previously infected with the Hepatitis C virus; Defendants being responsible under one or
2 more of the following principles of criminal liability, to wit: (1) by directly committing said
3 acts; and/or (2) aiding or abetting each other in the commission of the crime by directly or
4 indirectly counseling, encouraging, hiring, commanding, inducing, or procuring each other,
5 and/or others to commit said acts, Defendants acting with the intent to commit said crime,
6 and/or (3) pursuant to a conspiracy to commit this crime.

7 COUNT 19 - INSURANCE FRAUD

8 Defendants, did on or about September 21, 2007, knowingly and willfully present, or
9 cause to be presented a statement as a part of, or in support of, a claim for payment or other
10 benefits under a policy of insurance issued pursuant to Title 57 of the Nevada Revised
11 Statutes, knowing that the statement concealed or omitted facts, or contained false or
12 misleading information concerning a fact material to said claim; and/or did assist, abet,
13 solicit or conspire to present or cause to be presented a statement to an insurer, a reinsurer, a
14 producer, a broker or any agent thereof, knowing that said statement concealed or omitted
15 facts, or did contain false or misleading information concerning a fact material to a claim for
16 payment or other benefits under such policy issued pursuant to Title 57 of the Nevada
17 Revised Statutes, by falsely representing to CULINARY WORKERS HEALTH FUND that
18 the billed anesthesia time and/or charges for the endoscopic procedure performed on SONIA
19 ORELLANA-RIVERA were more than the actual anesthetic time and/or charges, said false
20 representation resulting in the payment of money to Defendants and/or their medical practice
21 and/or the racketeering enterprise which exceeded that which would have normally been
22 allowed for said procedure; Defendants being responsible under one or more of the
23 following principles of criminal liability, to wit: (1) by directly committing said acts; and/or
24 (2) aiding or abetting each other in the commission of the crime by directly or indirectly
25 counseling, encouraging, hiring, commanding, inducing, or procuring each other, and/or
26 others to commit said acts, Defendants acting with the intent to commit said crime, and/or
27 (3) pursuant to a conspiracy to commit this crime.

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1 COUNT 20 - PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS
2 OR PROPERTY

3 Defendants, did on or about September 21, 2007, then and there willfully and
4 unlawfully perform acts in willful or wanton disregard of the safety of persons or property
5 resulting in substantial bodily harm to CAROLE GRUESKIN, in the following manner, to-
6 wit: by Defendants performing one or more of the following acts: (1) by directly
7 administering and/or directly or indirectly instructing employees of the Endoscopy Center of
8 Southern Nevada, (ECSN) to administer one or more doses of the anesthetic drug Propofol
9 from a single use vial to more than one patient contrary to the express product labeling of
10 said drug and in violation of universally accepted safety precautions for the administration of
11 said drug; and/or (2) by creating an employment environment in which said employees were
12 pressured to administer one or more doses of the anesthetic drug Propofol from a single use
13 vial to more than one patient contrary to the express product labeling of said drug and in
14 violation of universally accepted safety precautions for the administration of said drug;
15 and/or (3) by directly reusing and/or directly or indirectly instructing said employees, and/or
16 creating an employment environment in which said employees were pressured to reuse
17 syringes and/or needles and/or biopsy forceps and/or snares and/or bite blocks contrary to
18 the express product labeling of said items, and/or in violation of universally accepted safety
19 precautions for the use of said items; and/or (4) by directly limiting and/or directly or
20 indirectly instructing said employees, and/or creating an employment environment in which
21 said employees were pressured to limit the use of medical supplies necessary to conduct safe
22 endoscopic procedures; and/or (5) by falsely precharting patient records and/or rushing
23 patients through said endoscopy center and/or rushing patient procedures at the expense of
24 patient safety and/or well being and/or directly or indirectly instructing said employees,
25 and/or creating an employment environment in which said employees were pressured to
26 falsely prechart patient records and/or rush patients through said endoscopy center and/or
27 rush patient procedures at the expense of patient safety and/or well being; and/or (6) by
28 directly or indirectly scheduling and/or treating an unreasonable number of patients per day

1 which resulted in substandard care and/or jeopardized the safety and/or well being of said
2 patients; and/or (7) by directly failing to adequately clean and/or prepare endoscopy scopes,
3 contrary to the express manufacturers guidelines for the handling and processing of said
4 endoscopy scopes, and/or in violation of universally accepted safety precautions for the use
5 of said scopes and/or directly or indirectly instructing said employees, and/or creating an
6 employment environment in which said employees were inadequately trained and/or
7 pressured to provide endoscopy scopes for patient procedures that were not adequately
8 cleaned and/or prepared contrary to the express manufacturers guidelines for the handling
9 and processing of said endoscopy scopes, and/or in violation of universally accepted safety
10 precautions for the use of said scopes; Defendants being responsible under one or more of
11 the following principles of criminal liability, to wit: (1) by directly committing said acts;
12 and/or (2) aiding or abetting each other in the commission of the crime by directly or
13 indirectly counseling, encouraging, hiring, commanding, inducing, or procuring each other,
14 and/or others to commit said acts, Defendants acting with the intent to commit said crime,
15 and/or (3) pursuant to a conspiracy to commit this crime.

16 COUNT 21- CRIMINAL NEGLIGENCE OF PATIENTS

17 Defendants, on or about September 21, 2007, being professional caretakers of
18 CAROLE GRUESKIN, did act or omit to act in an aggravated, reckless or gross manner,
19 failing to provide such service, care or supervision as is reasonable and necessary to
20 maintain the health or safety of said CAROLE GRUESKIN, resulting in substantial bodily
21 harm to CAROLE GRUESKIN, said acts or omissions being such a departure from what
22 would be the conduct of an ordinarily prudent, careful person under the same circumstances
23 that it is contrary to a proper regard for danger to human life or constitutes indifference to
24 the resulting consequences, said consequences of the negligent act or omission being
25 reasonably foreseeable; said danger to human life not being the result of inattention,
26 mistaken judgment or misadventure, but the natural and probable result of said aggravated
27 reckless or grossly negligent act or omission, by performing one or more of the following
28 acts: (1) by directly or indirectly instructing employees of the Endoscopy Center of

1 Southern Nevada, (ECSN) to administer one or more doses of the anesthetic drug Propofol
2 from a single use vial to more than one patient contrary to the express product labeling of
3 said drug and in violation of universally accepted safety precautions for the administration of
4 said drug; and/or (2) by creating an employment environment in which said employees were
5 pressured to administer one or more doses of the anesthetic drug Propofol from a single use
6 vial to more than one patient contrary to the express product labeling of said drug and in
7 violation of universally accepted safety precautions for the administration of said drug;
8 and/or (3) by directly or indirectly instructing said employees, and/or creating an
9 employment environment in which said employees were pressured to reuse syringes and/or
10 needles and/or biopsy forceps and/or snares and/or bite blocks contrary to the express
11 product labeling of said items, and/or in violation of universally accepted safety precautions
12 for the use of said items; and/or (4) by directly or indirectly instructing said employees,
13 and/or creating an employment environment in which said employees were pressured to limit
14 the use of medical supplies necessary to conduct safe endoscopic procedures; and/or (5) by
15 directly or indirectly instructing said employees, and/or creating an employment
16 environment in which said employees were pressured to falsely prechart patient records
17 and/or rush patients through said endoscopy center and/or rush patient procedures at the
18 expense of patient safety and/or well being; and/or (6) by directly or indirectly scheduling
19 and/or treating an unreasonable number of patients per day which resulted in substandard
20 care and/or jeopardized the safety and/or well being of said patients; and/or (7) by directly or
21 indirectly instructing said employees, and/or creating an employment environment in which
22 said employees were inadequately trained and/or pressured to provide endoscopy scopes for
23 patient procedures that were not adequately cleaned and/or prepared contrary to the express
24 manufacturers guidelines for the handling and processing of said endoscopy scopes, and/or
25 in violation of universally accepted safety precautions for the use of said scopes; and/or (8)
26 by methods unknown; for the purpose of enhancing the financial profit of ECSN, said act(s)
27 or omission(s) causing the transmission of Hepatitis C virus from patient KENNETH
28 RUBINO to patient CAROLE GRUESKIN, who was not previously infected with the

1 Hepatitis C virus; Defendants being responsible under one or more of the following
2 principles of criminal liability, to wit: (1) by directly committing said acts; and/or (2) aiding
3 or abetting each other in the commission of the crime by directly or indirectly counseling,
4 encouraging, hiring, commanding, inducing, or procuring each other, and/or others to
5 commit said acts, Defendants acting with the intent to commit said crime, and/or (3)
6 pursuant to a conspiracy to commit this crime.

7 COUNT 22 - INSURANCE FRAUD

8 Defendants, did on or about September 21, 2007, knowingly and willfully present, or
9 cause to be presented a statement as a part of, or in support of, a claim for payment or other
10 benefits under a policy of insurance issued pursuant to Title 57 of the Nevada Revised
11 Statutes, knowing that the statement concealed or omitted facts, or contained false or
12 misleading information concerning a fact material to said claim; and/or did assist, abet,
13 solicit or conspire to present or cause to be presented a statement to an insurer, a reinsurer, a
14 producer, a broker or any agent thereof, knowing that said statement concealed or omitted
15 facts, or did contain false or misleading information concerning a fact material to a claim for
16 payment or other benefits under such policy issued pursuant to Title 57 of the Nevada
17 Revised Statutes, by falsely representing to HEALTH PLAN OF NEVADA that the billed
18 anesthesia time and/or charges for the endoscopic procedure performed on CAROLE
19 GRUESKIN were more than the actual anesthetic time and/or charges, said false
20 representation resulting in the payment of money to Defendants and/or their medical practice
21 and/or the racketeering enterprise which exceeded that which would have normally been
22 allowed for said procedure; Defendants being responsible under one or more of the
23 following principles of criminal liability, to wit: (1) by directly committing said acts; and/or
24 (2) aiding or abetting each other in the commission of the crime by directly or indirectly
25 counseling, encouraging, hiring, commanding, inducing, or procuring each other, and/or
26 others to commit said acts, Defendants acting with the intent to commit said crime, and/or
27 (3) pursuant to a conspiracy to commit this crime.

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COUNT 23 - PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS
OR PROPERTY

Defendants, did on or about September 21, 2007, then and there willfully and unlawfully perform acts in willful or wanton disregard of the safety of persons or property resulting in substantial bodily harm to GWENDOLYN MARTIN, in the following manner, to-wit: by Defendants performing one or more of the following acts: (1) by directly administering and/or directly or indirectly instructing employees of the Endoscopy Center of Southern Nevada, (ECSN) to administer one or more doses of the anesthetic drug Propofol from a single use vial to more than one patient contrary to the express product labeling of said drug and in violation of universally accepted safety precautions for the administration of said drug; and/or (2) by creating an employment environment in which said employees were pressured to administer one or more doses of the anesthetic drug Propofol from a single use vial to more than one patient contrary to the express product labeling of said drug and in violation of universally accepted safety precautions for the administration of said drug; and/or (3) by directly reusing and/or directly or indirectly instructing said employees, and/or creating an employment environment in which said employees were pressured to reuse syringes and/or needles and/or biopsy forceps and/or snares and/or bite blocks contrary to the express product labeling of said items, and/or in violation of universally accepted safety precautions for the use of said items; and/or (4) by directly limiting and/or directly or indirectly instructing said employees, and/or creating an employment environment in which said employees were pressured to limit the use of medical supplies necessary to conduct safe endoscopic procedures; and/or (5) by falsely precharting patient records and/or rushing patients through said endoscopy center and/or rushing patient procedures at the expense of patient safety and/or well being and/or directly or indirectly instructing said employees, and/or creating an employment environment in which said employees were pressured to falsely prechart patient records and/or rush patients through said endoscopy center and/or rush patient procedures at the expense of patient safety and/or well being; and/or (6) by directly or indirectly scheduling and/or treating an unreasonable number of patients per day

1 which resulted in substandard care and/or jeopardized the safety and/or well being of said
2 patients; and/or (7) by directly failing to adequately clean and/or prepare endoscopy scopes,
3 contrary to the express manufacturers guidelines for the handling and processing of said
4 endoscopy scopes, and/or in violation of universally accepted safety precautions for the use
5 of said scopes and/or directly or indirectly instructing said employees, and/or creating an
6 employment environment in which said employees were inadequately trained and/or
7 pressured to provide endoscopy scopes for patient procedures that were not adequately
8 cleaned and/or prepared contrary to the express manufacturers guidelines for the handling
9 and processing of said endoscopy scopes, and/or in violation of universally accepted safety
10 precautions for the use of said scopes; Defendants being responsible under one or more of
11 the following principles of criminal liability, to wit: (1) by directly committing said acts;
12 and/or (2) aiding or abetting each other in the commission of the crime by directly or
13 indirectly counseling, encouraging, hiring, commanding, inducing, or procuring each other,
14 and/or others to commit said acts, Defendants acting with the intent to commit said crime,
15 and/or (3) pursuant to a conspiracy to commit this crime.

16 COUNT 24 - CRIMINAL NEGLECT OF PATIENTS

17 Defendants, on or about September 21, 2007, being professional caretakers of
18 GWENDOLYN MARTIN, did act or omit to act in an aggravated, reckless or gross manner,
19 failing to provide such service, care or supervision as is reasonable and necessary to
20 maintain the health or safety of said GWENDOLYN MARTIN, resulting in substantial
21 bodily harm to GWENDOLYN MARTIN, said acts or omissions being such a departure
22 from what would be the conduct of an ordinarily prudent, careful person under the same
23 circumstances that it is contrary to a proper regard for danger to human life or constitutes
24 indifference to the resulting consequences, said consequences of the negligent act or
25 omission being reasonably foreseeable; said danger to human life not being the result of
26 inattention, mistaken judgment or misadventure, but the natural and probable result of said
27 aggravated reckless or grossly negligent act or omission, by performing one or more of the
28 following acts: (1) by directly or indirectly instructing employees of the Endoscopy Center

1 of Southern Nevada, (ECSN) to administer one or more doses of the anesthetic drug
2 Propofol from a single use vial to more than one patient contrary to the express product
3 labeling of said drug and in violation of universally accepted safety precautions for the
4 administration of said drug; and/or (2) by creating an employment environment in which
5 said employees were pressured to administer one or more doses of the anesthetic drug
6 Propofol from a single use vial to more than one patient contrary to the express product
7 labeling of said drug and in violation of universally accepted safety precautions for the
8 administration of said drug; and/or (3) by directly or indirectly instructing said employees,
9 and/or creating an employment environment in which said employees were pressured to
10 reuse syringes and/or needles and/or biopsy forceps and/or snares and/or bite blocks contrary
11 to the express product labeling of said items, and/or in violation of universally accepted
12 safety precautions for the use of said items; and/or (4) by directly or indirectly instructing
13 said employees, and/or creating an employment environment in which said employees were
14 pressured to limit the use of medical supplies necessary to conduct safe endoscopic
15 procedures; and/or (5) by directly or indirectly instructing said employees, and/or creating an
16 employment environment in which said employees were pressured to falsely prechart patient
17 records and/or rush patients through said endoscopy center and/or rush patient procedures at
18 the expense of patient safety and/or well being; and/or (6) by directly or indirectly
19 scheduling and/or treating an unreasonable number of patients per day which resulted in
20 substandard care and/or jeopardized the safety and/or well being of said patients; and/or (7)
21 by directly or indirectly instructing said employees, and/or creating an employment
22 environment in which said employees were inadequately trained and/or pressured to provide
23 endoscopy scopes for patient procedures that were not adequately cleaned and/or prepared
24 contrary to the express manufacturers guidelines for the handling and processing of said
25 endoscopy scopes, and/or in violation of universally accepted safety precautions for the use
26 of said scopes; and/or (8) by methods unknown; for the purpose of enhancing the financial
27 profit of ECSN, said act(s) or omission(s) causing the transmission of Hepatitis C virus from
28 patient KENNETH RUBINO to patient GWENDOLYN MARTIN, who was not previously

1 infected with the Hepatitis C virus; Defendants being responsible under one or more of the
2 following principles of criminal liability, to wit: (1) by directly committing said acts; and/or
3 (2) aiding or abetting each other in the commission of the crime by directly or indirectly
4 counseling, encouraging, hiring, commanding, inducing, or procuring each other, and/or
5 others to commit said acts, Defendants acting with the intent to commit said crime, and/or
6 (3) pursuant to a conspiracy to commit this crime.

7 COUNT 25 - INSURANCE FRAUD

8 Defendants, did on or between September 20, 2007 and September 21, 2007,
9 knowingly and willfully present, or cause to be presented a statement as a part of, or in
10 support of, a claim for payment or other benefits under a policy of insurance issued pursuant
11 to Title 57 of the Nevada Revised Statutes, knowing that the statement concealed or omitted
12 facts, or contained false or misleading information concerning a fact material to said claim;
13 and/or did assist, abet, solicit or conspire to present or cause to be presented a statement to
14 an insurer, a reinsurer, a producer, a broker or any agent thereof, knowing that said statement
15 concealed or omitted facts, or did contain false or misleading information concerning a fact
16 material to a claim for payment or other benefits under such policy issued pursuant to Title
17 57 of the Nevada Revised Statutes, by falsely representing to PACIFIC CARE that the
18 billed anesthesia time and/or charges for the endoscopic procedure performed on
19 GWENDOLYN MARTIN were more than the actual anesthetic time and/or charges, said
20 false representation resulting in the payment of money to Defendants and/or their medical
21 practice and/or the racketeering enterprise which exceeded that which would have normally
22 been allowed for said procedure; Defendants being responsible under one or more of the
23 following principles of criminal liability, to wit: (1) by directly committing said acts; and/or
24 (2) aiding or abetting each other in the commission of the crime by directly or indirectly
25 counseling, encouraging, hiring, commanding, inducing, or procuring each other, and/or
26 others to commit said acts, Defendants acting with the intent to commit said crime, and/or
27 (3) pursuant to a conspiracy to commit this crime.

28 ///

1 COUNT 26 – THEFT

2 Defendants, did between July 25, 2007 and December 31, 2007, then and there
3 knowingly, feloniously, and without lawful authority, commit theft by obtaining personal
4 property in the amount of \$250.00, or more, lawful money of the United States, from
5 STACY HUTCHINSON, KENNETH RUBINO, PATTY ASPINWALL, SHARRIEFF
6 ZIYAD, MICHAEL WASHINGTON, CAROLE GRUESKIN and RODOLFO MEANA,
7 and/or ANTHEM BLUE CROSS AND BLUE SHIELD, HEALTHCARE PARTNERS OF
8 NEVADA, UNITED HEALTH SERVICES, VETERANS ADMINISTRATION and
9 SECURED HORIZONS, by a material misrepresentation with intent to deprive those
10 persons of the property, in the following manner, to-wit: by falsely representing that the
11 billed anesthesia time and/or charges for the endoscopic procedure performed on STACY
12 HUTCHINSON, KENNETH RUBINO, PATTY ASPINWALL, SHARRIEFF ZIYAD,
13 MICHAEL WASHINGTON, CAROLE GRUESKIN and RODOLFO MEANA, were more
14 than the actual anesthetic time and/or charges, said false representation resulting in the
15 payment of money to Defendants and/or their medical practice and/or the racketeering
16 enterprise, which exceeded that which would have normally been allowed for said
17 procedure, thereby obtaining said personal property by a material misrepresentation with
18 intent to deprive them of the property, Defendants being responsible under one or more of
19 the following principles of criminal liability, to wit: (1) by directly committing said acts;
20 and/or (2) aiding or abetting each other in the commission of the crime by directly or
21 indirectly counseling, encouraging, hiring, commanding, inducing, or procuring each other,
22 and/or others to commit said acts, Defendants acting with the intent to commit said crime,
23 and/or (3) pursuant to a conspiracy to commit this crime.

24 COUNT 27 - OBTAINING MONEY UNDER FALSE PRETENSES

25 Defendants, did on or between September 20, 2007, and December 31, 2007, with
26 intent to cheat and defraud, wilfully, unlawfully, feloniously, knowingly, designedly, and by
27 use of false pretenses, obtain \$250.00, or more, lawful money of the United States from
28 GWENDOLYN MARTIN and/or PACIFICARE, within Las Vegas, Clark County, Nevada,

1 in the following manner, to-wit: by falsely representing that the billed anesthesia times
2 and/or charges for the endoscopic procedures performed on GWENDOLYN MARTIN were
3 more than the actual anesthetic times and/or charges, said false representation resulting in the
4 payment of money to Defendants and/or the medical practice and/or the racketeering
5 enterprise, which exceeded that which would have normally been allowed for said
6 procedures Defendants being responsible under one or more of the following principles of
7 criminal liability, to wit: (1) by directly committing said acts; and/or (2) aiding or abetting
8 each other in the commission of the crime by directly or indirectly counseling, encouraging,
9 hiring, commanding, inducing, or procuring each other, and/or others to commit said acts,
10 Defendants acting with the intent to commit said crime, and/or (3) pursuant to a conspiracy
11 to commit this crime.

12 COUNT 28 - OBTAINING MONEY UNDER FALSE PRETENSES

13 Defendants, did on or between September 21, 2007, and December 31, 2007, with
14 intent to cheat and defraud, wilfully, unlawfully, feloniously, knowingly, designedly, and by
15 use of false pretenses, obtain \$250.00, or more, lawful money of the United States from
16 SONIA ORELLANA-RIVERA and/or CULINARY WORKERS HEALTH FUND, within
17 Las Vegas, Clark County, Nevada, in the following manner, to-wit: by falsely representing
18 that the billed anesthesia times and/or charges for the endoscopic procedures performed on
19 SONIA ORELLANA-RIVERA were more than the actual anesthetic times and/or charges,
20 said false representation resulting in the payment of money to Defendants and/or the medical
21 practice and/or the racketeering enterprise, which exceeded that which would have normally
22 been allowed for said procedures Defendants being responsible under one or more of the
23 following principles of criminal liability, to wit: (1) by directly committing said acts; and/or
24 (2) aiding or abetting each other in the commission of the crime by directly or indirectly
25 counseling, encouraging, hiring, commanding, inducing, or procuring each other, and/or
26 others to commit said acts, Defendants acting with the intent to commit said crime, and/or
27 (3) pursuant to a conspiracy to commit this crime.

28 ///

COUNT 29 – MURDER (SECOND DEGREE)

Defendants, did on or between September 21, 2007 and April 27, 2012, then and there willfully, feloniously, without authority of law, and with malice aforethought, kill RODOLFO MEANA, a human being, by introducing Hepatitis C virus into the body of RODOLFO MEANA, based upon the following principles of criminal liability, to-wit: (1) by the killing occurring under circumstances showing an abandoned and malignant heart; and/or (2) during the commission of an unlawful act, to-wit: criminal neglect of patients, and/or performance of an unlawful act in reckless disregard of persons or property, which in its consequences, naturally tends to destroy the life of a human being; and/or (3) the killing being committed in the prosecution of a felonious intent, to-wit: criminal neglect of patients, and/or performance of an act in reckless disregard of persons or property, which in its consequences, naturally tends to destroy the life of a human being, by directly or indirectly using and/or introducing contaminated medical instruments, supplies, and/or drugs upon or

into the body of RODOLFO MEANA which were contaminated with the Hepatitis C virus; Defendants being responsible under one or more of the following principles of criminal liability, to wit: (1) by directly committing said acts; and/or (2) by aiding or abetting each other and/or others including uncharged confederates in the commission of the crime(s) of criminal neglect of patients, and/or performance of an act in reckless disregard of persons or property by directly or indirectly counseling, encouraging, hiring, commanding, inducing, or procuring each other, and/or others to utilize a patient care delivery system which directly or indirectly limited the use of medical instruments, and/or supplies, and/or drugs; scheduled and/or treated an unreasonable number of patients per day, and/or rushed patients or patient procedures all at the expense of patient safety and/or well being, and which resulted in

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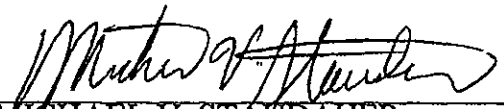
///

1 substandard care and/or jeopardized the safety of RODOLFO MEANA, Defendants acting
2 with the intent to commit the crime(s) of criminal neglect of patients, and/or performance of
3 an act in reckless disregard of persons or property; and/or (3) pursuant to a conspiracy to
4 commit the crime(s) of criminal neglect of patients, and/or performance of an act in reckless
5 disregard of persons or property, Defendants acting in concert throughout.

6 DATED this 3rd day of December, 2012.

7 STEVEN B. WOLFSON
8 DISTRICT ATTORNEY
9 Nevada Bar #001565

10 BY


11 MICHAEL V. STAUDAHER
12 Chief Deputy District Attorney
13 Nevada Bar #008273
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1 Names of witnesses testifying before the Grand Jury:
2 ARMOUR, PATRICIA, NV. HEALTH DISTRICT
3 ASPINWALL, PATTY
4 BAGANG, MAYNARD, LVMPD
5 CAMPBELL, LYNETTE, RN
6 CAROL, CLIFFORD
7 CARRERA, HILARIO
8 CERDA, RYAN, HEALTH CARE BUSINESS SOLUTIONS
9 DESAI, SAEHAL
10 DROBENINE, JAN, CDC LAB SUPERVISOR
11 DUENAS, YERENY, INSURANCE CLAIMS
12 GONZALES, PATRICIA, BLUE CROSS DIRECTOR DEPT.
13 GRUESKIN, CAROLE
14 HAWKINS, MELVIN
15 HUTCHINSON, STACY
16 KALKA, KATIE, UNITED HEALTH GROUP INV.
17 KHUDYAKOV, YURY, CDC
18 KRUEGER, JEFFREY ALLEN, RN
19 LABUS, BRIAN, NV HEALTH DISTRICT
20 LANGLEY, GAYLE, CDC PHYSICIAN
21 LOBIANBO, ANNAMARIE, CRNA
22 MARTIN, GWENDOLYN
23 MEANA, RODOLFO
24 MYERS, ELAINE, CLAIMS DIRECTOR
25 NEMEC, FRANK, GASTROENTEROLOGIST
26 OLSON, ALANE, MEDICAL EXAMINER
27 RIVERA, SONIA ORELLONO
28 RUBINO, KENNETH

1 RUSHING, TONYA, OFFICE MGR.
2 SAGENDORF, VINCENT, CRNA
3 SAMPSON, NANCY, LVMPD
4 SAMS, JOANNE, VET ADMIN. CODER
5 SCHAEFER, MELISSA, CDC PHYSICIAN
6 SHARMA, SATISH, ANESTHESIOLOGIST
7 SIMS, DOROTHY, BUREAU OF LICENSING AND CERTIFICATION
8 SPAETH, CORRINE, CLAIMS DIRECTOR
9 VANDRUFF, MARION, MEDICAL ASSISTANT
10 WASHINGTON, MICHAEL
11 YEE, THOMAS, ANESTHESIOLOGIST
12 YOST, ANNE, NURSE
13 ZIYAD, SHARRIEFF

14
15 Additional witnesses known to the District Attorney at time of filing the Indictment:
16 ALFARO-MARTINEZ, SAMUEL
17 ANWAR, JAVAID, 3006 MARYLAND PKWY #400, LVN 89109
18 ARBOREEN, DAVE, LVMPD
19 ARMENI, PAOLA
20 ARNONE, ANTHONY, LVMPD
21 ASHANTE, DR.
22 BAILEY, PAULINE, 3416 MONTE CARLO DR., LVN 89121
23 BARCLAY, DR. ROBERT
24 BIEN, KATHY, 3800 DALECREST DR. #1117, LVN 89129
25 BLEMINGS, RENATE, 2100 PLAIN ST., PAHRUMP, NV 89060
26 BROWN, DAVID
27 BUI, DR.
28 BUNIN, DANIEL

1 BURKIN, JERALD, FBI SA
2 CALVALHO, DANIEL CARRERA
3 CARAWAY, ANTOINETTE, 1407 BAREBACK CT., HNV 89014
4 CARRERA, ELADIO, 612 CANYON GREENS DR., LVN 89144
5 CARROLL, CLIFFORD, 10313 ORKINEY DR., LVN 89144
6 CASTLEMAN, DR. STEPHANIE
7 CAVETT, JOSHUA, 7829 TATTERSALL FLAG ST., LVN 89139
8 CHAFFEE, ROD, 9303 GILCREASE #1080, LVN 89149
9 CLEMMER, DANA MARIE, 4913 FERRELL ST., NLVN 89034
10 COE, DANIEL, LVMPD
11 COHAN, DR. CHARLES, POB 4144, SAYLORSBURG, PA
12 COOK, KATIE, FBI S/A
13 COOPER, DOUG, CHIEF INV., NV. ST. BOARD OF ME
14 CRANE, AUSA
15 CREMEN, FRANK
16 DESAI, DIPAK, 3093 RED ARROW, LVN 89135
17 DESAI, KUSAM, MD
18 DIAZ, ALLEN, LVMPD INTERPRETER
19 DIBUDUO, CHARLES
20 DORAME, JOHN
21 DRURY, JANINE
22 ECKERT, PHYSICIAN ASST.
23 ELLEN, DIANE
24 FALZONE, LISA, 8024 PEACEFUL WOODS STREET, LVN 89143
25 FARIS, FRANK
26 FIGLER, DAYVID
27 FISHCHER, GAYLE, 1600 CLIFTON MAIL STOP #G37, ATLANTA, GA. 30333
28 FORD, MIKE, LVMPD

1 FRANKS, LISA, PHYSICIAN ASST.
2 GASKILL, SARA
3 GENTILE, DOMINIC
4 GLASS-SERAN, BARBARA, CRNA
5 GRAY, WARREN, LVMPD
6 GREER, MARY, 3462 SHAMROCK AVE., LVN 89120
7 GREGORY, MARTHA
8 HAHN, JASON, LVMPD
9 HANCOCK, L., LVMPD #7083
10 HANSEN, IDA
11 HARPER, TIFFANY
12 HARRIS, ORELENA (HOLLEMAN), 2816 DESERT SONG, LVN 89106
13 HERRERO, CARMELO, 1864 WOODHAVEN DR., HNV 89074
14 HIGGINS, HEATHER, INV. NV. ST. BOARD OF ME
15 HIGUERA, LILIA, 3504 FLOWER, NLVN 89030
16 HITTI, DR. MIRANDA
17 HOWARD, NADINE, HEALTH FACILITIES SURVEYOR
18 HUBBARD, LINDA, 515 PARK ROYAL DR., NLVN 89031
19 HUGHES, LAURA, AG INV.
20 HUYNH, NGUYEN, 3004 HAZY MEADOW LN., LVN 89108
21 IRVIN, JOHNNA
22 JOHNSON, SHONNA S., 22 VIA DE LUCCIA, HNV 89074
23 JONES, LISA, CHIEF NSB OF LICENSURE AND CERTIFICATION (BLC)
24 JURANI, DR.
25 KIRCH, MARLENE
26 KAUL, DR.
27 KAUSHAL, DR. DHAN
28 KELLEY, J., LVMPD #3716

1 KHAN, IKRAM, 3006 S. MARYLAND PKWY, #465 LVN 89109
2 KNOWLES, DR.
3 KOSLOY, LESLEE, RN, HEALTH FACILITIES SURVEYOR
4 LAKEMAN, RONALD, 700 SHADOW LN #165B, LVN 89106
5 LATHROP, CAROL, 1741 AUGUSTA ST., PAHRUMP, NV 89048
6 LATHROP, WILLIAM
7 LEWIS, DR. DANIEL
8 LOBIONDA, CRNA
9 LOPEZ, J. JULIAN, 7106 SMOKE RANCH RD. #120 LVN 89128
10 LUKENS, JOHN
11 MAANO, PETER, RN
12 MALEY, KATIE, 4275 BURNHAM #101, LVN
13 MALMBERG, GEORGE
14 MANTHEI, PETER, 7066 AZURE BEACH AZURE ST., LVN 89148
15 MANUEL, DR. DAVID
16 MARTIN, LOVEY
17 MASON, ALBERT
18 MATHAHS, KEITH, 10220 BUTTON WILLOW DR., LVN 89134
19 MCDOWELL, RALPH, 388 SANTA CANDIDA ST., LVN 89138
20 MCGOWAN, SHANNON, 5420 CARNATION MEADOW ST., LVN 89130
21 MCILROY, ROBIN, FBI
22 MILLER, JAMES
23 MIONE, VINCENT, 2408 W. EL CAMPO GRANDE AVE., NLVN 89031
24 MOORE, DAVID
25 MUKHERJEE, RANADER, MD
26 MURPHY, MAGGIE, 10175 W. SPRING MTN RD. #2012 LVN 89117
27 NAYYAR, SANJAY, MD
28 NAZAR, WILLIAM

1 NAZARIO, DR. BRUNILDA
2 OM, HARI, LLC MGR
3 O'REILLY, JOHN
4 O'REILLY, TIM
5 PAGE-TAYLOR, LESLIE, CDC
6 PATEL, DR.
7 PENSAKOVIC, JOAN
8 PETERSON, KAREN, 2138 FT. SANDERS ST., HNV
9 PHELPS, LISA, 784 MORMON PEAK ST., OVERTON, NV 89040
10 POMERANZ, AUSA
11 PRESTON, LAWRENCE, 801 S. RANCHO DR., STE C-1, LVN
12 QUANNAH, LAKOTA
13 REXFORD, KEVIN
14 RICHVALSKY, KAREN, 3325 NIGUL WAY, LVN 89117
15 ROSEL, LINDA, FBI SA
16 RUSSOM, RUTA, 4854 MONTERREY AVE., LVN 89121
17 SAGENDORF, VINCENT
18 SAMEER, DR. SHEIKH
19 SAPP, BETSY, PHLEBOTOMIST
20 SCAMBIO, JEAN, 2920 YUKON FLATS CT., NLVN 89031
21 SCHULL, JERRY, 5413 SWEET SHADE ST., LVN
22 SENI, DR.
23 SHARMA, DR. SATISH
24 SHARMA, VISHVINDER, DR. 3212 CEDARDALE PL., LVN 89134
25 SHEFNOFF, NEIL, 755 E. MCDOWELL RD., PHOENIX, AZ 85006
26 SMITH, CHARNESSA
27 SOOD, RAJAT
28 STURMAN, GLORIA

1 SUKHDEO, DANIEL, 3925 LEGEND HILLS ST. #203, LVN 89129
2 TAGLE, PEGGY, RN
3 TERRY, JENNIFER, LVMPD INTERPRETER
4 TONY, DR.
5 VAZIRI, DR.
6 WAHID, SHAHID, MD
7 WEBB, KAREN, 1459 S. 14TH ST., OMAHA, NE
8 WHITAKER, GERALDINE, 701 CARPICE DR. #17B, BOULDER CITY, NV 89005
9 WHITELY, R. LVMPD
10 WILLIAMS, SKLAR, RESIDENT AGENT, 8363 W. SUNSET RD. #300, LVN 89113
11 WISE, PATTY
12 YAMPOLSKY, MACE
13 ZIMMERMAN, MARILYN, 550 SEASONS PKWY, BELVIDERE, IL 89040

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LVMPD EV #0802292576
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EXHIBIT 8

EXHIBIT 8


CLERK OF THE COURT

1 RPLY
RICHARD A. WRIGHT
2 Nevada Bar No. 886
MARGARET M. STANISH
3 Nevada Bar No. 4057
WRIGHT STANISH & WINCKLER
4 300 S. Fourth Street, Suite 701
Las Vegas, NV 89101
5 (702) 382-4004
Attorneys for Dipak Desai
6

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 vs.

12 DIPAK KANTILAL DESAI, #1240942,

13 Defendant.
14

Consolidated Case Nos. C265107
C-12-283381

Dept. XXI

Hearing Date: December 11, 2012
Hearing Time: 9:30 a.m.

15 DEFENDANT DESAI'S REPLY TO STATE'S RETURN TO WRIT OF HABEAS
16 CORPUS REGARDING THE MURDER INDICTMENT

17 A. Facially Defective Indictment Violating Procedural and Substantive Due Process

18 Desai's first argument for habeas relief and dismissal of the murder indictment is a
19 procedural and substantive due process challenge based on the defective charging language of
20 the second-degree felony murder offense. The murder indictment is defective on its face
21 because it omits the immediate-and-direct-causal-relationship element that is required by the
22 Nevada Supreme Court. *See, Ramirez v. State*, 126 Nev. Adv. Op. 22, 235 P.3d 619, 621-23
23 (2010); *Labastida v. State*, 115 Nev. 298, 306-07, 986 P.2d 443, 448-49 (1999); *Sheriff v.*
24 *Morris*, 99 Nev. 109, 118, 659 P.2d 852, 859 (1983). Moreover, the second-degree felony
25 murder charge, on its face, subverts substantive due process by alleging, in the alternative, that
26 multiple defendants "*indirectly*" performed negligent acts and they were "*indirectly*" responsible
27 for Rodolfo Meana's death.

28 ///

1 The State's Return gives short shrift to the facial challenge to the indictment. First, it
2 argues that it satisfied the notice pleading requirements by citing the applicable statutes and
3 alleging factual averments and theories of criminal liability. State's Return, p. 5. The State
4 also misinterprets Morris and its progeny. The State argues, "While the State agrees with the
5 line of cases cited by the defense which requires a petit jury to make specific findings to convict
6 on a theory of second degree felony murder, there is no case or statute which imposed the same
7 requirement on a grand jury." State's Return, pp. 5-8. This argument ignores the significance
8 of judicially-created elements of an offense and the constitutional procedural and substantive
9 due process. It also ignores the fact that Morris involved the dismissal of a facially defective
10 indictment "in view of [the Nevada Supreme Court's] holding concerning the necessary
11 elements of proof in a criminal prosecution under the provisions of NRS 200.070." Morris, 99
12 Nev. 120, 659 P.2d at 860.

13 Judicially-created elements of an offense must be alleged in the indictment. *See, United*
14 *States v. Keith*, 605 F.2d 462, 463 (9th Cir.1979) (dismissing involuntary murder indictment
15 that tracked involuntary murder statute but did not include the judicially-created "gross
16 negligence" element); United States v. Parisien, 515 F. Supp. 24, 25-26 (N.D. D.C.
17 1981)(same); " Morris, 99 Nev. at 118-20, 659 P.2d at 859-60 (dismissing second-degree
18 felony murder indictment based on insufficient pleading of judicially-created elements); *see*
19 *generally*, W. LaFave, 5 Crim.Proc., §19.3(a)(3d ed.), "Failure to Allege Essential Elements"
20 (2012).

21 Reciting the statutory language meets due process notice requirement only when the
22 statute "fully, directly, and expressly, without any uncertainty or ambiguity, set forth all the
23 elements necessary to constitute the offense." Hamling v. United States, 418 U.S. 87, 117
24 (1977). Tracking the statutory language is insufficient if the indictment does not include the
25 essential elements of the offense established in case law. Keith, 605 F.2d at 463-64. The Ninth
26 Circuit in Keith rejected an argument similar to the one now posed by the State to salvage the
27 defective indictment:

28 ///

1 The Government contends that the indictment is sufficient because it tracks the
2 language of [the federal involuntary murder statute]. The Government's
3 contention is incorrect. Although an indictment tracking the language of the
4 statute is usually adequate because statutes usually include all the elements of a
5 crime, *an indictment is inadequate when it fails to allege an essential element of
6 the offense even when it tracks the language of the statute.*

7 Keith, 605 F.2d at 464.

8 The State argues that the indictment is sufficient, arguing:

9 The Petitioner claims that because the indictment does not include language as to
10 the immediate and direct causal relationship with regard to a second degree
11 murder charge based on second degree felony murder, that indictment is
12 somehow deficient. First of all, the caption of the indictment contains the
13 citations to the specific statutes under which Petitioner is charged. As such, there
14 is a complete inclusion of the statutory language and the elements of those
15 statutes which are all that is required under notice pleading. In addition, the
16 charge of murder itself contains the factual averments and all theories of criminal
17 liability on which the State is proceeding.

18 State's Return, p. 5.

19 To be clear, Desai is not arguing that the indictment is "somehow deficient" because it
20 merely omits language relating to the immediate and direct causal relationship. The indictment
21 is constitutionally and fatally defective on its face because it omits an *essential element* of
22 second-degree felony murder. Furthermore, its imprecise "and/or" and "directly or indirectly"
23 factual averments do not adequately support this essential element.

24 Contrary to the State's implication, the Nevada Supreme Court's interpretation of the
25 second-degree felony murder statute in the above-cited cases is not "judicial gloss" on the
26 proximate cause element to be fettered out more fully by a petit jury. It is an essential element
27 of the offense designed to limit the scope of the statutory language with the stated purpose of
28 preventing "untoward prosecutions." Ramirez, 235 P.3d. at 622. "[I]f courts have added a
significant refinement in the interpretation of a particular statutory element, that element often
must be pleaded as interpreted rather than as stated in the statutory language, *especially if the
judicial interpretation substantially limits the scope of the statutory language.*" LaFave, *supra*,
text accompanying note 47.

The Nevada Supreme Court clearly set forth the essential elements that it created to limit
the scope of the statute:

[T]he second-degree felony-murder rule only applies when the following two elements are satisfied: (1) "where the [predicate] felony is inherently dangerous, where death or injury is a directly foreseeable consequence of the illegal act," and (2) "where there is an immediate and direct causal relationship—without the intervention of some other source or agency—between the actions of the defendant and the victim's death."

Ramirez, 235 P.3d. at 622. [Emphasis added and citations omitted.]

The Morris case involved both a substantive and procedural due process challenge to an indictment charging second degree murder in a pretrial habeas corpus proceeding. In Morris, the Nevada Supreme Court first recognized the offense of second-degree felony murder. See, Ramirez, 235 P.3d at 621-22 (explaining the judicial evolution of the elements of the second-degree felony murder rule). The Morris Court expressly limited the application of second-degree felony murder and felonious intent murder by creating the following three elements: (1) the predicate felony must be inherently dangerous in the abstract;¹ (2) the death must be a directly foreseeable consequence of the felony; and (3) the defendant's conduct must be the immediate and direct cause of the death without the intervention of some other source or agency. 99 Nev. at 118-19, 659 P.2d at 859. Although the indictment contained the statutory language, the Nevada Supreme Court granted habeas relief, ruling that it was fatally defective because it failed to allege specific facts to satisfy the necessary elements articulated by the Court. See, 99 Nev. at 112 & 119-20, 659 P.2d at 855 & 860.

The instant indictment violates procedural due process because it does not allege the judicially-created elements nor specific facts connecting Desai to each element. The indictment also violates substantive due process because it pleads in the alternative that Desai *indirectly* performed acts that lead to the patient's death and was *indirectly* responsible for the death. The State's return does not appear to address the substantive due process argument. This instant indictment is, therefore, facially defective in contravention of procedural and substantive due process.

¹ The Nevada Supreme Court subsequently clarified this element in Labastida, stating that it must be analyzed by looking at the manner in which the defendant committed the felony as opposed to analyzing the felony in the abstract. 115 Nev. at 307, 986 P.2d at 859.

1 **B. The Grand Jury Instructions were Defective**

2 The grand jury instructions did not include the direct-and-immediate-causal-relationship
3 element. The State cites pre-1985 case law in support of its argument that it is not required to
4 instruct the grand jury on the law. State's Return, p 5, *discussing Hyler v. Sheriff*, 93 Nev. 561,
5 571 P.2d 114 (1977). In 1985, the Legislature added the statutory provision that mandated the
6 prosecution to instruct the grand jury on the elements of the offence: "Before seeking an
7 indictment, or a series of similar indictments, the district attorney shall inform the grand jurors
8 of the specific elements of any public offense which they may consider as the basis of the
9 indictment or indictments." NRS 172.095(2), added by SB 107, 63d Sess., Nev. Stat., p.1028
10 (1985).

11 The State also relies heavily on *Schuster v. Dist. Ct.*, 123 Nev. 187, 160 P.3d 873 (2007)
12 to support its argument that it was not obligated to instruct the grand jury on the immediate and
13 direct causal relationship element. This case held that the prosecution was not obligated to
14 instruct the grand jury on the affirmative defense of self-defense.

15 In the instant habeas petition, Desai argues that the prosecution did not instruct the grand
16 jury on the essential element of the second-degree felony murder and felonious intent offense,
17 i.e., the judicially-created direct-and-immediate-causal-relationship element. Moreover, the
18 prosecution misstated the law to the grand jury.

19 The State argues that it properly instructed the grand jury because the indictment cited
20 the applicable murder statutes and it gave the following instruction:

21 Now you have previously found related to this victim, because you returned a
22 true bill as to both the criminal neglect of patient charge as well as performance
23 of an act in reckless disregard, **you have to make a determination under one**
24 **scenario whether or not those are dangerous felonies. Did they result in**
25 **harm or death to someone?** The other aspect of it is based on all of the
information you have, were the actions of these individuals either directly, or by
aiding and abetting each other, or by conspiring, reckless to the point that they
caused someone to have a depraved heart or reckless indifference to human life,
that kind of thing, and that's what you're here to determine.

26 State's Return, p. 8 (emphasis in original), *citing* GJ Transcript, pp. 60-61.

27 As previously argued, the State's instruction to the grand jury omitted the direct-and-
28 immediate-causal-relationship element. The above highlighted text is an incorrect and

1 incomplete statement of second-degree felony murder. First, it directs the grand jury to
2 determine whether the predicate offenses were "dangerous felonies." This appears to direct the
3 grand jury to make an abstract finding of whether the predicate offenses in and of themselves
4 are dangerous felonies. Labastida requires that the dangerous felony element be analyzed by
5 looking at the manner in which a defendant committed the predicate offense as opposed to
6 analyzing the felony in the abstract. 115 Nev. at 307, 986 P.2d at 859.

7 Secondly, the highlighted phrase of "Did they result in harm or death to someone?" does
8 not equate to the direct-and-immediate-causal-relationship element developed by the Nevada
9 Supreme Court. At best, it is an imprecise and impermissibly watered down instruction on
10 factual cause. In short, the incomplete and incorrect elements of the second-degree murder and
11 felonious intent murder impinged on Desai's due process procedural rights to a fair grand jury,
12 as required by NRS 172.095(2) and the Due Process Clause of the Nevada Constitution.

13 **C. Conclusion**

14 Based on the foregoing and previously submitted petition, Desai respectfully requests
15 this Court to dismiss the murder indictment. The State should not be permitted to cavalierly
16 charge second-degree felony murder and felonious intent murder in disregard of the Nevada
17 Supreme Court's rulings in Morris and its progeny and fundamental procedural and substantive
18 due process.

19 DATED this 4th day of December 2012,

20 Respectfully Submitted,

21 WRIGHT STANISH & WINCKLER

22
23 By: 

24 RICHARD A. WRIGHT
25 MARGARET M. STANISH
26 Counsel for DESAI
27
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of December, 2012, I caused a copy of the foregoing **DEFENDANT DESAI'S REPLY TO STATE'S RETURN TO WRIT OF HABEAS CORPUS REGARDING THE MURDER INDICTMENT** to be served via electronic filing, emailed, hand delivered, facsimile or placed in the United States mail, postage prepaid, to the following persons at their last known address as listed below:

Michael V. Staudaher
Chief Deputy District Attorney
200 Lewis Ave
Las Vegas, NV 89101

By: *Debbie Crowell*
An employee of Wright Stanish & Winckler

EXHIBIT 7

EXHIBIT 7

1 **RWHC**

2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 MICHAEL V. STAUDAHER
6 Chief Deputy District Attorney
7 Nevada Bar #008273
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 State of Nevada

12 **DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

14 In the Matter of Application,
15 of
16 DIPAK KANTILAL DESAI,
17 #1240942
18 for a Writ of Habeas Corpus.

CASE NO. C-10-265107-1
DEPT NO. XXI

19 **RETURN TO WRIT OF HABEAS CORPUS**

20 DATE OF HEARING: DECEMBER 11, 2012
21 TIME OF HEARING: 9:30 A.M.

22 COMES NOW, DOUGLAS C. GILLESPIE, Sheriff of Clark County, Nevada,
23 Respondent, through his counsel, STEVEN B. WOLFSON, District Attorney, through
24 MICHAEL V. STAUDAHER, Chief Deputy District Attorney, in response to a Petition for
25 Writ of Habeas Corpus, and set for hearing on the 11th day of December, 2012, at the hour
26 of 9:30 o'clock A.M., before the above-entitled Court, and states as follows:

27 1. Respondent admits the allegations of Paragraphs 3, 6 and 10 of the
28 Petitioner's Petition for Writ of Habeas Corpus.

29 2. Respondent denies the allegations of Paragraph 4 of the Petitioner's
30 Petition for Writ of Habeas Corpus.

31 3. Paragraphs 1, 2, 7, 8, and 9 do not require admission or denial.

32 //

1 4. The Petitioner is in the constructive custody of DOUGLAS C.
2 GILLESPIE, Clark County Sheriff. Respondent herein, pursuant to a Criminal Amended
3 Indictment, a copy of which is attached hereto as **Exhibit 1** and incorporated by reference
4 herein.

5 Wherefore, Respondent prays that the Petition for Writ of Habeas Corpus be
6 dismissed.

7 DATED this 20th day of November, 2012.

8 Respectfully submitted,

9 STEVEN B. WOLFSON
10 Clark County District Attorney
 Nevada Bar # 001565

11
12 BY /s/ Michael V. Staudaheer
13 MICHAEL V. STAUDAHER
 Chief Deputy District Attorney
14 Nevada Bar #008273

15 **POINTS AND AUTHORITIES**

16 **PROCEDURAL HISTORY**

17 Respondent adopts the procedural history outlined in Dipak Desai's Petition before
18 this Court.

19 **FACTUAL BACKGROUND**

20 The following factual background is pertinent to the charge at issue in the Petitioner's
21 Writ of Habeas Corpus. In April of 2012, it became readily apparent that victim Rodolfo
22 Meana would likely die from the Hepatitis C infection he contracted at the Endoscopy
23 Center of Southern Nevada (ECSN) on September 21, 2007. On April 27, 2012, Detective
24 Maynard Bangang of the Las Vegas Metropolitan Police Department (LVMPD) learned that
25 Victim Meana had died. Grand Jury Transcript (August 10, 2012), hereinafter, (GJT) pg 14.
26 Detective Bangang, along with Medical Examiner Alane Olson, subsequently traveled to the
27 Philippines to attend the autopsy of Victim Meana and to retrieve biological samples from
28 that autopsy. GJT pgs 14-15.

1 Once Detective Bangang arrived in the Philippines he helped to facilitate the autopsy
2 of Victim Meana. Detective Bangang identified Victim Meana's body and confirmed with
3 Victim Meana's family that they had given their consent to have the autopsy performed.
4 GJT pgs 15-17. The autopsy began and Detective Bangang, along with Medical Examiner
5 Olson, observed the autopsy from beginning to end. GJT pg 17. Dr. Olson not only
6 observed the autopsy, but collected biological samples from Victim Meana for later analysis.
7 The obtained samples were sealed in approved specified medical containers and were kept in
8 the custody of Dr. Olson during her return to the United States. GJT pg 18.

9 Dr. Olson subsequently examined the biological samples she obtained during the
10 autopsy. GJT pg 26. Prior to Dr. Olson traveling to the Philippines for the autopsy,
11 however, she reviewed the medical records for Victim Meana including medical treatments
12 he had received, his various hospitalizations and his medical condition predating the
13 infection he contracted at the ECSN on September 21, 2007. GJT pgs 26-27. Dr. Olson
14 utilized these records in her analysis and agreed with the findings in the death certificate for
15 Victim Meana that he suffered from a grade four hepatic and uremic encephalopathy. Dr.
16 Olson also concurred with the findings showing that an antecedent cause of Victim Meana's
17 death was sepsis with an underlying cause being Hepatitis C and chronic kidney disease.
18 GJT pg 33. In addition, Dr. Olson also reviewed the report of the autopsy, which she had
19 observed, and concurred that the report was consistent with both her findings and those
20 contained in the death certificate. GJT pg. 36.

21 Dr. Olson testified that Victim Meana's liver was small and scarred on direct
22 observation and this finding was consistent with scarring caused from a Hepatitis C
23 infection. GJT pgs 42-43. Dr. Olson further noted that laboratory studies performed by the
24 Philippine examiners showed positive results for Victim Meana having an active Hepatitis C
25 infection at the time of his death. Dr. Olson stated that her examination was also consistent
26 with signs of an active Hepatitis C infection. GJT pg 43.

27 During the autopsy, Dr. Olson observed the presence of a significant amount of ascites
28 fluid in the abdominal cavity which was consistent with cirrhosis. GJT pg. 47. Dr. Olson

1 testified that the tissues of Victim Meana's liver also showed signs of inflammation which
2 indicated that he had ongoing damage and liver failure caused from the active Hepatitis C
3 infection. Id.

4 When questioned about whether there was any medical evidence or record of Victim
5 Meana having had an active Hepatitis C infection prior to his going to the ECSN for his
6 colonoscopy on September 21, 2007, Dr. Olson stated that there was no evidence of any
7 prior infection. GJT pgs 47-48. Dr. Olson further stated that there was also no evidence that
8 Victim Meana suffered from liver disease, cirrhosis, liver failure or any other liver disorder
9 prior to him going to the ECSN on September 21, 2007. GJT pg 48.

10 When questioned about the presence of any other condition or disease process which
11 may have contributed to Victim Meana's cirrhosis such as alcohol abuse, Dr. Olson stated
12 that that there was no such evidence. Id. Conversely, Dr. Olson stated that medical records
13 showed that Victim Meana developed an active Hepatitis C infection following his visit to
14 the ECSN. Id. Ultimately, Dr. Olson testified that Victim Meana died as a result of chronic
15 active hepatitis associated with his Hepatitis C infection. GJT pg 48-49, 52.

16 ARGUMENT

17 At a grand jury presentment or preliminary hearing, the State's burden is limited to
18 slight or marginal evidence. See Middleton v. State, 112 Nev. 956, 961, 921 P.2d 282, 286
19 (1996) quoting Sheriff v. Hodes, 96 Nev. 184, 606 P.2d 178, 189 (1980)("[A]t the
20 preliminary hearing stage, probable cause to bind a defendant over for trial 'may be based on
21 "slight," even "marginal" evidence because it does not involve a determination of guilt or
22 innocence of the accused.") "To commit an accused for trial, the State is not required to
23 negate all inferences which might explain his conduct, but only to present enough evidence
24 to support a reasonable inference that the accused committed the offense." Kinsey v.
25 Sheriff, 87 Nev. 361, 363, 487 P.2d 340, 341 (1971); see also, Sheriff v. Milton, 109 Nev.
26 412, 851 P.2d 417 (1993); Lamb v. Holsten, 85 Nev. 566, 568, 459 P.2d 771, 772 (1969);
27 Johnson v. State, 82 Nev. 338, 341, 418 P.2d 495, 496 (1966).

28

1 Although Petitioner raises the lack of probable cause in his petition, he fails to site to
2 a single place in the record pertaining to evidence that was or was not presented to the grand
3 jury to support that contention. Since the main purpose of bringing a Writ of Habeas Corpus
4 is to elucidate the failure of the State to bring forth sufficient probable cause to bind the
5 Petitioner over to district court for trial, the complete absence of any citation to the record in
6 this regard illustrates that the State met its burden.

7 **I. The Indictment Is Sufficient**

8 The Petitioner claims that because the indictment does not include language as to the
9 immediate and direct causal relationship with regard to a second degree murder charge based
10 on second degree felony murder, that the indictment is somehow deficient. First of all, the
11 caption of the indictment contains the citations to the specific statutes under which Petitioner
12 is charged. As such, there is a complete inclusion of the statutory language and the elements
13 of those statutes which are all that is required under notice pleading. In addition, the charge
14 of murder itself contains the factual averments and all theories of criminal liability on which
15 the State is proceeding.

16 Second, despite the Petitioner's assertion to the contrary, there has never been a
17 requirement in Nevada that the prosecution provide specific and detailed instruction on the
18 law to the grand jury. Hylar v. Sheriff, 93 Nev. 561, 564, 571 P.2d 114, 116 (1997). In fact,
19 the Nevada Supreme Court held in Hylar that "it is not mandatory for the prosecuting
20 attorney to instruct the grand jury on the law." Id. See also Phillips v. Sheriff, 93 Nev. 309,
21 312, 565 P.2d 330, 332 (1977), (where the Court stated that there is "no requirement upon
22 the prosecuting attorney to offer gratuitous explanations of every legal matter that may or
23 may not become relevant to the further prosecution of the case").

24 Likewise more recently in Schuster v. Dist. Ct., 123 Nev. 187, 160 P.3d 873 (2007), a
25 murder case in which the defense claimed that the prosecution should have instructed the
26 grand jury on self defense, the Nevada Supreme Court reiterated its previous position and
27 held that:

28 //

1 The finding of probable cause does not involve a determination
2 of the guilt or innocence of an accused, and this court has
3 consistently held that to secure an indictment, the State is not
4 required to negate all inferences which might explain away an
5 accused's conduct. This court has further held that it is not
6 mandatory of the prosecuting attorney to instruct the grand
7 jury on the law. Id.
8 (emphasis added)(internal quotes omitted).

9 The Court in Schuster went on to state that the legislature set up a statutory scheme in
10 which the grand jury's role is mainly investigative and accusatory. The Court further stated
11 that the Legislature did not expand the requirement of the State in presenting evidence to the
12 grand jury to include instruction on the legal significance of any evidence. The Court stated
13 that the role of the grand jury is "to investigate, obtain, and review evidence, and based on
14 that evidence, to determine whether there is probable cause to believe that a crime has been
15 committed and that a particular person or persons committed it. Id. at 192, 160 P.3d at 887.

16 Similarly in Maestas v. State, 275 P.3d 74, 128 Nev. Adv. Op. 12 (2012), a murder
17 case involving aggravating circumstances which were not pled in the information, the
18 defense brought a challenge to the information on that basis. The defense argued that
19 because the information did not allege that the aggravating circumstances outweighed the
20 mitigating circumstances that the information was defective and violated the defendant's
21 federal constitutional rights. Id. at 86. The Nevada Supreme Court rejected this position,
22 however, while acknowledging that "the aggravating circumstances must be submitted to a
23 jury and proved beyond a reasonable doubt." Id. The Court stated that although facts and
24 circumstances must be submitted to a jury and also charged in an indictment in federal
25 prosecutions, the same does not hold true for the State since that requirement has not been
26 incorporated in the due process clause of the fourteenth amendment and, therefore, does not
27 apply to state prosecutions. Id. The Court ultimately found that "[b]ecause the aggravating
28 circumstances are not required to be pleaded in the charging document, it naturally follows
that they are not subject to a probable-cause determination." Id. at 87.

In the instant case, the defense claims that because there is a requirement to prove an
immediate and direct causal connection between the petitioner's acts and the death of Victim

1 Meana in order for a petit jury to convict petitioner of second degree felony murder, that this
2 somehow creates a requirement for the State to specifically instruct the grand jury on this
3 issue before they make their probable cause determination. This is simply not the law in
4 Nevada and there is no case that the defense can cite to that says otherwise.

5 In fact, with regard to the issue of specific instruction the Nevada Supreme Court has
6 never interpreted Chapter 172 of the Nevada Revised Statutes to impose any obligation of
7 the State to instruct a grand jury on the law pertaining to theories of criminal liability. There
8 is simply no support in the law to assert that the State's presentation, in the instant matter,
9 therefore, was somehow deficient because there was not specific instruction on the law
10 related to the requirement of the causal connection for second degree felony murder.

11 **II. The State Properly Pled Alternative Theories of Criminal Liability**

12 Here again, the Petitioner confuses the issue of the specific findings a petit jury must
13 make at the conclusion of a trial in order to convict Petitioner of second degree murder based
14 on a second degree felony murder theory. In that case, the issue is not whether the
15 Petitioner's acts themselves directly caused the death of Victim Meana, but rather, whether
16 or not Petitioner's acts were the ultimate cause of that death because his actions were a
17 directly foreseeable consequence of his illegal acts and there was no intervention of some
18 other source or agency which independently caused Victim Meana's death. In other words,
19 did the actions of Petitioner proceed as he planned, using his employees, facility and medical
20 supplies in the manner he intended, which foreseeably caused the death of Victim Meana, or
21 did some outside source intervene to interrupt that chain and cause the victim's death? That
22 is the ultimate question that a petit jury must make in order to convict Petitioner beyond a
23 reasonable doubt under that particular theory of criminal liability. It is not, however, the role
24 or purview of the grand jury to make such a determination.

25 While the State agrees with the line of cases cited by the defense which requires a
26 petit jury to make specific findings to convict on a theory of second degree felony murder,
27 there is no case or statute which imposes the same requirement on a grand jury. Since the
28 grand jury only determines probable cause using a slight or marginal standard and not the

1 ultimate guilt or innocence of a defendant, they are not required to make specific findings as
2 to any particular theory of criminal liability beyond a reasonable doubt. That is specifically
3 the reason why the Nevada Supreme Court has never required the State to specifically
4 instruct grand juries on the law pertaining to various theories of criminal liability.

5 Furthermore, while petitioner pointed out a portion of the grand jury transcript in an
6 attempt to support his contention that the State provided erroneous instructions to the grand
7 jury, he conveniently left out the entirety of that passage which discusses alternative theories
8 and defines dangerousness:

9 Now you have previously found related to this victim, because
10 you returned a true bill as to both the criminal neglect of patient
11 charge as well as performance of an act in reckless disregard,
12 **you have to make a determination under one scenario**
13 **whether or not those are dangerous felonies. Did they result**
14 **in harm or death to someone?** The other aspect of it is based
15 on all of the information you have, were the actions of these
16 individuals either directly, or by aiding and abetting each other,
17 or by conspiring, reckless to the point that they caused someone
18 to have a depraved heart or reckless indifference to human life,
19 that kind of thing, and that's what you're here to determine. GJT
20 pgs 60-61.
21 (emphasis added).

22 Not only, therefore, did the State instruct the grand jury that under one scenario they
23 had to make a determination that the specific crimes of criminal neglect of patients and
24 performance of an act in reckless disregard were dangerous felonies, but the State went
25 further and defined that dangerous mean causing harm or death.

26 **III. Petitioner's Claim that the State Failed to Provide Exculpatory Evidence to**
27 **Grand Jury is Erroneous**

28 Petitioner claims that there was exculpatory evidence that the State should have
presented to the grand jury in the instant matter. Petitioner erroneously, however, claims
that this so called exculpatory evidence relates to his defense that Victim Meana's actions or
lack thereof were intervening causes which broke the causal chain required for a second
degree felony murder conviction. In short, Petitioner claims that because Victim Meana
could not tolerate Interferon treatment therapy and because he did not continue that
treatment, that Victim Meana is somehow responsible for his own death. Petitioner's claim

1 is completely outrageous in that, he is essentially stating that Victim Meana committed
2 suicide and therefore the causal link to his death under a second degree felony murder theory
3 is broken.

4 First of all there is absolutely no evidence that Victim Meana had any hand in his own
5 death. Second, there is also no evidence that any treatment Victim Meana would have
6 received for the Hepatitis C infection, caused by Petitioner, would have prevented Victim
7 Meana's death. Third, attempting to blame Victim Meana for causing his own death is an
8 attempt to shift responsibility from Petitioner to the victim and is in no way exculpatory
9 evidence that the State had any obligation to present to the grand jury.

10 Again, Schuster addresses this issue squarely, in that, the Nevada Supreme Court
11 stated that the prosecution has no obligation to present a suspect's defenses. Id. at 193, 160
12 P.3d at 877. In fact, the Court expressly held that "Nevada's statutory scheme regulating
13 grand juries does not impose an independent, mandatory duty upon the State to instruct the
14 grand jury on the legal significance of exculpatory evidence." Id. at 194, 160 P.3d at 879.

15 Back on March 11, 2010, when Victim Meana testified before this very grand jury, he
16 stated that he was continuing to seek care for his Hepatitis C infection. GJT Volume 1-A
17 pgs 101-102. Nowhere in that testimony did Victim Meana say that he was going to stop
18 treatment or that he wanted to die. To the contrary, he received care for that infection up
19 until the time of his death. The fact that Victim Meana could not tolerate a particular
20 procedure or drug during his treatment is in no way exculpatory evidence and Schuster
21 stands for the proposition that the State has no obligation to present or instruct on the
22 significance of such spurious evidence. There is, therefore, no merit whatsoever to
23 Petitioner's claim.

24 **IV. The State did not Present any Hearsay Evidence of Victim Meana**

25 Petitioner claims that the State improperly introduced hearsay evidence of Victim
26 Meana's prior testimony which took place on March 11, 2010. What Petitioner fails to
27 grasp, however, is that Victim Meana actually testified (on March 11, 2010) before the very
28 grand jury who determined the probable cause pertaining to the instant murder charge. As

1 such, the grand jury previously heard Victim Meana's direct testimony and, therefore, that
2 testimony was not hearsay to them. Just like the testimony of other witnesses who
3 previously appeared before the grand jury, the grand jury is properly able to review the
4 transcripts of that testimony at anytime before making their determination as to probable
5 cause. There is simply no legal or logical support for Petitioner's contention that Victim
6 Meana's prior testimony was hearsay.

7 **V. The Grand Jury was Properly Impaneled and was not Formally Discharged**
8 **Prior to Being Recalled**

9 Petitioner claims that the grand jury who heard the instant matter was improperly
10 recalled. NRS 172.275 governs the issue of discharge of a grand jury. NRS 172.275 states
11 in pertinent part that:

12 1. **A grand jury shall serve until discharged by the court**
13 **and may be so discharged at any time after the expiration of 1**
14 **year. At any time for cause shown the court may excuse a juror**
15 **either temporarily or permanently, and the latter event the court**
16 **may impanel an alternate grand juror in place of the juror**
17 **excused.**
18 (emphasis added)

19 In addition, NRS 6.145 governs the issue of recess of a grand jury. NRS 6.145 states
20 that:

21 **Upon the completion of its business for the time being, the**
22 **court may, at the request of or with the concurrence of the**
23 **grand jury, recess the grand jury subject to recall at such time**
24 **as new business may require its attention.**
25 (emphasis added)

26 As evidenced by the order in this case entered by the Honorable Linda Marie Bell, the
27 court made it clear that the grand jury who heard the evidence in the original case against
28 Petitioner, had not been discharged and was subject to recall. In fact, Judge Bell specifically
stated in her order that no order of dismissal was entered pertaining to the instant grand jury
and that they were properly subject to recall. As such, therefore, pursuant to NRS 172.275
and NRS 6.145, the grand jury was properly recalled by the court. **See Exhibit 2.**

//

//

CONCLUSION

The Endoscopy Center of Southern Nevada engaged in practices that endangered patients every day. The Center also defrauded patients and their insurance companies. Petitioner was able to engage in these crimes because Petitioner and CRNAs Mathahs and Lakeman agreed to cut corners on safety in order to avoid discarding unused medicine and supplies. The practice was economically successful not just because it was frugal with regard to wasting supplies, but also because the parties agreed to overbill their patients and the patients' insurance companies. In all these acts, Petitioner, like his co-conspirators, has criminal liability.

The fact that Rodolfo Meana subsequently died as a foreseeable result of the Hepatitis C infection he contracted because of the actions of Petitioner and his co-conspirators makes him guilty of murder. The grand jury in this matter was properly recalled and heard legally sufficient evidence for them to hold Petitioner to answer to the charge of murder. Respondent, therefore, respectfully requests that the Petition be denied.

DATED this 20th day of November, 2012.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar # 008273

BY /s/ Michael V. Staudaher
MICHAEL V. STAUDAHER
Chief Deputy District Attorney
Nevada Bar #008273

1 CERTIFICATE OF FACSIMILE TRANSMISSION

2 I hereby certify that service of Return To Writ Of Habeas Corpus, was made this 20th
3 day of November, 2012, by facsimile transmission to:

4 RICHARD A. WRIGHT, Esq.
5 MARGARET M. STANISH, Esq.
6 FAX: (702) 382-4800

7 BY: /s/ S. Munoz
8 S. MUNOZ
9 Secretary for the District Attorney's Office
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28 MVS/sam/MVU

EXHIBIT 1

ORIGINAL

AIND

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
MICHAEL V. STAUDAHER
Chief Deputy District Attorney
Nevada Bar #008273
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

JUN 11 2010

BY *Linda Skinner*
LINDA SKINNER, DEPUTY

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DIPAK KANTILAL DESAI, #1240942,
RONALD ERNEST LAKEMAN,
KEITH H. MATHAHS,

Defendant(s).

Case No. C265107
Dept. No. XIV

AMENDED
INDICTMENT

STATE OF NEVADA }
COUNTY OF CLARK } ss.

The Defendant(s) above named, DIPAK KANTILAL DESAI, RONALD ERNEST LAKEMAN and KEITH H. MATHAHS accused by the Clark County Grand Jury of the crime(s) of RACKETEERING (Felony - NRS 207.350, 207.360, 207.370, 207.380, 207.390, 207.400), PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS OR PROPERTY (Felony - NRS 0.060, 202.595), CRIMINAL NEGLECT OF PATIENTS (Felony - NRS 0.060, 200.495), INSURANCE FRAUD (Felony - NRS 686A.2815), THEFT (Felony - NRS 205.0832, 205.0835) and OBTAINING MONEY UNDER FALSE PRETENSES (Felony - NRS 205.265, 205.380), committed at and within the County of Clark, State of Nevada, on or between June 3, 2005, and May 5, 2008, as follows:

///

1 COUNT 1 - RACKETEERING

2 Defendants, did on or between June 3, 2005, and May 5, 2008, then and there, within
3 Clark County, Nevada knowingly, willfully and feloniously while employed by or associated
4 with an enterprise, conduct or participate directly or indirectly in racketeering activity
5 through the affairs of said enterprise; and/or with criminal intent receive any proceeds
6 derived, directly or indirectly, from racketeering activity to use or invest, whether directly or
7 indirectly, any part of the proceeds from racketeering activity; and/or through racketeering
8 activity to acquire or maintain, directly or indirectly, any interest in or control of any
9 enterprise; and/or intentionally organize, manage, direct, supervise or finance a criminal
10 syndicate; and/or did conspire to engage in said acts, to-wit: by directly or indirectly causing
11 and/or pressuring the employees and/or agents of the Endoscopy Center of Southern Nevada
12 to falsify patient anesthesia records from various endoscopic procedures; and/or to commit
13 insurance fraud by directly or indirectly submitting said false anesthesia records to various
14 insurance companies for the purpose of obtaining money under false pretenses from said
15 insurance companies and/or patients; said fraudulent submissions resulting in the payment of
16 monies to Defendants and/or their medical practice and/or the enterprise, which exceeded the
17 legitimate reimbursement amount allowed for said procedures; Defendants being responsible
18 under one or more of the following principles of criminal liability, to wit: (1) by directly
19 committing said acts; and/or (2) aiding or abetting each other in the commission of the crime
20 by directly or indirectly counseling, encouraging, hiring, commanding, inducing, or
21 procuring each other, and/or others to commit said acts, Defendants acting with the intent to
22 commit said crime.

23 COUNT 2 - INSURANCE FRAUD

24 Defendants did, on or about July 25, 2007, knowingly and willfully present, or cause
25 to be presented a statement as a part of, or in support of, a claim for payment or other
26 benefits under a policy of insurance, issued pursuant to Title 57 of the Nevada Revised
27 Statutes, knowing that the statement concealed or omitted facts, or contained false or
28 misleading information concerning a fact material to said claim; and/or did assist, abet,

1 solicit or conspire to present or cause to be presented a statement to an insurer, a reinsurer, a
2 producer, a broker or any agent thereof, knowing that said statement concealed or omitted
3 facts, or did contain false or misleading information concerning a fact material to a claim for
4 payment or other benefits under such policy issued pursuant to Title 57 of the Nevada
5 Revised Statutes, by falsely representing to ANTHEM BLUE CROSS - BLUE SHIELD
6 that the billed anesthesia time and/or charges for the endoscopic procedure performed on
7 SHARRIEFF ZIYAD were more than the actual anesthetic time and/or charges, said false
8 representation resulting in the payment of money to Defendants and/or their medical practice
9 and/or the racketeering enterprise which exceeded that which would have normally been
10 allowed for said procedure; Defendants being responsible under one or more of the
11 following principles of criminal liability, to wit: (1) by directly committing said acts; and/or
12 (2) aiding or abetting each other in the commission of the crime by directly or indirectly
13 counseling, encouraging, hiring, commanding, inducing, or procuring each other, and/or
14 others to commit said acts, Defendants acting with the intent to commit said crime, and/or
15 (3) pursuant to a conspiracy to commit this crime.

16 COUNT 3 - PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS
17 OR PROPERTY

18 Defendants did on or about July 25, 2007, then and there willfully and unlawfully
19 perform acts in willful or wanton disregard of the safety of persons or property resulting in
20 substantial bodily harm to MICHAEL WASHINGTON, in the following manner, to-wit: by
21 Defendants performing one or more of the following acts: (1) by directly administering
22 and/or directly or indirectly instructing employees of the Endoscopy Center of Southern
23 Nevada, (ECSN) to administer one or more doses of the anesthetic drug Propofol from a
24 single use vial to more than one patient contrary to the express product labeling of said drug
25 and in violation of universally accepted safety precautions for the administration of said
26 drug; and/or (2) by creating an employment environment in which said employees were
27 pressured to administer one or more doses of the anesthetic drug Propofol from a single use
28 vial to more than one patient contrary to the express product labeling of said drug and in

1 violation of universally accepted safety precautions for the administration of said drug;
2 and/or (3) by directly reusing and/or directly or indirectly instructing said employees, and/or
3 creating an employment environment in which said employees were pressured to reuse
4 syringes and/or needles and/or biopsy forceps and/or snares and/or bite blocks contrary to
5 the express product labeling of said items, and/or in violation of universally accepted safety
6 precautions for the use of said items; and/or (4) by directly limiting and/or directly or
7 indirectly instructing said employees, and/or creating an employment environment in which
8 said employees were pressured to limit the use of medical supplies necessary to conduct safe
9 endoscopic procedures; and/or (5) by falsely precharting patient records and/or rushing
10 patients through said endoscopy center and/or rushing patient procedures at the expense of
11 patient safety and/or well being and/or directly or indirectly instructing said employees,
12 and/or creating an employment environment in which said employees were pressured to
13 falsely prechart patient records and/or rush patients through said endoscopy center and/or
14 rush patient procedures at the expense of patient safety and/or well being; and/or (6) by
15 directly or indirectly scheduling and/or treating an unreasonable number of patients per day
16 which resulted in substandard care and/or jeopardized the safety and/or well being of said
17 patients; and/or (7) by directly failing to adequately clean and/or prepare endoscopy scopes,
18 contrary to the express manufacturers guidelines for the handling and processing of said
19 endoscopy scopes, and/or in violation of universally accepted safety precautions for the use
20 of said scopes and/or directly or indirectly instructing said employees, and/or creating an
21 employment environment in which said employees were inadequately trained and/or
22 pressured to provide endoscopy scopes for patient procedures that were not adequately
23 cleaned and/or prepared contrary to the express manufacturers guidelines for the handling
24 and processing of said endoscopy scopes, and/or in violation of universally accepted safety
25 precautions for the use of said scopes; Defendants being responsible under one or more of
26 the following principles of criminal liability, to wit: (1) by directly committing said acts;
27 and/or (2) aiding or abetting each other in the commission of the crime by directly or
28 indirectly counseling, encouraging, hiring, commanding, inducing, or procuring each other,

1 and/or others to commit said acts, Defendants acting with the intent to commit said crime,
2 and/or (3) pursuant to a conspiracy to commit this crime.

3 COUNT 4 - CRIMINAL NEGLECT OF PATIENTS

4 Defendants, on or about July 25, 2007, being professional caretakers of MICHAEL
5 WASHINGTON, did act or omit to act in an aggravated, reckless or gross manner, failing to
6 provide such service, care or supervision as is reasonable and necessary to maintain the
7 health or safety of said MICHAEL WASHINGTON, resulting in substantial bodily harm to
8 MICHAEL WASHINGTON, said acts or omissions being such a departure from what would
9 be the conduct of an ordinarily prudent, careful person under the same circumstances that it
10 is contrary to a proper regard for danger to human life or constitutes indifference to the
11 resulting consequences, said consequences of the negligent act or omission being reasonably
12 foreseeable; said danger to human life not being the result of inattention, mistaken judgment
13 or misadventure, but the natural and probable result of said aggravated reckless or grossly
14 negligent act or omission, by performing one or more of the following acts: (1) by directly
15 or indirectly instructing employees of the Endoscopy Center of Southern Nevada, (ECSN) to
16 administer one or more doses of the anesthetic drug Propofol from a single use vial to more
17 than one patient contrary to the express product labeling of said drug and in violation of
18 universally accepted safety precautions for the administration of said drug; and/or (2) by
19 creating an employment environment in which said employees were pressured to administer
20 one or more doses of the anesthetic drug Propofol from a single use vial to more than one
21 patient contrary to the express product labeling of said drug and in violation of universally
22 accepted safety precautions for the administration of said drug; and/or (3) by directly or
23 indirectly instructing said employees, and/or creating an employment environment in which
24 said employees were pressured to reuse syringes and/or needles and/or biopsy forceps and/or
25 snares and/or bite blocks contrary to the express product labeling of said items, and/or in
26 violation of universally accepted safety precautions for the use of said items; and/or (4) by
27 directly or indirectly instructing said employees, and/or creating an employment
28 environment in which said employees were pressured to limit the use of medical supplies

1 necessary to conduct safe endoscopic procedures; and/or (5) by directly or indirectly
2 instructing said employees, and/or creating an employment environment in which said
3 employees were pressured to falsely prechart patient records and/or rush patients through
4 said endoscopy center and/or rush patient procedures at the expense of patient safety and/or
5 well being; and/or (6) by directly or indirectly scheduling and/or treating an unreasonable
6 number of patients per day which resulted in substandard care and/or jeopardized the safety
7 and/or well being of said patients; and/or (7) by directly or indirectly instructing said
8 employees, and/or creating an employment environment in which said employees were
9 inadequately trained and/or pressured to provide endoscopy scopes for patient procedures
10 that were not adequately cleaned and/or prepared contrary to the express manufacturers
11 guidelines for the handling and processing of said endoscopy scopes, and/or in violation of
12 universally accepted safety precautions for the use of said scopes; and/or (8) by methods
13 unknown; for the purpose of enhancing the financial profit of ECSN, said act(s) or
14 omission(s) causing the transmission of Hepatitis C virus from patient SHARRIEFF ZIYAD
15 to patient MICHAEL WASHINGTON, who was not previously infected with the Hepatitis
16 C virus; Defendants being responsible under one or more of the following principles of
17 criminal liability, to wit: (1) by directly committing said acts; and/or (2) aiding or abetting
18 each other in the commission of the crime by directly or indirectly counseling, encouraging,
19 hiring, commanding, inducing, or procuring each other, and/or others to commit said acts;
20 Defendants acting with the intent to commit said crime, and/or (3) pursuant to a conspiracy
21 to commit this crime.

22 COUNT 5 - INSURANCE FRAUD

23 Defendants did, on or about July 25, 2007, knowingly and willfully present, or cause
24 to be presented a statement as a part of, or in support of, a claim for payment or other
25 benefits under a policy of insurance issued pursuant to Title 57 of the Nevada Revised
26 Statutes, knowing that the statement concealed or omitted facts, or contained false or
27 misleading information concerning a fact material to said claim; and/or did assist, abet,
28 solicit or conspire to present or cause to be presented a statement to an insurer, a reinsurer, a

1 producer, a broker or any agent thereof, knowing that said statement concealed or omitted
2 facts, or did contain false or misleading information concerning a fact material to a claim for
3 payment or other benefits under such policy issued pursuant to Title 57 of the Nevada
4 Revised Statutes, by falsely representing to VETERANS ADMINISTRATION that the
5 billed anesthesia time and/or charges for the endoscopic procedure performed on MICHAEL
6 WASHINGTON were more than the actual anesthetic time and/or charges, said false
7 representation resulting in the payment of money to Defendants and/or their medical practice
8 and/or the racketeering enterprise which exceeded that which would have normally been
9 allowed for said procedure; Defendants being responsible under one or more of the
10 following principles of criminal liability, to wit: (1) by directly committing said acts; and/or
11 (2) aiding or abetting each other in the commission of the crime by directly or indirectly
12 counseling, encouraging, hiring, commanding, inducing, or procuring each other, and/or
13 others to commit said acts, Defendants acting with the intent to commit said crime, and/or
14 (3) pursuant to a conspiracy to commit this crime.

15 COUNT 6 - INSURANCE FRAUD

16 Defendants did, on or about July 25, 2007, knowingly and willfully present, or cause
17 to be presented a statement as a part of, or in support of, a claim for payment or other
18 benefits under a policy of insurance issued pursuant to Title 57 of the Nevada Revised
19 Statutes, knowing that the statement concealed or omitted facts, or contained false or
20 misleading information concerning a fact material to said claim; and/or did assist, abet,
21 solicit or conspire to present or cause to be presented a statement to an insurer, a reinsurer, a
22 producer, a broker or any agent thereof, knowing that said statement concealed or omitted
23 facts, or did contain false or misleading information concerning a fact material to a claim for
24 payment or other benefits under such policy issued pursuant to Title 57 of the Nevada
25 Revised Statutes, by falsely representing to ANTHEM BLUE CROSS AND BLUE
26 SHIELD that the billed anesthesia time and/or charges for the endoscopic procedure
27 performed on KENNETH RUBINO were more than the actual anesthetic time and/or
28 charges, said false representation resulting in the payment of money to Defendants and/or

1 their medical practice and/or the racketeering enterprise which exceeded that which would
2 have normally been allowed for said procedure; Defendants being responsible under one or
3 more of the following principles of criminal liability, to wit: (1) by directly committing said
4 acts; and/or (2) aiding or abetting each other in the commission of the crime by directly or
5 indirectly counseling, encouraging, hiring, commanding, inducing, or procuring each other,
6 and/or others to commit said acts, Defendants acting with the intent to commit said crime,
7 and/or (3) pursuant to a conspiracy to commit this crime.

8 COUNT 7 - PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS
9 OR PROPERTY

10 Defendants did on or about September 21, 2007, then and there willfully and
11 unlawfully perform acts in willful or wanton disregard of the safety of persons or property
12 resulting in substantial bodily harm to STACY HUTCHINSON, in the following manner, to-
13 wit: by Defendants performing one or more of the following acts: (1) by directly
14 administering and/or directly or indirectly instructing employees of the Endoscopy Center of
15 Southern Nevada, (ECSN) to administer one or more doses of the anesthetic drug Propofol
16 from a single use vial to more than one patient contrary to the express product labeling of
17 said drug and in violation of universally accepted safety precautions for the administration of
18 said drug; and/or (2) by creating an employment environment in which said employees were
19 pressured to administer one or more doses of the anesthetic drug Propofol from a single use
20 vial to more than one patient contrary to the express product labeling of said drug and in
21 violation of universally accepted safety precautions for the administration of said drug;
22 and/or (3) by directly reusing and/or directly or indirectly instructing said employees, and/or
23 creating an employment environment in which said employees were pressured to reuse
24 syringes and/or needles and/or biopsy forceps and/or snares and/or bite blocks contrary to
25 the express product labeling of said items, and/or in violation of universally accepted safety
26 precautions for the use of said items; and/or (4) by directly limiting and/or directly or
27 indirectly instructing said employees, and/or creating an employment environment in which
28 said employees were pressured to limit the use of medical supplies necessary to conduct safe

1 endoscopic procedures; and/or (5) by falsely precharting patient records and/or rushing
2 patients through said endoscopy center and/or rushing patient procedures at the expense of
3 patient safety and/or well being and/or directly or indirectly instructing said employees,
4 and/or creating an employment environment in which said employees were pressured to
5 falsely prechart patient records and/or rush patients through said endoscopy center and/or
6 rush patient procedures at the expense of patient safety and/or well being; and/or (6) by
7 directly or indirectly scheduling and/or treating an unreasonable number of patients per day
8 which resulted in substandard care and/or jeopardized the safety and/or well being of said
9 patients; and/or (7) by directly failing to adequately clean and/or prepare endoscopy scopes,
10 contrary to the express manufacturers guidelines for the handling and processing of said
11 endoscopy scopes, and/or in violation of universally accepted safety precautions for the use
12 of said scopes and/or directly or indirectly instructing said employees, and/or creating an
13 employment environment in which said employees were inadequately trained and/or
14 pressured to provide endoscopy scopes for patient procedures that were not adequately
15 cleaned and/or prepared contrary to the express manufacturers guidelines for the handling
16 and processing of said endoscopy scopes, and/or in violation of universally accepted safety
17 precautions for the use of said scopes; Defendants being responsible under one or more of
18 the following principles of criminal liability, to wit: (1) by directly committing said acts;
19 and/or (2) aiding or abetting each other in the commission of the crime by directly or
20 indirectly counseling, encouraging, hiring, commanding, inducing, or procuring each other,
21 and/or others to commit said acts, Defendants acting with the intent to commit said crime,
22 and/or (3) pursuant to a conspiracy to commit this crime.

23 COUNT 8 - CRIMINAL NEGLECT OF PATIENTS

24 Defendants, on or about September 25, 2007, being professional caretakers of
25 STACY HUTCHINSON, did act or omit to act in an aggravated, reckless or gross manner,
26 failing to provide such service, care or supervision as is reasonable and necessary to
27 maintain the health or safety of said STACY HUTCHINSON, resulting in substantial bodily
28 harm to STACY HUTCHINSON, said acts or omissions being such a departure from what

1 would be the conduct of an ordinarily prudent, careful person under the same circumstances
2 that it is contrary to a proper regard for danger to human life or constitutes indifference to
3 the resulting consequences, said consequences of the negligent act or omission being
4 reasonably foreseeable; said danger to human life not being the result of inattention,
5 mistaken judgment or misadventure, but the natural and probable result of said aggravated
6 reckless or grossly negligent act or omission, by performing one or more of the following
7 acts: (1) by directly or indirectly instructing employees of the Endoscopy Center of
8 Southern Nevada, (ECSN) to administer one or more doses of the anesthetic drug Propofol
9 from a single use vial to more than one patient contrary to the express product labeling of
10 said drug and in violation of universally accepted safety precautions for the administration of
11 said drug; and/or (2) by creating an employment environment in which said employees were
12 pressured to administer one or more doses of the anesthetic drug Propofol from a single use
13 vial to more than one patient contrary to the express product labeling of said drug and in
14 violation of universally accepted safety precautions for the administration of said drug;
15 and/or (3) by directly or indirectly instructing said employees, and/or creating an
16 employment environment in which said employees were pressured to reuse syringes and/or
17 needles and/or biopsy forceps and/or snares and/or bite blocks contrary to the express
18 product labeling of said items, and/or in violation of universally accepted safety precautions
19 for the use of said items; and/or (4) by directly or indirectly instructing said employees,
20 and/or creating an employment environment in which said employees were pressured to limit
21 the use of medical supplies necessary to conduct safe endoscopic procedures; and/or (5) by
22 directly or indirectly instructing said employees, and/or creating an employment
23 environment in which said employees were pressured to falsely prechart patient records
24 and/or rush patients through said endoscopy center and/or rush patient procedures at the
25 expense of patient safety and/or well being; and/or (6) by directly or indirectly scheduling
26 and/or treating an unreasonable number of patients per day which resulted in substandard
27 care and/or jeopardized the safety and/or well being of said patients; and/or (7) by directly or
28 indirectly instructing said employees, and/or creating an employment environment in which

1 said employees were inadequately trained and/or pressured to provide endoscopy scopes for
2 patient procedures that were not adequately cleaned and/or prepared contrary to the express
3 manufacturers guidelines for the handling and processing of said endoscopy scopes, and/or
4 in violation of universally accepted safety precautions for the use of said scopes; and/or (8)
5 by methods unknown; for the purpose of enhancing the financial profit of ECSN, said act(s)
6 or omission(s) causing the transmission of Hepatitis C virus from patient KENNETH
7 RUBINO to patient STACY HUTCHINSON, who was not previously infected with the
8 Hepatitis C virus; Defendants being responsible under one or more of the following
9 principles of criminal liability, to wit: (1) by directly committing said acts; and/or (2) aiding
10 or abetting each other in the commission of the crime by directly or indirectly counseling,
11 encouraging, hiring, commanding, inducing, or procuring each other, and/or others to
12 commit said acts, Defendants acting with the intent to commit said crime, and/or (3)
13 pursuant to a conspiracy to commit this crime.

14 COUNT 9 - INSURANCE FRAUD

15 Defendants did, on or about September 21, 2007, knowingly and willfully present, or
16 cause to be presented a statement as a part of, or in support of, a claim for payment or other
17 benefits under a policy of insurance issued pursuant to Title 57 of the Nevada Revised
18 Statutes, knowing that the statement concealed or omitted facts, or contained false or
19 misleading information concerning a fact material to said claim; and/or did assist, abet,
20 solicit or conspire to present or cause to be presented a statement to an insurer, a reinsurer, a
21 producer, a broker or any agent thereof, knowing that said statement concealed or omitted
22 facts, or did contain false or misleading information concerning a fact material to a claim for
23 payment or other benefits under such policy issued pursuant to Title 57 of the Nevada
24 Revised Statutes, by falsely representing to HEALTH PLAN OF NEVADA that the billed
25 anesthesia time and/or charges for the endoscopic procedure performed on STACY
26 HUTCHINSON were more than the actual anesthetic time and/or charges, said false
27 representation resulting in the payment of money to Defendants and/or their medical practice
28 and/or the racketeering enterprise which exceeded that which would have normally been

1 allowed for said procedure; Defendants being responsible under one or more of the
2 following principles of criminal liability, to wit: (1) by directly committing said acts; and/or
3 (2) aiding or abetting each other in the commission of the crime by directly or indirectly
4 counseling, encouraging, hiring, commanding, inducing, or procuring each other, and/or
5 others to commit said acts, Defendants acting with the intent to commit said crime, and/or
6 (3) pursuant to a conspiracy to commit this crime.

7 COUNT 10 - PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS
8 OR PROPERTY

9 Defendants did on or about September 21, 2007, then and there willfully and
10 unlawfully perform acts in willful or wanton disregard of the safety of persons or property
11 resulting in substantial bodily harm to RUDOLFO MEANA, in the following manner, to-
12 wit: by Defendants performing one or more of the following acts: (1) by directly
13 administering and/or directly or indirectly instructing employees of the Endoscopy Center of
14 Southern Nevada, (ECSN) to administer one or more doses of the anesthetic drug Propofol
15 from a single use vial to more than one patient contrary to the express product labeling of
16 said drug and in violation of universally accepted safety precautions for the administration of
17 said drug; and/or (2) by creating an employment environment in which said employees were
18 pressured to administer one or more doses of the anesthetic drug Propofol from a single use
19 vial to more than one patient contrary to the express product labeling of said drug and in
20 violation of universally accepted safety precautions for the administration of said drug;
21 and/or (3) by directly reusing and/or directly or indirectly instructing said employees, and/or
22 creating an employment environment in which said employees were pressured to reuse
23 syringes and/or needles and/or biopsy forceps and/or snares and/or bite blocks contrary to
24 the express product labeling of said items, and/or in violation of universally accepted safety
25 precautions for the use of said items; and/or (4) by directly limiting and/or directly or
26 indirectly instructing said employees, and/or creating an employment environment in which
27 said employees were pressured to limit the use of medical supplies necessary to conduct safe
28 endoscopic procedures; and/or (5) by falsely precharting patient records and/or rushing

1 patients through said endoscopy center and/or rushing patient procedures at the expense of
2 patient safety and/or well being and/or directly or indirectly instructing said employees,
3 and/or creating an employment environment in which said employees were pressured to
4 falsely prechart patient records and/or rush patients through said endoscopy center and/or
5 rush patient procedures at the expense of patient safety and/or well being; and/or (6) by
6 directly or indirectly scheduling and/or treating an unreasonable number of patients per day
7 which resulted in substandard care and/or jeopardized the safety and/or well being of said
8 patients; and/or (7) by directly failing to adequately clean and/or prepare endoscopy scopes,
9 contrary to the express manufacturers guidelines for the handling and processing of said
10 endoscopy scopes, and/or in violation of universally accepted safety precautions for the use
11 of said scopes and/or directly or indirectly instructing said employees, and/or creating an
12 employment environment in which said employees were inadequately trained and/or
13 pressured to provide endoscopy scopes for patient procedures that were not adequately
14 cleaned and/or prepared contrary to the express manufacturers guidelines for the handling
15 and processing of said endoscopy scopes, and/or in violation of universally accepted safety
16 precautions for the use of said scopes; Defendants being responsible under one or more of
17 the following principles of criminal liability, to wit: (1) by directly committing said acts;
18 and/or (2) aiding or abetting each other in the commission of the crime by directly or
19 indirectly counseling, encouraging, hiring, commanding, inducing, or procuring each other,
20 and/or others to commit said acts, Defendants acting with the intent to commit said crime,
21 and/or (3) pursuant to a conspiracy to commit this crime.

22 COUNT 11 - CRIMINAL NEGLECT OF PATIENTS

23 Defendants, on or about September 21, 2007, being professional caretakers of
24 RUDOLFO MEANA, did act or omit to act in an aggravated, reckless or gross manner,
25 failing to provide such service, care or supervision as is reasonable and necessary to
26 maintain the health or safety of said RUDOLFO MEANA, resulting in substantial bodily
27 harm to RUDOLFO MEANA, said acts or omissions being such a departure from what
28 would be the conduct of an ordinarily prudent, careful person under the same circumstances

1 that it is contrary to a proper regard for danger to human life or constitutes indifference to
2 the resulting consequences, said consequences of the negligent act or omission being
3 reasonably foreseeable; said danger to human life not being the result of inattention,
4 mistaken judgment or misadventure, but the natural and probable result of said aggravated
5 reckless or grossly negligent act or omission, by performing one or more of the following
6 acts: (1) by directly or indirectly instructing employees of the Endoscopy Center of
7 Southern Nevada, (ECSN) to administer one or more doses of the anesthetic drug Propofol
8 from a single use vial to more than one patient contrary to the express product labeling of
9 said drug and in violation of universally accepted safety precautions for the administration of
10 said drug; and/or (2) by creating an employment environment in which said employees were
11 pressured to administer one or more doses of the anesthetic drug Propofol from a single use
12 vial to more than one patient contrary to the express product labeling of said drug and in
13 violation of universally accepted safety precautions for the administration of said drug;
14 and/or (3) by directly or indirectly instructing said employees, and/or creating an
15 employment environment in which said employees were pressured to reuse syringes and/or
16 needles and/or biopsy forceps and/or snares and/or bite blocks contrary to the express
17 product labeling of said items, and/or in violation of universally accepted safety precautions
18 for the use of said items; and/or (4) by directly or indirectly instructing said employees,
19 and/or creating an employment environment in which said employees were pressured to limit
20 the use of medical supplies necessary to conduct safe endoscopic procedures; and/or (5) by
21 directly or indirectly instructing said employees, and/or creating an employment
22 environment in which said employees were pressured to falsely prechart patient records
23 and/or rush patients through said endoscopy center and/or rush patient procedures at the
24 expense of patient safety and/or well being; and/or (6) by directly or indirectly scheduling
25 and/or treating an unreasonable number of patients per day which resulted in substandard
26 care and/or jeopardized the safety and/or well being of said patients; and/or (7) by directly or
27 indirectly instructing said employees, and/or creating an employment environment in which
28 said employees were inadequately trained and/or pressured to provide endoscopy scopes for

1 patient procedures that were not adequately cleaned and/or prepared contrary to the express
2 manufacturers guidelines for the handling and processing of said endoscopy scopes, and/or
3 in violation of universally accepted safety precautions for the use of said scopes; and/or (8)
4 by methods unknown; for the purpose of enhancing the financial profit of ECSN, said act(s)
5 or omission(s) causing the transmission of Hepatitis C virus from patient KENNETH
6 RUBINO to patient RUDOLFO MEANA, who was not previously infected with the
7 Hepatitis C virus; Defendants being responsible under one or more of the following
8 principles of criminal liability, to wit: (1) by directly committing said acts; and/or (2) aiding
9 or abetting each other in the commission of the crime by directly or indirectly counseling,
10 encouraging, hiring, commanding, inducing, or procuring each other, and/or others to
11 commit said acts, Defendants acting with the intent to commit said crime, and/or (3)
12 pursuant to a conspiracy to commit this crime.

13 COUNT 12 - INSURANCE FRAUD

14 Defendants did, on or about September 21, 2007, knowingly and willfully present, or
15 cause to be presented a statement as a part of, or in support of, a claim for payment or other
16 benefits under a policy of insurance issued pursuant to Title 57 of the Nevada Revised
17 Statutes, knowing that the statement concealed or omitted facts, or contained false or
18 misleading information concerning a fact material to said claim; and/or did assist, abet,
19 solicit or conspire to present or cause to be presented a statement to an insurer, a reinsurer, a
20 producer, a broker or any agent thereof, knowing that said statement concealed or omitted
21 facts, or did contain false or misleading information concerning a fact material to a claim for
22 payment or other benefits under such policy issued pursuant to Title 57 of the Nevada
23 Revised Statutes, by falsely representing to SECURE HORIZONS and/or PACIFICARE that
24 the billed anesthesia time and/or charges for the endoscopic procedure performed on
25 RUDOLFO MEANA were more than the actual anesthetic time and/or charges, said false
26 representation resulting in the payment of money to Defendants and/or their medical practice
27 and/or the racketeering enterprise which exceeded that which would have normally been
28 allowed for said procedure; Defendants being responsible under one or more of the

1 following principles of criminal liability, to wit: (1) by directly committing said acts; and/or
2 (2) aiding or abetting each other in the commission of the crime by directly or indirectly
3 counseling, encouraging, hiring, commanding, inducing, or procuring each other, and/or
4 others to commit said acts, Defendants acting with the intent to commit said crime, and/or
5 (3) pursuant to a conspiracy to commit this crime.

6 COUNT 13 - PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS
7 OR PROPERTY

8 Defendants did on or about September 21, 2007, then and there willfully and
9 unlawfully perform acts in willful or wanton disregard of the safety of persons or property
10 resulting in substantial bodily harm to PATTY ASPINWALL, in the following manner, to-
11 wit: by Defendants performing one or more of the following acts: (1) by directly
12 administering and/or directly or indirectly instructing employees of the Endoscopy Center of
13 Southern Nevada, (ECSN) to administer one or more doses of the anesthetic drug Propofol
14 from a single use vial to more than one patient contrary to the express product labeling of
15 said drug and in violation of universally accepted safety precautions for the administration of
16 said drug; and/or (2) by creating an employment environment in which said employees were
17 pressured to administer one or more doses of the anesthetic drug Propofol from a single use
18 vial to more than one patient contrary to the express product labeling of said drug and in
19 violation of universally accepted safety precautions for the administration of said drug;
20 and/or (3) by directly reusing and/or directly or indirectly instructing said employees, and/or
21 creating an employment environment in which said employees were pressured to reuse
22 syringes and/or needles and/or biopsy forceps and/or snares and/or bite blocks contrary to
23 the express product labeling of said items, and/or in violation of universally accepted safety
24 precautions for the use of said items; and/or (4) by directly limiting and/or directly or
25 indirectly instructing said employees, and/or creating an employment environment in which
26 said employees were pressured to limit the use of medical supplies necessary to conduct safe
27 endoscopic procedures; and/or (5) by falsely precharting patient records and/or rushing
28 patients through said endoscopy center and/or rushing patient procedures at the expense of

1 patient safety and/or well being and/or directly or indirectly instructing said employees,
2 and/or creating an employment environment in which said employees were pressured to
3 falsely prechart patient records and/or rush patients through said endoscopy center and/or
4 rush patient procedures at the expense of patient safety and/or well being; and/or (6) by
5 directly or indirectly scheduling and/or treating an unreasonable number of patients per day
6 which resulted in substandard care and/or jeopardized the safety and/or well being of said
7 patients; and/or (7) by directly failing to adequately clean and/or prepare endoscopy scopes,
8 contrary to the express manufacturers guidelines for the handling and processing of said
9 endoscopy scopes, and/or in violation of universally accepted safety precautions for the use
10 of said scopes and/or directly or indirectly instructing said employees, and/or creating an
11 employment environment in which said employees were inadequately trained and/or
12 pressured to provide endoscopy scopes for patient procedures that were not adequately
13 cleaned and/or prepared contrary to the express manufacturers guidelines for the handling
14 and processing of said endoscopy scopes, and/or in violation of universally accepted safety
15 precautions for the use of said scopes; Defendants being responsible under one or more of
16 the following principles of criminal liability, to wit: (1) by directly committing said acts;
17 and/or (2) aiding or abetting each other in the commission of the crime by directly or
18 indirectly counseling, encouraging, hiring, commanding, inducing, or procuring each other,
19 and/or others to commit said acts, Defendants acting with the intent to commit said crime,
20 and/or (3) pursuant to a conspiracy to commit this crime.

21 COUNT 14 - CRIMINAL NEGLIGENCE OF PATIENTS

22 Defendants, on or about September 21, 2007, being professional caretakers of
23 PATTY ASPINWALL, did act or omit to act in an aggravated, reckless or gross manner,
24 failing to provide such service, care or supervision as is reasonable and necessary to
25 maintain the health or safety of said PATTY ASPINWALL, resulting in substantial bodily
26 harm to PATTY ASPINWALL, said acts or omissions being such a departure from what
27 would be the conduct of an ordinarily prudent, careful person under the same circumstances
28 that it is contrary to a proper regard for danger to human life or constitutes indifference to

1 the resulting consequences, said consequences of the negligent act or omission being
2 reasonably foreseeable; said danger to human life not being the result of inattention,
3 mistaken judgment or misadventure, but the natural and probable result of said aggravated
4 reckless or grossly negligent act or omission, by performing one or more of the following
5 acts: (1) by directly or indirectly instructing employees of the Endoscopy Center of
6 Southern Nevada, (ECSN) to administer one or more doses of the anesthetic drug Propofol
7 from a single use vial to more than one patient contrary to the express product labeling of
8 said drug and in violation of universally accepted safety precautions for the administration of
9 said drug; and/or (2) by creating an employment environment in which said employees were
10 pressured to administer one or more doses of the anesthetic drug Propofol from a single use
11 vial to more than one patient contrary to the express product labeling of said drug and in
12 violation of universally accepted safety precautions for the administration of said drug;
13 and/or (3) by directly or indirectly instructing said employees, and/or creating an
14 employment environment in which said employees were pressured to reuse syringes and/or
15 needles and/or biopsy forceps and/or snares and/or bite blocks contrary to the express
16 product labeling of said items, and/or in violation of universally accepted safety precautions
17 for the use of said items; and/or (4) by directly or indirectly instructing said employees,
18 and/or creating an employment environment in which said employees were pressured to limit
19 the use of medical supplies necessary to conduct safe endoscopic procedures; and/or (5) by
20 directly or indirectly instructing said employees, and/or creating an employment
21 environment in which said employees were pressured to falsely prechart patient records
22 and/or rush patients through said endoscopy center and/or rush patient procedures at the
23 expense of patient safety and/or well being; and/or (6) by directly or indirectly scheduling
24 and/or treating an unreasonable number of patients per day which resulted in substandard
25 care and/or jeopardized the safety and/or well being of said patients; and/or (7) by directly or
26 indirectly instructing said employees, and/or creating an employment environment in which
27 said employees were inadequately trained and/or pressured to provide endoscopy scopes for
28 patient procedures that were not adequately cleaned and/or prepared contrary to the express

1 manufacturers guidelines for the handling and processing of said endoscopy scopes, and/or
2 in violation of universally accepted safety precautions for the use of said scopes; and/or (8)
3 by methods unknown; for the purpose of enhancing the financial profit of ECSN, said act(s)
4 or omission(s) causing the transmission of Hepatitis C virus from patient KENNETH
5 RUBINO to patient PATTY ASPINWALL, who was not previously infected with the
6 Hepatitis C virus; Defendants being responsible under one or more of the following
7 principles of criminal liability, to wit: (1) by directly committing said acts; and/or (2) aiding
8 or abetting each other in the commission of the crime by directly or indirectly counseling,
9 encouraging, hiring, commanding, inducing, or procuring each other, and/or others to
10 commit said acts, Defendants acting with the intent to commit said crime, and/or (3)
11 pursuant to a conspiracy to commit this crime.

12 COUNT 15 - INSURANCE FRAUD

13 Defendants did, on or about September 21, 2007, knowingly and willfully present, or
14 cause to be presented a statement as a part of, or in support of, a claim for payment or other
15 benefits under a policy of insurance issued pursuant to Title 57 of the Nevada Revised
16 Statutes, knowing that the statement concealed or omitted facts, or contained false or
17 misleading information concerning a fact material to said claim; and/or did assist, abet,
18 solicit or conspire to present or cause to be presented a statement to an insurer, a reinsurer, a
19 producer, a broker or any agent thereof, knowing that said statement concealed or omitted
20 facts, or did contain false or misleading information concerning a fact material to a claim for
21 payment or other benefits under such policy issued pursuant to Title 57 of the Nevada
22 Revised Statutes, by falsely representing to ANTHEM BLUE CROSS AND BLUE
23 SHIELD that the billed anesthesia time and/or charges for the endoscopic procedure
24 performed on PATTY ASPINWALL were more than the actual anesthetic time and/or
25 charges, said false representation resulting in the payment of money to Defendants and/or
26 their medical practice and/or the racketeering enterprise which exceeded that which would
27 have normally been allowed for said procedure; Defendants being responsible under one or
28 more of the following principles of criminal liability, to wit: (1) by directly committing said

1 acts; and/or (2) aiding or abetting each other in the commission of the crime by directly, or
2 indirectly counseling, encouraging, hiring, commanding, inducing, or procuring each other,
3 and/or others to commit said acts, Defendants acting with the intent to commit said crime,
4 and/or (3) pursuant to a conspiracy to commit this crime.

5 COUNT 16 - INSURANCE FRAUD.

6 Defendants did, on or about September 21, 2007, knowingly and willfully present, or
7 cause to be presented a statement as a part of, or in support of, a claim for payment or other
8 benefits under a policy of insurance issued pursuant to Title 57 of the Nevada Revised
9 Statutes, knowing that the statement concealed or omitted facts, or contained false or
10 misleading information concerning a fact material to said claim; and/or did assist, abet,
11 solicit or conspire to present or cause to be presented a statement to an insurer, a reinsurer, a
12 producer, a broker or any agent thereof, knowing that said statement concealed or omitted
13 facts, or did contain false or misleading information concerning a fact material to a claim for
14 payment or other benefits under such policy issued pursuant to Title 57 of the Nevada
15 Revised Statutes, by falsely representing to UNITED HEALTH SERVICES that the billed
16 anesthesia time and/or charges for the endoscopic procedure performed on PATTY
17 ASPINWALL were more than the actual anesthetic time and/or charges, said false
18 representation resulting in the payment of money to Defendants and/or their medical practice
19 and/or the racketeering enterprise which exceeded that which would have normally been
20 allowed for said procedure; Defendants being responsible under one or more of the
21 following principles of criminal liability, to wit: (1) by directly committing said acts; and/or
22 (2) aiding or abetting each other in the commission of the crime by directly or indirectly
23 counseling, encouraging, hiring, commanding, inducing, or procuring each other, and/or
24 others to commit said acts, Defendants acting with the intent to commit said crime, and/or
25 (3) pursuant to a conspiracy to commit this crime.

26 COUNT 17 - PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS
27 OR PROPERTY

28 Defendants did on or about September 21, 2007, then and there willfully and

1 unlawfully perform acts in willful or wanton disregard of the safety of persons or property
2 resulting in substantial bodily harm to SONIA ORELLANA-RIVERA, in the following
3 manner, to-wit: by Defendants performing one or more of the following acts: (1) by directly
4 administering and/or directly or indirectly instructing employees of the Endoscopy Center of
5 Southern Nevada, (ECSN) to administer one or more doses of the anesthetic drug Propofol
6 from a single use vial to more than one patient contrary to the express product labeling of
7 said drug and in violation of universally accepted safety precautions for the administration of
8 said drug; and/or (2) by creating an employment environment in which said employees were
9 pressured to administer one or more doses of the anesthetic drug Propofol from a single use
10 vial to more than one patient contrary to the express product labeling of said drug and in
11 violation of universally accepted safety precautions for the administration of said drug;
12 and/or (3) by directly reusing and/or directly or indirectly instructing said employees, and/or
13 creating an employment environment in which said employees were pressured to reuse
14 syringes and/or needles and/or biopsy forceps and/or snares and/or bite blocks contrary to
15 the express product labeling of said items, and/or in violation of universally accepted safety
16 precautions for the use of said items; and/or (4) by directly limiting and/or directly or
17 indirectly instructing said employees; and/or creating an employment environment in which
18 said employees were pressured to limit the use of medical supplies necessary to conduct safe
19 endoscopic procedures; and/or (5) by falsely precharting patient records and/or rushing
20 patients through said endoscopy center and/or rushing patient procedures at the expense of
21 patient safety and/or well being and/or directly or indirectly instructing said employees,
22 and/or creating an employment environment in which said employees were pressured to
23 falsely prechart patient records and/or rush patients through said endoscopy center and/or
24 rush patient procedures at the expense of patient safety and/or well being; and/or (6) by
25 directly or indirectly scheduling and/or treating an unreasonable number of patients per day
26 which resulted in substandard care and/or jeopardized the safety and/or well being of said
27 patients; and/or (7) by directly failing to adequately clean and/or prepare endoscopy scopes;
28 contrary to the express manufacturers guidelines for the handling and processing of said

1 endoscopy scopes, and/or in violation of universally accepted safety precautions for the use
2 of said scopes and/or directly or indirectly instructing said employees, and/or creating an
3 employment environment in which said employees were inadequately trained and/or
4 pressured to provide endoscopy scopes for patient procedures that were not adequately
5 cleaned and/or prepared contrary to the express manufacturers guidelines for the handling
6 and processing of said endoscopy scopes, and/or in violation of universally accepted safety
7 precautions for the use of said scopes; Defendants being responsible under one or more of
8 the following principles of criminal liability, to wit: (1) by directly committing said acts;
9 and/or (2) aiding or abetting each other in the commission of the crime by directly or
10 indirectly counseling, encouraging, hiring, commanding, inducing, or procuring each other,
11 and/or others to commit said acts, Defendants acting with the intent to commit said crime,
12 and/or (3) pursuant to a conspiracy to commit this crime.

13 COUNT 18 - CRIMINAL NEGLECT OF PATIENTS

14 Defendants, on or about September 21, 2007, being professional caretakers of SONIA
15 ORELLANA-RIVERA, did act or omit to act in an aggravated, reckless or gross manner,
16 failing to provide such service, care or supervision as is reasonable and necessary to
17 maintain the health or safety of said SONIA ORELLANA-RIVERA, resulting in substantial
18 bodily harm to SONIA ORELLANA-RIVERA, said acts or omissions being such a
19 departure from what would be the conduct of an ordinarily prudent, careful person under the
20 same circumstances that it is contrary to a proper regard for danger to human life or
21 constitutes indifference to the resulting consequences, said consequences of the negligent act
22 or omission being reasonably foreseeable; said danger to human life not being the result of
23 inattention, mistaken judgment or misadventure, but the natural and probable result of said
24 aggravated reckless or grossly negligent act or omission, by performing one or more of the
25 following acts: (1) by directly or indirectly instructing employees of the Endoscopy Center
26 of Southern Nevada, (ECSN) to administer one or more doses of the anesthetic drug
27 Propofol from a single use vial to more than one patient contrary to the express product
28 labeling of said drug and in violation of universally accepted safety precautions for the

1 administration of said drug; and/or (2) by creating an employment environment in which
2 said employees were pressured to administer one or more doses of the anesthetic drug
3 Propofol from a single use vial to more than one patient contrary to the express product
4 labeling of said drug and in violation of universally accepted safety precautions for the
5 administration of said drug; and/or (3) by directly or indirectly instructing said employees,
6 and/or creating an employment environment in which said employees were pressured to
7 reuse syringes and/or needles and/or biopsy forceps and/or snares and/or bite blocks contrary
8 to the express product labeling of said items, and/or in violation of universally accepted
9 safety precautions for the use of said items; and/or (4) by directly or indirectly instructing
10 said employees, and/or creating an employment environment in which said employees were
11 pressured to limit the use of medical supplies necessary to conduct safe endoscopic
12 procedures; and/or (5) by directly or indirectly instructing said employees, and/or creating an
13 employment environment in which said employees were pressured to falsely prechart patient
14 records and/or rush patients through said endoscopy center and/or rush patient procedures at
15 the expense of patient safety and/or well being; and/or (6) by directly or indirectly
16 scheduling and/or treating an unreasonable number of patients per day which resulted in
17 substandard care and/or jeopardized the safety and/or well being of said patients; and/or (7)
18 by directly or indirectly instructing said employees, and/or creating an employment
19 environment in which said employees were inadequately trained and/or pressured to provide
20 endoscopy scopes for patient procedures that were not adequately cleaned and/or prepared
21 contrary to the express manufacturers guidelines for the handling and processing of said
22 endoscopy scopes, and/or in violation of universally accepted safety precautions for the use
23 of said scopes; and/or (8) by methods unknown; for the purpose of enhancing the financial
24 profit of ECSN, said act(s) or omission(s) causing the transmission of Hepatitis C virus from
25 patient KENNETH RUBINO to patient SONIA ORELLANA-RIVERA, who was not
26 previously infected with the Hepatitis C virus; Defendants being responsible under one or
27 more of the following principles of criminal liability, to wit: (1) by directly committing said
28 acts; and/or (2) aiding or abetting each other in the commission of the crime by directly or

1 indirectly counseling, encouraging, hiring, commanding, inducing, or procuring each other,
2 and/or others to commit said acts, Defendants acting with the intent to commit said crime,
3 and/or (3) pursuant to a conspiracy to commit this crime.

4 COUNT 19 - INSURANCE FRAUD

5 Defendants did, on or about September 21, 2007, knowingly and willfully present, or
6 cause to be presented a statement as a part of, or in support of, a claim for payment or other
7 benefits under a policy of insurance issued pursuant to Title 57 of the Nevada Revised
8 Statutes, knowing that the statement concealed or omitted facts, or contained false or
9 misleading information concerning a fact material to said claim; and/or did assist, abet,
10 solicit or conspire to present or cause to be presented a statement to an insurer, a reinsurer, a
11 producer, a broker or any agent thereof, knowing that said statement concealed or omitted
12 facts, or did contain false or misleading information concerning a fact material to a claim for
13 payment or other benefits under such policy issued pursuant to Title 57 of the Nevada
14 Revised Statutes, by falsely representing to CULINARY WORKERS HEALTH FUND that
15 the billed anesthesia time and/or charges for the endoscopic procedure performed on SONIA
16 ORELLANA-RIVERA were more than the actual anesthetic time and/or charges, said false
17 representation resulting in the payment of money to Defendants and/or their medical practice
18 and/or the racketeering enterprise which exceeded that which would have normally been
19 allowed for said procedure; Defendants being responsible under one or more of the
20 following principles of criminal liability, to wit: (1) by directly committing said acts; and/or
21 (2) aiding or abetting each other in the commission of the crime by directly or indirectly
22 counseling, encouraging, hiring, commanding, inducing, or procuring each other, and/or
23 others to commit said acts, Defendants acting with the intent to commit said crime, and/or
24 (3) pursuant to a conspiracy to commit this crime.

25 COUNT 20 - PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS
26 OR PROPERTY

27 Defendants did on or about September 21, 2007, then and there willfully and
28 unlawfully perform acts in willful or wanton disregard of the safety of persons or property

1 resulting in substantial bodily harm to CAROLE GRUESKIN, in the following manner, to-
2 wit: by Defendants performing one or more of the following acts: (1) by directly
3 administering and/or directly or indirectly instructing employees of the Endoscopy Center of
4 Southern Nevada, (ECSN) to administer one or more doses of the anesthetic drug Propofol
5 from a single use vial to more than one patient contrary to the express product labeling of
6 said drug and in violation of universally accepted safety precautions for the administration of
7 said drug; and/or (2) by creating an employment environment in which said employees were
8 pressured to administer one or more doses of the anesthetic drug Propofol from a single use
9 vial to more than one patient contrary to the express product labeling of said drug and in
10 violation of universally accepted safety precautions for the administration of said drug;
11 and/or (3) by directly reusing and/or directly or indirectly instructing said employees, and/or
12 creating an employment environment in which said employees were pressured to reuse
13 syringes and/or needles and/or biopsy forceps and/or snares and/or bite blocks contrary to
14 the express product labeling of said items, and/or in violation of universally accepted safety
15 precautions for the use of said items; and/or (4) by directly limiting and/or directly or
16 indirectly instructing said employees, and/or creating an employment environment in which
17 said employees were pressured to limit the use of medical supplies necessary to conduct safe
18 endoscopic procedures; and/or (5) by falsely precharting patient records and/or rushing
19 patients through said endoscopy center and/or rushing patient procedures at the expense of
20 patient safety and/or well being and/or directly or indirectly instructing said employees,
21 and/or creating an employment environment in which said employees were pressured to
22 falsely prechart patient records and/or rush patients through said endoscopy center and/or
23 rush patient procedures at the expense of patient safety and/or well being; and/or (6) by
24 directly or indirectly scheduling and/or treating an unreasonable number of patients per day
25 which resulted in substandard care and/or jeopardized the safety and/or well being of said
26 patients; and/or (7) by directly failing to adequately clean and/or prepare endoscopy scopes,
27 contrary to the express manufacturers guidelines for the handling and processing of said
28 endoscopy scopes, and/or in violation of universally accepted safety precautions for the use

1 of said scopes and/or directly or indirectly instructing said employees, and/or creating an
2 employment environment in which said employees were inadequately trained and/or
3 pressured to provide endoscopy scopes for patient procedures that were not adequately
4 cleaned and/or prepared contrary to the express manufacturers guidelines for the handling
5 and processing of said endoscopy scopes, and/or in violation of universally accepted safety
6 precautions for the use of said scopes; Defendants being responsible under one or more of
7 the following principles of criminal liability, to wit: (1) by directly committing said acts;
8 and/or (2) aiding or abetting each other in the commission of the crime by directly or
9 indirectly counseling, encouraging, hiring, commanding, inducing, or procuring each other,
10 and/or others to commit said acts, Defendants acting with the intent to commit said crime,
11 and/or (3) pursuant to a conspiracy to commit this crime.

12 COUNT 21- CRIMINAL NEGLECT OF PATIENTS

13 Defendants, on or about September 21, 2007, being professional caretakers of
14 CAROLE GRUESKIN, did act or omit to act in an aggravated, reckless or gross manner,
15 failing to provide such service, care or supervision as is reasonable and necessary to
16 maintain the health or safety of said CAROLE GRUESKIN, resulting in substantial bodily
17 harm to CAROLE GRUESKIN, said acts or omissions being such a departure from what
18 would be the conduct of an ordinarily prudent, careful person under the same circumstances
19 that it is contrary to a proper regard for danger to human life or constitutes indifference to
20 the resulting consequences, said consequences of the negligent act or omission being
21 reasonably foreseeable; said danger to human life not being the result of inattention,
22 mistaken judgment or misadventure, but the natural and probable result of said aggravated
23 reckless or grossly negligent act or omission, by performing one or more of the following
24 acts: (1) by directly or indirectly instructing employees of the Endoscopy Center of
25 Southern Nevada, (ECSN) to administer one or more doses of the anesthetic drug Propofol
26 from a single use vial to more than one patient contrary to the express product labeling of
27 said drug and in violation of universally accepted safety precautions for the administration of
28 said drug; and/or (2) by creating an employment environment in which said employees were

1 pressured to administer one or more doses of the anesthetic drug Propofol from a single use
2 vial to more than one patient contrary to the express product labeling of said drug and in
3 violation of universally accepted safety precautions for the administration of said drug;
4 and/or (3) by directly or indirectly instructing said employees, and/or creating an
5 employment environment in which said employees were pressured to reuse syringes and/or
6 needles and/or biopsy forceps and/or snares and/or bite blocks contrary to the express
7 product labeling of said items, and/or in violation of universally accepted safety precautions
8 for the use of said items; and/or (4) by directly or indirectly instructing said employees,
9 and/or creating an employment environment in which said employees were pressured to limit
10 the use of medical supplies necessary to conduct safe endoscopic procedures; and/or (5) by
11 directly or indirectly instructing said employees, and/or creating an employment
12 environment in which said employees were pressured to falsely prechart patient records
13 and/or rush patients through said endoscopy center and/or rush patient procedures at the
14 expense of patient safety and/or well being; and/or (6) by directly or indirectly scheduling
15 and/or treating an unreasonable number of patients per day which resulted in substandard
16 care and/or jeopardized the safety and/or well being of said patients; and/or (7) by directly or
17 indirectly instructing said employees, and/or creating an employment environment in which
18 said employees were inadequately trained and/or pressured to provide endoscopy scopes for
19 patient procedures that were not adequately cleaned and/or prepared contrary to the express
20 manufacturers guidelines for the handling and processing of said endoscopy scopes, and/or
21 in violation of universally accepted safety precautions for the use of said scopes; and/or (8)
22 by methods unknown; for the purpose of enhancing the financial profit of ECSN, said act(s)
23 or omission(s) causing the transmission of Hepatitis C virus from patient KENNETH
24 RUBINO to patient CAROLE GRUESKIN, who was not previously infected with the
25 Hepatitis C virus; Defendants being responsible under one or more of the following
26 principles of criminal liability, to wit: (1) by directly committing said acts; and/or (2) aiding
27 or abetting each other in the commission of the crime by directly or indirectly counseling,
28 encouraging, hiring, commanding, inducing, or procuring each other, and/or others to

1 commit said acts, Defendants acting with the intent to commit said crime, and/or (3)
2 pursuant to a conspiracy to commit this crime.

3 COUNT 22 - INSURANCE FRAUD

4 Defendants did, on or about September 21, 2007, knowingly and willfully present, or
5 cause to be presented a statement as a part of, or in support of, a claim for payment or other
6 benefits under a policy of insurance issued pursuant to Title 57 of the Nevada Revised
7 Statutes, knowing that the statement concealed or omitted facts, or contained false or
8 misleading information concerning a fact material to said claim; and/or did assist, abet,
9 solicit or conspire to present or cause to be presented a statement to an insurer, a reinsurer, a
10 producer, a broker or any agent thereof, knowing that said statement concealed or omitted
11 facts, or did contain false or misleading information concerning a fact material to a claim for
12 payment or other benefits under such policy issued pursuant to Title 57 of the Nevada
13 Revised Statutes, by falsely representing to HEALTH PLAN OF NEVADA that the billed
14 anesthesia time and/or charges for the endoscopic procedure performed on CAROLE
15 GRUESKIN were more than the actual anesthetic time and/or charges, said false
16 representation resulting in the payment of money to Defendants and/or their medical practice
17 and/or the racketeering enterprise which exceeded that which would have normally been
18 allowed for said procedure; Defendants being responsible under one or more of the
19 following principles of criminal liability, to wit: (1) by directly committing said acts; and/or
20 (2) aiding or abetting each other in the commission of the crime by directly or indirectly
21 counseling, encouraging, hiring, commanding, inducing, or procuring each other, and/or
22 others to commit said acts, Defendants acting with the intent to commit said crime, and/or
23 (3) pursuant to a conspiracy to commit this crime.

24 COUNT 23 - PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS
25 OR PROPERTY

26 Defendants did on or about September 21, 2007, then and there willfully and
27 unlawfully perform acts in willful or wanton disregard of the safety of persons or property
28 resulting in substantial bodily harm to GWENDOLYN MARTIN, in the following manner,

1 to-wit: by Defendants performing one or more of the following acts: (1) by directly
2 administering and/or directly or indirectly instructing employees of the Endoscopy Center of
3 Southern Nevada, (ECSN) to administer one or more doses of the anesthetic drug Propofol
4 from a single use vial to more than one patient contrary to the express product labeling of
5 said drug and in violation of universally accepted safety precautions for the administration of
6 said drug; and/or (2) by creating an employment environment in which said employees were
7 pressured to administer one or more doses of the anesthetic drug Propofol from a single use
8 vial to more than one patient contrary to the express product labeling of said drug and in
9 violation of universally accepted safety precautions for the administration of said drug;
10 and/or (3) by directly reusing and/or directly or indirectly instructing said employees, and/or
11 creating an employment environment in which said employees were pressured to reuse
12 syringes and/or needles and/or biopsy forceps and/or snares and/or bite blocks contrary to
13 the express product labeling of said items, and/or in violation of universally accepted safety
14 precautions for the use of said items; and/or (4) by directly limiting and/or directly or
15 indirectly instructing said employees, and/or creating an employment environment in which
16 said employees were pressured to limit the use of medical supplies necessary to conduct safe
17 endoscopic procedures; and/or (5) by falsely precharting patient records and/or rushing
18 patients through said endoscopy center and/or rushing patient procedures at the expense of
19 patient safety and/or well being and/or directly or indirectly instructing said employees,
20 and/or creating an employment environment in which said employees were pressured to
21 falsely prechart patient records and/or rush patients through said endoscopy center and/or
22 rush patient procedures at the expense of patient safety and/or well being; and/or (6) by
23 directly or indirectly scheduling and/or treating an unreasonable number of patients per day
24 which resulted in substandard care and/or jeopardized the safety and/or well being of said
25 patients; and/or (7) by directly failing to adequately clean and/or prepare endoscopy scopes,
26 contrary to the express manufacturers guidelines for the handling and processing of said
27 endoscopy scopes, and/or in violation of universally accepted safety precautions for the use
28 of said scopes and/or directly or indirectly instructing said employees, and/or creating an

1 employment environment in which said employees were inadequately trained and/or
2 pressured to provide endoscopy scopes for patient procedures that were not adequately
3 cleaned and/or prepared contrary to the express manufacturers guidelines for the handling
4 and processing of said endoscopy scopes, and/or in violation of universally accepted safety
5 precautions for the use of said scopes; Defendants being responsible under one or more of
6 the following principles of criminal liability, to wit: (1) by directly committing said acts;
7 and/or (2) aiding or abetting each other in the commission of the crime by directly or
8 indirectly counseling, encouraging, hiring, commanding, inducing, or procuring each other,
9 and/or others to commit said acts, Defendants acting with the intent to commit said crime,
10 and/or (3) pursuant to a conspiracy to commit this crime.

11 COUNT 24 - CRIMINAL NEGLECT OF PATIENTS

12 Defendants, on or about September 21, 2007, being professional caretakers of
13 GWENDOLYN MARTIN, did act or omit to act in an aggravated, reckless or gross manner,
14 failing to provide such service, care or supervision as is reasonable and necessary to
15 maintain the health or safety of said GWENDOLYN MARTIN, resulting in substantial
16 bodily harm to GWENDOLYN MARTIN, said acts or omissions being such a departure
17 from what would be the conduct of an ordinarily prudent, careful person under the same
18 circumstances that it is contrary to a proper regard for danger to human life or constitutes
19 indifference to the resulting consequences, said consequences of the negligent act or
20 omission being reasonably foreseeable; said danger to human life not being the result of
21 inattention, mistaken judgment or misadventure, but the natural and probable result of said
22 aggravated reckless or grossly negligent act or omission, by performing one or more of the
23 following acts: (1) by directly or indirectly instructing employees of the Endoscopy Center
24 of Southern Nevada, (ECSN) to administer one or more doses of the anesthetic drug
25 Propofol from a single use vial to more than one patient contrary to the express product
26 labeling of said drug and in violation of universally accepted safety precautions for the
27 administration of said drug; and/or (2) by creating an employment environment in which
28 said employees were pressured to administer one or more doses of the anesthetic drug

1 Propofol from a single use vial to more than one patient contrary to the express product
2 labeling of said drug and in violation of universally accepted safety precautions for the
3 administration of said drug; and/or (3) by directly or indirectly instructing said employees,
4 and/or creating an employment environment in which said employees were pressured to
5 reuse syringes and/or needles and/or biopsy forceps and/or snares and/or bite blocks contrary
6 to the express product labeling of said items, and/or in violation of universally accepted
7 safety precautions for the use of said items; and/or (4) by directly or indirectly instructing
8 said employees, and/or creating an employment environment in which said employees were
9 pressured to limit the use of medical supplies necessary to conduct safe endoscopic
10 procedures; and/or (5) by directly or indirectly instructing said employees, and/or creating an
11 employment environment in which said employees were pressured to falsely prechart patient
12 records and/or rush patients through said endoscopy center and/or rush patient procedures at
13 the expense of patient safety and/or well being; and/or (6) by directly or indirectly
14 scheduling and/or treating an unreasonable number of patients per day which resulted in
15 substandard care and/or jeopardized the safety and/or well being of said patients; and/or (7)
16 by directly or indirectly instructing said employees, and/or creating an employment
17 environment in which said employees were inadequately trained and/or pressured to provide
18 endoscopy scopes for patient procedures that were not adequately cleaned and/or prepared
19 contrary to the express manufacturers guidelines for the handling and processing of said
20 endoscopy scopes, and/or in violation of universally accepted safety precautions for the use
21 of said scopes; and/or (8) by methods unknown; for the purpose of enhancing the financial
22 profit of ECSN, said act(s) or omission(s) causing the transmission of Hepatitis C virus from
23 patient KENNETH RUBINO to patient GWENDOLYN MARTIN, who was not previously
24 infected with the Hepatitis C virus; Defendants being responsible under one or more of the
25 following principles of criminal liability, to wit: (1) by directly committing said acts; and/or
26 (2) aiding or abetting each other in the commission of the crime by directly or indirectly
27 counseling, encouraging, hiring, commanding, inducing, or procuring each other, and/or
28 ///

1 others to commit said acts, Defendants acting with the intent to commit said crime, and/or
2 (3) pursuant to a conspiracy to commit this crime.

3 COUNT 25 - INSURANCE FRAUD

4 Defendants did, on or between September 20, 2007 and September 21, 2007,
5 knowingly and willfully present, or cause to be presented a statement as a part of, or in
6 support of, a claim for payment or other benefits under a policy of insurance issued pursuant
7 to Title 57 of the Nevada Revised Statutes, knowing that the statement concealed or omitted
8 facts, or contained false or misleading information concerning a fact material to said claim;
9 and/or did assist, abet, solicit or conspire to present or cause to be presented a statement to
10 an insurer, a reinsurer, a producer, a broker or any agent thereof, knowing that said statement
11 concealed or omitted facts, or did contain false or misleading information concerning a fact
12 material to a claim for payment or other benefits under such policy issued pursuant to Title
13 57 of the Nevada Revised Statutes, by falsely representing to PACIFIC CARE that the
14 billed anesthesia time and/or charges for the endoscopic procedure performed on
15 GWENDOLYN MARTIN were more than the actual anesthetic time and/or charges, said
16 false representation resulting in the payment of money to Defendants and/or their medical
17 practice and/or the racketeering enterprise which exceeded that which would have normally
18 been allowed for said procedure; Defendants being responsible under one or more of the
19 following principles of criminal liability, to wit: (1) by directly committing said acts; and/or
20 (2) aiding or abetting each other in the commission of the crime by directly or indirectly
21 counseling, encouraging, hiring, commanding, inducing, or procuring each other, and/or
22 others to commit said acts, Defendants acting with the intent to commit said crime, and/or
23 (3) pursuant to a conspiracy to commit this crime.

24 COUNT 26 - THEFT

25 Defendants did, between July 25, 2007 and December 31, 2007, then and there
26 knowingly, feloniously, and without lawful authority, commit theft by obtaining personal
27 property in the amount of \$250.00, or more, lawful money of the United States, from
28 STACY HUTCHINSON, KENNETH RUBINO, PATTY ASPINWALL, SHARRIEFF

1 ZIYAD, MICHAEL WASHINGTON, CAROLE GRUESKIN and RODOLFO MEANA,
2 and/or ANTHEM BLUE CROSS AND BLUE SHIELD, HEALTHCARE PARTNERS OF
3 NEVADA, UNITED HEALTH SERVICES, VETERANS ADMINISTRATION and
4 SECURED HORIZONS, by a material misrepresentation with intent to deprive those
5 persons of the property, in the following manner, to-wit: by falsely representing that the
6 billed anesthesia time and/or charges for the endoscopic procedure performed on STACY
7 HUTCHINSON, KENNETH RUBINO, PATTY ASPINWALL, SHARRIEFF ZIYAD,
8 MICHAEL WASHINGTON, CAROLE GRUESKIN and RODOLFO MEANA, were more
9 than the actual anesthetic time and/or charges, said false representation resulting in the
10 payment of money to Defendants and/or their medical practice and/or the racketeering
11 enterprise, which exceeded that which would have normally been allowed for said
12 procedure, thereby obtaining said personal property by a material misrepresentation with
13 intent to deprive them of the property, Defendants being responsible under one or more of
14 the following principles of criminal liability, to wit: (1) by directly committing said acts;
15 and/or (2) aiding or abetting each other in the commission of the crime by directly or
16 indirectly counseling, encouraging, hiring, commanding, inducing, or procuring each other,
17 and/or others to commit said acts, Defendants acting with the intent to commit said crime,
18 and/or (3) pursuant to a conspiracy to commit this crime.

19 COUNT 27 - OBTAINING MONEY UNDER FALSE PRETENSES

20 Defendants, did on or between September 20, 2007, and December 31, 2007, with
21 intent to cheat and defraud, wilfully, unlawfully, feloniously, knowingly, designedly, and by
22 use of false pretenses, obtain \$250.00, or more, lawful money of the United States from
23 GWENDOLYN MARTIN and/or PACIFICARE, within Las Vegas, Clark County, Nevada,
24 in the following manner, to-wit: by falsely representing that the billed anesthesia times
25 and/or charges for the endoscopic procedures performed on GWENDOLYN MARTIN were
26 more than the actual anesthetic times and/or charges, said false representation resulting in the
27 payment of money to Defendants and/or the medical practice and/or the racketeering
28 enterprise, which exceeded that which would have normally been allowed for said

1 procedures Defendants being responsible under one or more of the following principles of
2 criminal liability, to wit: (1) by directly committing said acts; and/or (2) aiding or abetting
3 each other in the commission of the crime by directly or indirectly counseling, encouraging,
4 hiring, commanding, inducing, or procuring each other, and/or others to commit said acts,
5 Defendants acting with the intent to commit said crime, and/or (3) pursuant to a conspiracy
6 to commit this crime.

7 COUNT 28 - OBTAINING MONEY UNDER FALSE PRETENSES

8 Defendants, did on or between September 21, 2007, and December 31, 2007, with
9 intent to cheat and defraud, wilfully, unlawfully, feloniously, knowingly, designedly, and by
10 use of false pretenses, obtain \$250.00, or more, lawful money of the United States from
11 SONIA ORELLANA-RIVERA and/or CULINARY WORKERS HEALTH FUND, within
12 Las Vegas, Clark County, Nevada, in the following manner, to-wit: by falsely representing
13 that the billed anesthesia times and/or charges for the endoscopic procedures performed on
14 SONIA ORELLANA-RIVERA were more than the actual anesthetic times and/or charges,
15 said false representation resulting in the payment of money to Defendants and/or the medical
16 practice and/or the racketeering enterprise, which exceeded that which would have normally
17 been allowed for said procedures Defendants being responsible under one or more of the
18 following principles of criminal liability, to wit: (1) by directly committing said acts; and/or
19 (2) aiding or abetting each other in the commission of the crime by directly or indirectly
20 counseling, encouraging, hiring, commanding, inducing, or procuring each other, and/or

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1 others to commit said acts, Defendants acting with the intent to commit said crime, and/or
2 (3) pursuant to a conspiracy to commit this crime.

3 DATED this 8th day of June, 2010.

4
5 DAVID ROGER
6 DISTRICT ATTORNEY
7 Nevada Bar #002781

8 BY


9 MICHAEL V. STAUDAHER
10 Chief Deputy District Attorney
11 Nevada Bar #008273
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1 Names of witnesses testifying before the Grand Jury:
2 CARRERA, HILARIO
3 DESAI, SAEHAL
4 RIVERA, SONIA ORELLONO
5 ZIYAD, SHARRIEFF
6 MEANA, RODOLFO
7 RUBINO, KENNETH
8 WASHINGTON, MICHAEL
9 GRUESKIN, CAROLE
10 MARTIN, GWENDOLYN
11 HUTCHINSON, STACY
12 ASPINWALL, PATTY
13 CAROL, CLIFFORD
14 LANGLEY, GAYLE, CDC PHYSICIAN
15 SCHAEFER, MELISSA, CDC PHYSICIAN
16 DROBENINE, JAN, CDC LAB SUPERVISOR
17 KHUDYAKOV, YURY, CDC
18 ARMOUR, PATRICIA, NV. HEALTH DISTRICT
19 LABUS, BRIAN, NV HEALTH DISTRICT,
20 HAWKINS, MELVIN
21 YEE, THOMAS, ANESTHESIOLOGIST
22 SHARMA, SATISH, ANESTHESIOLOGIST
23 DUENAS, YERENY, INSURANCE CLAIMS
24 YOST, ANNE, NURSE
25 SAGENDORF, VINCENT, CRNA
26 CERDA, RYAN, HEALTH CARE BUSINESS SOLUTIONS
27 VANDRUFF, MARION, MEDICAL ASSISTANT
28 MYERS, ELAINE, CLAIMS DIRECTOR

1 SPAETH, CORRINE, CLAIMS DIRECTOR
2 GONZALES, PATRICIA, BLUE CROSS DIRECTOR DEPT.
3 SAMPSON, NANCY, LVMPD
4 SAMS, JOANNE, VET ADMIN. CODER
5 LOBIANBO, ANNAMARIE, CRNA
6 NEMEC, FRANK, GASTROENTEROLOGIST
7 CAMPBELL, LYNETTE, RN
8 SIMS, DOROTHY, BUREAU OF LICENSING AND CERTIFICATION
9 KALKA, KATIE, UNITED HEALTH GROUP INV.
10 KRUEGER, JEFFREY ALEN, RN
11 RUSHING, TONYA, OFFICE MGR.
12 Additional witnesses known to the District Attorney at time of filing the Indictment:
13 WHITELY, R. LVMPD
14 FORD, MIKE, LVMPD
15 HANCOCK, L., LVMPD #7083
16 KELLEY, J., LVMPD #3716
17 COE, DANIEL, LVMPD
18 ARNONE, ANTHONY, LVMPD
19 GRAY, WARREN, LVMPD
20 MCILROY, ROBIN, FBI
21 DESAI, DIPAK, 3093 RED ARROW, LVN 89135
22 LAKEMAN, RONALD, 700 SHADOW LN #165B, LVN 89106
23 MATHAHS, KEITH, 10220 BUTTON WILLOW DR., LVN 89134
24 HERRERO, CARMELO, 1864 WOODHAVEN DR., HNV 89074
25 KHAN, IKRAM, 3006 S. MARYLAND PKWY, #465 LVN 89109
26 ANWAR, JAVAID, 3006 MARYLAND PKWY #400, LVN 89109
27 FISHCHER, GAYLE, 1600 CLIFTON MAIL STOP #G37, ATLANTA, GA. 30333
28 SHARMA, VISHVINDER, DR. 3212 CEDARDALE PL., LVN 89134

- 1 COHAN, DR. CHARLES, POB 4144, SAYLORSBURG, PA
- 2 LOPEZ, J. JULIAN, 7106 SMOKE RANCH RD. #120 LVN 89128
- 3 MALEY, KATIE, 4275 BURNHAM #101, LVN
- 4 HANSEN, IDA
- 5 PETERSON, KAREN, 2138 FT. SANDERS ST., HNV
- 6 BIEN, KATHY, 3800 DALECREST DR. #1117, LVN 89129
- 7 CAVETT, JOSHUA, 7829 TATTERSALL FLAG ST., LVN 89139
- 8 HARRIS, ORELENA (HOLLEMAN), 2816 DESERT SONG, LVN 89106
- 9 GREGORY, MARTHA
- 10 HIGUERA, LILIA, 3504 FLOWER, NLVN 89030
- 11 CARAWAY, ANTOINETTE, 1407 BAREBACK CT., HNV 89014
- 12 DRURY, JANINE
- 13 JOHNSON, SHONNA S., 22 VIA DE LUCCIA, HNV 89074
- 14 BAILEY, PAULINE, 3416 MONTE CARLO DR., LVN 89121
- 15 FALZONE, LISA, 8024 PEACEFUL WOODS STREET, LVN 89143
- 16 IRVIN, JOHNNA
- 17 MCDOWELL, RALPH, 388 SANTA CANDIDA ST., LVN
- 18 RICHVALSKY, KAREN, 3325 NIGUL WAY, LVN 89117
- 19 HUBBARD, LINDA, 515 PARK ROYAL DR., NLVN 89031
- 20 MURPHY, MAGGIE, 10175 W. SPRING MTN RD. #2012 LVN 89117
- 21 RUSSOM, RUTA, 4854 MONTERREY AVE., LVN 89121
- 22 SCHULL, JERRY, 5413 SWEET SHADE ST., LVN
- 23 MCDOWELL, RALPH, 388 SANTA CANDIDA ST., LVN 89138
- 24 SUKHDEO, DANIEL, 3925 LEGEND HILLS ST. #203, LVN 89129
- 25 CLEMMER, DANA MARIE, 4913 FERRELL ST., NLVN 89034
- 26 WEBB, KAREN, 1459 S. 14TH ST., OMAHA, NE
- 27 MIONE, VINCENT, 2408 W. EL CAMPO GRANDE AVE., NLVN 89031
- 28 CHAFFEE, ROD, 9303 GILCREASE #1080, LVN 89149

- 1 MCGOWAN, SHANNON, 5420 CARNATION MEADOW ST., LVN 89130
- 2 KOSLOY, LESLEE, RN, HEALTH FACILITIES SURVEYOR
- 3 HOWARD, NADINE, HEALTH FACILITIES SURVEYOR
- 4 WHITAKER, GERALDINE, 701 CARPICE DR. #17B, BOULDER CITY, NV 89005
- 5 HUYNH, NGUYEN, 3004 HAZY MEADOW LN., LVN 89108
- 6 MANTHEL, PETER, 7066 AZURE BEACH AZURE ST., LVN 89148
- 7 PRESTON, LAWRENCE, 801 S. RANCHO DR., STE C-1, LVN
- 8 SHEFNOFF, NEIL, 755 E. MCDOWELL RD., PHOENIX, AZ 85006
- 9 GREER, MARY, 3462 SHAMROCK AVE., LVN 89120
- 10 SCAMBIO, JEAN, 2920 YUKON FLATS CT., NLVN 89031
- 11 LATHROP, CAROL, 1741 AUGUSTA ST., PAHRUMP, NV 89048
- 12 PHELPS, LISA, 784 MORMON PEAK ST., OVERTON, NV 89040
- 13 ZIMMERMAN, MARILYN, 550 SEASONS PKWY, BELVIDERE, IL 89040
- 14 BLEMINES, RENATE, 2100 PLAIN ST., PAHRUMP, NV 89060
- 15 ELLEN, DIANE
- 16 CARRERA, ELADIO, 612 CANYON GREENS DR., LVN 89144
- 17 CARROLL, CLIFFORD, 10313 ORKINEY DR., LVN 89144
- 18 JONES, LISA, CHIEF NSB OF LICENSURE AND CERTIFICATION (BLC)
- 19 WILLIAMS, SKLAR, RESIDENT AGENT, 8363 W. SUNSET RD. #300, LVN 89113
- 20 DESAI, KUSAM, MD
- 21 FARIS, FRANK
- 22 WAHID, SHAHID, MD
- 23 NAYYAR, SANJAY, MD
- 24 MUKHERJEE, RANADER, MD
- 25 OM, HARI, LLC MGR
- 26 COOPER, DOUG, CHIEF INV., NV. ST. BOARD OF ME
- 27 MASON, ALBERT
- 28 HIGGINS, HEATHER, INV. NV. ST. BOARD OF ME

1 HUGHES, LAURA, AG S/A
2 FRANKS, LISA, PHYSICIAN ASST.
3 ECKERT, PHYSICIAN ASST.
4 KAUL, DR.
5 PATEL, DR.
6 QUANNAH, LAKOTA
7 HUYNH, NGUYEN
8 COOK, KATIE, FBI S/A
9 VAZIRI, DR.
10 BUI, DR.
11 SAMEER, DR. SHEIKH
12 MANUEL, DR. DAVID
13 MANUEL, DR.
14 RICHVALSKY, KAREN, RN
15 CALVALHO, DANIEL CARRERA
16 JURANI, DR.
17 CASTLEMAN, DR. STEPHANIE
18 SENI, DR.
19 FALZONE, NURSE
20 TONY, DR.
21 LOPEZ, DR.
22 ALFARO-MARTINEZ, SAMUEL
23 WISE, PATTY
24 TERRY, JENNIFER, LVMPD INTERPRETER
25 MOORE, DAVID
26 DIAZ, ALLEN, LVMPD INTERPRETER
27 LEWIS, DR. DANIEL
28 O'REILLY, TIM

1 O'REILLY, JOHN
2 MARTIN, LOVEY
3 MALMBERG, GEORGE
4 ASHANTE, DR.
5 KNOWLES, DR.
6 SAPP, BETSY, PHLEBOTOMIST
7 PAGE-TAYLOR, LESLIE, CDC
8 HUBBARD, LINDA, CRNA
9 ROSEL, LINDA, FBI SA
10 LOBIONDA, CRNA
11 YAMPOLSKY, MACE
12 POMERANZ, AUSA
13 FIGLER, DAYVID
14 BUNIN, DANIEL
15 TAGLE, PEGGY, RN
16 BLEMINGS, RENATE
17 LUKENS, JOHN
18 KOSLOY, LESLEE, RN
19 HAHN, JASON, LVMPD
20 SMITH, CHARNESSA
21 HITTI, DR. MIRANDA
22 NAZARIO, DR. BRUNILDA
23 BARCLAY, DR. ROBERT
24 REXFORD, KEVIN
25 CAVETT, JOSHUA, GI TECH
26 ARBOREEN, DAVE, LVMPD
27 BURKIN, JERALD, FBI SA
28 NAZAR, WILLIAM

1 PHELPS, LISA
2 HARPER, TIFFANY
3 SCAMBIO, JEAN, NURSE
4 HUGHES, LAURA, AG INV.
5 MAANO, PETER, RN
6 MILLER, JAMES
7 CRANE, AUSA
8 DIBUDUO, CHARLES
9 GLASS-SERAN, BARBARA, CRNA
10 PENSAKOVIC, JOAN
11 KIRCH, MARLENE
12 KAUSHAL, DR. DHAN
13 LATHROP, CAROL
14 LATHROP, WILLIAM
15 SHARMA, DR. SATISH
16 STURMAN, GLORIA
17 GASKILL, SARA
18 BROWN, DAVID
19 DORAME, JOHN
20 GENTILE, DOMINIC
21 ARMENI, PAOLA
22 CREMEN, FRANK
23 SAGENDORF, VINCENT
24 TAGLE, PEGGY
25 IRVIN, JOHNNA
26 SOOD, RAJAT
27 09BGJ049A-C/10F03793A-C/GJ/mj
28 LVMPD EV #080229-2576
(TK11)

EXHIBIT 2

**EIGHTH JUDICIAL DISTRICT COURT**

REGIONAL JUSTICE CENTER
200 LEWIS AVENUE
LAS VEGAS, NEVADA 89155-2367

LINDA MARIE BELL
DISTRICT JUDGE

DEPARTMENT SEVEN
(702) 671-4344
FAX: (702) 671-4343

October 11, 2012

Richard Wright, Esq.
Wright, Stanish & Winckler
300 S. Fourth St., #701
Las Vegas, NV 89101

Dear Mr. Wright,

This letter is in response to your request for information regarding procedures in the Desai case. I apologize for the delay in my response. I have been extraordinarily busy in my new assignment.

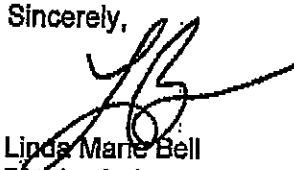
Grand juries sit in Clark County for a period of one year. The one year period is a matter of practice, not statute. Nevada Revised Statute 6.110 requires selection of a grand jury "as often as the public interest may require and at least once in each 4 years." We have two grand juries at any time, an A Grand Jury and a B Grand Jury. Generally, the A Grand Jury is seated in May, and the B Grand Jury is seated in October.

The grand juries are released after serving a year, but not formally discharged. That procedure was in place when I took oversight of the grand jury. My understanding is that the grand juries are not formally discharged to allow for the possibility of recall in cases such as this one. I'm not aware of any documentation being filed relative to their release or discharge. Generally, I meet with them, thank them for their service and we give them a certificate of thanks. Since that meeting is ceremonial in nature, it is not taken down by the court reporter.

In this specific case, a request was made by the district attorney's office to recall the original grand jury (the 2009 B Grand Jury) to hear additional charges in the Desai case. The request to recall the 2009 B Grand Jury stemmed from the length of the prior proceedings. As I recall, the first presentation took approximately ten days of grand jury time – roughly twenty percent of the grand jury year. On that basis, the request was granted with certain safeguards in place. The grand jurors were re-instructed. They also were provided with copies of the prior proceeding transcripts in advance, and I polled each grand juror to ensure the transcripts had been reviewed. I am enclosing the Order recalling the Grand Jury.

I would be happy to meet with you and Mr. Staudaher if you have any additional questions. Feel free to contact my JEA Tina Hurd at 671-4344 to set up a mutually agreeable time.

Sincerely,



Linda Marie Bell
District Judge

Enclosure: One (1)

CC: Stefany Miley, District Judge
Michael Staudaher, Deputy District Attorney



OFFICE OF THE DISTRICT ATTORNEY

HIDTA / GRAND JURY

STEVEN B. WOLFSON
District Attorney

CHRIS OWENS
Assistant District Attorney

TERESA M. LOWRY
Assistant District Attorney

MARY-ANNE MILLER
County Counsel

CHRISTOPHER LAURENT
Chief Deputy

July 2, 2012

The Honorable Linda Marie Bell
Eighth Judicial District Court Judge
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

RE: A595107 - State's Request to Recall Thursday 2009 Grand Jury

Honorable Judge Bell:

The State is requesting that the court recall the Thursday 2009 grand jury that heard *State of Nevada v. Dipak Kantilal Desai, et al.* (Case no. 09BGJ049A-C) so that it may hear evidence concerning the death of Rodolfo Meana. The State will be seeking a superseding indictment adding the charge of murder. Mr. Meana was one of the original five persons to contract Hepatitis C as a result of his treatment at the Endoscopy Center and he has died post indictment. Dr. Alane Olson, who attended the autopsy in the Philippines and who prepared and reviewed tissue slides of Mr. Meana, determined that a contributing cause of Mr. Meana's death was the Hepatitis C and that that manner of death was homicide.

The State seeks to recall the Thursday 2009 grand jury that heard the original presentment. That presentment took place over ten (10) separate grand jury days. The Grand Jury heard from thirty-eight (38), at least four (4) of which were out of state witnesses from the Center of Disease Control. There are fourteen (14) volumes of transcripts and eighty-nine (89) separate exhibits. Together the transcripts and the exhibits consist of 1,658 pages of material. The indictment alone is forty-two (42) pages long. See Exhibit 1. The State would incur astronomical costs if it were required to present anew the entire case to a new grand jury. The additional cost for the court

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(702) 671-2500 • Fax: (702) 455-2294 • TDD: 1-800-326-6868

Request for Recall for GJ A595107

2

reporter alone would more that justify recalling the previous grand jury from a cost benefit analysis perspective.

Section 172.275 of the Nevada Revised Statutes states: "A grand jury shall serve until discharged by the court and may be so discharged at any time after the expiration of 1 year." Moreover, section 6.145 of the Nevada Revised Statutes states: "Upon completion of it's business for the time being, the court may, at the request of or with the concurrence of the grand jury, recess the grand jury subject to recall at such time as new business my require its attention." It is my understanding that the previous grand jury was made aware of the possibility that they would be recalled and that they agreed that they would respond to a recall if needed in this case.

It used to be the practice of the court to formally discharge a grand jury at the conclusion of its one year of service. However, due to circumstances similar to this case, the court dispensed with formally discharging the grand jury so that it would be subject to recall in the interest of justice. In the instant case there was no formal order of discharge issued by the court.

Rather than presenting anew the entire case to a new grand jury, the State seeks to recall the previous grand jury and take testimony from one or two witnesses to supplement the evidence. It is anticipated that this would take two full days. One day to review the transcripts and exhibits and a second day for the presentation of new evidence and deliberation.

The State respectfully requests that the court recall the Thursday 2009 grand jury. Thank you for considering this request. If you have any questions or require further information please do not hesitate to contact me. The State anxiously awaits your decision in this matter.

Very truly yours,



Christopher Laurent
Chief Deputy

Electronically Filed
07/11/2012 11:34:37 AM

1 ORDER

2 EIGHTH JUDICIAL DISTRICT COURT

Allen L. Johnson
CLERK OF THE COURT

3 CLARK COUNTY, NEVADA

4 In re: Request to Recall 2009B Grand Jury on
5 Case No. 09BGJ049A-C

Case No. A-09-595107-P

6 Dep't No. VII

7 DECISION AND ORDER

8 In June of 2010, the 2009 B Grand Jury heard the case of State of Nevada v. Desai
9 under Grand Jury Case Number 09BGJ049 A-C. After hearing evidence over several days,
10 the Grand Jury issued a true bill on all counts. An indictment followed charging the
11 defendants with racketeering, performance of an act in reckless disregard of persons or
12 property, criminal neglect of patients, insurance fraud, theft and obtaining money under
13 false pretenses.

14 The case is complex and took ten days to present. The presentment included thirty-
15 eight witnesses, at least four of whom resided out of state. The resulting transcripts and
16 exhibits constitute about 1,658 pages of written material.

17 The State now seeks to present additional charges following the death of Rodolfo
18 Meana to add a charge of murder. (See attached letter). Given the complexity of the issues
19 involved, the State requests that the 2009 B Grand Jury be recalled to hear the additional
20 evidence.

21 Nevada Revised Statute 6.145 allows that "upon the completion of its business for
22 the time being, the court may, at the request of or with the concurrence of the grand jury,
23 recess the grand jury subject to recall at such time as new business may require its
24 attention." In Clark County, the grand jurors serve for one year, and then are recessed. No
25 order of dismissal is entered upon excusal of grand jurors in Clark County.

26 Currently two grand juries meet regularly to hear cases - the 2011B Grand Jury and
27 the 2012A Grand Jury. Under NRS 6.110, a grand jury may be summoned "as often as the
28 public interest may require." Consequently, impaneling an additional grand jury is

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII
JUL 11 2012
CLERK OF THE COURT

1 permissible, even if another grand jury is currently meeting. *Lera v. Sheriff*, 93 Nev. 498,
2 586 P.2d 581 (1997).

3 A case may be resubmitted to the same grand jury unless the grand jury returned a
4 "no bill" on a charge. *State v. Towers*, 37 Nev. 94, 139 P. 776 (1914). The current concern
5 involves a new charge not previously presented to the grand jury. Thus, it is permissible for
6 the same grand jury to hear the case. On balance, the time and cost of representing the case
7 to one of the regularly meeting grand juries far exceeds the inconvenience and cost of
8 recalling the 2009B grand jurors. Additionally, the court can see no prejudice that would
9 result to the defendants by having the additional charge presented to the grand jury that
10 issued the original indictment. Consequently, the State's request to recall the 2009B Grand
11 Jury is granted.

12 The State will have two weeks from the date of this order to locate the prior grand
13 jurors and provide contact information to the Court. The Court will summons those grand
14 jurors to appear in court on Friday, August 10 at 11:00 a.m. in Department VII.

15 At that time, the Court will ensure that sufficient grand jurors are present to proceed
16 with the case, remind the grand jurors of their oath and provide additional instructions.
17 The State will be required to furnish the grand jurors with copies of the transcripts (which
18 are now publicly filed documents) to be reviewed prior to the presentment of evidence. The
19 State will be required to canvass the grand jurors on the record that they each have
20 reviewed the transcripts prior to presentment. The date of presentment will be determined
21 at the August 10 hearing.

22
23 DATED this 10 of July, 2012.
24

25
26 

27 LINDA MARIE BELL
28 DISTRICT COURT JUDGE

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 10 of July, 2012, he/she served the foregoing Decision and Order by faxing, mailing, or electronically serving a copy to counsel as listed below:

Name	Party	Phone	Service Method
Christopher Laurent Chief Deputy District Attorney	Attorney for State of Nevada	(702) 671-2569	(702) 477-2943



SARAH BASSETT
LAW CLERK, DEPARTMENT VII

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Decision and Order filed in District Court case number A-09-595107-P DOES NOT contain the social security number of any person.

/s/ Linda Marie Bell

Date 07-10-12

District Court Judge

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

EXHIBIT 6

EXHIBIT 6


CLERK OF THE COURT

PETN
RICHARD A. WRIGHT
Nevada Bar No. 886
MARGARET M. STANISH
Nevada Bar No. 4057
WRIGHT STANISH & WINCKLER
300 S. Fourth Street
Suite 701
Las Vegas, NV 89101
(702) 382-4004
Attorneys for Dipak Desai

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DIPAK KANTILAL DESAI, #1240942,

Defendant.

Consolidated Case Nos. C265107
C-12-283381

Dept. No. XXI

DATE OF HEARING: 11-13-12

TIME OF HEARING: 9:30 am

PETITION FOR WRIT OF HABEAS CORPUS

DIPAK KANTILAL DESAI, by and through his attorney, Richard A. Wright and Margaret M. Stanish, WRIGHT STANISH & WINCKLER, petitions this Court to grant a writ of habeas corpus.

1. The above counsel are duly qualified, practicing and licensed attorneys in the State of Nevada.

2. Counsel is authorized to represent the defendant in this matter.

3. The place where the defendant's liberty is restrained is Clark County, Nevada. Desai is released on bail.

4. The restraint of liberty is unlawful because:

A. The murder indictment is facially defective indictment, violating both procedural and substantive due process.

- 1 B. The grand jury instructions were improper, erroneous, and prejudicial.
2 C. The State introduced inadmissible hearsay in the grand jury proceeding.
3 D. The State failed to disclose exculpatory evidence to the grand jury.
4 E. The grand jury's consideration of the testimony and exhibits of the prior
5 grand jury, along with the grand jury instructions, implicated the same
6 procedural and substantive due process violations in the first grand jury
7 proceeding.
8 F. The grand jury was improperly impaneled contrary to constitutional and
9 statutory requirements.

10 6. This Court previously denied the two prior Petitions for Writs of Habeas Corpus
11 have been filed on behalf of the defendant. The denial the petition filed on March 30, 2012, is
12 currently the subject of a Petition for Writ of Mandamus and, in the Alternative, Writ of
13 Prohibition currently pending before the Nevada Supreme Court in Case No. 61230.

14 7. This Petition is supported by a Memorandum of Points and Authorities which is
15 concurrently filed with this Petition.

16 8. The defendant waives the 60-day limitation for bringing an accused to trial.

17 9. The grand jury returned the instant murder indictment August 10, 2012, in Case
18 No. C-12-283381. On October 4, 2012, this Court granted Desai's motion to consolidate the
19 murder indictment with the earlier case, Case No. C265107. The parties previously stipulated
20 that the instant petition was due on this date.

21 10. The defendant respectfully urges this Court to enter an Order directing the County
22 Clerk to issue a Writ of Habeas Corpus directed to the Clark County Sheriff, commanding him to

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1 return the cause of the defendant's restraint. The defendant also urges this Court to dismiss the
2 above murder indictment based on violation of due process and statutory law.
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4 DATED this 29th day of October 2012.

5 WRIGHT STANISH & WINCKLER

6
7 By 

8 RICHARD A. WRIGHT
9 Attorney for DIPAK DESAI
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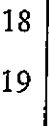
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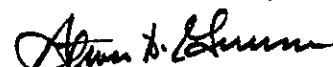
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CLERK OF THE COURT

MEMO
RICHARD A. WRIGHT
Nevada Bar No. 886
MARGARET M. STANISH
Nevada Bar No. 4057
WRIGHT STANISH & WINCKLER
300 S. Fourth Street, Suite 701
Las Vegas, NV 89101
(702) 382-4004
Attorneys for Dipak Desai

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DIPAK KANTILAL DESAI, #1240942,

Defendant.

Consolidated Case Nos. C265107
C-12-283381

Dept. XXI

**DEFENDANT DESAI'S MEMORANDUM IN SUPPORT OF
PETITION FOR WRIT OF HABEAS CORPUS
AND ALTERNATIVE MOTION TO DISMISS MURDER INDICTMENT**

DIPAK KANTILAL DESAI, by and through his attorneys, Richard A. Wright and Margaret M. Stanish, WRIGHT STANISH & WINCKLER, submit that a writ of habeas corpus, or dismissal of the indictment, is warranted based on (1) facially defective indictment violating procedural and substantive due process; (2) improper and prejudicial grand jury instructions; (4) admission of hearsay; (5) failure to disclose exculpatory evidence; and (6) the constitutional and statutory violation of the right to a properly impaneled grand jury.


This petition and motion are based on the Due Process clauses of the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, the similar clauses in Article I,

1 Section 8, of the Nevada Constitution; Article 4, Section 20 of the Nevada Constitution; NRS
2 172.055-.065, 172.255, 173.075, and the following Points and Authorities.

3
4 DATED this 29th day of October 2012.

5 Respectfully Submitted,

6 WRIGHT STANISH & WINCKLER

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8 By: 
9 RICHARD A. WRIGHT
10 Counsel for DESAI
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1 opined that Meana died from the hepatitis transmission, as charged in the instant case. A true
2 bill for second degree murder was returned in Case No. Case No. C-12-283381, which was
3 assigned to Department 23.

4 The indictment contained a single count of second degree murder based on alternative
5 theories of criminal liability and alternative means. More particularly, it charged that defendants
6 directly committed, aided and abetted, "and/or" conspired to commit second degree murder of
7 Meana. It alleges three alternative theories of murder: malignant heart murder, felony-murder,
8 and felonious intent murder. The felony-murder and felonious murder theories are both
9 predicated on criminal neglect of patient "and/or" reckless disregard.

10 To protect against unfair successive prosecutions arising from the same set of facts,
11 Desai moved for the consolidation of the two related cases, which this Court granted on October
12 4, 2012.

13 II. ARGUMENTS

14 A. The Missing Element: The Immediate-and-Direct-Causal-Relationship Element

15 The instant murder indictment violates procedural and substantive due process. It does
16 not provide the fundamental fair notice mandated by constitutional and statutory due process. It
17 does not contain the essential element of the immediate and direct causal relationship between
18 each defendant's acts and Meana's death. It does not allege sufficient facts showing that
19 Desai's conduct was the immediate and direct cause of Meana's death.

20 Moreover, the indictment violates substantive due process by charging the defendants
21 with second degree murder based upon the indirect performance of the alternatively pled acts.
22 No amount of judicial interpretation or intervention can salvage this indictment or correct the
23 other due process violations discussed below. The indictment must be dismissed.
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2 **1. *The Law Limiting the Second-Degree Felony Murder Rule and Felonious***
3 ***Intent Murder***

4 The Nevada Supreme Court has specifically limited the application of second-degree
5 felony murder and felonious intent murder to fend against the potential for “untoward
6 prosecution” of people for the commission of an unlawful act that results in unintended death.
7 Ramirez v. State, 126 Nev. Adv. Op. 22, 235 P.3d 619, 621-23 (2010); Labastida v. State, 115
8 Nev. 298, 306-07, 986 P.2d 443, 448-49 (1999); Sheriff v. Morris, 99 Nev. 109, 118, 659 P.2d
9 852, 859 (1983). The instant case precisely represents the over-zealous abuse of the second-
10 degree murder doctrine repeatedly denounced by the Nevada Supreme Court.

11 The Morris Court first established the second-degree felony murder rule by reading the
12 involuntary manslaughter statute, NRS 200.070, in conjunction with the murder statute, NRS
13 200.030(2).¹ In a line of cases, the Nevada Supreme Court placed restrictions on the second-
14 degree felony murder rule to prevent unreasonable prosecutions under the doctrine. Ramirez,
15 126 Nev. ___, 235 P.3d at 622-23; Labastida, 115 Nev. at 306-07, 986 P.2d at 448-49; Morris,
16 99 Nev. at 118, 659 P.2d at 859. The Supreme Court in Ramirez succinctly stated the critical
17 elements of the offense and its reasoning for limiting its application:

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20 ¹ The involuntary murder statute reads in pertinent part:

21 [I]nvoluntary manslaughter is the killing of a human being, without any intent to
22 do so, in the commission of an unlawful act, or a lawful act which probably might
23 produce such a consequence in an unlawful manner, *but where the involuntary*
24 *killing occurs in the commission of an unlawful act, which, in its consequences,*
naturally tends to destroy the life of a human being, or is committed in the
prosecution of a felonious intent, the offense is murder.

25 NRS 200.070(1)(emphasis added).

26 The murder statute states that second-degree murder is all kinds of murder that are not
27 first-degree murder. NRS 200.030(2).

[T]he second-degree felony-murder rule only applies when the following two elements are satisfied: (1) "where the [predicate] felony is inherently dangerous, where death or injury is a directly foreseeable consequence of the illegal act," and (2) "*where there is an immediate and direct causal relationship—without the intervention of some other source or agency—between the actions of the defendant and the victim's death.*" Because we have repeatedly expressed disapproval at the potential for untoward prosecutions resulting from our decision to recognize the second-degree felony-murder rule and consciously limited application of the rule, these two elements are critical to any second-degree felony-murder jury instruction.

235 P.3d at 622 [citations omitted and emphasis added].

Morris held that the restrictions on second-degree murder rule apply to both the felony murder and felonious intent prong of the involuntary murder statute. 99 Nev. at 119, 659 P.2d at 859.

The first element quoted above limits the kinds of felonies upon which the second-degree murder is predicate, restricting it to those felonies that are inherently dangerous, i.e., "the death or injury is a directly foreseeable consequence of the illegal act." Id. at 622 n.2. The determination of whether a predicate felony is inherently dangerous is based on the manner in which the felony was committed rather than an abstract analysis of the felony itself. Id. This limitation on the kinds of felonies that will suffice recognized that there can be no deterrent value in applying the second-degree felony murder rule to potential felons when the possibility of death or injury resulting from the act is not readily foreseeable. Id. at 622.

The second element is a restriction upon the proximate or legal cause. The second-degree felony murder rule only applies when the defendant's act is the immediate and direct cause of the death. Labastida, 115 Nev. at 306-07, 986 P.2d at 448-49; Morris, 99 Nev. at 118-119, 659 P.2d at 859. Morris defined "immediate" as meaning "without intervention of some other source or agency." 99 Nev. at 118-119, 659 P.2d at 859. Hence, even though an act or felony may be inherently dangerous, a defendant cannot be held liable for second degree felony murder or second degree felonious intent murder if the acts of the victim or third party were the direct cause of death. Labastida, 115 Nev. at 307, 986 P.2d at 448-49 (defendant's felony child neglect was not the immediate and direct result of her son's death when her boyfriend's abuse

killed the child); *see*, Morris, 99 Nev. at 118-119, 659 P.2d at 859 (“[T]he causal relationship must extend beyond the unlawful sale of the drugs to the involvement by commission or omission in the ingestion of a lethal dosage by the decedent.”)

2. *The Defective Indictment: Procedural and Substantive Due Process Violations*

The instant murder indictment is facially defective because it omits the immediate-and-direct causal relationship element and specific facts showing that Desai committed the element. Moreover, the indictment violates substantive due process by charging the defendants with second degree murder based upon the indirect performance of the alternatively pled acts.

An indictment, on its face, must contain each and every element of the offense and must allege facts showing how the defendant allegedly committed each of the elements. State v. Hancock, 114 Nev. 161, 164, 955 P.2d 183 (1998). If the indictment omits an essential element of the offense, no crime is in fact charged and the defective charge must be dismissed. Ex parte Rovnianek, 41 Nev. 141, 168 P. 327, 328 (1917).

The instant murder entirely omits the essential element of the immediate-and-direct-causal-relationship. Accordingly, the indictment must be dismissed.

The indictment also fails to allege specific facts showing that Desai was the immediate and direct cause of Meana's death. Similar to the earlier indictment, the murder indictment uses the imprecise "and/or" approach to prosecution, stringing together a number of alleged negligent acts that the defendants "directly or *indirectly*" performed. (Emphasis added.) See, Hildalgo v. Eighth Judicial Dist. Ct., 124 Nev. 330, 338, 184 P.3d 369, 375 (2008) ("repeated use of "and/or" to connect the numerous allegations undercuts rather than bolsters the notice's specificity.") The lack of specificity as to who did what act makes it impossible for the defendants and fact-finder to determine the essential immediate-and-direct-causal-relationship element. See, Morris, 99 Nev. at 119-20, 659 P.2d at 860 (finding second-degree murder indictment defective because of the lack of specific facts showing that the defendant's conduct was the immediate and direct cause of the victim's death by lethal drug overdose).

1 The disjunctive charging of the alleged negligent acts, along with the lack of specificity
2 as to which defendant or "uncharged confederates" committed which negligent act, is so
3 confusing that it is impossible to discern whose act was the immediate and direct cause of
4 Meana's death. The indefinite charging language can be read to charge Desai with second-
5 degree murder for acts which were neither the immediate nor direct cause of Meana's death.
6 Stated differently, the indictment impermissibly charges Desai with second degree murder based
7 on the intervention of some other source or agency. *See, Ramirez*, 235 P.3d at 623-24;
8 *Labastida*, 115 Nev. at 307, 986 P.2d at 508.

9 The allegation that the defendants "indirectly" performed various alternative acts also
10 gives rise to a substantive due process violation in the light of the immediate-and-direct-
11 relationship element. Second degree felony murder cannot be grounded on the indirect
12 performance of negligent acts. The causal relationship must extend beyond the negligent act to
13 immediate and direct involvement by commission or omission of the act that caused the death.
14 *See, Morris*, 99 Nev. at 118-119, 659 P.2d at 859.

15 Finally, the alternatively pled theories of criminal liability also make it impossible to
16 distinguish which of the three defendants, if any, performed an act that was the immediate and
17 direct cause of Meana's death. The indictment, in a conclusory manner, lumps together the
18 defendants, alleging that they are criminally liable by directly committing the acts; "and/or"
19 aiding and abetting each other and uncharged confederates in the performance of the acts;
20 "and/or" conspiracy to commit the predicate offenses of criminal neglect of patients and reckless
21 disregard. This boilerplate language of alternative theories of liability is fatal since it fails to
22 give notice as to which defendant committed what act to immediately and directly cause
23 Meana's death.

24 B. Erroneous Grand Jury Instructions

25 The State is obligated to instruct the grand jurors on the essential elements of the
26 offense pursuant to NRS 172.095(2). This section reads in pertinent part: "Before seeking an
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1 indictment, . . . [t]he district attorney shall inform the grand jurors of the specific elements of
2 any public offense which they may consider the basis of the indictment or indictments.”

3 The State failed to provide any instruction to the grand jury on the essential element of
4 the immediate and direct causal relationship between each of the defendants’ alleged acts and
5 Meana’s death. As the Nevada Supreme Court ruled in Ramirez, second-degree felony murder
6 instructions must address both the inherently dangerous felony element and the immediate-and-
7 direct- causal- relationship element. 235 P.3d at 622. “Because we have repeatedly expressed
8 disapproval at the potential for untoward prosecutions resulting from our decision to recognize
9 the second-degree felony-murder rule and consciously limited application of the rule, *these two*
10 *elements are critical to any second-degree felony-murder jury instruction.*” Id. (emphasis
11 added).

12 The failure to properly instruct the grand jury on the critical element of immediate and
13 direct causal relationship is especially prejudicial in the light of the State’s other erroneous
14 instructions. After approximately five minutes of deliberation, the grand jury requested
15 clarification on whether it could consider the prior grand jury evidence and further instruction
16 on the elements of second degree murder. The prosecutor again told the grand jury that it
17 should consider the prior testimony, including that of Meana who was no longer available to
18 testify due to his death. GJ-2, pp 59.²

19 In attempting to clarify the second degree murder elements, the prosecutor explained that
20 the grand jurors had previously returned a true bill on the predicate offenses related to Meana
21 and needed to make a determination on whether these were dangerous felonies. The following
22 instruction was given in an apparent attempt to explain the elements of the felony murder
23 theory:

24 You’re here to determine whether or not second degree murder . . . and the
25 different theories under that that we brought forth to you, whether or not they

26 ² “TR-2” refers to the grand jury transcript in the instant case and “TR-1” refers to the
27 2010 grand jury record.

1 apply in this particular case. *Now you have previously found related to this*
2 *victim, because you returned a true bill as to both the criminal neglect of patient*
3 *charge as well as performance of an act in reckless disregard, you have to make*
4 *a determination under one scenario whether or not those are dangerous felonies.*

5 GJ-2, pp. 60-61. [Emphasis added.]

6 As discussed more fully below, this instruction not only misstated the essential elements
7 of the second-degree felony murder and felonious intent murder, it also boot-strapped the many
8 constitutional defects in the pleading of Counts 10 and 11 of the first indictment, which are
9 currently pending review by the Nevada Supreme Court.

10 **C. Failure to Present Exculpatory Evidence to the Grand Jury on Intervening Cause**

11 The State failed to introduce exculpatory evidence bearing on the immediate-and direct-
12 causal- relationship element. Under NRS 172.145(2), a prosecutor is duty-bound duty to present
13 evidence which will "explain away" the charges. This section reads: "If the district attorney is
14 aware of *any* evidence which will explain away the charge, he *shall* submit it to the Grand Jury."
15 NRS 172.145(2) [emphasis added].

16 Exculpatory evidence is broadly defined as that evidence "'which has a *tendency to*
17 *explain away* the charge against the target of the Grand Jury's investigation.'" Babayan, 106
18 Nev. 155, 169, 787 P.2d 805, 816-17 (1990). To be considered exculpatory evidence, the
19 evidence need not be dispositive on whether the crime was committed; it may merely suggest
20 that the crime did not occur. *See, Id.* at 170; 787 P.2d at 817. Exculpatory evidence bearing on
21 an essential element of the crime must be presented. *See, Ostman v. Eighth Judicial District*,
22 107 Nev. 563, 816 P.2d 458 (1991). The failure of the prosecutor to present exculpatory
23 evidence undermines the grand jury's ability to render independent and informed decisions.
24 Sheriff v. Frank, 103 Nev. 160, 165, 734 P.2d 1241, 1245 (1987).

25 Turning to the instant case, an essential element of second-degree felony murder and
26 felonious intent murder is the immediate-and-direct-causal-relationship element. This critical
27 element precludes "untoward prosecution" of people for acts when an intervening act by a third
28 party or victim is the immediate and direct cause of death. Morris, 99 Nev. at 118-119, 659

1 P.2d at 859. Hence, even though an act or felony may be inherently dangerous, a defendant
2 cannot be held liable for second degree felony murder or second degree felonious intent murder
3 if the acts of the victim or third party were the direct cause of death. *See, Labastida*, 115 Nev. at
4 307, 986 P.2d at 448-49; *Morris*, 99 Nev. at 118-119, 659 P.2d at 859.

5 Meana elected to forego treatment for the hepatitis virus. Prior to the second grand jury
6 proceeding, the State was aware of this fact. The State provided supplemental discovery to Desai
7 in preparation for the deposition of Meana held on March 20, 2012.³ The medical records
8 showed that Meana elected to discontinue treatment contrary to the advice of his personal
9 physician, Rajat Sood, M.D. In a progress note dated April 1, 2009, Dr. Sood wrote:

- 10 2. After prolonged workup, finally the patient had started treatment for
11 pegylated interferon and ribavirin.
12 3. After the first shot because of the well known side effects of the
13 medication the patient has decided to discontinue.
14 4. I went through with the patient the options of continuing medication,
15 treating symptomatically, went through the natural history, also the
16 possibility of having cirrhosis, carcinoma. The patient understands all that
17 fully he says, but would not want the treatment at this time.

18 Supplemental Discovery 009977.

19 The above evidence tends to explain away the element of immediate and direct causal
20 relationship between the alternatively alleged acts of the defendants "and/or" the uncharged
21 confederates and Meana's death. Unfortunately, the grand jury was never informed of this
22 element let alone the exculpatory evidence of the intervening cause of Meana's early
23 discontinuance of continued medical treatment.

24 D. Admission of Hearsay Evidence

25 NRS 172.135(2) requires that the grand jury "receive none but legal evidence, and the
26 best evidence in degree, to the exclusion of hearsay or secondary evidence. In contravention of
27 this requirement, the State introduced the inadmissible hearsay testimony of Meana from the
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³ The deposition was terminated at the request of Meana and his family before defense
counsel had an opportunity to cross-examine him.

1 previous grand jury. Since Meana is deceased, no hearsay exception is applicable to this
2 testimony. At the first grand jury proceeding, Meana testified about the events surrounding his
3 colonoscopy and follow-up visits to the clinic and the diagnosis and effects of hepatitis, . GJ-1
4 TR, Vol 1A, pp. 93-102.

5 The introduction of the hearsay testimony was aggravated by the State's highlighting of
6 Meana's prior testimony. In response to a grand juror's question on whether they were suppose
7 to consider the testimony and exhibits from the prior grand jury, the prosecutor responded: "Let
8 me make sure we're clear on this. The reason that those exhibits and that prior testimony were
9 provided to you and that you had to go through them was so you – for example, the deceased in
10 this case you heard testimony from. He's not coming in to give you testimony, nor could he
11 because he's no longer with us." GR-2 TR., p. 59.

12 **E. Reassertion of Constitutional Defects in Case No. C265107 Pertaining to the**
13 **Predicate Offenses in the Murder**

14 The second degree murder indictment is intricately related to the procedural and
15 substantive facts arising in the first grand jury's investigation of the criminal negligence
16 offenses in Counts 10 and 11. As such, the constitutional defects in the original charges also
17 infect and compound the additional due process violations in the subsequent murder
18 prosecution. These impaired Desai's right to procedural and substantive due process.
19 Moreover, these counts were not supported by sufficient probable cause. For the sake of brevity
20 and to preserve his appellate rights, Desai will incorporate by reference herein those portions of
21 his previous pleadings that more fully develop these arguments.

22 **1. *Boot-strapping the Constitutional Defects of the First Grand Jury Indictment***

23 As discussed above, the instructions erroneously directed the grand jurors to consider
24 that they had previously found returned a true bill against the defendants on the predicate
25 offenses related to Meana and needed now to make a determination on whether these were
26 dangerous felonies. The grand jurors were required to review and consider the previous
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transcripts and exhibits. Hence, the State boot-strapped the grand jury's previous findings as to Counts 10 and 11 of the first indictment into the second grand jury's deliberation of the murder indictment.

2. *Reassertion of Procedural and Substantive Due Process Challenges*

As previously argued to this Court, the reckless endangerment count (Count 10) and criminal neglect of patient count (Count 11), Desai is entitled to an indictment that clearly and concisely states the elements of the offense and means by which he committed the offense as determined by a concurrence of 12 or more jurors. With respect to Count 11, the defendants were accused of directly committing, aided and abetting, *and/or* conspiring to commit criminal neglect of patient by seven identified acts of negligence *and/or* “*by methods unknown.*” Desai argued that it violated substantive due process to criminally prosecute a person for criminal neglect based upon an unknown act of negligence.

Desai further argued that the criminal neglect charges in both Counts 10 and 11 ran afoul of due process notice requirements. These counts charged, in the disjunctive, multiple acts of negligence, including "methods unknown," without sufficiently describing which defendant committed which act.

Accordingly, Desai reasserts and incorporates by reference herein the same arguments pertaining to Counts 10 and 11 of the first indictment which were presented to this Court in his Memorandum in Support of Writ of Habeas Corpus and Alternative Motion to Dismiss the Indictment (“Habeas Memorandum”), as well as the arguments to the Supreme Court in his Petition for Writ of Mandamus or Alternative Writ of Prohibition (“Mandamus Petition”). More particularly, he reasserts the arguments set forth in Section II of the Habeas Memorandum, which set forth the substantive and procedural due process arguments pertaining to the defective charging language of the criminal neglect offenses. Additionally, Desai incorporates by reference herein the arguments presented in Section IV.A of the Mandamus Petition, which also discusses the constitutional defects in criminal negligent counts.

1 **3. *Reassertion of Lack of Probable Cause***

2 Since the State instructed the grand jury to rely on the earlier grand jury evidence and
3 the return of a true bill respecting the predicate offenses, Desai reasserts the argument that the
4 State failed to present probable cause to support the allegations that certain negligent acts,
5 charged in the alternative, were the proximate cause of the hepatitis transmission.

6 As conceded by the State, no evidence was presented showing that the following
7 alternative negligent acts caused the hepatitis transmission: the allege misuse of bite blocks,
8 biopsy forceps, snares, endoscopy scopes, and unspecified medical supplies, as well as acts
9 related to medical charting, cleaning scopes, and the number of patients scheduled.

10 The inclusion of the unsupported acts of negligence proved fatal to Counts 10 and 11
11 because the indictment alleges them in the alternative. This insufficiency of evidence impinges
12 on the due process rights associated with the grand jury. The Court and parties cannot speculate
13 as to which of the alleged acts served as the grand jurors' proximate cause determination.
14 Desai, therefore, incorporates by reference herein the arguments set forth in Section IV of the
15 Habeas Memorandum.

16 **F. *Violation of the Right to a Properly Impaneled Grand Jury***

17 **1. *The Constitutional and Statutory Framework***

18 The grand jury that returned the murder indictment was impaneled contrary to the
19 constitutional and statutory scheme protecting the right to grand jury. As a matter of due
20 process, Desai is entitled to a grand jury that is impaneled by a district court judge "under such
21 rules and regulations as may be prescribed by law." Nev. Const., Art. 1, §8, Art. 6, §5. "Grand
22 juries shall be impaneled as provided in chapter 6 of NRS." NRS 172.045; NRS 6.110 to
23 6.140. Desai challenges the array of the grand jurors on the "ground that is was not selected,
24 drawn, or summoned in accordance with law." NRS 172.055. Dismissal of the murder
25 indictment is the appropriate remedy. NRS 172.065. He further moves for a writ of habeas
26 corpus based on the due process violation of his right to a properly impaneled grand jury.

1 Under NRS 6.110, the clerk of the court randomly selects at least 500 persons to be
2 called as prospective grand jurors and sends them a questionnaire prepared by the district judge
3 that estimates the time required for service and describes the duties to be performed. The
4 recipients of the questionnaire indicate their willingness and availability to serve.

5 The clerk continues to randomly select potential jurors until a list of 100 persons willing
6 to serve is established. The district judges in rotation, according to seniority, each select one
7 name from the list until a 50 person venire has been established. From the venire, the district
8 judge presiding over the grand jury then randomly selects 17 persons to constitute the grand jury
9 and 12 alternates. NRS 6.110.

10 "Upon the completion of its business for the time being, the court may, at the request of
11 or with the concurrence of the grand jury, recess that grand jury subject to recall at such time as
12 new business may require its attention." NRS 6.145. Under NRS 172.275, a "grand jury shall
13 serve until discharged by the court and may be so discharged at any time after the expiration of 1
14 year."

15 As a matter of practice, grand juries in Clark County sit for a period of one year.⁴ There
16 are two grand juries with staggered terms. The "A Grand Jury" is seated in May and the "B
17 Grand Jury" is seated in October. At the end of the one year period of service, an informal
18 ceremony is held during which the jurors receive a certificate of appreciation for their service.
19 There is not a formal proceeding in which the grand jury is either discharged or recessed.
20 There is not an order issued that either discharges or recesses the grand jury.

21 2. *The Improper Recall of the 2009 B Grand Jury*

22 By letter dated July 2, 2012, the district attorney's office wrote Judge Bell and
23 requested that she recall the 2009 B Grand Jury, which returned the indictment in Case
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25 ⁴ As required by NRS 6.110(1), the questionnaire sent to the potential grand jurors
26 identifies the dates of service as either May or October of one year to May or October of the next
27 year. The undersigned is awaiting further documentation from the Court pertaining to the 2009 B
28 Grand Jury and, therefore, reserves the right to supplement this petition and motion.

1 C265107. The State represented to the judge that it would seek a superseding indictment to add
2 a murder charge pertaining to Meana. The State opined that it would cost too much money for
3 the State and court to present the entire case to a new grand jury. It contemplated that the jurors
4 would need time to review transcripts and exhibits.

5 By order dated July 11, 2012, Judge Bell granted the State's request in Case No. A-09-
6 595107-P. (Exhibit A) The Court gave the State two weeks to locate the prior grand jurors and
7 provide their contact information to the Court. The Court thereafter summoned the majority of
8 the 2009 B Grand Jury to appear on August 10, 2012. The Court further directed that the grand
9 jurors to review the transcripts and evidence of the previous grand jury proceedings before that
10 date.

11 On August 10, 2012, the Court informed the grand jurors that it was never intended that
12 they be called back to grand jury service, but explained that the previous grand jury involved 10
13 days of testimony over a period of time and it was more efficient to bring back the same grand
14 jurors. The Court confirmed that each grand juror reviewed the materials from the first grand
15 jury. Grand Jury Instr., 8/10/12, pp. 3-4, 20-21. The Court then instructed the grand jurors on
16 the law pertaining to the powers and duties of the grand jury. There was no inquiry into whether
17 the members of the grand jury developed any bias against the defendants or discussed with
18 anyone their previous deliberations.

19 The above procedures to recall the original grand jurors following the termination of
20 their term of service in October 2010 violates Article 6, §5, and the due process clause of the
21 Nevada Constitution. Although the Court has supervisory power over grand juries, it is
22 restrained by the constitutional and statutory framework described above. More particularly,
23 there is no indication that the 2009 B Grand Jury was recessed or discharged after the expiration
24 of its term in October 2010. Even if it is assumed that it was recessed, there is no indication
25 that the grand jurors, at the time of the assumed recess, consented to return to grand jury service.

1 The granting of the district attorney's request to recall the 2009 B Grand Jury
2 circumvented the random and periodic selection of grand juries to ensure the independence of
3 the grand jury from the executive branch. Here, the above procedures essentially created a
4 "special grand jury" with an indefinite term of service to investigate only these three defendants.

5 Moreover, the State's request to recall the grand jury is suspect. Contrary to the
6 representations in its request, the State sought a separate indictment rather than superceding the
7 original indictment. It apparently did so, amongst other strategic reasons, to avoid a unfavorable
8 ruling from the Nevada Supreme Court, avoid delaying the trial of the original indictment, and
9 avoid the extension of the previously posted cash bails to the murder charge. At the
10 arraignment on the murder indictment, the State opposed the defendants' motion to stay the
11 prosecution of the murder indictment pending a decision of the Nevada Supreme Court on the
12 petitions for extraordinary relief in connection with the challenges to the criminal neglect
13 charges in the earlier indictment. The State emphasized that the murder indictment was separate
14 and distinct from the earlier indictment and, therefore, it would not be affected by an
15 unfavorable ruling by the Nevada Supreme Court. Arraignment TR, 8/22/12, pp.5-6.

16 The State also used the separate murder indictment as a justification to attempt to detain
17 Desai until he could post a \$500,000 cash bail. Desai argued that the indictment was a *de facto*
18 superceding indictment and it was appropriate to extend the \$1,000,000 cash bail already posted
19 in the first case pursuant to NRS 178.502. The State contended that the second indictment was
20 a separate and distinct from the first prosecution and moved for bail in the amount of \$500,000
21 for Desai. The Court ordered a cash bail of \$250,000. Arraignment TR, pp. 15-19.

22 Had the State disclosed in its original request to Judge Bell that it sought an unfair
23 advantage in bringing a successive and separate indictment instead of just being cost conscious,
24 it is unlikely that the Court would have considered the recall of the grand jury to be fair.
25 Additionally, the Court was not likely made aware that the grand jury was given the
26
27
28

1 inadmissible hearsay evidence in the form of Meana's testimony at the earlier grand jury, as
2 discussed above.

3 In short, the recall of the 2009 B Grand Jury after the expiration of its one-year term of
4 service undermined constitutional and statutory mandates and permitted the State to impede the
5 due process right to a fair grand jury.

6 **G. Conclusion**

7 Based on the foregoing, the fundamental principals of due process and statutory law
8 require the dismissal of the facially defective murder indictment which is the by product of
9 several procedural and substantive due process violations.

10 DATED this 29th day of October 2012.

11 Respectfully Submitted,

12 WRIGHT STANISH & WINCKLER
13

14 By: 
15 RICHARD A. WRIGHT
16 Counsel for DESAI
17
18
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27
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EXHIBIT A

EXHIBIT A

Ann L. Quinn
CLERK OF THE COURT

1 ORDER

2 EIGHTH JUDICIAL DISTRICT COURT

3 CLARK COUNTY, NEVADA

4 In re: Request to Recall 2009B Grand Jury on
5 Case No. 09BGJo49A-C

Case No. A-09-595107-P

Dep't No. VII

6 DECISION AND ORDER

7 In June of 2010, the 2009 B Grand Jury heard the case of State of Nevada v. Desai
8 under Grand Jury Case Number 09BGJo49 A-C. After hearing evidence over several days,
9 the Grand Jury issued a true bill on all counts. An indictment followed charging the
10 defendants with racketeering, performance of an act in reckless disregard of persons or
11 property, criminal neglect of patients, insurance fraud, theft and obtaining money under
12 false pretenses.

13 The case is complex and took ten days to present. The presentment included thirty-
14 eight witnesses, at least four of whom resided out of state. The resulting transcripts and
15 exhibits constitute about 1,658 pages of written material.

16 The State now seeks to present additional charges following the death of Rodolfo
17 Meana to add a charge of murder. (See attached letter). Given the complexity of the issues
18 involved, the State requests that the 2009 B Grand Jury be recalled to hear the additional
19 evidence.

20 Nevada Revised Statute 6.145 allows that "upon the completion of its business for
21 the time being, the court may, at the request of or with the concurrence of the grand jury,
22 recess the grand jury subject to recall at such time as new business may require its
23 attention." In Clark County, the grand jurors serve for one year, and then are recessed. No
24 order of dismissal is entered upon excusal of grand jurors in Clark County.

25 Currently two grand juries meet regularly to hear cases -- the 2011B Grand Jury and
26 the 2012A Grand Jury. Under NRS 6.110, a grand jury may be summoned "as often as the
27 public interest may require." Consequently, impaneling an additional grand jury is
28

RECEIVED
JUL 11 2012
LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII
CLERK OF THE COURT

EXHIBIT

A

1 permissible, even if another grand jury is currently meeting. *Lera v. Sheriff*, 93 Nev. 498
2 586 P.2d 581 (1997).

3 A case may be resubmitted to the same grand jury unless the grand jury returned a
4 "no bill" on a charge. *State v. Towers*, 37 Nev. 94, 139 P. 776 (1914). The current concern
5 involves a new charge not previously presented to the grand jury. Thus, it is permissible for
6 the same grand jury to hear the case. On balance, the time and cost of representing the case
7 to one of the regularly meeting grand juries far exceeds the inconvenience and cost of
8 recalling the 2009B grand jurors. Additionally, the court can see no prejudice that would
9 result to the defendants by having the additional charge presented to the grand jury that
10 issued the original indictment. Consequently, the State's request to recall the 2009B Grand
11 Jury is granted.

12 The State will have two weeks from the date of this order to locate the prior grand
13 jurors and provide contact information to the Court. The Court will summons those grand
14 jurors to appear in court on Friday, August 10 at 11:00 a.m. in Department VII.

15 At that time, the Court will ensure that sufficient grand jurors are present to proceed
16 with the case, remind the grand jurors of their oath and provide additional instructions.
17 The State will be required to furnish the grand jurors with copies of the transcripts (which
18 are now publicly filed documents) to be reviewed prior to the presentment of evidence. The
19 State will be required to canvass the grand jurors on the record that they each have
20 reviewed the transcripts prior to presentment. The date of presentment will be determined
21 at the August 10 hearing.

22
23 DATED this 10 of July, 2012.
24

25
26 
27 LINDA MARIE BELL
28 DISTRICT COURT JUDGE

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 10 of July, 2012, he/she served the foregoing Decision and Order by faxing, mailing, or electronically serving a copy to counsel as listed below:

Name	Party	Phone	Service Method
Christopher Laurent Chief Deputy District Attorney	Attorney for State of Nevada	(702) 671-2569	(702) 477-2943



SARAH BASSETT
LAW CLERK, DEPARTMENT VII

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Decision and Order filed in District Court case number A-09-595107-P DOES NOT contain the social security number of any person.

/s/ Linda Marie Bell Date 07-10-12
District Court Judge

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII



OFFICE OF THE DISTRICT ATTORNEY HIDTA / GRAND JURY

STEVEN B. WOLFSON
District Attorney

CHRIS OWENS
Assistant District Attorney

TERESA M. LOWRY
Assistant District Attorney

MARY-ANNE MILLER
County Counsel

CHRISTOPHER LAURENT
Chief Deputy

July 2, 2012

The Honorable Linda Marie Bell
Eighth Judicial District Court Judge
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

RE: A595107 - State's Request to Recall Thursday 2009 Grand Jury

Honorable Judge Bell:

The State is requesting that the court recall the Thursday 2009 grand jury that heard *State of Nevada v. Dipak Kantilal Desai, et al.* (Case no. 09BGJ049A-C) so that it may hear evidence concerning the death of Rodolfo Meana. The State will be seeking a superseding indictment adding the charge of murder. Mr. Meana was one of the original five persons to contract Hepatitis C as a result of his treatment at the Endoscopy Center and he has died post indictment. Dr. Alane Olson, who attended the autopsy in the Philippines and who prepared and reviewed tissue slides of Mr. Meana, determined that a contributing cause of Mr. Meana's death was the Hepatitis C and that that manner of death was homicide.

The State seeks to recall the Thursday 2009 grand jury that heard the original presentment. That presentment took place over ten (10) separate grand jury days. The Grand Jury heard from thirty-eight (38), at least four (4) of which were out of state witnesses from the Center of Disease Control. There are fourteen (14) volumes of transcripts and eighty-nine (89) separate exhibits. Together the transcripts and the exhibits consist of 1,658 pages of material. The indictment alone is forty-two (42) pages long. See Exhibit 1. The State would incur astronomical costs if it were required to present anew the entire case to a new grand jury. The additional cost for the court

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(702) 671-2500 • Fax: (702) 455-2294 • TDD: 1-800-326-6868

reporter alone would more that justify recalling the previous grand jury from a cost benefit analysis perspective.

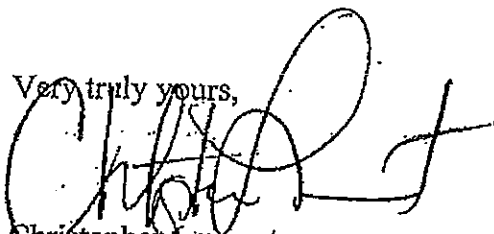
Section 172.275 of the Nevada Revised Statutes states: "A grand jury shall serve until discharged by the court and may be so discharged at any time after the expiration of 1 year." Moreover, section 6.145 of the Nevada Revised Statutes states: "Upon completion of it's business for the time being, the court may, at the request of or with the concurrence of the grand jury, recess the grand jury subject to recall at such time as new business may require its attention." It is my understanding that the previous grand jury was made aware of the possibility that they would be recalled and that they agreed that they would respond to a recall if needed in this case.

It used to be the practice of the court to formally discharge a grand jury at the conclusion of its one year of service. However, due to circumstances similar to this case, the court dispensed with formally discharging the grand jury so that it would be subject to recall in the interest of justice. In the instant case there was no formal order of discharge issued by the court.

Rather than presenting anew the entire case to a new grand jury, the State seeks to recall the previous grand jury and take testimony from one or two witnesses to supplement the evidence. It is anticipated that this would take two full days. One day to review the transcripts and exhibits and a second day for the presentation of new evidence and deliberation.

The State respectfully requests that the court recall the Thursday 2009 grand jury. Thank you for considering this request. If you have any questions or require further information please do not hesitate to contact me. The State anxiously awaits your decision in this matter.

Very truly yours,



Christopher Laurent
Chief Deputy

EXHIBIT 5

EXHIBIT 5

REGISTER OF ACTIONS

CASE No. 10C265107-1

The State of Nevada vs Dipak K Desai

மாண்புமிகு பேரவைத் தலைவர்:

Case Type: Felony/Gross
Date Filed: Misdemeanor
Location: 06/04/2010
Department 21
Case Number: C265107
Scope ID #: 1240942
Case Number: 09GJ00049

RELATED CASE INFORMATION

Related Cases

10C265107-2 (Multi-Defendant Case)
10C265107-3 (Multi-Defendant Case)
C-12-283381-1 (Consolidated)
C-12-283381-2 (Consolidated)
C-12-283381-3 (Consolidated)

PARTY INFORMATION

Defendant Desai, Dipak K

Lead Attorneys
Richard A. Wright
Retained
7023824004(W)

Other	Nevada Mutual Insurance Co
-------	----------------------------

Mark B. Bailus
Retained
7027377702(W)

Plaintiff State of Nevada

Steven B Wolfson
702-671-2700(W)

CHARGE INFORMATION

Charges: Desai, Dipak K

Charge/Description	Statute	Level	Date
1. UNLAWFUL RACKETEERING.	207.400	Felony	01/01/1900
1. AS USED IN NRS 207.360-207.520, INCLUSIVE, UNLESS CONTEXT OTHERWISE REQUIR	207.350	Felony	01/01/1900
1. "CRIME RELATED TO RACKETEERING" MEANS THE COMMISSION OF ATTEMPT TO	207.360	Felony	01/01/1900
1. "CRIMINAL SYNDICATE" MEANS ANY COMBINATION OF PERSONS, SO STRUCTURED	207.370	Felony	01/01/1900
1. "ENTERPRISE" INCLUDES ANY NATRAL PRSN, SOLE PRPRIETRSHP, PRTNRSHP, CORP	207.380	Felony	01/01/1900
1. RACKETEERING ACTIVITY MEANS ENGAGING IN AT LEAST 2 CRIMES RELATED TO	207.390	Felony	01/01/1900
2. PRESENTING ANY STATEMENT TO AN INSURER OR AGENT THAT CONTAINS FALSE OR	686A.2815	Felony	01/01/1900
3. RECKLESS ENDANGERMENT	202.595	Felony	01/01/1900
4. CRIMINAL NEGLIGENCE OF PATIENTS	200.495	Felony	01/01/1900
4. SUBSTANTIAL BODILY HARM.	0.060	Felony	01/01/1900
5. PRESENTING ANY STATEMENT TO AN INSURER OR AGENT THAT CONTAINS FALSE OR	686A.2815	Felony	01/01/1900
6. PRESENTING ANY STATEMENT TO AN INSURER OR AGENT THAT CONTAINS FALSE OR	686A.2815	Felony	01/01/1900
7. RECKLESS ENDANGERMENT	202.595	Felony	01/01/1900
7. SUBSTANTIAL BODILY HARM.	0.060	Felony	01/01/1900
8. CRIMINAL NEGLIGENCE OF PATIENTS	200.495	Felony	01/01/1900
8. SUBSTANTIAL BODILY HARM.	0.060	Felony	01/01/1900
9. PRESENTING ANY STATEMENT TO AN INSURER OR AGENT THAT CONTAINS FALSE OR	686A.2815	Felony	01/01/1900
10. RECKLESS ENDANGERMENT	202.595	Felony	01/01/1900
10. SUBSTANTIAL BODILY HARM.	0.060	Felony	01/01/1900
11. CRIMINAL NEGLIGENCE OF PATIENTS	200.495	Felony	01/01/1900

11.SUBSTANTIAL BODILY HARM.	0.060	Felony	01/01/1900
12.PRESENTING ANY STATEMENT TO AN INSURER OR AGENT THAT CONTAINS FALSE OR	686A.2815	Felony	01/01/1900
13.RECKLESS ENDANGERMENT	202.595	Felony	01/01/1900
13.SUBSTANTIAL BODILY HARM.	0.060	Felony	01/01/1900
14.CRIMINAL NEGLECT OF PATIENTS	200.495	Felony	01/01/1900
14.SUBSTANTIAL BODILY HARM.	0.060	Felony	01/01/1900
15.PRESENTING ANY STATEMENT TO AN INSURER OR AGENT THAT CONTAINS FALSE OR	686A.2815	Felony	01/01/1900
16.PRESENTING ANY STATEMENT TO AN INSURER OR AGENT THAT CONTAINS FALSE OR	686A.2815	Felony	01/01/1900
17.RECKLESS ENDANGERMENT	202.595	Felony	01/01/1900
17.SUBSTANTIAL BODILY HARM.	0.060	Felony	01/01/1900
18.CRIMINAL NEGLECT OF PATIENTS	200.495	Felony	01/01/1900
18.SUBSTANTIAL BODILY HARM.	0.060	Felony	01/01/1900
19.PRESENTING ANY STATEMENT TO AN INSURER OR AGENT THAT CONTAINS FALSE OR	686A.2815	Felony	01/01/1900
20.RECKLESS ENDANGERMENT	202.595	Felony	01/01/1900
20.SUBSTANTIAL BODILY HARM.	0.060	Felony	01/01/1900
21.CRIMINAL NEGLECT OF PATIENTS	200.495	Felony	01/01/1900
21.SUBSTANTIAL BODILY HARM.	0.060	Felony	01/01/1900
22.PRESENTING ANY STATEMENT TO AN INSURER OR AGENT THAT CONTAINS FALSE OR	686A.2815	Felony	01/01/1900
23.RECKLESS ENDANGERMENT	202.595	Felony	01/01/1900
23.SUBSTANTIAL BODILY HARM.	0.060	Felony	01/01/1900
24.CRIMINAL NEGLECT OF PATIENTS	200.495	Felony	01/01/1900
24.SUBSTANTIAL BODILY HARM.	0.060	Felony	01/01/1900
25.PRESENTING ANY STATEMENT TO AN INSURER OR AGENT THAT CONTAINS FALSE OR	686A.2815	Felony	01/01/1900
26.ACTIONS WHICH CONSTITUTE THEFT	205.0832	Felony	01/01/1900
26.THEFT-PENALTIES	205.0835	Felony	01/01/1900
27.OBTAINING MONEY, PROPERTY, RENT OR LABOR BY FALSE PRETENSES.	205.380	Felony	01/01/1900
27.IT SHALL BE NO DEFENSE TO A PROSECUTION FOR LARCENY THAT THE ACCUSED WAS	205.265	Felony	01/01/1900
28.OBTAINING MONEY, PROPERTY, RENT OR LABOR BY FALSE PRETENSES.	205.380	Felony	01/01/1900
28.IT SHALL BE NO DEFENSE TO A PROSECUTION FOR LARCENY THAT THE ACCUSED WAS	205.265	Felony	01/01/1900
29.MURDER, SECOND DEGREE	200.030.2	Felony	09/21/2007

EVENTS & ORDERS OF THE COURT

10/04/2012 All Pending Motions (9:30 AM) (Judicial Officer Adair, Valerie)

Minutes

10/04/2012 9:30 AM

- DEFENDANT DESAI'S MOTION TO CONSOLIDATE RELATED CASES...DEFENDANT'S MOTION TO CONTINUE TRIAL (DESAI)...STATUS CHECK: DISCOVERY/TRIAL READINESS (ALL)...DEFENDANT'S MOTION TO CONTINUE TRIAL (MATHAHS)...DEFENDANT'S MOTION TO CONSOLIDATE MATHAHS Michael Staudaheer and Pam Weckerly appearing for the State of Nevada. Richard Wright and Margaret Stanish appearing for defendant

Dipak Desai; F. Santacroce appearing for Ronald Lakeman and M. Cristalli appearing for Keith Mathahs. Mr. Lakeman and Mr. Mathahs appearances were waived at this hearing. The Court noted that on 10/2/12 the Defendants moved for a continuance with no opposition by the State as Mr. Wright was not prepared and felt he would be rendering ineffective assistance of counsel. Additionally, Mr. Wright and Ms. Stanish agreed they would be ready for trial in six months. Mr. Santacroce and Mr. Cristalli also agreed to be ready in six months. COURT ORDERED, trial date is VACATED and RESET and informed counsel that this would be the LAST CONTINUANCE afforded to counsel. Mr. Wright requested that wanted to discuss his client's deficits. The Court informed him to provide medical information to the Court and the State closer to trial time. Mr. Staudaher advised that the State has designated 59 witnesses and experts and will provide the list to defense counsel. COURT ORDERED, cases C265107 and C283381 are HEREBY CONSOLIDATED. COURT FURTHER ORDERED, status checks will be set to determine experts being called and to assure counsel will be ready for trial. Questionnaires provide to all counsel by the Marshall. COURT ORDERED, trial date VACATED and RESET to a FIRM SETTING. BOND (ALL) 11/1/12 9:30 AM STATUS CHECK: EXPERTS/TRIAL READINESS 4/18/13 CALENDAR CALL - FIRM SETTING 4/22/13 9:30 AM JURY TRIAL - FIRM SETTING

Parties Present

Return to Register of Actions

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

December 19, 2012

10C265107-1

The State of Nevada vs Dipak K Desai

December 19, 2012

3:00 PM

Decision

HEARD BY: Adair, Valerie

COURTROOM: RJC Courtroom 11C

COURT CLERK: Denise Husted

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS (DESAI)...DEFENDANT RONALD LAKEMAN'S PETITION FOR WRIT OF HABEAS CORPUS

COURT ORDERED, Dr. Desai's Habeas Petition is DENIED. Dr. Desai will stand trial on the murder charge.

COURT ORDERED, Defendant Lakeman's Petition is CONTINUED to 1/3/13 at 9:30 AM for further argument and decision. The Court will entertain argument on how Lakeman's role as a co-conspirator and/or aider and abettor relates to the infection and death of Mr. Meana.

The State is to prepare the order regarding the denial of Desai's petition.

1/3/13 9:30 AM ARGUMENT/DECISION RE: LAKEMAN'S PETITION

REGISTER OF ACTIONS
CASE NO. C-12-283381-1

State of Nevada vs Dipak Desai

~~~~~

Case Type: Felony/Gross  
Date Filed: Misdemeanor  
Location: 08/10/2012  
Department 21  
Case Number: C283381  
Scope ID #: 1240942  
Case Number: 09BGJ119

### RELATED CASE INFORMATION

## Related Cases

10C265107-1 (Consolidated)  
10C265107-2 (Consolidated)  
10C265107-3 (Consolidated)  
C-12-283381-2 (Multi-Defendant Case)  
C-12-283381-3 (Multi-Defendant Case)

## PARTY INFORMATION

**Defendant** Desai, Dipak K

**Lead Attorneys**  
**Richard Allen Wright**  
*Retained*  
7023824004(W)

**Plaintiff            State of Nevada**

**Steven B Wolfson**  
702-671-2700(W)

### CHARGE INFORMATION

**Charges: Desai, Dipak K**

1. MURDER IN THE SECOND DEGREE

**Statute**  
**200.030**

**Level  
Felony**

Date  
09/21/2007

## EVENTS & ORDERS OF THE COURT

|            |                                                                 |
|------------|-----------------------------------------------------------------|
| 08/22/2012 | Initial Arraignment (9:30 AM) (Judicial Officer Miley, Stefany) |
|------------|-----------------------------------------------------------------|

## Minutes

08/22/2012 9:30 AM

Michael Staudaher and Pamela Weckerly, Deputy District Attorneys, present for the State of Nevada. Deft. Desai, present out of custody, with Richard Wright, Esq., and Margaret Stanish, Esq. Deft. Lakeman, present out of custody, with Frederick Santacroce, Esq. Deft. Mathahs, present out of custody, with Michael Cristalli, Esq. With respect to Deft's Motion for Stay, arguments by Mr. Cristalli noting Mr. Wright and Mr. Santacroce have joined in the Motion. Mr. Wright confirmed counsel have joined in the Motion. Mr. Staudaher requested to respond orally; COURT SO ORDERED. Arguments by Mr. Staudaher. Further arguments by Mr. Cristalli. COURT ORDERED, Motion DENIED advising it agrees with the State's position, there is no legal basis for the Stay. With respect to Deft's Motion for Bail, arguments by Mr. Cristalli, Mr. Santacroce, Mr. Wright and Mr. Staudaher. COURT stated its findings and ORDERED, Motion DENIED, Deft. Desai's Bail SET at \$250,000.00, Deft. Lakeman's Bail SET at \$50,000.00 and Deft. Mathahs Bail SET at \$50,000.00. At request of Defense counsel, COURT FURTHER ORDERED, Defts have until 4:00 pm today to post bond and provide verification to the Court or Defts are to be remanded to custody. Mr. Wright on behalf of DEFT. DESAI ARRAIGNED, PLED NOT GUILTY, and WAIVED the 60-DAY RULE. DEFT. LAKEMAN ARRAIGNED, PLED NOT GUILTY, and WAIVED the 60-DAY RULE. DEFT. MATHAHS ARRAIGNED, PLED NOT GUILTY, and WAIVED the 60-DAY RULE. Colloquy regarding trial dates and setting of Status Check. COURT

ORDERED, Status Check SET. Mr. Santacroce requested Deft. Lakeman's presence waived at the Status Check. Mr. Staudaher objected to Deft. Desai's presence being waived. Arguments by Mr. Staudaher and Mr. Wright. COURT FURTHER ORDERED, Defts presences waived at the Status Check as it is only for trial setting, however Defts are required to be at all other substantive dates. Mr. Santacroce, with oral Joinders made by Mr. Wright and Mr. Cristalli, requested 21 days after receiving the Grand Jury transcripts and discovery to file a Writ; COURT SO ORDERED. NIC (ALL) 9/19/12 9:30 AM STATUS CHECK: TRIAL SETTING (ALL)

[Return to Register of Actions](#)



EXHIBIT 4

EXHIBIT 4

1 EIGHTH JUDICIAL DISTRICT COURT

2 CLARK COUNTY, NEVADA

3  
4 BEFORE THE GRAND JURY IMPANELED BY THE AFORESAID  
5 DISTRICT COURT  
6

7 IN RE: 09BGJ119A-C, (Desai, )  
8 Lakeman & Mathahs) CLARK COUNTY )  
9 GRAND JURY INSTRUCTIONS, )  
10 )  
11 )  
12 )

No. 09BGJ119A-C

13  
14 Taken at Las Vegas, Nevada

15 Friday, August 10, 2012

16 8:46 a.m.  
17  
18  
19

20 REPORTER'S TRANSCRIPT OF PROCEEDINGS  
21  
22  
23  
24

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

1 GRAND JURORS PRESENT ON AUGUST 10, 2012

2

3 PAMELA YOUNG, Foreperson

4 JOSEPH WILLOUGHBY, Deputy Foreperson

5 SHELLY SALAMANOPOULOS, Secretary

6 CONSTANCE CABILES, Assistant Secretary

7 SVEN BRADLEY

8 MICHAEL CONNELL

9 AGNES PARKER

10 YOLANDA PARKER

11 BIANCA ROBERSON

12 ALICE SZURAN

13 MICHAEL THOMPSON

14 THOMAS UHRHAN

15 ANNE ZARATE

16

17

18

19 Also present at the request of the Grand Jury:

20 Linda Marie Bell, District Court Judge

21 Estee Del Padre, Grand Jury Coordinator,  
22 District Attorney's Office

23 Rick Moon, Court Marshal

24

25

1 LAS VEGAS, NEVADA, AUGUST 10, 2012

2 \* \* \* \* \*

3 THE COURT: Good morning. I want to thank  
4 all of you first for returning today. I know we let you  
5 go with the idea that you would never have to come back  
6 but because of the complexity of this particular case it  
7 just made more sense to have you return.

8 We anticipate that you will be done with  
9 this part today. It is possible, given the complexity  
10 of this case, that there may be something that comes up  
11 in the future. We'll let you know. Hopefully not but I  
12 just wanted to let you know that.

13 Also, you were all provided with the  
14 transcripts and exhibits. Has everyone had an  
15 opportunity to look through that?

16 You know, I'm just going to go around the  
17 room and if each of you could just say your name and  
18 just affirm that you read the transcripts.

19 A JUROR: Tom Uhrhan. Yes, I read the  
20 transcripts.

21 A JUROR: Alice Szuran. And I brought the  
22 disk back. I read it.

23 A JUROR: Sven Bradley. Yes, I did read  
24 it.

25 A JUROR: Michael Connell. Yes, I did read

1 it.

2 A JUROR: Yolanda Parker. Yes, I did read  
3 it.

4 A JUROR: Shelly Salamanopoulos. I did  
5 read it.

6 A JUROR: Constance Cabiles. Yes, I did  
7 read it.

8 A JUROR: Pamela Young. Yes, I read it.

9 A JUROR: Joseph Willoughby. Yes, I read  
10 it.

11 A JUROR: Michael Thompson. Yes, I read  
12 it.

13 A JUROR: Agnes Parker. I finished reading  
14 it.

15 A JUROR: Anne Zarate. I did finish it.

16 A JUROR: Bianca Roberson. Yes, I read the  
17 transcripts.

18 THE COURT: Okay. I'm going to ask you to  
19 hang on to them just in case there is something that  
20 happens in the future. But please remember that some of  
21 the exhibits in particular are of a sensitive nature and  
22 you have some patient names in there that actually are  
23 sealed in the court record. So please make sure that  
24 you take care with those and don't share them with  
25 anyone else. It's very important because those are

1 sealed court records. Just be careful with them.

2 Also, so you know, there are some reporters  
3 outside and so I would just remind you, I'm going to  
4 reinstruct you on all of the instructions since it's  
5 been awhile since you've met, but I just remind you not  
6 to speak with anybody about the case until after the  
7 case is returned. And probably really a good idea given  
8 this one just to not speak to anybody about it at all.

9 I'm going to go ahead and read through the  
10 instructions.

11 Ladies and gentlemen of the Grand Jury: It  
12 is now my duty as Judge of the Eighth Judicial District  
13 Court to instruct you in the law regarding your powers  
14 and duties as grand jurors.

15 It is a great honor to serve as a member of  
16 a grand jury. In time of peace, no citizen can perform  
17 a higher duty than that of grand jury service. No other  
18 body of citizens exercises a public function of more  
19 vital importance to the administration of law and order  
20 and maintenance of good government.

21 In the State of Nevada, as in many other  
22 states, a grand jury can perform two distinctly,  
23 separate and different types of service.

24 1. In the most frequent type of service,  
25 the grand jury is an accusing body. In performing this

1 function, the grand jury considers evidence presented to  
2 it by the district attorney or attorney general, and  
3 determines whether or not it should issue an indictment  
4 for the criminal trial of persons accused of a crime.

5           2. In the other type of service, the grand  
6 jury is an investigating body. In performing this  
7 function, the grand jury, subject to the approval and  
8 supervision of the court, investigates public problems,  
9 public officials and public institutions. In performing  
10 this investigative function, if improper conditions are  
11 found to exist, the grand jury may recommend charges or  
12 remedies subject to the guidelines set forth in these  
13 instructions.

14           You must not be concerned with the wisdom  
15 of any rule of law. Regardless of any opinion you may  
16 have as to what the law ought to be, it would be a  
17 violation of your oath to base a finding upon any other  
18 view than that given in the instructions.

19           Let us first consider your powers and  
20 duties as an accusing body.

21           The grand jury may inquire into all public  
22 offenses triable in the district court or in the  
23 justice's court, committed within Clark County.

24           This inquiry begins when the district  
25 attorney or attorney general initiates a criminal

1 prosecution before the grand jury. The prosecutor will  
2 bring the case to the grand jury and request the grand  
3 jury to return an indictment.

4 An indictment is an accusation in writing,  
5 presented by a grand jury to a district court, charging  
6 a person with a crime.

7 As an accusing body you will be concerned  
8 with hearing witnesses and considering other evidence in  
9 order to determine whether or not, in light of that  
10 evidence alone, an indictment is justified.

11 In the performance of this work, the  
12 prosecutor will present to you, and explain, the charge.  
13 You will hear testimony from witnesses who receive a  
14 subpoena issued by the prosecutor.

15 Whenever you are not fully satisfied with  
16 the evidence presented, you have the power to insist  
17 that additional witnesses be called, if available or  
18 obtainable.

19 The witnesses will be called before you one  
20 at a time to be questioned first by the prosecutor, then  
21 by your foreperson, and then by any of you who may  
22 desire to ask the witness any questions. As to what is  
23 a proper question, the advice of the prosecutor should  
24 be obtained, and, in the event of a doubt, a ruling may  
25 be obtained from the court.



1           In the investigation of a charge, for the  
2 purpose of an indictment, you can receive no evidence  
3 other than the testimony of the witnesses, any legal  
4 documentary evidence you are provided, the depositions  
5 of witnesses taken as provided by law, and certain  
6 affidavits as provided by law.

7           It is your duty to weigh all evidence  
8 submitted to you, and when you have reason to believe  
9 that other evidence within your reach will explain away  
10 the charge, you must order that such evidence be  
11 produced. For that purpose, you may require the  
12 prosecutor to issue process for witnesses.

13           Nevada Revised Statutes provide: "Whenever  
14 criminal causes are being investigated by the grand  
15 jury, it shall appoint a certified shorthand reporter.  
16 If he or she is not an official district court reporter,  
17 he or she shall, before entering upon their duties, take  
18 and subscribe the constitutional oath of office."

19           The certified shorthand reporter shall  
20 include in the notes he or she takes of a grand jury  
21 proceeding all criminal matters which come before the  
22 grand jury, including the charge by the impaneling  
23 judge; any subsequent instructions or statements made by  
24 the judge; each statement made by the district attorney  
25 or the attorney general; each question asked of and

1 response given by the witnesses who appear before the  
2 grand jury; and any statements made by the grand jurors  
3 during the proceeding. The certified shorthand reporter  
4 shall not include in his or her notes any confidential  
5 communication between a witness and his legal counsel  
6 and the deliberation and voting of the grand jury.

7           The prosecutor, the witness under  
8 examination, interpreters when needed, and any person  
9 engaged by or requested by the grand jury to be present,  
10 and an attorney accompanying a witness whose indictment  
11 the prosecutor intends to seek or the grand jury on its  
12 own motion intends to return, may be present while the  
13 grand jury is in session.

14           A person whose indictment the district  
15 attorney or attorney general intends to seek, may  
16 testify before the grand jury, if the person requests to  
17 do so and executes a valid waiver in writing of his or  
18 her constitutional privilege against self-incrimination.

19           The failure of a person to exercise their  
20 right to testify as provided must not be considered in  
21 your decision of whether or not to return an indictment.

22           After the charges and evidence in each case  
23 have been presented to you, all persons except members  
24 of the grand jury, must leave the room so that you may  
25 consider and discuss the matter privately behind closed

1 doors. If any other person is present at that time, the  
2 indictment would be void and of no force or effect.

3           There may be occasions when a particular  
4 member of the grand jury may not participate in the  
5 deliberation and in the voting. Such a circumstance  
6 arises when a member has not heard, or in the  
7 alternative, has not read the transcripts of all the  
8 testimony presented, or, where a particular member is  
9 "too close" to the case, such that the member cannot be  
10 fair to both the State and the defendant or cannot  
11 decide the case based on the evidence presented alone.  
12 Under such circumstances that member will be asked to  
13 leave the grand jury room during the deliberation and  
14 the voting.

15           Those members of the grand jury "qualified"  
16 to deliberate and vote shall consider each person and  
17 each count for each person separately. That is to say,  
18 each person and each count for each person named in a  
19 proposed indictment, must be voted on separately by the  
20 grand jury.

21           It is inappropriate for a "qualified"  
22 member of the grand jury, participating in  
23 deliberations, to abstain from voting.

24           When all persons except members of the  
25 grand jury have left the room, your foreperson will ask

1 you to discuss and vote on the question of whether or  
2 not a "True Bill" should be found on each charge.

3 Every grand juror then has a right to  
4 comment on the evidence and fully express his or her  
5 views of the entire matter.

6 After every member of the grand jury has  
7 been given an opportunity to be heard, the vote should  
8 be taken.

9 Please remember that no indictment or count  
10 can be found and issued unless at least twelve grand  
11 jurors concur in so doing.

12 You should find and issue an indictment  
13 when all the evidence before you, taken together,  
14 establishes probable cause to believe that an offense  
15 has been committed and that the defendant has committed  
16 it.

17 Probable cause is a legal standard. In  
18 grand jury proceedings, the State need only show that a  
19 crime has been committed and that the accused probably  
20 committed it. The finding of probable cause to support  
21 a criminal charge may be based on slight, even marginal  
22 evidence, and does not involve a determination of the  
23 guilt or innocence of an accused.

24 To return an indictment and commit an  
25 accused for trial, the State is required to present only

1 enough evidence to support a reasonable inference that  
2 the accused committed the offense. So long as an  
3 inference of criminal agency can be drawn from the  
4 evidence, it is proper for the grand jury to draw it,  
5 thereby leaving to the jury at trial the ultimate  
6 determination on the credibility of witnesses and the  
7 guilt of the accused. If the prosecutor is aware of any  
8 evidence that will explain away the charge - often  
9 referred to as exculpatory evidence - that evidence  
10 shall be submitted to the grand jury.

11           An indictment may be found only upon the  
12 concurrence of twelve or more grand jurors.

13           When you do find and desire to issue an  
14 indictment, it must first be endorsed "A True Bill."  
15 This endorsement must be signed by your foreperson. The  
16 names of all the witnesses examined before the grand  
17 jury must be inserted at the foot of the indictment or  
18 endorsed upon it.

19           The indictment must then be returned by the  
20 grand jury to a judge in open court.

21           The court may direct that the indictment be  
22 kept secret until the defendant is in custody or has  
23 been given bail, and in that case, the clerk shall seal  
24 the indictment. It is unlawful for any person to  
25 disclose the finding of the secret indictment except

1 when necessary for the issuance and execution of a  
2 warrant or summons.

3 In the event that twelve or more grand  
4 jurors do not concur in finding an indictment, the  
5 proposed indictment shall be delivered to the court  
6 through the district attorney with the endorsement  
7 signed by the foreperson that it is a "No True Bill."

8 Let us consider your powers and duties if  
9 the grand jury acts as an investigative body. With  
10 regard to your powers as an investigating body you are  
11 instructed that any investigation not commenced by  
12 either the district attorney or the attorney general  
13 must first be submitted to the Chief Judge for approval.

14 The law provides that each grand jury may  
15 inquire into the case of every person imprisoned in the  
16 jail of the county, on a criminal charge, against whom  
17 an indictment has not been found or an information or  
18 complaint filed; the condition and management of any  
19 public prison located within the county; the misconduct  
20 in office of public officers of every description within  
21 the county which may constitute a violation of provision  
22 of Chapter 197 of the Nevada Revised Statutes, crimes by  
23 and against the executive power.

24 The Grand Jury has the power at the request  
25 of the district attorney or attorney general to cause

1 the issuance of subpoenas, subscribed by the foreperson  
2 or by the deputy foreperson, or temporary foreperson,  
3 for witnesses within the state and for the production of  
4 books, papers or documents, such as books of account,  
5 bank account records, and the contents of deposit boxes.

6           The singular purpose of an investigation by  
7 you is to issue a report concerning a matter into which  
8 you may lawfully inquire. The report must be issued for  
9 the sole purpose of reporting on the matter. The report  
10 must not contain material the sole effect of which is to  
11 ridicule or abuse a person or otherwise subject him to  
12 public disgrace or embarrassment; contain material which  
13 is personal in nature and does not relate to any lawful  
14 inquiry; or accuse a named or unnamed person directly or  
15 by innuendo, imputation or otherwise of an act that, if  
16 true, constitutes an indictable offense unless the  
17 report is accompanied by an indictment of the person for  
18 the offense mentioned in the report.

19           The grand jury is supervised by a Judge of  
20 the District Court. The grand jury shall not spend  
21 money or incur debt exceeding the amount of money  
22 budgeted for its use unless it first obtains the  
23 approval of the Judge.

24           The law requires that you be instructed as  
25 follows: Any civil officer in this State who, during

1 his term of office, becomes -- this is my favorite  
2 instruction, we have to give it by statute -- becomes  
3 intoxicated or is under the influence of alcoholic,  
4 malt, liquors, or becomes or is addicted to the use of  
5 controlled substances, so that he is not at all times in  
6 proper condition for the discharge of the duties of his  
7 office, is guilty of a gross misdemeanor, and if he is a  
8 state officer, is subject to removal from office by  
9 impeachment or if he is a county, city or township  
10 officer he shall be removed from office by the judgment  
11 of the court in which the conviction is had, as part of  
12 the penalty in such a conviction.

13           Upon receiving information from any person  
14 that the provisions of this section has been violated,  
15 sheriffs and their deputies, constables and their  
16 deputies, district attorneys, and all other peace  
17 officers in this State shall immediately institute  
18 proceedings in the proper court against the person  
19 complained of, and shall prosecute the same with  
20 reasonable diligence to final judgment.

21           If any person makes and files a complaint  
22 under oath charging the district attorney with a  
23 violation of this section, the attorney general shall  
24 prosecute the district attorney pursuant to the terms of  
25 this section.



1           If any state officer is convicted pursuant  
2 to this section, the prosecuting officer obtaining the  
3 conviction shall file a certified copy of the judgment  
4 roll with the secretary of state. The secretary of  
5 state shall lay the certified copy of the judgment roll  
6 before the legislature at its next session.

7           As it pertains to grand jury secrecy,  
8 Nevada law provides as follows: Evidence presented to  
9 the grand jury, information obtained by the grand jury,  
10 and an event occurring or a statement made in the  
11 presence of the grand jury other than its deliberations  
12 and the vote of a juror, may be disclosed to the  
13 district attorney for use in the performance of his  
14 duties.

15           Except as otherwise stated herein, the  
16 district attorney, the attorney general, or a member of  
17 his or her staff, a grand juror, peace officer, clerk,  
18 stenographer, interpreter, witness or other person  
19 invited or allowed to attend the proceedings of a grand  
20 jury shall not disclose evidence presented to the grand  
21 jury, an event occurring or a statement made in the  
22 presence of the grand jury, information obtained by the  
23 grand jury, or the results of an investigation made by  
24 the grand jury.

25           A person may disclose his knowledge

1 concerning the proceedings of a grand jury when so  
2 directed by the court preliminary to or in connection  
3 with a judicial proceeding; when permitted by the court  
4 at the request of the defendant, upon showing that  
5 grounds may exist for a motion to dismiss the  
6 presentment or indictment because of matters occurring  
7 before the grand jury; or if he was a witness before the  
8 grand jury and is disclosing his knowledge of the  
9 proceedings to his own attorney.

10 Nevada Revised Statute 179.225 provides  
11 that upon finding of an indictment and when the  
12 stenographic reporter certifies and files a transcript  
13 with the county clerk, the transcript and any related  
14 physical evidence exhibited to the grand jury becomes a  
15 matter of public record unless the court orders that the  
16 presentment or indictment remain secret until the  
17 defendant is in custody or has been given bail; or upon  
18 motion, orders the transcript and evidence to remain  
19 secret until further order of the court.

20 No obligation of secrecy may be imposed  
21 upon any person except in accordance with these  
22 instructions. The court may direct that the indictment  
23 be kept secret until the defendant is in custody or has  
24 been given bail, and in that case, the clerk shall seal  
25 the indictment. It is unlawful for any person to

1 disclose the finding of the secret indictment except  
2 when necessary for the issuance and execution of a  
3 warrant or summons.

4           The attorney general or district attorney  
5 shall investigate and prosecute a violation of this  
6 section.

7           The grand jury shall inform each person who  
8 appears before it of the provisions of this section and  
9 the penalties for its violation.

10           Failure to comply with the secrecy  
11 provisions set forth is a gross misdemeanor punishable  
12 by a year in the Clark County Jail and a \$2,000 fine.  
13 In addition, a person violating these admonishments may  
14 be held in contempt of court punishable by an additional  
15 \$500 fine and 25 days in the Clark County Jail.

16           Now, a few words regarding organization of  
17 the Grand Jury.

18           You shall elect one of your members to be  
19 foreperson -- and I think you've already voted on  
20 that -- another to be deputy foreperson, and a third to  
21 be secretary.

22           The foreperson shall have the power to  
23 administer oaths and affirmations and shall sign all  
24 indictments. The foreperson shall, in addition, inform  
25 each witness of the general nature of the grand jury

1 inquiry and prior to excusing the witness admonish him  
2 of the secret nature of the proceeding and sanctions for  
3 its violation.

4           The secretary shall keep a record of the  
5 number of jurors concurring in the finding of every  
6 indictment and shall file the record with the clerk of  
7 the court, but the record shall not be made public  
8 except on order of the court.

9           In addition, the secretary shall mark all  
10 exhibits introduced and keep an accurate record of the  
11 same. The secretary shall maintain an accurate  
12 attendance roll of all grand jurors present. The  
13 exhibits and minutes shall be delivered to the district  
14 court through the district attorney or the attorney  
15 general.

16           During the absence of the foreperson, the  
17 deputy foreperson shall act as foreperson, and if both  
18 are absent, those present shall elect a temporary  
19 foreperson.

20           In the State of Nevada, a quorum of the  
21 grand jury is twelve members present. Not less than  
22 twelve members must be present at all meetings of the  
23 grand jury in order to transact any business as a grand  
24 jury. If less than this number is present, all  
25 proceedings of the grand jury as such cease until twelve

1 or more members are present.

2 A grand jury shall serve until discharged  
3 by the court and may be so discharged at any time after  
4 the expiration of one year.

5 At any time for cause shown the court may  
6 excuse a grand juror, either temporarily or permanently;  
7 in the latter event, the court may, and ordinarily will,  
8 impanel an alternate grand juror in place of the juror  
9 excused.

10 The court now delivers to you these written  
11 instructions, which have been read to you on this  
12 occasion.

13 And you will now -- okay. You're already  
14 in the grand jury room, and there won't be organization  
15 meetings obviously because you've already done that.  
16 And you know you're doing it right.

17 So I want to thank you again for your  
18 willingness to come back and help with this case. It  
19 would take a new grand jury, I'm sure you recall it was  
20 a couple weeks of, what? All together it was about ten  
21 days.

22 A JUROR: About a year. Off and on.

23 THE COURT: It was all spread out but when  
24 you put it all together it was ten days. So it was two  
25 weeks, two full weeks of grand jury time to hear this

1 case. So that's why we made the decision that it would  
2 make more sense to bring all of you folks back. So I  
3 really appreciate your time.

4 If anyone has any issues with work or, you  
5 know, you need a note to your boss or anything like that  
6 please let me know. Just contact my chambers and we'll  
7 make sure that we get that for you. So everyone have a  
8 great day. It's very nice to see all of you again.

9 A JUROR: Can we get that note today,  
10 Judge?

11 THE COURT: Absolutely. Will you just  
12 write down -- does anybody else need one?

13 No? Okay.

14 That's okay. Do we have -- I just don't  
15 have any --

16 A JUROR: I just need it that we got  
17 released today or whatever. Because I guess we're  
18 getting released today.

19 THE COURT: I anticipate that it's going to  
20 be probably just the morning but I don't know for sure.

21 A JUROR: Okay.

22 THE COURT: Thank you all.

23 A JUROR: Okay. Thanks.

24 (Proceedings concluded.)

25 --oo0oo--

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3 **REPORTER'S CERTIFICATE**4 **STATE OF NEVADA** )

: Ss

5 **COUNTY OF CLARK** )

6 I, Danette L. Antonacci, C.C.R. 222, do  
7 hereby certify that I took down in Shorthand (Stenotype)  
8 all of the proceedings had in the before-entitled matter  
9 at the time and place indicated and thereafter said  
10 shorthand notes were transcribed at and under my  
11 direction and supervision and that the foregoing  
12 transcript constitutes a full, true, and accurate record  
13 of the proceedings had.

14 Dated at Las Vegas, Nevada,  
15 September 6, 2012.

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18 Danette L. Antonacci, C.C.R. 222  
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# EXHIBIT 3

# EXHIBIT 3



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EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

~~DIPAK KANTHIAH, DESAI, RONALD~~  
ERNEST LAKEWAN, KEITH H. MATHAHS,

Defendants.

No. 09BGJ119A-C

COPY  
C283381  
XXII

Taken at Las Vegas, Nevada

Thursday, August 10, 2012

9:14 a.m.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

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

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GRAND JURORS PRESENT ON AUGUST 10, 2012

PAMELA YOUNG BIANCA, Foreperson

JOSEPH WILLOUGHBY, Deputy Foreperson

SHELLY SALAMANPOULOS, Secretary

CONSTANCE CABILES, Assistant Secretary

SVEN BRADLEY

MICHAEL CONNELL

AGNES PARKER

YOLANDA PARKER

BIANCA ROBERSON

ALICE SZURAN

MICHAEL THOMPSON

THOMAS UHRHAN

ANNE ZARATE

Also present at the request of the Grand Jury:

Michael Staudaher & Pamela Weckerly,  
Chief Deputy District Attorneys

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CLERK OF THE COURT

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4 - COPY OF DRIVER'S LICENSE OF RODOLFO MEANA

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5 - DEATH CERTIFICATE

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LAS VEGAS, NEVADA, AUGUST 10, 2012

\* \* \* \* \*

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 here  
today with Pamela Weckerly. We are the deputy district  
attorneys assigned to prosecute the case of State of  
Nevada versus Dipak Kantilal Desai, Ronald Ernest  
Lakeman and Keith H. Mathahs in Grand Jury Case Number  
09BGJ119A-C.

Ladies and gentlemen of the Grand Jury,  
before we get started there's a couple things we need to  
do. First of all you have before you an Indictment  
which is going to be marked and it has been marked  
rather as Exhibit Number 1.

Exhibit Number 2 will be the law pertaining  
to the charge in this particular case which is second  
degree murder. We are going to be following a couple of  
different theories of murder. I'm going to go through  
the law with you pertaining to that particular charge in

just a moment. At the end of that, if you have any  
questions about that I ask that you let me know so we  
can clarify it or make sure that you're all on board  
with every issue in the case. Okay?

Also I know that the Grand Jury judge has  
previously just sworn you a moment ago, that you have  
all acknowledged on the record that you have reviewed  
the materials from the prior presentation in a separate  
case. This is a separate case at this point. The prior  
presentation materials included all the transcripts of  
the prior presentation involving these three defendants,  
as well as all of the Grand Jury exhibits that were  
presented during that presentation. Again just before  
we get started, general acknowledgment or lack thereof  
that you have reviewed those materials.

A JUROR: We have reviewed.

MR. STAUDAHER: And a general  
acknowledgment among the Grand Jury members.

As we start out I'm going to go over the  
law which is Exhibit 2. You have the entirety of the  
statutes contained in Exhibit 2 pertaining to each of  
the statutes in this case which is what you will  
deliberate on in this case after you hear the evidence  
and take into consideration the prior evidence that you  
reviewed as well.

The first is under NRS 200.010. It's  
murder. Murder is defined as the unlawful killing of a  
human being with malice aforethought.

Under NRS 200.020. Malice is further  
defined as either express or implied malice.

Now it's important to know that under the  
theory of murder that the State is proceeding under, it  
is not a first degree murder. It is not a  
premeditation, deliberation, express malice murder that  
we're going forward on. It is second degree murder. So  
second degree murder has implied malice. There does not  
have to be an intent to kill. We're going to get into  
some of that in just a moment.

But under NRS 200.020, malice. Under  
subsection 2 related to implied malice. It says malice  
shall be implied when all of the circumstances of the  
killing show an abandoned or malignant heart.

NRS 200.030 delineates the various forms of  
murder. Again we're not proceeding under a first degree  
murder theory. Anything that does not carry with it the  
intent to kill a human being that is defined as murder  
is all other forms of murder which is second degree.

Under NRS 200.070, that is actually the  
involuntary murder, or, excuse me, involuntary  
manslaughter statute. The important portion there that

relates to the charge of second degree murder in this  
case is that: Even though an involuntary killing occurs  
in the commission of an unlawful act -- and here the  
unlawful acts specifically are the criminal neglect of  
patients charge and the performance of an act in  
reckless disregard of persons or property. That in the  
commission of that, or one or more of those acts, a  
killing occurs, and that in its consequences those acts  
naturally tend to destroy the life of a human being or  
is committed in the prosecution of a felonious intent,  
the offense is murder.

Under NRS 0.060, it defines substantial  
bodily harm which you had previously heard testimony  
about in the other case. But substantial bodily harm  
also includes the possibility of death. Under  
subsection 1, it's bodily injury which creates a  
substantial risk of death.

Under the two particular felonies that we  
are providing you today information on, what we believe  
will show that there was, essentially provides the  
malice for the murder. The two felonies that we're  
centering on today are the performance of an act in  
reckless disregard of persons or property. That is NRS  
202.595. A person who performs any act or neglects any  
duty imposed by law in willful or wanton disregard of

1 the safety of persons or property, and if the neglect  
2 results in substantial bodily harm or death, that is a  
3 felony.

4 Under NRS 200.495, that is the criminal  
5 neglect of patient statute. Now I know you've had these  
6 before but I need to go over these, and specifically  
7 this one with you in detail, because as I go through  
8 this the things that I'm going to be telling you are  
9 conjunctive, which means they are all required for the  
10 finding. And I know that you have previously made a  
11 finding as related to the patient involved in the charge  
12 here and these defendants, but I still need to make sure  
13 that you understand that this is the theory that we're  
14 proceeding on for this charge and the previous one, the  
15 performance of an act that I told you a moment ago.

16 Under NRS 200.495, a professional caretaker  
17 who fails to provide such service, care or supervision  
18 as is reasonable and necessary to maintain the health or  
19 safety of a patient -- these are the four parts that you  
20 need to consider -- the act or omission must be  
21 aggravated, reckless or gross; (b) The act or omission  
22 is such a departure from what would be the conduct of an  
23 ordinarily prudent, careful person under the same  
24 circumstances that it is contrary to a proper regard for  
25 danger to human life or constitutes indifference to the

1 resulting consequences; (c) The consequences of the  
2 negligent act or omission could have reasonably been  
3 foreseen; and (d) The danger to human life was not the  
4 result of inattention, mistake, judgment or  
5 misadventure, but the natural and probable result of an  
6 aggravated, reckless or grossly negligent act or  
7 omission.

8 Now again, ladies and gentlemen, you have  
9 the entirety of these statutes. Is there any questions  
10 thus far about the law as its been provided to you?

11 Now one section I want to cover again so  
12 we're clear on this. The Indictment that you have  
13 before you lists certain theories of principles of  
14 theories of criminal liability that we are proceeding  
15 under. The first is essentially a reckless theory. The  
16 acts involved were so reckless that they constituted,  
17 essentially as it says there, an abandoned or malignant  
18 heart. That is second degree murder. If a killing or  
19 death results from that type of conduct, it's murder.  
20 However there's a second portion of that. If in fact,  
21 under the second section, the commission of the unlawful  
22 act -- and the unlawful act again here is either the  
23 criminal neglect of patients or the performance of an  
24 act in reckless disregard -- if those acts, those  
25 consequences of those two acts, naturally tend to

1 destroy the life of a human being, or they were  
2 committed in the performance of felonious intent --  
3 meaning criminal neglect of patients or performance of  
4 an act in reckless disregard -- and those acts naturally  
5 tend to destroy the life of a human being, that is also  
6 murder.

7 So we're talking about dangerous felonies  
8 in one standpoint and reckless conduct in the other. Is  
9 there any question about that?

10 With that we will go ahead and start our  
11 presentation of the evidence. Again if you develop any  
12 questions as we go through this about the law or about  
13 the evidence before that you need to have addressed, I  
14 know you've all reviewed it, let us know.

15 THE FOREPERSON: Sir, could you please  
16 remain standing. Raise your right hand.

17 You do solemnly swear the testimony you are  
18 about to give upon the investigation now pending before  
19 this Grand Jury shall be the truth, the whole truth, and  
20 nothing but the truth, so help you God?

21 THE WITNESS: I do.

22 THE FOREPERSON: You may be seated.

23 You are advised that you are here today to  
24 give testimony in the investigation pertaining to the  
25 offense of murder in the second degree, category A

1 felony.

2 Do you understand this advisement?

3 THE WITNESS: Yes, ma'am, I do.

4 THE FOREPERSON: Thank you. Could you  
5 state both your first and last names please and then  
6 spell them both for the record.

7 THE WITNESS: My name is Maynard Bagang.  
8 First name M-A-Y-N-A-R-D, last name B-A-G-A-N-G.

9 THE FOREPERSON: Thank you.

10 MAYNARD BAGANG,  
11 having been first duly sworn by the Foreperson of the  
12 Grand Jury to testify to the truth, the whole truth,  
13 and nothing but the truth, testified as follows:

14 EXAMINATION

15 BY MR. STAUDAHER:

16 Q. Detective, what do you do for a living?

17 A. I'm a police officer and been working for  
18 the Las Vegas Metropolitan Police Department for  
19 approximately eight years now.

20 Q. Are you an officer or detective?

21 A. I've been recently assigned to the airport  
22 so I'm an officer.

23 Q. With regard to your testimony today, I'm

1 going to direct you to a specific time period,  
2 specifically April 27th of this year. Were you involved  
3 in any kind of an investigation pertaining to Rodolfo, a  
4 person by the name of Rodolfo Meana?

5 A. Yes, sir.

6 Q. Can you tell us -- first of all, before  
7 that date, were you even aware that this was a situation  
8 you might become involved in?

9 A. Yes, sir.

10 Q. Can you explain to us how that happened and  
11 then what occurred on that day and thereafter?

12 A. In the beginning week of April 2012 I was  
13 informed by Detective Bob Whiteley --

14 Q. And again, ladies and gentlemen, if he  
15 discusses any -- I'm going to ask you to not, as much as  
16 possible, tell us what other people said. But I'm going  
17 to caution the Grand Jury that this is simply to give  
18 context and foundation for what he did or why he was  
19 involved in this particular case. It's not offered for  
20 the truth of the matter asserted, nor is it intended to  
21 be used by you for that purpose.

22 A. In the beginning week of April I was  
23 informed by Detective Bob Whiteley that his case, one of  
24 the patients of his case is unfortunately probably going  
25 to pass away and he asked me if I speak the native

1 language of the Philippines which is Tagalog and asked  
2 me if that happens if I can go to the Philippines and  
3 facilitate an autopsy for the victim which is Rodolfo  
4 Meana. And I told him yes.

5 Q. So move forward then. So you were aware of  
6 it at least at the early part of April and agreed that  
7 you would do that for Detective Whiteley if the time  
8 came?

9 A. Yes, sir.

10 Q. Did that time come?

11 A. Yes, sir. Last April 27th at about  
12 11 o'clock in the morning, I was in California, I was  
13 performing my military duties because I'm in the Navy  
14 Reserve, and I was called by Sergeant Misty Pence and  
15 informed me that the victim Rodolfo Meana passed away  
16 and she asked me if I can fly out that night from Las  
17 Vegas to the Philippines. And I was able to check out  
18 from the Naval installation in Coronado, California and  
19 drove back to Las Vegas, and I flew out that night 11:00  
20 p.m. from Las Vegas to Manila.

21 Q. So did you accompany anybody or were you  
22 alone?

23 A. I accompanied the Nevada examiner, Dr.  
24 Alane Olson.

25 Q. What was the purpose of you going to the

1 Philippines?

2 A. My main purpose is to facilitate the  
3 autopsy, identify the body and witness the autopsy.

4 Q. Did you do those things?

5 A. Yes, sir.

6 Q. I'm showing you what has been previously  
7 marked as Grand Jury Exhibit Number 4 and ask you if you  
8 recognize that.

9 A. Yes, sir, I do.

10 Q. What is that, sir?

11 A. This is the copy of the driver's license of  
12 Rodolfo Meana.

13 Q. A Nevada issued driver's license; is that  
14 correct?

15 A. Correct, sir.

16 Q. Now you said that part of what you were to  
17 do was to identify the body as well as make sure that  
18 you basically were there for the autopsy; is that  
19 correct?

20 A. Yes, sir.

21 Q. I assume that means that you didn't want to  
22 do an autopsy on somebody who was not Rodolfo Meana?

23 A. Correct.

24 Q. So did you look at the person and identify  
25 them as being the person that you believed was Rodolfo

1 Meana?

2 A. Yes, sir.

3 Q. Is that the same person as depicted in this  
4 driver's license?

5 A. Yes, sir.

6 Q. At that point what else did you do? I know  
7 you've identified the body as Mr. Meana. What else did  
8 you do as far as your involvement in the autopsy?

9 A. After the body's been identified -- first  
10 off, before the autopsy was conducted, at about  
11 11:00 a.m. April 30th, Dr. Olson and myself went to  
12 Funeraria Paz, it's F-U-N-E-R-A-R-I-A, and then P-A-Z,  
13 in Manila where the body was stored.

14 Q. And what is that facility?

15 A. That facility is a funeral home and a  
16 morgue.

17 Q. So you go to that location. What happens?

18 A. I went to that location and I met with the  
19 Funeraria Paz staff and also one of the daughters of  
20 Mr. Meana which is Marissa Meana and she advised me  
21 that --

22 MR. STAUDAHER: Again, ladies and  
23 gentlemen, not offered for the truth of the matter  
24 asserted at this point.

25 THE WITNESS: She advised me that they had

1 given consent for the autopsy to be performed.  
 2 BY MR. STAUDAHER:  
 3 Q. So further at least information that you  
 4 had that this in fact was Mr. Meana; correct?  
 5 A. Yes, sir.  
 6 Q. So what happens thereafter?  
 7 A. After that we started the autopsy  
 8 approximately 12:30 p.m.  
 9 Q. When you say we started the autopsy, were  
 10 you actually performing it?  
 11 A. No, sir, I was a witness. It was the  
 12 Philippine coroner that was provided by the Philippine  
 13 law enforcement agency which is the National Bureau of  
 14 Investigation, and the Interpol chief based in Manila,  
 15 and inside the room was Dr. Olson, myself, the  
 16 Philippine coroner and her assistant.  
 17 Q. So you were present during the entirety of  
 18 the autopsy?  
 19 A. Yes, sir.  
 20 Q. Now Dr. Olson, did she participate in the  
 21 autopsy itself?  
 22 A. No, sir.  
 23 Q. What was the purpose of her being there?  
 24 A. Dr. Olson's purpose is to witness the  
 25 autopsy and collect the tissue and blood samples.

1 A. Say that again, sir.  
 2 Q. Do you come back to the United States at  
 3 some point?  
 4 A. Yes, sir.  
 5 Q. So when you get back to the United States  
 6 did you continue on in this investigation at all or were  
 7 you done?  
 8 A. My mission was done, sir.  
 9 Q. Now beside the things that you described  
 10 when you were there physically, the things that you were  
 11 involved with, did you facilitate those, that process  
 12 because you know the language of Tagalog?  
 13 A. Yes, sir. When I got to the Philippines I  
 14 met with one of the agents of National Bureau of  
 15 Investigation because there was no coroner in place. So  
 16 what I did was I briefed the Interpol chief in Manila  
 17 and also the head doctor of the National Bureau of  
 18 Investigation about the mission, why we're there in  
 19 Manila, and we informed them that we need to do this as  
 20 soon as possible because the body was frozen inside the  
 21 morgue which is Funeraria Paz. And they were able to  
 22 obtain the permission from the family to perform the  
 23 autopsy and provided the pathologist which is Dr.  
 24 Oropilla, O-R-O-P-I-L-L-A, and Dr. Oropilla performed  
 25 the autopsy.

1 Q. Were you present when those samples were  
 2 collected and given to Dr. Olson?  
 3 A. Yes, sir.  
 4 Q. So you saw that actually taking place?  
 5 A. Yes, sir.  
 6 Q. What else, if anything, did you do in this  
 7 particular investigation?  
 8 A. After the samples were collected, they were  
 9 sealed on an approved specified medical containers and  
 10 they were secured by Dr. Olson and we maintained the  
 11 chain of custody of the evidence until we got back here  
 12 in the United States.  
 13 Q. So then you left I assume after the autopsy  
 14 and came back to the United States?  
 15 A. No, sir, we stayed there a few days and we  
 16 have the evidence locked in our safe, in Dr. Olson's  
 17 safe inside her hotel room.  
 18 Q. Okay. So it wasn't just sitting on a table  
 19 where anybody could come in and access it; is that  
 20 correct?  
 21 A. Yes, sir. The hotel room was provided with  
 22 a combination lock safe and Dr. Olson was the only one  
 23 who had access to that safe.  
 24 Q. So after the time passes for you to then  
 25 return back to the United States do you do so?

1 MR. STAUDAHER: Okay. Thank you.  
 2 I have nothing further for this witness,  
 3 ladies and gentlemen.  
 4 THE FOREPERSON: Are there any questions  
 5 from the jury? There are none?  
 6 BY A JUROR:  
 7 Q. I have one.  
 8 You mean frozen, you don't mean like hard  
 9 frozen, you mean like cold, right?  
 10 A. Yes, ma'am.  
 11 Q. Okay.  
 12 THE FOREPERSON: Okay. By law, these  
 13 proceedings are secret and you are prohibited from  
 14 disclosing to anyone anything that has transpired before  
 15 us, including evidence and statements presented to the  
 16 Grand Jury, any event occurring or statement made in the  
 17 presence of the Grand Jury, and information obtained by  
 18 the Grand Jury.  
 19 Failure to comply with this admonition is a  
 20 gross misdemeanor punishable by a year in the Clark  
 21 County Detention Center and a \$2,000 fine. In addition,  
 22 you may be held in contempt of court punishable by an  
 23 additional \$500 fine and 25 days in the Clark County  
 24 Detention Center.  
 25 Do you understand this admonition?

1 THE WITNESS: Yes, I do.  
 2 THE FOREPERSON: Thank you. You can be  
 3 excused now.  
 4 THE WITNESS: Thank you.  
 5 THE FOREPERSON: You do solemnly swear the  
 6 testimony you are about to give upon the investigation  
 7 now pending before this Grand Jury shall be the truth,  
 8 the whole truth, and nothing but the truth, so help you  
 9 God?  
 10 THE WITNESS: I do.  
 11 THE FOREPERSON: You may be seated.  
 12 You are advised that you are here today to  
 13 give testimony in the investigation pertaining to the  
 14 offense of murder in the second degree, involving the  
 15 defendants Dipak Kantilal Desai, Ronald Ernest Lakeman  
 16 and Keith H. Mathahs.  
 17 Do you understand this advisement?  
 18 THE WITNESS: Yes, ma'am.  
 19 THE FOREPERSON: Thank you.  
 20 Could you please state both your first and  
 21 last names and spell them both please.  
 22 THE WITNESS: My name is Alane Olson. My  
 23 first name is spelled A-L-A-N-E, my last name is spelled  
 24 O-L-S-O-N.  
 25 THE FOREPERSON: Thank you.

1 ALANE OLSON,  
 2 having been first duly sworn by the Foreperson of the  
 3 Grand Jury to testify to the truth, the whole truth,  
 4 and nothing but the truth, testified as follows:  
 5  
 6 EXAMINATION  
 7  
 8 BY MR. STAUDAHER:  
 9 Q. Dr. Olson, what do you do for a living?  
 10 A. I'm employed at the Clark County Coroner's  
 11 Office and I'm a medical examiner.  
 12 Q. And what do you do primarily at the  
 13 coroner's office then?  
 14 A. I perform autopsies and other types of  
 15 examinations with the goal of determining cause and  
 16 manner of death.  
 17 Q. So you're familiar with how autopsies are  
 18 done obviously?  
 19 A. Yes.  
 20 Q. How long have you been doing that work at  
 21 the coroner's office?  
 22 A. I've been working at the coroner's office  
 23 in Las Vegas since September of 2005 and prior to that I  
 24 worked at the coroner's office in Reno from 2000 to  
 25 2005.

1 Q. Can you give us a brief background as to  
 2 your training and experience which led you to those  
 3 positions?  
 4 A. Yes. I have a Bachelor's Degree in  
 5 Microbiology from the University of Idaho. I went to  
 6 medical school at the University of Nevada School of  
 7 Medicine which is based in Reno. Once I got my MD  
 8 Degree I moved to Portland, Oregon and spent five years  
 9 at Oregon Health Sciences University in training for a  
 10 residency in anatomic and clinical pathology which is  
 11 where I learned how to do autopsies. During that time I  
 12 also learned how to look at specimens, tissues and  
 13 organs that were removed at surgery for diagnosis of  
 14 cancer and other diseases. I also learned how clinical  
 15 laboratories are run. Those are the labs that analyze  
 16 blood, urine and other specimens to allow doctors to  
 17 diagnosis and treat disease. Once I completed my  
 18 residency I moved to Milwaukee, Wisconsin and worked at  
 19 the medical examiner's office in Wisconsin, in  
 20 Milwaukee, for one year, in a forensic pathology  
 21 fellowship program. So that was further training in  
 22 performing autopsies. That completed by formal training  
 23 and I've been working in the State of Nevada since.  
 24 Q. Thank you.  
 25 So some of the things that you did mention

1 that I wanted to ask you a couple quick questions about  
 2 is that you had both pathologic, meaning in the sense of  
 3 live patient interaction where maybe an organ at the  
 4 time of surgery was sent to you for analysis where you  
 5 remove sections of that tissue and then analyze them,  
 6 stain them, things like that?  
 7 A. Yes.  
 8 Q. So you've dealt with sort of the living  
 9 patient portion of pathology and now you're dealing as a  
 10 medical examiner with deceased patients; is that right?  
 11 A. That's correct.  
 12 Q. Same kinds of things, do you look at the  
 13 same kinds of tissues and stain them and things along  
 14 those lines?  
 15 A. Yes.  
 16 Q. In doing that are you able to determine on  
 17 deceased patients as well whether or not there was  
 18 disease process involved in the cause of their death?  
 19 A. Oftentimes, yes.  
 20 Q. I'm going to direct your attention back to  
 21 why you're here today now. Were you involved in either  
 22 the autopsy or observance or some way the autopsy of an  
 23 individual by the name of Rodolfo Meana?  
 24 A. Yes, I was.  
 25 Q. Can you explain to us how that took place,

1 what your role was and what you observed or did?

2 A. My involvement with Mr. Meana came about  
3 through a request from the Las Vegas Metropolitan Police  
4 Department. Basically Metro got in touch with the  
5 coroner who is my boss and informed him that there were  
6 patients who had been infected by hepatitis C from --

7 MR. STAUDAHER: And again, ladies and  
8 gentlemen, I'm cautioning the Grand Jury, it's not  
9 offered for the truth of the matter asserted, just how  
10 she gets involved in this case. I would ask you not to  
11 use it for that purpose.

12 THE WITNESS: Who had been infected with  
13 hepatitis C during procedures at the Endoscopy Clinic of  
14 Southern Nevada. They were concerned that one of those  
15 patients was in rapidly declining health and might in  
16 fact die relatively soon as a consequence of his  
17 infection. They wanted to essentially give the  
18 coroner's office a heads up this case may be coming our  
19 way and so we were provided with information about  
20 Mr. Meana's medical history and they basically kept us  
21 informed of what was happening. I was aware that  
22 Mr. Meana had requested or had intended to go back to  
23 the Philippines and his intent was to go home to die.  
24 So I was aware that he had in fact gone back to the  
25 Philippines. And on I believe it was April 27, 2012,

1 our office got a call from Metro saying that Mr. Meana  
2 had died in the Philippines and they requested that  
3 someone from our office go to the Philippines to observe  
4 the autopsy and if possible bring specimens back so they  
5 could be examined. I'm the one who ended up going to  
6 the Philippines at the request of Metro. And with the  
7 assistance of Detective Bagang we managed to observe the  
8 autopsy and get specimens and bring them back so that I  
9 could look at them under the microscope. My presence at  
10 his autopsy was strictly that of an observer since I am  
11 not licensed to practice medicine in the Philippines and  
12 performing an autopsy is in fact the practice of  
13 medicine. So my presence was strictly that of an  
14 observer at the examination.

15 BY MR. STAUDAHER:

16 Q. So let me go back just a little bit.

17 You said before you actually make the trip  
18 to the Philippines though that you were provided with  
19 information regarding Mr. Meana's medical history, his  
20 records and so forth; is that correct?

21 A. Yes.

22 Q. Had you had a chance to review those before  
23 going to the Philippines?

24 A. Yes.

25 Q. And did that include all of the available

1 information at least that you were given related to  
2 previous treatments he had received, hospitalizations,  
3 his medical condition and so forth?

4 A. Yes, as far as I'm aware of.

5 Q. Did that information predate the particular  
6 date where the infection allegedly took place?

7 A. Yes.

8 Q. So we've got information before the  
9 infection takes place up to the present time, meaning  
10 present time being the 27th essentially that you went to  
11 the Philippines?

12 A. Yes, with the exception that I didn't have  
13 records from his hospitalization while he was in the  
14 Philippines.

15 Q. And he was there for a very short time,  
16 just a couple weeks; is that correct?

17 A. That's correct, yes.

18 Q. So you got that information, you've  
19 actually reviewed it?

20 A. Yes.

21 Q. Did that go into or make its way into your  
22 findings or your report that you did in this particular  
23 case?

24 A. It essentially served as a background  
25 though it's not directly referenced in the report.

1 Q. So it's something you considered, is that  
2 fair to say, and analyzed and used, but didn't, it just  
3 doesn't, the actual text of his medical history doesn't  
4 appear in your report; is that right?

5 A. That's correct, it does not.

6 Q. Now let's go to the 27th. You get notified  
7 of this information or of the death. You said that you  
8 had gone to the Philippines with another individual.  
9 Who was that?

10 A. Detective Bagang from the Las Vegas  
11 Metropolitan Police Department.

12 Q. Did you pass by him, sort of ships passing  
13 in the night, as you came in here to testify today?

14 A. Yes, I did.

15 Q. Was that the same person that you went to  
16 the Philippines with?

17 A. Yes, it was.

18 Q. Tell us what happens when you get to the  
19 Philippines.

20 A. When we arrived in the Philippines we got  
21 in contact with a agent, FBI agent who was resident in  
22 the embassy, U.S. Embassy in Manila, and he had been  
23 able to get information for us, essentially to help us  
24 figure out how to get an autopsy done since Detective  
25 Bagang didn't have any experience with that aspect of

1 life in the Philippines and I had no clue. So the agent  
2 was very helpful in figuring out who we needed to  
3 contact and how to go about directing the family so that  
4 an autopsy could be performed.

5 Q. So when is all this taking place?

6 A. The majority of the consultations and paper  
7 signing took place on Sunday the 29th and the autopsy  
8 itself occurred on the 30th.

9 Q. Okay. And when did you actually arrive,  
10 the calendar day, in the Philippines?

11 A. It would have been the 29th of April.

12 Q. So did you leave the 29th or did you leave  
13 earlier than that?

14 A. We left about 11:00 p.m. on Friday the  
15 27th.

16 Q. So it took physically, with the time  
17 changes and International Date Line and all of that, it  
18 took you a time to get there obviously, but when you  
19 leave here you leave on the 27th?

20 A. Correct, yes.

21 Q. And that was the day that you were informed  
22 at least that the time the death occurred?

23 A. Yes.

24 Q. And as fast as travel could get you there  
25 you're in the Philippines, but the calendar day then is

1 on the 29th?

2 A. Correct.

3 Q. Autopsy takes place the following day.  
4 What role did you play in this?

5 A. As I said, my role was strictly that of an  
6 observer since I'm not medically licensed in the  
7 Philippines and so I essentially stood in the room while  
8 the doctor performed the autopsy. I observed what she  
9 was doing and she was very helpful in obtaining tissue  
10 samples and some blood for me at my request. I had  
11 prior to that gotten a consent signed by Mr. Meana's  
12 next of kin to legally allow me to take those samples.

13 Q. So what is the purpose of you obtaining  
14 samples?

15 A. The purpose of obtaining the samples is  
16 essentially to confirm that he did in fact have  
17 cirrhosis which is scarring in the liver and that he did  
18 in fact ultimately die as a result of that cirrhosis or  
19 scarring in his liver.

20 Q. Was there any indication that there was an  
21 infectious component in this, in your analysis?

22 A. I was not able to do special stains to  
23 actually identify hepatitis C virus in his liver. We  
24 attempted to have that testing done through the  
25 laboratory that does our histology which is what it

1 means when you prepare tissues to look at them under the  
2 microscope. They themselves did not have a stain  
3 available for hepatitis C and they checked with other  
4 labs and were not able to find apparently any labs that  
5 would do testing on tissue to verify the presence of  
6 hepatitis C.

7 Q. So you weren't able to do that particular  
8 portion of the testing yourself, but the samples that  
9 you obtained were for then to try and determine the  
10 cause of death essentially?

11 A. Essentially, yes.

12 Q. So let's go back just a little bit. You're  
13 at the location where the autopsy takes place. Do you  
14 watch the entirety of the autopsy?

15 A. Yes.

16 Q. So you're there for the whole time. And  
17 during the autopsy, is that when you get the samples or  
18 do you get them at the end? I mean how did that work?

19 A. I got the samples essentially at the end of  
20 the autopsy once all the organs had been removed and the  
21 Filipino doctor had the opportunity to look at them,  
22 then she motioned me over and asked what I wanted.

23 Q. Were you involved in, for example, doing  
24 anything that would go to the cause of death or that  
25 would make it into a death certificate in the

1 Philippines, anything like that?

2 A. No, I was not involved in the preparation  
3 of the death certificate.

4 Q. Did you in any way involve yourself in the  
5 actual report that was -- first of all, was there a  
6 report done, an autopsy report done by the Filipino  
7 physician?

8 A. Yes.

9 Q. Were you involved in the preparation, the  
10 authoring, anything related to that report?

11 A. No, I was not.

12 Q. Have you seen that report?

13 A. Yes, I have.

14 Q. Have you looked at that in conjunction with  
15 all of the others things that you mentioned that you  
16 reviewed?

17 A. Yes.

18 Q. Have you looked at the death certificate in  
19 this particular case?

20 A. Yes.

21 Q. I'm showing you what has been marked as  
22 State's Exhibit 5 and ask you if you recognize that?

23 A. Yes, I do.

24 Q. Can you tell us what that is?

25 A. State's Exhibit Number 5 is a certificate



1 of death for Rodolfo Torrillo Meana.  
 2 Q. I believe it's a copy of a certified death  
 3 certificate; is that correct?  
 4 A. Yes. Was issued by the Republic of the  
 5 Philippines and it is as noted a certified copy.  
 6 Q. And on that document what are listed as the  
 7 causes or contributing factors related to the death?  
 8 A. The cause of death statement is hepatic and  
 9 uremic encephalopathy, grade four. An antecedent cause  
 10 is listed sepsis and an underlying cause is hepatitis C  
 11 and chronic kidney disease.  
 12 Q. Does that indicate some form of infection?  
 13 A. Yes.  
 14 Q. Based on your analysis, and we're going to  
 15 get into your analysis in just a minute, but based on  
 16 your analysis of what you did with the tissue samples  
 17 yourself, the observance of the autopsy, your review of  
 18 the medical records predating your even going to the  
 19 Philippines related to Mr. Meana, do you have any issue  
 20 with what is listed there on the cause of death?  
 21 A. No, I do not.  
 22 Q. Do you agree with it?  
 23 A. Yes.  
 24 Q. Okay. Now before we get to your actual  
 25 report, again I want to talk about the fact that there

1 was a separate autopsy report done by this Filipino  
 2 medical examiner. Correct?  
 3 A. Yes.  
 4 Q. Have you reviewed that report?  
 5 A. Yes, I have.  
 6 Q. In detail?  
 7 A. Yes.  
 8 Q. And again in conjunction with your  
 9 observance of what took place at the autopsy, is there  
 10 any issue that you have with what took place at the  
 11 autopsy, meaning how the autopsy was performed by that  
 12 doctor?  
 13 A. No.  
 14 Q. Did it appear to follow the normal standard  
 15 practice in not only medicine but in your specific  
 16 profession as to how to conduct such an autopsy?  
 17 A. Yes, it appeared to follow those forms.  
 18 Q. So is there anything there that was, you  
 19 know, completely out of the ordinary or even out of the  
 20 ordinary that you would not do here that you saw being  
 21 done there with regard to her performance of the autopsy  
 22 itself?  
 23 A. The only difference that I noted, when we  
 24 do autopsies here we generally collect blood samples at  
 25 the beginning of the examination, and she collected

1 blood samples at the end of the examination. It's  
 2 basically a stylistic difference.  
 3 Q. So there's no significance to that other  
 4 than the way that you do it versus the way that somebody  
 5 else would do it?  
 6 A. Correct.  
 7 Q. Are there people even in your own  
 8 profession here in this country that might do it that  
 9 particular way?  
 10 A. If a person is, if a doctor is performing  
 11 an autopsy in a coroner's office or a medical examiner's  
 12 office, oftentimes the emphasis in those cases is on  
 13 toxicology testing, meaning we look at the blood to see  
 14 if there are drugs or alcohol or any toxic substance  
 15 that may have led this person to die. So we are very  
 16 concerned with getting good quantities of good quality  
 17 blood for our testing. On the other hand, someone who  
 18 dies in the hospital or who has an autopsy essentially  
 19 for medical purposes, the emphasis may not in fact be on  
 20 the toxicology testing and results and so the blood  
 21 collected is not as much of a priority for those types  
 22 of cases as it typically is for the types of cases that  
 23 I do and that other medical examiners do.  
 24 Q. So just to make sure I get that question  
 25 answered. Is it anything that would impair, impede or

1 otherwise make that process that you saw, observed and  
 2 saw the report of, invalid or called into question in  
 3 some way?  
 4 A. No.  
 5 Q. And you reviewed the findings of that  
 6 autopsy report as well?  
 7 A. Yes.  
 8 Q. And I'm not going to get into the actual  
 9 findings of that, but were they consistent with what you  
 10 determined later on?  
 11 A. Yes.  
 12 Q. And consistent with the death certificate  
 13 itself?  
 14 A. Yes.  
 15 Q. Anything about the information contained in  
 16 that autopsy report from the doctor in the Philippines  
 17 that gave you pause or question or made you change or  
 18 alter in any way your opinions in this case?  
 19 A. No.  
 20 Q. So let's move forward. You've observed the  
 21 autopsy, you've gotten your samples. What happens next?  
 22 A. Once I had the samples they were placed  
 23 into a fixative called formalin and I brought them back  
 24 to the United States with me and took them to the office  
 25 immediately after I got out of the airport and put them

1 in storage at the coroner's office until I could prepare  
2 them.

3 Q. Did you somehow take care of those  
4 specimens along the way or did you just leave them  
5 sitting somewhere where anybody could get ahold of them?

6 A. In Manila, after I got the specimens, we  
7 went back to our hotel which is when I put them in the  
8 fixative. I brought fixative with me. Once they were  
9 in fixative I placed them in the safe in my hotel room  
10 where they stayed until I took them out as I was packing  
11 to leave. I put them in my carry-on luggage and they  
12 never left my control during the time of our transit  
13 from the Philippines back to Las Vegas.

14 Q. Did you then take them to your office at  
15 some point?

16 A. Yes, as soon as I got out of the airport  
17 after arriving in Las Vegas I took them to the office  
18 and placed them in storage there.

19 Q. So is that where they currently are is in  
20 the coroner's office?

21 A. Yes.

22 Q. Now we know the chain there.

23 You mentioned fixative, that you brought  
24 some with you. Is there a reason why you did that?

25 A. Yes, there is a reason. Prior to going to

1 the Philippines I had no knowledge of exactly what  
2 would, what materials would be available to me there.  
3 And better to be safe than sorry I brought materials  
4 with me in case none were available. So I had the  
5 fixative, I had sealable containers, I had a heat sealer  
6 so that nothing could leak out. I took what materials I  
7 thought I would need in order to transport the type of  
8 specimens that I anticipated collecting.

9 Q. So all of the things that you collected the  
10 samples with, the samples being put in the formalin or  
11 the fixative, all of that was brought by you to the  
12 Philippines?

13 A. Yes.

14 Q. So you did not rely on them for any  
15 materials like that during this process?

16 A. That's correct, I did not.

17 Q. What was the purpose or what was the need  
18 to put a specimen in this fixative that you mentioned?

19 A. Tissue is put in fixative so that it  
20 essentially doesn't rot, so that it is well preserved so  
21 that I can look at it under the microscope and see good  
22 detail.

23 Q. Now again, I know I'm jumping forward and  
24 back, but I want to go back to the autopsy for a minute.  
25 You said that you were present there, observed the

1 entirety of the autopsy.

2 A. Yes.

3 Q. Did that include the standard things that  
4 are done, like an external, internal examination, things  
5 like that?

6 A. Yes.

7 Q. And specific examinations of the internal  
8 organs themselves?

9 A. Yes.

10 Q. And just for an aside and for the Grand  
11 Jury, what is the purpose, why do you have to look at  
12 the individual organs when you're doing an autopsy?

13 A. The goal of looking, the goal of doing an  
14 autopsy in general is to document the presence of injury  
15 as well as natural disease and so you do that by looking  
16 at the body as a whole and then you look at each of the  
17 organs with those goals in mind.

18 Q. While you're there at the autopsy was there  
19 any evidence of any injury to Mr. Meana?

20 A. Not really traumatic injury per se, but he  
21 did have some areas of bleeding on the skin of his arms  
22 which typically go along with people who are in liver  
23 failure because the liver is important for making  
24 clotting factors and if the liver is failing it's not  
25 doing its job in a variety of respects. So it's pretty

1 common for people who have liver failure not to be able  
2 to clot their blood adequately and so they may have  
3 bleeding, what looks like bruises on their skin.

4 Q. So there was some at least even external  
5 signs that maybe there was a problem with the liver at  
6 the time?

7 A. Yes.

8 Q. Beyond that, did you, and we're going to  
9 stay away from the liver for just a moment. Okay?

10 But as far as the heart, the lungs, things  
11 like that that were taken out, were they dissected  
12 outside the body or looked upon and samples taken of  
13 those outside the body or how does that work in the  
14 Philippines?

15 A. They essentially do the same order that we  
16 do in that you look at the external body, you open the  
17 body cavities up, you take each organ out and examine it  
18 individually.

19 Q. So as far as this individual, you knew that  
20 this person had been hospitalized; correct?

21 A. Yes.

22 Q. You also knew of the prior hospitalizations  
23 and medical treatment that this person had -- and I'm  
24 talking about Rodolfo Meana -- had undergone; is that  
25 correct?

1 A. Yes.

2 Q. Was there anything about the organ  
3 examination, excluding the liver for the moment, that  
4 was of significance to you during the process of the  
5 autopsy?

6 A. It appeared that he had pneumonia based  
7 upon the gross appearance, the naked eye appearance of  
8 his lungs and the fact that they appeared to be heavier  
9 than normal.

10 Q. Now can you tell us about that, pneumonia,  
11 the pneumonia itself, was that a contributing factor to  
12 the cause of his death?

13 A. Basically someone who is in poor, extremely  
14 poor health as Mr. Meana was because of his liver  
15 failure, they're susceptible to a number of different  
16 medical problems and pneumonia certainly would be one of  
17 those. So it's one of the things that was present at  
18 the time of his death and is essentially attributable to  
19 his liver failure.

20 Q. So a secondary cause from the primary liver  
21 failure itself?

22 A. Correct.

23 Q. What about the heart, was there evidence of  
24 obstruction in any of the coronary arteries or anything  
25 along those lines?

1 A. I did not see that personally but in her  
2 autopsy report Dr. Oropilla describes one area of severe  
3 narrowing in one of his coronary arteries.

4 Q. Any indication that he had suffered a  
5 coronary artery infarction or anything like that?

6 A. No.

7 Q. Any issues with the heart itself other than  
8 some narrowing of some of the vessels?

9 A. No.

10 Q. Any other organ that was a problem,  
11 excluding the liver and -- well, any other organ beside  
12 the liver at this point?

13 A. No.

14 Q. Now let's move to the liver. What was  
15 the -- and I'm not talking about your samples that you  
16 took, I'm talking about you still being at the autopsy,  
17 your visualization as this is taking place -- what did  
18 you see?

19 A. I saw a small, scarred liver.

20 Q. What is that indicative of?

21 A. Well, the scarring can occur for a variety  
22 of reasons. People who chronically abuse alcohol can  
23 develop a similar appearance of scarring. In  
24 Mr. Meana's case, because I knew that he had hepatitis C  
25 infection that was ongoing, it's consistent with a

1 chronic hepatitis C infection producing the scarring.

2 Q. And in fact were some of the findings about  
3 the thing that you mentioned regarding the hepatitis C  
4 infection, did the autopsy that was done in the  
5 Philippines, did they take blood and test it for  
6 hepatitis C at the time?

7 A. Yes, they did.

8 Q. And the results of that, were they  
9 consistent with your findings that he had an active  
10 infection of hepatitis C at the time of his death?

11 A. Yes.

12 Q. Now the liver sits where in the body?

13 A. It sits basically at the bottom of your rib  
14 cage on the right side, that tends to lie over the  
15 majority of the liver. So it's in your upper abdomen  
16 below the ribs.

17 Q. And is it sitting in a particular cavity of  
18 the body?

19 A. Yes, it is, it sits in the abdominal  
20 cavity.

21 Q. Now normally on a patient who has liver  
22 failure, what is -- before I get to that. What is the  
23 purpose of the liver; what does it do?

24 A. The liver does actually a lot of things.  
25 It produces proteins including clotting factors. It

1 breaks down toxins and it helps your body to maintain a  
2 steady blood glucose level because it stores glucose.

3 Q. Does it also act as somewhat of a filtering  
4 mechanism for the body as well?

5 A. Absolutely, yes.

6 Q. The blood that returns to the heart, does  
7 it primarily go through the liver?

8 A. Yes, it does.

9 Q. In order to get back to the heart it has to  
10 filter through the liver itself?

11 A. Yes.

12 Q. If the liver is scarred and sclerotic and  
13 diseased from hepatitis C or anything else that would  
14 cause cirrhosis, does that impair the flow of the blood  
15 through the liver?

16 A. Absolutely, yes.

17 Q. Is there a secondary sort of thing that  
18 happens as a result of that impaired blood flow?

19 A. There are actually a number of things that  
20 occur as a result of the impaired blood flow. One of  
21 them is something called portal hypertension and that is  
22 since the blood can't get through the liver as it  
23 normally would it has to find other ways to get back to  
24 the heart and those other ways, when they experience  
25 that increase in blood flow, the veins get bigger and

1 you can see things like, they're called esophageal  
2 varices, meaning that they're large veins around the  
3 esophagus, and those can rupture causing bleeding. You  
4 can also see enlarged veins around the stomach which  
5 again can rupture causing bleeding. The spleen may  
6 become enlarged because the blood is backing up into the  
7 spleen. So there are a variety of problems that can  
8 occur when someone has cirrhosis and the blood cannot  
9 flow normally through the liver.

10 Q. Now does that essentially pressurize the  
11 venous system abnormally then?

12 A. Yes.

13 Q. And in doing so is there typically  
14 something like a leaking of fluid out of the venous  
15 system into the perineal cavity?

16 A. Yes, people who have portal hypertension  
17 often have the accumulation of fluid in their bellies.

18 Q. What is that fluid called?

19 A. It's called ascites.

20 Q. Was there any evidence of ascites or  
21 ascites fluid during the autopsy?

22 A. Yes.

23 Q. A significant amount?

24 A. Yes, there was quite a lot.

25 Q. Is that typical of people with liver

1 failure or cirrhosis?

2 A. Very frequently.

3 Q. So this is a finding also that you saw  
4 during the autopsy itself?

5 A. Yes.

6 Q. Now any other findings beside the liver  
7 issue? I know that you mentioned the lungs and the  
8 pneumonia or whatever was going on there. But was there  
9 any other abnormal thing that you saw within his body  
10 other than that associated with his liver?

11 A. His kidneys were a little bit scarred.

12 Q. Anything there that was significant?

13 A. Not over and above his liver disease, no.

14 Q. So now you've moved from, let's move you  
15 rather from the Philippines to the United States.  
16 You've got your samples. What do you do with them after  
17 they're physically back at the coroner's office and  
18 you're going to do your studies?

19 A. Once I got back to the United States I had  
20 the opportunity to transfer the pieces of tissue into  
21 fresh formalin just to make sure it was well fixed and I  
22 cut the pieces of tissue into smaller pieces and put  
23 them in specialized little containers called cassettes  
24 and those cassettes were sent to the laboratory that  
25 prepares our tissues to be looked at under the

1 microscope.

2 Q. Do you eventually get those back?

3 A. Yes.

4 Q. Tell us what you found when you looked at  
5 them.

6 A. When I looked at the tissues under the  
7 microscope, the most obvious tissue of interest was the  
8 liver, and he did in fact have cirrhosis which is  
9 extensive scarring, he had inflammation in the tissue in  
10 his liver indicating that he had ongoing damage from the  
11 hepatitis C. As far as the other tissues go, he had  
12 evidence of pneumonia in his lungs. Basically all of  
13 the tissue samples from his lungs that I looked at had  
14 evidence of pneumonia. Some of it was recent, some of  
15 it was a little bit older. He did have scarring in his  
16 kidneys, most likely the result of high blood pressure,  
17 and his spleen had some extra scar tissue in it and  
18 again that would have been the result of the portal  
19 hypertension which was due to his liver failure and  
20 cirrhosis.

21 Q. Okay. Now just as we -- again I'm going to  
22 take you back just a little bit.

23 You reviewed the medical records of  
24 Mr. Meana before you went even to the Philippines?

25 A. Yes.

1 Q. Were you aware of whether or not he had an  
2 active hepatitis C infection before he went to the  
3 Endoscopy Center of Southern Nevada on the 21st of I  
4 believe it was September of 2007?

5 A. I found no indication in his medical  
6 records that he had hepatitis C prior to his visit to  
7 the Endoscopy Clinic.

8 Q. Was there evidence that he had hepatitis C  
9 after he went to the clinic on that day?

10 A. Yes.

11 Q. Was there any evidence of him having any  
12 liver disease, cirrhosis, failure, anything along those  
13 lines, prior to that visit to the clinic?

14 A. No.

15 Q. Was there any evidence in the medical  
16 records that he was suffering from, either some other  
17 disease process or external source like drinking too  
18 much, anything like that that could have contributed to  
19 or caused his cirrhosis other than the hepatitis C?

20 A. No.

21 Q. Do you have an opinion as to what was the  
22 cause of death in this particular case?

23 A. Yes.

24 Q. What was that opinion?

25 A. My opinion is that he ultimately died as a

1 result of chronic active hepatitis associated with  
2 hepatitis C infection.

3 Q. Now you were not necessarily given  
4 information about a criminal investigation or anything  
5 in this particular case; is that correct?

6 A. That's correct.

7 Q. So you're basically using, your opinion  
8 here is related to the findings of his medical records,  
9 the autopsy that was done, as well as your actual  
10 analysis yourself of the tissue samples that you  
11 obtained?

12 A. Yes.

13 Q. Related to that, are you aware that in this  
14 country or even any place in the world that sometimes  
15 people engage in unsafe medical practices?

16 A. Yes, I'm aware.

17 Q. And sometimes those unsafe medical  
18 practices can be the reuse of single use only materials,  
19 things like that?

20 A. Yes.

21 Q. First of all, are you aware of what  
22 Universal safety Precautions are?

23 A. Yes.

24 Q. Do you know what they are first of all and  
25 can you explain that to the jury?

1 A. Universal Precautions, essentially what it  
2 boils down to is good hygiene practices. So the goal is  
3 to minimize the spread of potentially infectious  
4 materials and you do that by means of using gloves and  
5 gowns and masks and eye protection and any other barrier  
6 that is appropriate depending on what you may be dealing  
7 with as an infectious disease. So you're trying to  
8 contain potentially infectious material.

9 Q. And you worked in the clinical setting as  
10 well as the current setting you're in; correct?

11 A. Yes.

12 Q. So in dealing in a clinical setting, as far  
13 as the use of Universal safety Precautions along those  
14 lines, does one typically employ those to protect  
15 themselves from potential infection?

16 A. Yes.

17 Q. Does one also employ those to protect the  
18 person that they're administering to for potential  
19 infection that they may have?

20 A. Yes.

21 Q. Are those precautions also used to prevent  
22 the cross contamination from one person or patient to  
23 another patient?

24 A. Yes.

25 Q. Are there breaches that naturally occur

1 normally in the process of getting and receiving medical  
2 care?

3 A. Absolutely.

4 Q. If a situation is occurring, and this is a  
5 hypothetical for you now, a situation where those  
6 medical practices were actively not being followed,  
7 meaning the Universal safety Precautions, and a  
8 transmission of an infectious agent occurred to another  
9 person, as in this particular case where we have  
10 Mr. Meana going to the clinic at the Endoscopy Center,  
11 beforehand he's not hepatitis C positive; correct?

12 A. Correct.

13 Q. And afterward he is?

14 A. Yes.

15 Q. And if in fact at the clinic at that time  
16 it was found that there were unsafe injection practices  
17 for example, or something along those lines that were  
18 taking place, could that have been a mechanism by which  
19 infection was transferred to Mr. Meana?

20 A. Yes.

21 Q. If in fact the mechanism, that had occurred  
22 and that is how he got the infection, and I'm not asking  
23 you to make the determination that he did in that  
24 manner, would that be consistent with what you saw which  
25 led up to his death?

1 A. Yes.

2 Q. And again if I understand you correctly,  
3 the cause of his death from your standpoint or from what  
4 you have determined was the hepatitis C virus infection  
5 and the secondary effects of that infection throughout  
6 the course of his life thereafter?

7 A. Yes.

8 MR. STAUDAHNER: Ladies and gentlemen, I  
9 have no further questions for this witness. Do you have  
10 any for this particular individual?

11 THE FOREPERSON: Yes, go ahead.

12 BY A JUROR:

13 Q. Further back you were talking about testing  
14 to see if a person has hepatitis C and you said no  
15 facilities would do that, you couldn't find any. Why is  
16 that?

17 A. The reason that I couldn't find a lab that  
18 would do that type of testing on his liver tissue I  
19 believe is because we are so geared medically now to do  
20 testing on blood or serum that it's simply not a test  
21 that's in demand because we have other better ways of  
22 looking for that infection.

23 MR. STAUDAHNER: And let me follow-up if I  
24 may on that.

25 Q. The testing that you're talking about that

1 you were not able to conduct was on tissue samples  
 2 themselves looking for the virus within those samples;  
 3 correct?  
 4 A. Yes, that's correct.  
 5 Q. That is not the same thing as the blood  
 6 sample that was taken at the time and tested and was  
 7 made part of the autopsy findings from the Philippines?  
 8 A. That is correct, those are completely  
 9 different samples and modes of testing.  
 10 Q. So his medical records and even the results  
 11 of the medical findings from the autopsy itself show  
 12 that there was an active hepatitis infection at the  
 13 time?  
 14 A. Yes.  
 15 Q. You just weren't able to actually do the  
 16 stains to see the virus within the tissues themselves?  
 17 A. That's correct.  
 18 THE FOREPERSON: Over here and then I'll  
 19 come back to you.  
 20 BY A JUROR:  
 21 Q. On the tissue, what was it that you added  
 22 to preserve it, what's the name of it?  
 23 A. It's called formalin, F-O-R-M-A-L-I-N.  
 24 Q. What was the other word? I thought there  
 25 was another word.

1 MR. STAUDAHER: Fixative.  
 2 A JUROR: Fixative.  
 3 THE WITNESS: Okay. Fixative is a  
 4 description of what formalin does. So it preserves  
 5 tissue.  
 6 BY A JUROR:  
 7 Q. So when you do that, does it have to be,  
 8 for example when you do a heart, I understand that you  
 9 have to refrigerate it and there's a certain time period  
 10 that you can still keep it. Is there anything with that  
 11 additive that you put in there when you put it to the  
 12 tissue, by the time you take it from the Philippines to  
 13 the United States, is it still going to be preserved for  
 14 24 hours, 48 hours, six months, a year? How long is  
 15 that tissue still going to be a valid tissue when you  
 16 examine it is where I'm going.  
 17 A. You can keep tissue in formalin for years  
 18 and if there is enough formalin around that tissue to  
 19 adequately preserve it then you can take that tissue out  
 20 of the formalin years later and prepare it and look at  
 21 it under the microscope and it will be well preserved,  
 22 if it was well preserved when it went into the formalin.  
 23 So that's a long way of saying the formalin that I put  
 24 the tissue in was adequate to preserve it for as long as  
 25 I wanted to keep it in there.

1 Q. And does it have to be climatized or  
 2 anything like that? There was testimony it was put in a  
 3 safe. So it doesn't have to be put in any special  
 4 environment?  
 5 A. No, it doesn't have to be refrigerated or  
 6 treated in any way but kept at room temperature.  
 7 Q. Thank you.  
 8 MR. STAUDAHER: And just to follow-up on  
 9 that.  
 10 Q. If I understand you correctly, you received  
 11 those samples directly from the autopsy itself?  
 12 A. Yes, I did.  
 13 Q. And thereafter immediately put them into  
 14 the formalin that you brought with you to fix the  
 15 samples so that they remained preserved for as long as  
 16 you needed them?  
 17 A. Yes.  
 18 BY A JUROR:  
 19 Q. You testified that you carried on these  
 20 when you came back to the States.  
 21 A. Yes.  
 22 Q. You carried the samples. To your knowledge  
 23 is there anything in the security process or anything  
 24 that you're aware of that might change it or --  
 25 A. No, there was nothing that those tissues

1 went through on their way back to the United States with  
 2 me that would have changed their appearance in any way.  
 3 Q. And it's not out of your sight that long or  
 4 anything like that?  
 5 A. No, it was in my hand carry luggage so it  
 6 was basically sitting on the plane with me.  
 7 Q. Thank you.  
 8 MR. STAUDAHER: Let me follow-up with that  
 9 for just a moment.  
 10 Q. Were you aware that at least the  
 11 Transportation Safety Administration, the TSA, was aware  
 12 of the fact that you were bringing samples in that  
 13 capacity through security and onto the airline and so  
 14 forth?  
 15 A. Yes. In fact when we went to the airport  
 16 in Manila to leave we were met by I believe the chief of  
 17 the airport police who escorted us through the whole  
 18 process of checking in and getting through security.  
 19 And once we touched down in the United States, which  
 20 happened to be in Detroit, we were met by a member of  
 21 the airport police who escorted us through the whole  
 22 process so we could board our domestic flight.  
 23 Q. And those were preparations obviously made  
 24 before you even went; correct?  
 25 A. I believe some of it was going on during

1 the time we were in the Philippines.

2 Q. Regardless of the timing then, is it safe  
3 to say that the process of going through, of  
4 communicating with the Transportation Safety  
5 Administration and dealing with that was to get those  
6 samples through so they just didn't end up in the belly  
7 of the plane somewhere or could be damaged?

8 A. Yes.

9 THE FOREPERSON: Are there any further  
10 questions? There are none?

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

17 Failure to comply with this admonition is a  
18 gross misdemeanor punishable by a year in the Clark  
19 County Detention Center and a \$2,000 fine. In addition,  
20 you may be held in contempt of court punishable by an  
21 additional \$500 fine and 25 days in the Clark County  
22 Detention Center.

23 Do you understand this admonition?

24 THE WITNESS: Yes, ma'am, I do.

25 THE FOREPERSON: Thank you. You can be

1 excused now.

2 THE WITNESS: Thank you.

3 THE FOREPERSON: You're welcome.

4 We'd like to call for a break now.

5 MR. STAUDAHER: That's fine. That's okay  
6 if you want a break. Sure.

7 THE FOREPERSON: Ten minutes.

8 MR. STAUDAHER: We're not going to have  
9 anymore witnesses just so you know.

10 THE FOREPERSON: Okay. Ten minute break.

11 (Recess.)

12 MR. STAUDAHER: Ladies and gentlemen of the  
13 Grand Jury, that concludes the presentation of the  
14 witness testimony.

15 Again, Exhibit 3 is the disk that you  
16 received or the information thereon related to all the  
17 transcripts of the prior presentations as well as all  
18 the exhibits. I know you've individually been canvassed  
19 on this but I just want to make sure there's no  
20 questions related to that evidence that you're using in  
21 this particular case or any question regarding the law  
22 so far that has been provided to you with regard to this  
23 charge, the murder charge. Any questions?

24 THE FOREPERSON: No.

25 MR. STAUDAHER: General lack of questions

1 by the Grand Jury. We'll submit it to you for  
2 deliberation.

3 (At this time, all persons, other than  
4 members of the Grand Jury, exit the room at 10:31 a.m.  
5 and return at 10:36 a.m.)

6 A JUROR: Can I start?

7 MR. STAUDAHER: Certainly.

8 A JUROR: My question is, I just wanted  
9 clarification, if we're not supposed to tie in what we  
10 know from previous testimony and exhibits and --

11 MR. STAUDAHER: Go ahead, finish your  
12 question.

13 A JUROR: To use that information that we  
14 previously heard into tying it into --

15 A JUROR: Charges.

16 A JUROR: -- charge of second degree  
17 murder. Do we use that information or we do not?

18 MR. STAUDAHER: Let me make sure we're  
19 clear on this. The reason that those exhibits and that  
20 prior testimony were provided to you and that you had to  
21 go through them was so you -- for example, the deceased  
22 in this case you heard testimony from. He's not coming  
23 in to give you testimony, nor could he because he's no  
24 longer with us. So yes, you do take into account the  
25 evidence that was presented, the exhibits, the testimony

1 from that prior case. Because the reason that you are  
2 all constituted here as the original Grand Jury and had  
3 previously received all that information is to avoid  
4 having to re-present the entirety of all of that matter  
5 to a new Grand Jury. So yes, you are to take into  
6 consideration everything that was on that disk which  
7 includes all of the prior transcripts, all of the prior  
8 exhibits, everything that went into your decisions in  
9 the prior case. But this is a separate charge.

10 A JUROR: Yeah, I understood it's separate.  
11 Okay.

12 THE FOREPERSON: Anne, do you want to  
13 restate your question that brought up the discussion?

14 A JUROR: I guess if we want to get to the  
15 bottom line of it is to review some of the elements of  
16 second degree murder now. We can't do that now?

17 MR. STAUDAHER: Well no. You're here to  
18 determine whether or not second degree murder, because  
19 that's what we're proceeding on, not a first degree  
20 murder, but a second degree murder, and the different  
21 theories under that that we brought forth to you,  
22 whether or not they apply in this particular case. Now  
23 you have previously found related to this victim,  
24 because you returned a true bill as to both the criminal  
25 neglect of patient charge as well as performance of an

1 act in reckless disregard, you have to make a  
2 determination under one scenario whether or not those  
3 are dangerous felonies. Did they result in harm or  
4 death to someone? The other aspect of it is based on  
5 all of the information you have, were the actions of  
6 these individuals either directly, or by aiding and  
7 abetting each other, or by conspiring, reckless to the  
8 point that they caused someone to have a depraved heart  
9 or reckless indifference to human life, that kind of  
10 thing, and that's what you're here to determine.

11 A JUROR: So I have a question just to  
12 follow-up on that.

13 MR. STAUDAHER: Sure.

14 A JUROR: That would mean those three  
15 people, even if one of those persons wasn't involved --  
16 how can I say it? Because this is the question Anne  
17 had. One of those people weren't involved in the  
18 procedure on that day on Mr. Rodolfo -- sorry, excuse  
19 me. Go ahead, do you think --

20 MR. STAUDAHER: In order for you to --  
21 remember there's three theories of criminal liability  
22 that are involved here: Directly committing the act,  
23 aiding or abetting others in the commission of those  
24 acts, conspiring with others to commit the acts. If you  
25 find -- you don't have to find all three. You don't

1 have to find a particular one. But if you find that all  
2 three individuals are involved or liable under one of  
3 those three theories of criminal liability, some may be  
4 more than one, but you have to find that at least they  
5 are involved under one of those three theories of  
6 criminal liability in order for you to come back with a  
7 finding with regard to murder as to each individual.

8 A JUROR: Okay.

9 MR. STAUDAHER: Does that make sense?

10 A JUROR: Yes.

11 A JUROR: Absolutely.

12 A JUROR: Okay.

13 A JUROR: Thank you.

14 THE FOREPERSON: Thank you.

15 A JUROR: Thank you.

16 (At this time, all persons, other than  
17 members of the Grand Jury, exit the room at 10:40 a.m.  
18 and return at 10:44 a.m.)

19 THE FOREPERSON: Mr. District Attorney, by  
20 a vote of 12 or more grand jurors a true bill has been  
21 returned against the defendants Dipak Kantilal Desai,  
22 Ronald Ernest Lakeman and Keith H. Mathahs charging the  
23 crime of murder in the second degree, in Grand Jury Case  
24 Number 09BGJ119A-C. We instruct you to prepare an  
25 Indictment in conformance with the proposed Indictment

1 previously submitted to us.

2 MR. STAUDAHER: Thank you ladies and  
3 gentlemen.

4 THE FOREPERSON: You're welcome.

5 MS. WECKERLY: Thank you.

6 MR. STAUDAHER: Were there any changes to  
7 the Indictment?

8 THE FOREPERSON: No.

9 (Proceedings concluded.)

10 --oo0oo--

# REPORTER'S CERTIFICATE

1  
2  
3 STATE OF NEVADA )  
4 COUNTY OF CLARK ) Ss

5  
6 I, Danette L. Antonacci, C.C.R. 222, do  
7 hereby certify that I took down in Shorthand (Stenotype)  
8 all of the proceedings had in the before-entitled matter  
9 at the time and place indicated and thereafter said  
10 shorthand notes were transcribed at and under my  
11 direction and supervision and that the foregoing  
12 transcript constitutes a full, true, and accurate record  
13 of the proceedings had.

14 Dated at Las Vegas, Nevada,  
15 August 20, 2012.

16 *Danette L. Antonacci*

17  
18 Danette L. Antonacci, C.C.R. 222  
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## AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the  
preceding TRANSCRIPT filed in GRAND JURY CASE NUMBER  
09BGJ119A-C:

X Does not contain the social security number of any  
person,

-OR-

Contains the social security number of a person as  
required by:

A. A specific state or federal law, to-  
wit: NRS 656.250.

-OR-

B. For the administration of a public program  
or for an application for a federal or  
state grant.

Signature

8-20-12  
DateDanette L. Antonacci  
Print NameOfficial Court Reporter  
Title

EXHIBIT 2

EXHIBIT 2

1 IND

2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565

5 MICHAEL STAUDAHER  
6 Chief Deputy District Attorney  
7 Nevada Bar #008273

8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

FILED

AUG 10 12 30 PM '12

*Ann D. Schuman*  
CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,

11 Plaintiff,

12 -vs-

13 DIPAK KANTILAL DESAI, #1240942  
14 RONALD ERNEST LAKEMAN,  
15 #2753504  
16 KEITH H. MATHAHS, #2753191

Defendant(s).

CASE NO: C-12-283381-2

DEPT NO: XXIII

INDICTMENT

17 STATE OF NEVADA }  
18 COUNTY OF CLARK } ss.

19 The Defendant(s) above named, DIPAK KANTILAL DESAI, RONALD ERNEST  
20 LAKEMAN, KEITH H. MATHAHS, accused by the Clark County Grand Jury of the crime  
21 of MURDER (SECOND DEGREE) (Category A Felony - NRS 200.010, 200.020, 200.030,  
22 200.070, 0.060, 202.595, 200.495), committed at and within the County of Clark, State of  
23 Nevada, on or between September 21, 2007 and April 27, 2012 as follows: Defendants did  
24 then and there willfully, feloniously, without authority of law, and with malice aforethought,  
25 kill RODOLFO MEANA, a human being, by introducing Hepatitis C virus into the body of  
26 RODOLFO MEANA, based upon the following principles of criminal liability, to-wit: (1)  
27 by the killing occurring under circumstances showing an abandoned and malignant heart;  
28 and/or (2) during the commission of an unlawful act, to-wit: criminal neglect of patients,

1 and/or performance of an unlawful act in reckless disregard of persons or property, which in  
2 its consequences, naturally tends to destroy the life of a human being; and/or (3) the killing  
3 being committed in the prosecution of a felonious intent, to-wit: criminal neglect of patients,  
4 and/or performance of an act in reckless disregard of persons or property, which in its  
5 consequences, naturally tends to destroy the life of a human being, by directly or indirectly  
6 using and/or introducing contaminated medical instruments, supplies, and/or drugs upon or  
7 into the body of RODOLFO MEANA which were contaminated with the Hepatitis C virus;  
8 Defendants being responsible under one or more of the following principles of criminal  
9 liability, to wit: (1) by directly committing said acts; and/or (2) by aiding or abetting each  
10 other and/or others including uncharged confederates in the commission of the crime(s) of  
11 criminal neglect of patients, and/or performance of an act in reckless disregard of persons or  
12 property by directly or indirectly counseling, encouraging, hiring, commanding, inducing, or  
13 procuring each other, and/or others to utilize a patient care delivery system which directly or  
14 indirectly limited the use of medical instruments, and/or supplies, and/or drugs; scheduled  
15 and/or treated an unreasonable number of patients per day, and/or rushed patients or patient  
16 procedures all at the expense of patient safety and/or well being, and which resulted in  
17 substandard care and/or jeopardized the safety of RODOLFO MEANA, Defendants acting  
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1 with the intent to commit the crime(s) of criminal neglect of patients, and/or performance of  
2 an act in reckless disregard of persons or property; and/or (3) pursuant to a conspiracy to  
3 commit the crime(s) of criminal neglect of patients, and/or performance of an act in reckless  
4 disregard of persons or property, Defendants acting in concert throughout.

5 DATED this \_\_\_\_\_ day of August, 2012.

6  
7 STEVEN B. WOLFSON  
Clark County District Attorney  
8 Nevada Bar #001565

9  
10 BY

  
11 MICHAEL STAUDAHER  
Chief Deputy District Attorney  
12 Nevada Bar #008273

13 ENDORSEMENT: A True Bill

14  
15   
16 Foreperson, Clark County Grand Jury

1 Names of witnesses testifying before the Grand Jury:  
2 BAGANG, MAYNARD, LVMPD  
3 OLSON, ALANE, MEDICAL EXAMINER  
4  
5 Additional witnesses known to the District Attorney at time of filing the Indictment:  
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28 09BGJ119A-C/ed

# EXHIBIT 1

# EXHIBIT 1

IN THE SUPREME COURT OF THE STATE OF NEVADA

DIPAK KANTILAL DESAI,  
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
VALERIE ADAIR, DISTRICT JUDGE,  
Respondents,

and

THE STATE OF NEVADA,  
Real Party in Interest.

No. 61230

**FILED**

DEC 21 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER GRANTING PETITION IN PART

This original petition for a writ of mandamus or prohibition challenges an order of the district court denying petitioner Dipak Kantilal Desai's pretrial petition for a writ of habeas corpus challenging the sufficiency of the indictment. Desai argues that the charges alleged in the indictment fail to give him sufficient notice to defend against the State's allegations. See NRS 34.160; NRS 34.320; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981).

For the reasons discussed below, the district court should grant the petition for a writ of habeas corpus with respect to the count alleging racketeering (Count 1). It should also permit the State to amend the counts alleging criminal neglect of patients (Counts 4, 8, 11, 14, 18, 21, and 24) and performance of an act with reckless disregard to persons (Counts 3, 7, 10, 13, 17, 20, and 23) to reduce the number of theories of liability alleged and resolve ambiguity regarding how Desai engaged in the remaining theories. Our decision does not affect the remaining counts



of the indictment that allege insurance fraud (Counts 2, 5, 6, 9, 12, 15, 16, 19, 22, and 25), theft (Count 26), and obtaining money under false pretenses (Counts 27 and 28), which Desai does not challenge in this petition. It further does not affect the murder count charged in a separate indictment.

Desai contends that the charging document is inadequate. Specifically, he contends that the counts alleging the performance of an act with reckless disregard to persons are impermissibly vague as each count charges three defendants with seven alternative theories of liability. The criminal-neglect-of-patient counts allege eight alternative means, including one that the defendants directly or indirectly caused the harm by "methods unknown." In addition, each defendant is charged as a principal, aider and abettor, and coconspirator. Desai contends that the numerous alternatives permit the State to alter its theory of prosecution. Moreover, as the counts are based on a statute that does not specifically define the prohibited conduct, the indictment should have a more particular statement of facts. He also contends that the racketeering count is defective as the charge omitted elements of the offense, included an alternate theory that did not charge an offense under the statute, and failed to allege sufficient facts to indicate which defendant performed what acts regarding each theory of criminal liability.<sup>1</sup>

---

<sup>1</sup>Desai also contends that facts adduced before the grand jury do not support many of the alternative theories. These claims concerning whether the State produced sufficient evidence to support the allegations in the indictment are not appropriate grounds for extraordinary relief. See Kussman v. District Court, 96 Nev. 544, 545-46, 612 P.2d 679, 680 (1980) (providing that this court's review of a pretrial probable cause determination through an original writ petition is disfavored).

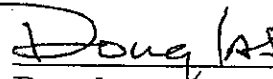
Both the United States and Nevada Constitutions require an indictment to allege a criminal offense in a manner that is sufficient to put the defendant on notice of the nature of the offense charged and the essential facts constituting the offense "in order to permit adequate preparation of a defense." Jennings v. State, 116 Nev. 488, 490, 998 P.2d 557, 559 (2000); see NRS 173.075(1) ("The indictment or the information must be a plain, concise and definite written statement of the essential facts constituting the offense charged."). To that end, this court has held that a charging document "which alleges the commission of the offense solely in the conclusory language of the statute is insufficient." Sheriff v. Levinson, 95 Nev. 436, 437, 596 P.2d 232, 233 (1979); see Earlywine v. Sheriff, 94 Nev. 100, 575 P.2d 599 (1978). Instead, the indictment must include "a statement of the acts constituting the offense in ordinary and concise language" and put the defendant on notice of the State's theory of prosecution. Viray v. State, 121 Nev. 159, 162, 111 P.3d 1079, 1082 (2005) (quoting Jennings, 116 Nev. at 490, 998 P.2d at 559). Where one offense may be committed by one or more specified means, an accused must be prepared to defend against all means alleged. See State v. Kirkpatrick, 94 Nev. 628, 630, 584 P.2d 670, 671-72 (1978).


We conclude that extraordinary relief is warranted because the challenged allegations are not sufficiently plain, concise, and definite for the following reasons. First, the criminal-neglect and reckless-disregard counts charge each defendant as a principal, aider and abettor, and coconspirator and further list numerous acts of aiding and abetting, which allege that the defendants aided and abetted each other as well as aided and abetted other unnamed individuals to commit the reckless or negligent acts. Barren v. State, 99 Nev. 661, 668, 669 P.2d 725, 729 (1983)

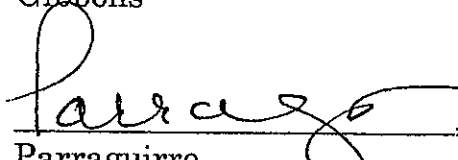
(noting that an indictment may charge a defendant as both a principal and as an aider and abettor provided that it contains "additional information as to the specific acts constituting the means of aiding and abetting so as to afford the defendant adequate notice to prepare his defense"). The allegations list numerous acts taken as principals and aiders and abettors but fail to specifically identify what acts are attributed to each defendant. Therefore, these counts are insufficiently precise as to "who is alleged to have done what." State v. Hancock, 114 Nev. 161, 165, 955 P.2d 183, 185 (1998) (internal quotations omitted). Second, the racketeering count fails to allege necessary elements and is inadequately pleaded. The alternative theory charged pursuant to NRS 207.400(1)(a) is incomplete as it omits the essential element concerning the use of proceeds to acquire real property or interest in another enterprise. In addition, the use of disjunctive language severed the description of racketeering activity, a necessary element of the previous alleged theories under NRS 207.400(1)(a)-(d), (j) (prohibiting acts done in conjunction with racketeering activity) into a separate theory of the offense, which was not sufficient to plead any violation of NRS 207.400 in and of itself. Lastly, even if the allegations of racketeering activity are interpreted as relating to each alleged theory under NRS 207.400(1)(a)-(d), (j), those allegations are inadequately pleaded as the first alternative act (causing and/or pressuring employees to falsify patient records) fails to allege a crime related to racketeering. Accordingly, we

ORDER the petition GRANTED IN PART AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to grant the pretrial petition for a writ of habeas corpus with respect to the racketeering count. The district court

should permit the State to amend the patient-neglect and reckless disregard counts to narrow the breadth of those charges and provide more detail as to how Desai engaged in the remaining theories.

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Valerie Adair, District Judge  
Wright Stanish & Winckler  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk



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|---------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------|
| The Honorable Valerie Adair<br>District Court, Department 21<br>200 Lewis Avenue<br>Las Vegas, NV 89101                                           | Michael V. Staudaher<br>Clark County District Attorney's Office<br>200 Lewis Avenue, 3d Floor<br>Las Vegas, NV 89155 |
| Catherine Cortez Masto<br>Attorney General<br>State of Nevada, Criminal Justice Division<br>100 North Carson Street<br>Carson City, NV 89701-4717 |                                                                                                                      |

I declare under penalty of perjury that the foregoing is true and correct.

William Crockett