

1 like a lot of complaints to him. You know, those kinds of
2 things.

3 MS. STANISH: Judge, if I can --

4 THE COURT: But -- but, you know, then you're
5 presenting the evidence of 31 complaints, that's not going to
6 come in any other way even if I were to say okay, we can get
7 evidence of some of the complaints, you don't have all 31
8 people.

9 MS. WECKERLY: We have the complaints.

10 MR. STAUDAHER: Yeah, and they have a complaint.

11 MS. STANISH: I'm sorry, you're --

12 MS. WECKERLY: But, I mean, the whole point of them
13 going through this line of questioning --

14 THE COURT: I get it. and I said you can get into
15 it --

16 MR. WRIGHT: Excuse us for defending.

17 THE COURT: -- but only, you know, only in a -- a
18 limited way and only in a certain way. Without you guys
19 testifying about all these complaints, which is what I'm
20 trying to avoid through the forms of your question.

21 MS. WECKERLY: Okay. But, I mean, that's why we're
22 asking now rather than just springing it on him.

23 THE COURT: And I said you can ask him about
24 complaints and then if he says that, yes, he knew about
25 complaints you can ask and that doesn't -- and you still --

1 you know that --

2 MS. WECKERLY: Judge, we briefed this --

3 THE COURT: -- and he didn't say his opinion was this
4 or that. You know, I mean the point of it was that this, you
5 know, State opened but of course the -- the State continued to
6 license this, notwithstanding any complaints. And where did
7 the complaints go? I mean, were they found to be with merit,
8 without merit. I don't know. I think we're --

9 MS. STANISH: Exactly right.

10 THE COURT: -- we're getting into some troubling
11 area.

12 MS. STANISH: Judge, this -- if I may, because this
13 was addressed in the briefing and as I recall Ms. Weckerly
14 pointed to the fact that there were 30, 31 complaints that
15 were filed. Correct me if I'm wrong. The Medical Board of
16 Examiners took absolutely no disciplinary action on any of
17 those -- writing -- and I practice before the Medical Board of
18 Examiners so I have some idea of the procedures and so the --
19 the board writes back to the patient saying that there's not
20 going to be any action, it's not founded. I mean, gee, if a
21 criminal indictment is nothing --

22 MR. WRIGHT: And arrests, how many arrests? This is
23 absurd.

24 MS. STANISH: -- I know. It's just -- there's no
25 finding. And, you know, and then secondly, what are we

1 supposed to do when the -- in the way of a defense when the
2 prosecution is disparaging our client, saying that he's such a
3 cheapskate and putting people in harm's way? We're not
4 entitled to address these matters as we have been doing
5 through cross-exam through Dr. Carrol?

6 MR. STAUDAHER: Well, clearly they can do. I'm not
7 precluding them from doing that. I'm just saying if they do
8 it opens the door to us actually bringing in some evidence
9 about the contrary.

10 MR. WRIGHT: It isn't evidence.

11 THE COURT: Well, what's your --

12 MS. STANISH: That's what you're doing all along.

13 THE COURT: I mean, what you're trying to bring in is
14 the fact -- I mean, here's the deal. They can say yes, we
15 continued to be licensed but now you want to essentially bring
16 in an unsubstantiated complaint, which is clearly by
17 definition hearsay that somebody's complaining that wasn't
18 substantiated. I mean, they're allowed to say we continued to
19 be licensed and we continued to be this and that --

20 MR. STAUDAHER: It's not that it wasn't
21 substantiated, they took no action. They -- the letters are
22 there, the information's there from not only individual
23 patients but doctors --

24 THE COURT: Were they substantiated?

25 MR. STAUDAHER: That this actually happened?

1 THE COURT: No, that there was a complaint and was
2 the conduct complained of ever substantiated or was it that --

3 MR. STAUDAHER: They acknowledged -- they
4 acknowledged that -- that these things happen.

5 THE COURT: No, they --

6 MR. WRIGHT: No.

7 MS. STANISH: No.

8 THE COURT: -- did they acknowledge they had -- well,
9 give me that complaint -- give me again the -- I mean, here's
10 the thing. Somebody makes a complaint. I mean, there's
11 complaints made all the time where nobody even investigates
12 it. There's complaints made to the Bar about lawyers.
13 There's complaints made to judicial discipline all the time
14 and after an initial review. If they don't think that it may
15 have some merit, they don't even do anything about it and you
16 don't even know about it. Then they may determine, okay, well
17 maybe there's something here and there could be contact to a
18 lawyer or something like that. Okay? That's the first step.

19 And then after interviews and this and that, they may
20 determine, okay, we think there's merit here and we're going
21 to go forward with this. But the fact that someone sends a
22 complaint in doesn't necessarily mean it's been substantiated
23 by the board, that it had any merit. I mean, so you have to
24 say A, did they even think it may have merit? B, was the
25 complaint substantiated, meaning the conduct occurred? And

1 then C, was any disciplinary action taken or were they forced
2 to remedy a situation based on the complaint? Was suspension
3 or further -- I'm assuming it works similar to a lawyer. Was
4 suspension or further education or something like that, any
5 kind of action. Was there a hearing? I mean, just the fact
6 somebody sends in a complaint --

7 MR. STAUDAHER: That's not what we're talking about,
8 Your Honor.

9 THE COURT: Okay.

10 MR. STAUDAHER: What we're talking about is in a
11 nutshell is this. There are complaints that obviously come
12 forward. There's -- there's supporting information from
13 those individuals that comes before the board. The reviewer
14 sees this, looks at it, looks at what supposedly transpired
15 and says I cannot say that that isn't something that is, you
16 know, within the realm of normal or that it wouldn't be just a
17 -- something that could have been a bad complication for
18 normal practice. Once they get to a certain level with the
19 number of complaints that come in, it generates a letter to
20 Dr. Desai saying look we got this --

21 THE COURT: You're receiving an excessive number of
22 complaints.

23 MR. STAUDAHER: -- and this is what we suggest you
24 do. There's not just one letter from the board, there's at
25 least two or three letters from the board on the same issue.

1 And it's different reviewers, we've listed them as witnesses
2 potentially in the case, but we got the people who actually
3 wrote the letters to Dr. Desai from the board basically saying
4 you're on notice about this and you probably should take some
5 corrective action. Now that rises to a higher level -- that's
6 not just somebody that gets a complaint and they say oh, this
7 is a lady with sour grapes, we're not going to even deal with
8 this.

9 THE COURT: Okay. And what was -- refresh -- I mean,
10 I know, there was a motion and it was months ago. There's
11 been a lot of subsequent motions and other issues. Refresh my
12 memory. What was the corrective action that was advised?

13 MR. STAUDAHER: That he has to slow down is the main
14 thing, that he should take more time with his patients, that
15 he should probably do --

16 THE COURT: That was advised in the letter from the
17 board?

18 MR. STAUDAHER: Yes.

19 THE COURT: Is that -- is that true?

20 MR. WRIGHT: Slow down his procedures? No, ma'am.

21 MS. STANISH: Yeah, I'd like to see that.

22 THE COURT: Okay. Here's the way, if that's correct,
23 you can say, are you aware that -- or, you know, that he --
24 Dr. Desai received a letter from the board telling him to slow
25 down his procedures.

1 MR. WRIGHT: Let's first --
2 MS. STANISH: No, let's see the letter first.
3 MR. WRIGHT: -- I don't want them fishing.
4 MS. STANISH: I don't think that's correct.
5 THE COURT: Well, I'm going to the letter.
6 MR. WRIGHT: I wanted to ask outside of the presence
7 of the jury. His questions, half of his questions are
8 introducing evidence --
9 THE COURT: So are yours. I mean, unless you --
10 MR. WRIGHT: I'm cross-examining supposedly. He
11 cross-examines more than I do.
12 THE COURT: Well, here's the thing. First of all, I
13 need to see the letter again. What did they actually tell him
14 in the letter? And then it's only relevant with this witness
15 if he knew about it.
16 MR. WRIGHT: But if he doesn't it's out of the bag.
17 They're supposed --
18 THE COURT: I'm trying to -- that's what I said, he
19 couldn't ask the question, are you aware there's been 31
20 complaints. Mr. Wright, I already told him he couldn't ask
21 that question, it's assuming facts. I'm -- I already said
22 that. The issue right now is whether he can ask any questions
23 about this. I've already said, they haven't given me enough
24 information on the lawsuits for me to -- to me to form an
25 opinion one way or the other as to whether or not that could

1 be relevant. You know, one lawsuit -- even if they're
2 settled.

3 First of all, if they're settled that's always
4 confidential so I'm sure nobody would necessarily know what
5 the terms of that -- that is. All it would show is a
6 settlement and dismissal on [indiscernible]. That's probably
7 all we're going to know.

8 (Court recessed at 3:28 p.m. until 3:34 p.m.)

9 (Outside the presence of the jury.)

10 THE COURT: Yes, Ms. Stanish. I think --

11 MS. STANISH: You know --

12 THE COURT: Are we on the record?

13 THE COURT RECORDER: I am.

14 THE COURT: Okay.

15 MS. STANISH: I thought it might just be helpful to
16 review the motions again. I mean we addressed it. I myself
17 don't have the detailed recollection. I know we had a problem
18 with having to have a bunch of mini-trials on medical
19 malpractice and the need for additional documentation and
20 review of this.

21 MS. WECKERLY: We're not asking to bring it in
22 affirmatively, we're just asking about a question on cross
23 given what was elicited on direct.

24 THE COURT: Well, it's only relevant, A, if he knew
25 about it --

1 MS. WECKERLY: Right.

2 THE COURT: -- so you can ask him, you know -- well,
3 first of all, it's only --

4 MS. WECKERLY: The testimony that was elicited on
5 direct is that there was this quality control certification
6 from AAAHC and they accredited the surgical center and they
7 watched the procedures and they looked at the books and they
8 came to the conclusion it was quote, a model unit. So that's
9 what it's --

10 MS. STANISH: That certificate's in the government's
11 exhibit, if I'm not mistaken, right?

12 MS. WECKERLY: Right, right, yes.

13 MS. STANISH: All right.

14 MS. WECKERLY: We're not disputing that that occurred
15 but we're asking -- we'd like to ask about it.

16 THE COURT: Well, you can ask, you know, if they're
17 aware -- is he aware of any -- well -- what -- I mean, what
18 was the out -- does anybody have the letter from --

19 MS. WECKERLY: Mr. Staudaher's looking for it.

20 MR. STAUDAHER: I'm looking for it, Your Honor.

21 THE COURT: Unfortunately, Ms. Stanish, we don't have
22 paper files so we --

23 MS. STANISH: Oh, right, right.

24 THE COURT: -- have to go back through Odyssey to try
25 to find the motion, which I can do but it's not like I can

1 just -- well, it's not like the good old days where I can just
2 go through the file and flip to it --

3 MS. STANISH: Pull it up on the -- you can't pull it
4 up on the computer like in a federal case, I understand.

5 THE COURT: Oh, well, that was awhile ago. I mean I
6 can -- it would be motion to introduce evidence of other --

7 MS. STANISH: Right, yeah.

8 THE COURT: -- bad acts or --

9 MS. STANISH: Okay.

10 THE COURT: Why don't we do this? Let's get started
11 again. Can you do that and Ms. Weckerly maybe work on finding
12 the letter and then just approach?

13 MR. STAUDAHER: Yeah, we can -- we can do that.

14 THE COURT: Can we do that? Due to the late -- I
15 mean certainly if you are allowed to ask the question you're
16 not going to be allowed to say, are you aware that there were
17 31 complaints? You can say are you aware of complaints made
18 against the center or against Dr. Desai --

19 MS. WECKERLY: Yeah, I mean --

20 THE COURT: -- and whether, you know -- well, yes.
21 Was any action taken?

22 MS. WECKERLY: Sure.

23 THE COURT: That would be --

24 MS. WECKERLY: I mean, I would think that would be
25 legitimate given what they've elicited regardless of what we

1 have.

2 THE COURT: -- that would be the extent of --

3 MS. STANISH: But if I may, in your --

4 THE COURT: -- questioning --

5 MR. WRIGHT: And if the answer's --

6 THE COURT: What?

7 MS. WECKERLY: And if it's no, it's no.

8 MR. WRIGHT: Okay. So I can ask each of these -- I
9 mean I can ask questions when I have no basis and fact for
10 them?

11 THE COURT: Well, they have a basis --

12 MR. STAUDAHER: That's not true, we have basis.

13 THE COURT: -- and fact. They're aware of --

14 MR. WRIGHT: But he knows it?

15 THE COURT: Well, how do we know if he knows it or
16 not?

17 MR. STAUDAHER: That's what we're going to ask.

18 THE COURT: It never came out but it's not --

19 MR. WRIGHT: That's what you asked in the middle --

20 THE COURT: -- like they're -- they're not on a
21 fishing expedition.

22 MR. WRIGHT: -- of the presence of the jury.

23 THE COURT: They know there's been 31 complaints.

24 They know that so it's not -- I can't say -- I mean, they're
25 not -- they're not fishing about complaints, they know about

1 the complaints.

2 MR. WRIGHT: So they --

3 THE COURT: I mean, you don't ask a witness in a
4 pretrial every conceivable thing. Oh, do you know this and do
5 you know --

6 MR. WRIGHT: So I can ask every witness this?

7 THE COURT: -- and if they did then you'd say they
8 were coaching him. So I mean --

9 MS. STANISH: If I'm not -- if I'm not mistaken,
10 these were not all against Dr. Desai personally, some of them
11 were against other doctors, if I'm not mistaken.

12 MS. WECKERLY: Right.

13 THE COURT: Well, we have to -- I think it's relevant
14 if it's against the clinic, practices at the clinic. Right
15 now he's going to find them, I'm going to see what it is again
16 and would you go get the law book?

17 MS. STANISH: And if I'm not mistaken, I thought Ms.
18 Weckerly conceded in her brief that none of these complaints
19 were --

20 MR. WRIGHT: Were substantiated.

21 MS. STANISH: -- substantiated -- or what was the
22 term you used?

23 MS. WECKERLY: They took action but it doesn't matter
24 now because it's not a bad acts motion anymore, we're asking
25 on cross. We're not asking to put this evidence in, this

1 Court hasn't made a ruling on that. But when they elicited
2 that they got this certification on direct, it made these
3 complaints and the issues with the medical board relevant. If
4 they got a certification as model unit, certainly if this
5 witness has knowledge about possible complaints or letters to
6 remedy the practices at the clinic, it goes directly to that
7 issue.

8 THE COURT: That would be the only -- the only
9 relevance. And again, you can't ask it in a way that you are
10 getting testimony but we're going to have you guys approach
11 the bench with the letter once he finds it. In the meantime,
12 we're going to bring the jury in and Mr. Staudaher you can
13 turn that over to Ms. Weckerly and you can resume your
14 redirect. When -- all right. Does Kenny know to bring the --

15 MR. WRIGHT: It still only comes in as another bad
16 act.

17 THE COURT: Well, no, it's to -- it's to -- it's to
18 show, okay, one opinion was that this was a model facility but
19 there were other -- there's other evidence that it wasn't a
20 model facility. That, you know, that you're getting letters
21 from the board saying you need to take corrective steps. So
22 that's -- it's counteracting that other evidence, if this is
23 such a great facility. It's not to say that he acted -- I
24 mean -- but I need to look at the letter again and see if it's
25 -- you know, again, you know, unsubstantiated complaints.

1 (Jury reconvened at 3:42 p.m.)

2 THE COURT: All right. We need to get the witness
3 again. Everyone may be seated.

4 Sir, come on up here to the witness stand and have a
5 seat again.

6 And Mr. Staudaher, you may resume your redirect
7 examination.

8 MR. STAUDAHER: Thank you, Your Honor.

9 BY MR. STAUDAHER:

10 Q When we left off we were talking about the
11 anesthesia sort of charges. Do you remember that?

12 A Yes.

13 Q And just so we're back in place, on direct
14 examination -- or cross-examination you were talking about a
15 -- a facility charge, a doctor charge, and an anesthesia
16 charge.

17 A Correct.

18 Q Now, prior to the CRNAs coming into the
19 practice, were you able to charge for an anesthesia charge?

20 A No.

21 Q Okay. So that -- who would have charged for
22 that?

23 A That's part of the facility fee.

24 Q Now, I'm talking about the person that would
25 administer the anesthesia. Who could charge for that?

1 A I understand. The anesthesiologist could charge
2 for that.

3 Q So prior to CRNAs, you could only charge the
4 facility charge and the doctor charge; is that fair?

5 A Fair.

6 Q After the CRNAs you could then charge for the
7 CRNA charge?

8 A Correct.

9 Q Now, were you aware in any discussions you had
10 regarding this issue with -- because you said the entirety of
11 your information came from Dr. Desai, correct?

12 A About what?

13 Q About the CRNA billing or charges or anything --
14 well, the CRNAs and supervising physicians and all that.

15 A Well, remember like I -- like I mentioned
16 before, the concept of supervisory role or official
17 supervising, to my recollection was never discussed with me
18 until after this event occurred when I learned about this.

19 Q Were you aware at the time that you had these
20 discussions with Dr. Desai that if you brought CRNAs in that
21 you could bill for their services?

22 A Was I aware of that? I think I was aware of
23 that. I just didn't know how that would work but I was aware
24 of that, yes.

25 Q Were you aware that there had been any

1 discussions with Dr. Desai and I think you said a verbal
2 agreement between Thomas Yee and Dr. Desai, correct?

3 A Correct.

4 Q Do you know how that financial arrangements, if
5 any, would go with that?

6 A No.

7 Q I mean, did you know that essentially if Yee was
8 involved that he would actually get the anesthesia billing?

9 A No.

10 Q You had mentioned that when you were at -- went
11 through the whole litany about symptoms from hepatitis and all
12 those things, you mentioned that one of the things that can
13 happen is that a person can develop cirrhosis of the liver; is
14 that right?

15 A Yes.

16 Q And you -- I think you mentioned that this was a
17 process that typically took 15 to 20 years?

18 A Correct.

19 Q Is it reported in cases that it can actually
20 happen much earlier than that?

21 A I don't know, even as an expert. I've heard of
22 cases with accelerated cirrhosis before but I'm not -- I can't
23 tell you've seen an article or a study about that.

24 Q Now you were also in the same vein of questions,
25 you were asked about typically from the time of inoculation I

1 think is what counsel used as the word, to symptoms --

2 A Correct.

3 Q -- if -- if it's going to be an acute case --

4 A Correct.

5 Q -- right? You said -- I think you mentioned
6 four to 12 weeks is the average?

7 A That's correct.

8 Q Is there -- I mean, how far out can it go
9 typically before you could still have symptoms and -- of this
10 type of an acute infection?

11 A The answer is I don't know because if there's
12 any say outlier case that is longer than that, I'm not aware
13 of it.

14 Q Okay. And you know that the health district
15 notified people who had been exposed for a period. I mean,
16 they were looking at people for six months. Does that ring a
17 bell to you at all?

18 A Yeah, it rings -- it does ring a bell in terms
19 of what they had planned on further testing, yes.

20 Q Now, you also mentioned related to that that
21 they went back in time and -- and I think you were talking
22 about a meeting that you had with Brian Labus where they
23 talked about how far back they were going to go in the
24 notification, correct?

25 A Correct.

1 Q In that same meeting, did -- I think you said
2 they related that at least some of the CRNAs that they had
3 observed, even mentioned to them that they had been doing this
4 practice for a long time.

5 A At that meeting?

6 Q Yes.

7 A No, that's not accurate.

8 Q Okay. What is accurate?

9 A What's accurate is that Brian Labus said to me
10 that this was the practice that we think caused this
11 transmission, the changing of the needles as we've discussed.

12 Q When he was talking to you about how far back
13 they were going to go, did he say why they would go back that
14 far?

15 A No. What he said was since we cannot determine
16 how far back this practice goes, we will start our
17 notification beginning in 2004 when you had -- you opened your
18 new center.

19 Q Did he indicate that -- that -- what information
20 had been provided to him in making that determination?
21 Meaning, provided to him by the CRNAs that they interviewed.

22 A They -- he did not.

23 Q So you weren't privy to any of that?

24 A No.

25 Q Were you privy to any of the real investigative

1 materials that they had talked about and -- and investigated,
2 whether it -- you know, the different transmission sources,
3 things like that?

4 A No.

5 Q And you yourself said that you went back and
6 looked at those results -- those -- those actual patient files
7 because you had access to them?

8 A Correct.

9 Q When you looked at those patient records, was --
10 I mean, I know one thing stood out, the time on the anesthesia
11 records, but did anything else stand out as far as a possible
12 commonality between the patients as far as a possible, you
13 know, transmission source?

14 A On -- well, let's see. Like I've said before
15 and I hope not to be too verbose but the transmission had to
16 have occurred either in pre-op or during the procedure or
17 post-op, there's -- there's no other way. So I didn't
18 identify a commonality to those source -- to those patients
19 that would put me in any one of those directions.

20 Q Are -- you're not an epidemiologist, right?

21 A No, I'm not.

22 Q I mean, have you ever been even remotely trained
23 as an epidemiologist?

24 A No, I have not.

25 Q Do you know what one does?

1 A Yes.

2 Q What do they do?

3 A An epidemiologist is a person who looks at
4 disease patterns and transmissions across populations and
5 looks for -- and is involved in the management of identifying
6 sources of infection and intervening to -- to decrease those
7 possibilities.

8 Q So when they came -- when the CDC and health
9 district come into the clinic, I believe your testimony was
10 you were there when that happened?

11 A Yes.

12 Q So they come in and you're on the -- where are
13 you in the facility when that happens?

14 A I'm on my way, literally walking from the
15 medical side to the endoscopy side when I get the phone call.

16 Q So you didn't actually see them come into the
17 building or anything like that?

18 A No.

19 Q When you contact them, did you say you were on
20 the fourth floor of that building?

21 A I was on the first floor and I went up to the
22 fourth floor where they were at Tonya's office.

23 Q That's what I meant. When you came in contact
24 with them where was it, was it up there?

25 A Yes.

1 Q So they weren't milling around down in the
2 endoscopy suites or in the -- in the file rooms or anything
3 like that at that point? They were up in Tonya's office?

4 A Correct.

5 Q You get called up there, correct?

6 A Yes.

7 Q Now, when they came over that was the -- at
8 least the call from Tonya was the first time I think you said
9 that you had any inkling that they were coming over.

10 A Call from Dr. Sharma.

11 Q Sharma, I'm sorry. I mean you get the call from
12 Dr. Sharma, you're to go up there?

13 A Yes.

14 Q When you met with them how many people were
15 there?

16 A To the best of my recollection three or four.

17 Q Now, on that day, did you know that they were
18 coming?

19 A No.

20 Q When you get up there and talk to them they tell
21 you why they're there obviously?

22 A Yes.

23 Q And -- well, did I understand you correctly that
24 they were going to come back the next morning and start to do
25 some looking around?

1 A Yes.

2 Q So what time of day is this that they roll over
3 to your clinic? Or when you actually contacted them up on the
4 fourth floor?

5 A I think it was early afternoon or late morning
6 to the best of my recollection.

7 Q So early in the day then?

8 A Yes. It wasn't, to my recollection, at the end
9 of the day.

10 Q Now, the fourth floor, what is the fourth floor?

11 A The office building where we practice had four
12 levels, different offices, different practices. On the fourth
13 floor we had our -- our management offices up there and that's
14 where Tonya's office was.

15 Q So there's no medical stuff going on up there at
16 all?

17 A Correct.

18 Q Are there records up there?

19 A No, there are no medical records up there to
20 my --

21 Q So it's mainly administrative stuff?

22 A Yes.

23 Q Billing, things like that?

24 A Billing is up there.

25 Q So do they then leave? Did they leave the

1 facility?

2 A To my knowledge, yes, they did.

3 Q Because you were there, right?

4 A Yes.

5 Q So they leave that day. So they don't --
6 they're not inspecting that first day?

7 A Correct.

8 Q Now, when they came back, do you know what they
9 did when they came back?

10 A They started the investigative process. All the
11 different things they wanted to do, look at records, look at
12 procedures, interview staff, take our blood for analysis, they
13 began that process.

14 Q Do you know how many days into the investigation
15 -- because you had on cross, rather you said it was about a 10
16 day window that they were there, correct?

17 A Yes.

18 Q Does that include the first day when they came
19 and just say we're going to come back?

20 A No, that -- that means the investigation
21 process.

22 Q So 10 days they're physically on the site
23 looking at stuff?

24 A Yes.

25 Q Do you know how many days into the investigation

1 it was before they actually came down and observed procedures
2 in the procedure rooms?

3 A It -- it would be a guess. I don't really
4 remember how -- how -- when that started.

5 Q If there was indications it might have been
6 three days or something. Would that be about --

7 MR. WRIGHT: Object to guessing. He said he doesn't
8 know. We'll have witnesses here day by day.

9 THE COURT: Overruled. He can answer.

10 BY MR. STAUDAHER:

11 Q I think we've actually already had that
12 testimony, I'm just asking if that comports with your memory
13 of the events; is that right?

14 A It comports --

15 THE COURT: Does that sound about right? That's the
16 question.

17 THE WITNESS: It sounds about right to me.

18 BY MR. STAUDAHER:

19 Q The point is that even the first couple of days
20 they weren't in the procedure rooms, right?

21 A I don't remember if they came in on the first
22 day. They may -- they may have, I honestly don't remember
23 what they started doing.

24 Q So they come back, they do their thing and then
25 they leave, right?

1 A After the 10-day period.

2 Q Now, other than this exit interview where you
3 get just some cursory information that Mr. Wright asked you
4 about, did you have any further actual information about the
5 things that they had found in the records, observed in the
6 procedure rooms, statements by the employees, anything like
7 that?

8 A No.

9 Q Now when you did your investigation and you said
10 you did kind of an independent one yourself, right?

11 A Yes.

12 Q When you did your investigation, decide looking
13 at the patient files and the records, did you interview any of
14 the -- of the people?

15 A No.

16 Q I mean, I'm talking about maybe even people that
17 were working on those days?

18 A No, I didn't.

19 Q Was there a reason why you didn't ask them if
20 anything untoward had happened on those days or if they
21 recalled anything, anything like that?

22 A Honestly, I just don't remember thinking of
23 doing that.

24 Q Okay. But that's what an epidemiologist would
25 do, right?

1 A Yes.

2 Q And to your knowledge, did they -- not only look
3 at the records and observe, did they interview people?

4 A Yes. They were talking to people but, you know,
5 I -- I knew more about that they had interviewed people after
6 the fact.

7 Q So their investigation continued on after they
8 left?

9 A No. I wasn't present during the time when they
10 -- when they ostensibly sat with people and interviewed them.
11 So did I know at the time, in real time, that they were
12 interviewing staff? I'm going to have to say I didn't know
13 that they were interviewing staff.

14 Q You learned at some point that they had done
15 that?

16 A Yes.

17 Q And did you ever go back and follow up? I know
18 you didn't do it initially, but did you ever go back and
19 follow up to confirm what some of the things you were hearing
20 had -- whether they had happened or not? Did you ever talk to
21 Doctor -- to Mr. Lakeman and confront him? Give him a call
22 and say, hey, look they're saying these things, did you ever
23 do these?

24 A No, I did not call Mr. Lakeman.

25 Q Did you ever confront Dr. Desai and say, look

1 this is what they're saying, did you know anything about this?

2 A No, because I first learned that -- about this
3 at the exit interview. So I don't -- I think maybe Tonya told
4 Dr. Desai about it, but I don't remember talking to Dr. Desai
5 about it.

6 Q Now, you mentioned a situation after the events
7 took place and after you wrote your -- your sort of policy
8 that you had every CRNA sign off on, right?

9 A Yes.

10 Q You said after that happened everybody signs off
11 on it, you're in a room and you observe Linda Rhubarb.

12 A Yes.

13 Q You observe -- you're doing -- what -- at what
14 stage of the procedure were you at when you saw this happen?
15 This -- it's what you called -- did you call it pooling?

16 A Well, I called it -- I didn't call it pooling, I
17 didn't use that term.

18 Q I'm sorry. What term did you use?

19 A I just -- I just labeled it as not discarding
20 the bottle and holding it for the next patient. I didn't give
21 it a term.

22 Q What did you see her do with the bottle?

23 A I saw her maintain it or hold on to it and put
24 it on a brown table and not discard it and save it to use for
25 propofol for the next patient.

1 Q Now, until the CDC came in, until you started
2 doing things like you just described, were you paying
3 attention to what the CRNAs were doing? Actually physically
4 doing in their procedures during the time that you're --
5 you're doing your endoscopies?

6 A No.

7 Q So did you not pay attention to it or did you
8 not see it at all?

9 A No. It wasn't in my consciousness or awareness
10 that there was any issue or problem about propofol
11 administration. I was never advised of it, never learned
12 about it, or never heard of it. So to say was I not watching,
13 I wasn't aware to watch or to look or to observe whether the
14 propofol bottles were being used correctly. It was sort of an
15 assumption that what was happening was proper.

16 Q Now you mentioned that Quality Care Consultants
17 came in and did some work?

18 A Yes.

19 Q Who was Quality Care Consultants?

20 A Well, I learned at the time that Quality Care
21 Consultants comprised two physicians --

22 Q And who are they?

23 A -- Drs. Anwar and Dr. Khan.

24 Q Were one of those individuals on the State
25 Medical Board at the time?

1 A Dr. Anwar was.

2 Q And what position on the State Medical Board did
3 he hold?

4 A I don't know.

5 Q But you're aware he was on it?

6 A Yes.

7 Q And the State Medical Board is what?

8 A The State Medical Board is that agency within
9 the Nevada government that oversees licensure of physicians.

10 Q When they came in, what did they do? Those two
11 -- it was just those two doctors, right?

12 A It's hard for me to tell you --

13 Q Is that right first of all?

14 A Yes, it is.

15 Q Okay.

16 A So they did some analysis, some evaluation of
17 our practice, of our endoscopy practice. What that is and
18 what that comprises I'm not exactly sure because I --

19 Q Did you see any report generated or anything
20 like that afterward?

21 A I don't know if I -- I may have seen the report,
22 I don't recall. But they did generate a report.

23 Q Do you know how many days they were there doing
24 this work?

25 A No.

1 Q Was it more than one?

2 A Yes, it was. They were there at least two days.

3 Q Now, you mentioned that there was this entity

4 called AAAHC?

5 A Yes.

6 Q And accredit -- is that a voluntary

7 accreditation entity or is that something that's mandatory for

8 these kinds of centers?

9 A It's voluntary.

10 Q So you choose to have them come in and look at

11 you and then give you this accreditation?

12 A Right.

13 Q Is there any portion of that accreditation where

14 you self report things?

15 A I don't know.

16 Q Well, when the people came in, how many people

17 came into the facilities?

18 A Two.

19 Q How long were they there?

20 A I don't remember, a number of days, a few days,

21 not many.

22 Q Three, five, 10?

23 A Two to -- I would say two to three days.

24 Q So about the same time period or frame that

25 Quality Care -- Care Consultants came in?

1 A Similar.

2 Q So they were there about the same length of
3 time?

4 A To my recollection, yes.

5 Q So we've got two people from Quality Care that
6 come in at one time and do their thing and two people that
7 come in from AAAHC and inspect?

8 A Yes.

9 Q And they're there about the same time period?

10 A It's the best I can recall for you.

11 Q Now, when AAAHC came in, were they just looking
12 at your facility or were they looking at other facilities too?

13 A I don't know. I believe they were looking only
14 at ours.

15 Q I mean, when I say yours, I mean the ones that
16 were part of your group --

17 A Oh, I see.

18 Q -- medical group?

19 A I think at that time they were looking only at
20 our endoscopy one or Shadow Lane facility.

21 Q Now beside AAAHC and Quality Care Consultants,
22 you mentioned that there was another one, a Jaco?

23 A Yes.

24 Q What is that?

25 A Well, Jaco is an organization that oversees and

1 accredits hospitals and surgical centers.

2 Q Is that a voluntary type of organization or is
3 that something that's mandatory?

4 A For surgical centers I think it's voluntary.
5 For hospitals, I'm not sure.

6 Q So they came in as well?

7 A They -- they -- I don't recall them coming in.
8 I just mentioned that those -- that is one of the
9 accrediting --

10 Q Okay. I want to make sure, so they didn't --
11 they never accredited you?

12 A No.

13 Q So the only two accrediting -- or -- did -- did
14 Quality Care Consultant accredit you or --

15 A No, they were not an accreditation company.

16 Q They were just checking to see if everything
17 was --

18 A Right. They were hired to check, whatever that
19 means.

20 Q But did -- you didn't know what exactly they
21 were looking at?

22 A No.

23 Q Who dealt with them?

24 A It was not me. I think --

25 Q Do you know who dealt with them?

1 A -- Dr. Desai dealt with them predominately.

2 Q Now, beside those two entities, was there any
3 other outside body that came in to inspect you and do things
4 beside the BLC that you've talked about later?

5 A Not that I'm aware of.

6 Q And the BLC is the -- at least at that time was
7 the Bureau of Licensing and Certification?

8 A Yes.

9 Q Were you there at anytime when they came onsite?

10 A Prior to these events?

11 Q Yes.

12 A No, not that I recall.

13 Q Now when AAAHC came to your facility to do the
14 voluntary accreditation, did you know they were coming?

15 A Yes.

16 Q So did -- is that something you actually had to
17 arrange for them to come out since it was a voluntary thing?

18 A Yes.

19 Q How far in advance did you have to arrange for
20 them to come out and was it something you called them up and
21 they were there the next day or was it a -- you know, you had
22 to arrange it a month out or what?

23 A The answer's I don't know because I didn't make
24 those arrangements. The reason I know that it was ahead of
25 time because we -- we knew that they were coming, we were

1 told.

2 Q Okay. So you knew that -- was it well in
3 advance though of their coming in?

4 A Yes.

5 Q Was it the same thing with Quality Care
6 Consultants, did you know they were coming? Were they asked
7 to come in as well?

8 A Well, I -- the answer to your first question is
9 I did not know they were coming and I didn't ask them to come.
10 I didn't know who they were and why they were there.

11 Q You just know that they were there?

12 A I saw them -- I saw the two doctors there one
13 day.

14 Q You mentioned in response to some questions
15 about the actual procedures, do you remember they were asking
16 about -- or being asked about the setup and you said it was
17 efficient and how you --

18 A Yes.

19 Q -- run that many patients through?

20 A Yes.

21 Q Whereas before you couldn't because it was a
22 different situation?

23 A Right.

24 Q Walk me through, if you would, and I know this
25 may be a little tedious but I -- I do want to get an idea of

1 it since you asked -- you answered those questions. In a
2 situation where you're going in to do an endoscopy or
3 colonoscopy, other than the procedure taking a different
4 length of time depending on what you're doing, what are the --
5 what are the time frames that we're talking about between a
6 patient rolling through the framed door -- frame of the door,
7 into the room, rolling back out until the next patient
8 actually rolls in. Tell us about the timing related to that
9 as best you can.

10 A Well, again, it varies. So if there's one
11 doctor starting out the day like on September 21st, like me,
12 starting out the day alone, once I finish the procedure, say
13 in room A and I finish my note and I walk over to room B and
14 the patient's ready. The patient in room A is going to be
15 there for a certain period of time to finish the vital signs
16 that they want to have post-sedation and then taken to
17 recovery area.

18 Then within a minute or two, if the next patient is
19 ready, that patient is wheeled into that room prior to me
20 finishing the procedure in room B. So by the time I get to --
21 back to room A that patient is ready. So the time between a
22 patient leaving into the recovery area and the next patient
23 being rolled in is a matter of a few minutes or less.

24 Q A few -- so it could be even as short as a
25 minute?

1 A It can be -- sure, it can short as a minute or
2 two. So imagine, the patient's being rolled out into a
3 recovery area where there's curtains and the next patient is
4 ready in a curtained area in the gurney, IV perhaps already in
5 most likely and ready to come right in and a staff member
6 rolls that patient right in.

7 Q And that's what I'm asking about. So you've got
8 -- if I understand you correctly, what you just said, was that
9 the patients that come into the room are on a gurney in what
10 is termed the recovery room to start off with?

11 A Yes.

12 Q And from that room they come into a room?

13 A Yes.

14 Q Get their procedure and then did they go back to
15 the same place?

16 A They go back to one of the five bays, one of the
17 five curtained bays to -- for recovery.

18 Q So at any one time, how many of that -- those
19 five bays are lined up with patients that are going to have a
20 colonoscopy versus the ones who have just had one and have
21 gone out to the recovery area?

22 A So again, that will -- that will vary as the day
23 moves on. But at any given time there are patients who are
24 recovering and patients who are ready to come in. Now, there
25 may be a time, as I remember, that the recovery beds are

1 filled with patients who are recovering and there may be a
2 patient up to one, two or three in the IV room sitting in one
3 of those chairs in a curtained area, with an IV in waiting to
4 be brought into the -- to the operating room or the endoscopy
5 room.

6 Q But there would be no bed in those rooms,
7 correct?

8 A We had enough gurneys for that I believe, we had
9 a gurney. There'd be enough gurneys, there weren't just five
10 as I remember, there were more than that.

11 Q How many more are we talking about?

12 A I think maybe seven. Again --

13 Q So there was one for each bay and then one for
14 each room; is that right?

15 A As I remember. I can't be -- I can't be 100
16 percent sure of that.

17 Q Okay. Mechanically though, the patients are
18 staged outside, come in, then go back outside to the same
19 area?

20 A Yes.

21 Q Now, the turnover time between procedures when
22 there's two doctors present, how does that work?

23 A When there's two doctors present it's literally
24 like running two surgical centers. That room A, for example,
25 if I'm in that room and room B has another doctor, I finish

1 the procedure, the patient is wheeled out to the recovery area
2 and if the next patient's ready, then that patient would be
3 wheeled in immediately to that room. If the patient's not
4 ready I waited.

5 Q So the turnover time, would it be -- since your
6 -- this is not a situation where they can take their time to
7 get a patient in and out of a room while you're doing a
8 procedure, you know you've got two doctors that are basically
9 wanting to just go it sounds like.

10 A Right.

11 Q Patient rolls into your room, you're stuck in
12 room 1, that's where you're going to be this day, at least for
13 that time period.

14 A Okay.

15 Q The patient rolls in, you do the procedure,
16 patient rolls out, next patient's going to roll in.

17 A Yes.

18 Q Are you following me? The turnover time for
19 that is about how long then?

20 A Again, if the patient -- if the next patient's
21 ready or if there's a, you know, a bed available or there's
22 enough room in the IV room, if the patient's ready, it's
23 within a minute or two they come right in.

24 Q Now what happens in that room from the time the
25 patient leaves until the next time -- next patient rolls in,

1 what's going on in that room?

2 A The room is being -- anything on -- any debris
3 on the floor is being picked up, new equipment is being ready,
4 the scope is being ready to put onto the endoscopy processor,
5 medicine is being ready for -- for administration to the
6 patient, people are doing things to get the room ready.

7 Q Are they cleaning the room?

8 A No. There's not -- it's not being wiped down,
9 you know, between cases.

10 Q What about a mop on the floor, anything like
11 that?

12 A No.

13 Q So no cleaning of the rooms, just moving
14 patients in and out; is that fair?

15 A Right. There's no -- again, to answer your
16 question, is the room being mopped or cleaned between? Not
17 that I remember.

18 Q Is it being cleaned in any way? I just want to
19 make sure I'm -- I'm clear about that. You see somebody
20 coming in and, you know, spraying down the beds or the gurneys
21 or anything like that?

22 A The gurneys, not in the room, but on the outside
23 if -- when a patient leaves the facility, that gurney is
24 cleansed with antibacterial and virucidal solution completely.

25 Q Did you see that?

1 A Oh, yes.

2 Q On a daily basis?

3 A On a daily basis I did. I saw the -- those
4 gurneys being cleaned all the time.

5 Q Okay. So when -- so now we've -- now I've got a
6 picture of -- in my mind, I want to be clear on this. I mean,
7 how many -- when you see that, how many of these beds are you
8 seeing getting cleaned at any one time?

9 A There might be one or two being cleaned if -- if
10 the patient has left, has exited, the sheets are taken off,
11 the bed is cleaned, it's sprayed and wiped down.

12 Q You mentioned sheets, what about sheets? Was
13 there any issue about using sheets in the clinic?

14 A Not that I was aware of. The sheets -- we -- we
15 sent those sheets out to be cleaned. We had a laundry
16 contract and those sheets were laundered and washed by a
17 contracted provider.

18 Q Did you ever hear Dr. Desai say anything about
19 not allowing patients to even have sheets to cover themselves
20 with?

21 A No. I never heard that when it was happening.
22 I heard rumors about that afterwards but not during -- when I
23 was there.

24 Q Did you ever see that yourself?

25 A No.

1 Q Did you ever see Desai go up and actually take a
2 sheet off of a bed and -- because somebody had used more than
3 one and folded it up and put it back on the shelf or under the
4 bed or anything like that?

5 A No, I never saw that.

6 Q Would that have alarmed you if you would have
7 seen him doing those kind of things?

8 A I don't know that I was aware of what was
9 happening. Again, I didn't have that awareness that that was
10 -- there was anything happening like that.

11 Q Well, but you're -- you're observing things
12 throughout the day, correct?

13 A Yes, yes.

14 Q Now, beside the fact that you're in a room,
15 physically when they're moving the patients in and out, what
16 are you doing during that time?

17 A I'm doing my notes and getting ready to see and
18 do the next patient.

19 Q Do you ever follow the patients out and meet
20 them at bedside and talk to them?

21 A Yes.

22 Q Did you do that on a regular basis?

23 A I did that on a regular basis when it -- it was
24 definitely my policy, my practice, to talk to patients when
25 there were findings. If there was an issue or finding or

1 tumor I made sure I spoke to the patient to make sure the
2 patient understood to come back and see me or someone to
3 follow up and to get proper treatment. Now, I didn't do that
4 with everybody. Most -- most cases ended with no -- no
5 findings. But I made sure that if there was a finding I spoke
6 to the patient and that could occur in the recovery bay or
7 that could occur in the -- in the discharge room.

8 Q So in the -- most cases where it -- there
9 weren't findings, would you go out to the bedside and see the
10 patients?

11 A No. Most cases it was to the recovery bay so my
12 -- my practice was to say, and I said this many times, this
13 patient cannot leave without me speaking to him or her first.
14 And that usually would occur in the discharge room when there
15 was a finding.

16 Q When there was a finding. But I'm talking about
17 most of the times when there's no finding, are you talking to
18 the patients there afterwards?

19 A No, the checkout nurse is -- the checkout person
20 is.

21 Q Okay. So if the records show that literally
22 every one of your cases you're at bedside on those days,
23 that's not accurate, right?

24 A That's not accurate.

25 Q Now, the -- you had mentioned on cross that you

1 would do between four and five procedures an hour, you felt
2 you could do that comfortably?

3 A Yes.

4 Q Just so we're talking -- we're looking at
5 between what, 10 - 15 minutes a procedure; is that right?

6 A Ten, 15 minutes a procedure or -- or even less
7 if it's an upper endoscopy.

8 Q And that's including the turnover time between
9 patients that you talked about --

10 A So I like to be clear. When I say to you a few
11 minutes for an upper endoscopy, I'm talking about the
12 procedure time, what I do. So when I say it takes a few
13 minutes to do an upper endoscopy, I'm talking about what I do
14 once I insert the camera, look, take biopsies and pull the
15 camera out.

16 Q So if you say that it takes three to five
17 minutes or five to six minutes or whatever it is for an upper
18 endoscopy, that's just procedure time?

19 A Yes, and for -- for me that's usually around
20 three to five minutes.

21 Q And for colons it was about what?

22 A It varied. It could be anywhere from six or
23 seven to eight minutes to 10, 12 minutes.

24 Q But on average that's what we're talking about?

25 A For me, yes.

1 Q So we would have to add on this couple of
2 minutes each time for the turnover; is that right?

3 A Yes.

4 Q But still within that time period you think you
5 could do the mixture of upper endoscopies and colonoscopies,
6 four or five an hour?

7 A Yes.

8 Q Now, four or five an hour is not two an hour,
9 right?

10 A Right.

11 Q And what I mean by that is you've seen those
12 anesthesia records?

13 A Yes.

14 Q You saw that they were all 31, 32 minutes of
15 anesthesia time, meaning in time -- under anesthesia, correct?

16 A Correct.

17 Q That would be at maximum two an hour, right?

18 A Two an hour per room.

19 Q Thirty minutes -- half -- I mean half an hour
20 would be two procedures per hour.

21 A Yes.

22 Q In your experience, did you do procedures at
23 that speed?

24 A No.

25 Q You've looked at this -- the charts where it

1 shows all of the different times, correct?

2 A Yes.

3 Q You mentioned I think that the start time for
4 you was about 6:45 to 7:00?

5 A Yes.

6 Q And you tried to finish at 3:30 to 4:00 in the
7 afternoon, something like that?

8 A Well, that was -- be an average. It could
9 longer, 5:00, sometimes 6:00.

10 Q Okay. But on average?

11 A Four o'clock.

12 Q So we're talking 10 hours a day, something like
13 that?

14 A Nine hours a day.

15 Q Okay. Nine hours a day, even let's give it 10
16 hours a day just to --

17 A Okay.

18 Q -- to make it easy. Thirty minutes a pop, 10
19 hours a day, how many -- how many procedures would we be able
20 to do if it was 30 minutes?

21 A That would be two procedures per room, 30
22 minutes, times 10 hours would be 20 so 40.

23 Q Forty. And you've seen the numbers on those
24 charts, right?

25 A Yes.

1 Q Is that possible?

2 A Is -- is --

3 Q You were there on those days, right?

4 A Yes.

5 Q Is that possible?

6 A I was there on September 21st.

7 Q Yes.

8 A So is what possible?

9 Q Is it possible to do the number of patients on
10 that day as it says there is time on the anesthesia record?

11 A No.

12 Q Now you mentioned that there were times -- I
13 think you even said that you had covered for Dr. Carrera when
14 he had some sort of medical emergency -- personal emergency
15 medical emergency, correct?

16 A Yes.

17 Q And that you did on that day 50 procedures in
18 that one day?

19 A Yes.

20 Q Did you do all of the procedures that were done
21 that day or -- or how did that work?

22 A On that particular day I did every procedure.

23 Q And that's 50 that were actually done?

24 A Yes.

25 Q Now the day in question, on the 21st when you

1 were there, we're talking in the 60s, correct?

2 A I think it was 61, 62. Again, you would have to
3 show me but it was 60 -- a little -- 60 or more.

4 Q Thirty-two patients in one room?

5 A Sixty -- 63.

6 Q Sixty-three total. So that's quite a bit more
7 than 50?

8 A Yes.

9 Q When you did 50 in that one day, did that -- I
10 mean, how did you accomplish that speed to do that on every
11 patient?

12 A I literally started at 6:50, 6:45 and did not
13 stop. I just went back and forth to -- went back and forth to
14 each room all day long.

15 Q So you -- I think you on -- you testified that
16 you started about 6:45 and went to about 4:00 on that day?

17 A On -- on -- on the day I did 50?

18 Q On the day you did 50.

19 A I don't remember when I -- when I finished on
20 that day.

21 Q Would that had been about the time that you
22 would have normally finished, was around 4:00 or so?

23 A Usually around four but it could have been 4:30,
24 five, I don't remember when I exactly stopped.

25 Q So we're talking about nine hours, you averaged

1 about nine minutes a patient --

2 A Yes.

3 Q -- throughout the entire day?

4 A Right.

5 Q If you had done 30 minutes a patient it would
6 only be about 18 minutes, right? Or 18 patients? Nine hours
7 times two, 18?

8 A Yes.

9 Q Now, speed, I wanted to ask you some questions
10 you were asked -- that counsel asked you about that. You had
11 testified on cross that Desai looked up to you, asked your
12 advice, referred complex cases to you, things like that, asked
13 for your assistance. Do you recall that?

14 A Yes.

15 Q Did that happen on a regular basis?

16 A Yes. He would ask me to see complex hepatitis
17 cases, Crohn's cases, inflammatory bowel disease cases and
18 occasionally he would ask me to try to finish a difficult
19 endoscopic procedure and I would try. If I couldn't, I
20 couldn't, but I tried.

21 Q What do you mean finish a difficult
22 endoscopic --

23 A For example, there came a couple of occasions
24 where he was doing a colonoscopy and someone said, you know,
25 Desai would you like to come in, meaning from the medical

1 side, brought me in and said Cliff can you try this, I can't
2 finish it, I can't get to the end. You want to give it a try?
3 For whatever technical reason and I -- and I would do that
4 whenever he asked and sometimes I was successful and sometimes
5 I wasn't.

6 Q Were you his mentor?

7 A No.

8 Q Okay. Was it the other way around?

9 A Was he my mentor?

10 Q Yeah.

11 A No. I had full training. I didn't have a
12 mentor.

13 Q So you were co-equals at least procedurally?

14 A Well, procedurally, yeah. Even when I started
15 he had been in practice a long time. He had done many more
16 procedures than I had ever done but there are different skill
17 levels and so you -- he would ask if I can give it a try and I
18 -- I would.

19 Q Did he know how to treat hepatitis C?

20 A Yes.

21 Q Many patients come through your practice, I mean
22 you said that that was one of the things you actually treated,
23 right?

24 A Sure.

25 Q Now, are you familiar with --

1 MR. STAUDAHER: May I approach, Your Honor?

2 THE COURT: Yes.

3 BY MR. STAUDAHER:

4 Q Showing you what has been marked and admitted as
5 State's 108. If you could just flip through it, if you would
6 and if you need to and I just want to know -- I'm not asking
7 you anything out of it specifically, I'm just asking if you're
8 familiar with that study, that report.

9 MR. SANTACROCE: What is the exhibit?

10 MR. STAUDAHER: 108. It's the 2006 colonoscopy
11 report.

12 THE WITNESS: I -- I briefly scanned this just now.

13 BY MR. STAUDAHER:

14 Q Have you seen it before?

15 A No.

16 Q Are you familiar with anything out of it?

17 A I don't think so.

18 Q Have you ever read any reports at all about what
19 average withdrawal times, average inspection times, pre-op
20 times, procedures, how they're done, things like that? Any
21 kind of a comprehensive study about colonoscopies, anything
22 like that?

23 A Well, in recent -- in recent years I have.

24 Q Back then --

25 A No.

1 Q -- had you done that?

2 A No.

3 Q Okay. What is the most important part of the
4 colonoscopy if you had to classify and break it down, going
5 through the anus, doing the transverse across, all the way to
6 the cecum, then the withdrawal and I think you mentioned the
7 -- what do you call that where you bend it backward --

8 A Retroflexion.

9 Q -- retroflexion. What portions of those are the
10 most important?

11 A I want to say there are four important parts to
12 the procedure. The first is inserting it safely to the cecum
13 and that is a function of feel and understanding of the
14 pressure that's being exerted on the colon so that you don't
15 over do it as you're pushing through to the cecum. So you
16 imagine the camera is a long black tube, it's five or six feet
17 long and if it's curved in the colon and you're pushing this
18 way, the curve is putting pressure on the colon.

19 It's very important to understand that feel so that
20 you don't perforate the colon. So for me I'm constantly aware
21 of that pressure and I'm very often reaching my hand over to
22 feel the belly to make sure I'm not overdoing it or putting
23 too much air in, that's number one.

24 Number two is proper identification of the end of the
25 colon to take a picture to make sure that you finished the

1 exam. To understand what the landmarks are so that you are
2 confident that you've actually completed the colonoscopy and
3 weren't halfway through thinking you made the whole thing.

4 Three is inspection both in and out. So inspecting
5 the lining of the colon. As you're withdrawing you're
6 watching on a big TV screen, it's a high definition TV screen
7 and you're watching as you're pulling out, looking for polyps
8 or tumors in the colon.

9 And finally, the retroflexion or turning the tip back
10 on itself like a candy cane to look at the anal area because
11 you don't want to miss an anal cancer.

12 Q Because that would be important not to miss
13 that, right?

14 A Of course.

15 Q Okay. So to get over to the cecum, average
16 colonoscopy, is that something you just kind of do? You get
17 over there and then you do most of your inspection on the way
18 out; is that fair?

19 A I would say that's fair.

20 Q Is that what you did typically?

21 A Typically I looked on both going in and going
22 out.

23 Q How long would it take you to get over there?

24 A That really varies. It could be 10, 15 minutes
25 if it's a difficult case or it can take me 90 seconds if it's

1 an easy case. It really -- that's hard to imagine but that's
2 the range.

3 Q Now, part of what -- we mentioned it, supplies,
4 KY Jelly and the like. I mean, is part of that whole issue
5 with having enough lubricant and so forth is because you're
6 putting a scope into somebody?

7 A Yes, the --

8 Q Is there a lot of resistance?

9 A The lubricant is important to -- so to minimize
10 the resistance especially at the anal area so that there's --
11 you can push the scope through easily. Using water to push
12 into the colon is a mechanism to make it much -- make the
13 friction much less when you're pushing the camera through the
14 rest of the colon. That black outer lining of the scope
15 becomes slippery when it's wet with water and you want to
16 minimize that friction. So you imagine the scope against the
17 wall pushing, you want as little friction as possible so you
18 minimize the risk of complication.

19 Q So water and KY Jelly are used for that
20 purpose --

21 A Yes.

22 Q -- is that right? Okay. You had -- I want to
23 make sure I understand this. You don't have an experience
24 with propofol; is that fair?

25 A As a person who administers it?

1 Q Yes.

2 A Correct.

3 Q And do you know much about the -- I know you
4 probably learned some things since that time --

5 A Right.

6 Q -- but did -- at the time did you have much
7 knowledge about the drug?

8 A No.

9 Q And you mentioned or were asked on
10 cross-examination about propofol's amnestic effect, the
11 ability of -- or the -- sort of the quality of that drug to
12 actually make people forget what has happened.

13 A Correct.

14 Q Do you know -- now did you know then what
15 actual amnestic effect that drug really has? I mean how much
16 of it is present in that drug?

17 A No, I don't know that.

18 Q So it could be a little or it could be a lot,
19 you don't know?

20 A Right.

21 Q Do you think it's ever appropriate to treat a
22 patient in a way that causes them discomfort or pain simply
23 because they have a drug on board that is not going to allow
24 them to remember what happened?

25 A No. I don't -- I don't think that -- no --

1 Q Do you understand the question? I mean
2 that's --

3 A A strange question. Would you intentionally do
4 something to hurt someone?

5 Q Not necessarily intentionally do something to
6 hurt -- let me -- let me rephrase it. Do you think it is
7 appropriate to treat a patient as you wouldn't normally -- and
8 here's -- here's a hypothetical. You do -- do a procedure
9 without anesthesia, you harm -- you hurt the patient, the
10 patient's writhing around on the table, something like that.
11 Would that be appropriate to do that?

12 A No.

13 Q Would you ever do that knowing that you were
14 going to give them medication that would make the patient
15 forget all of that and they wouldn't know about it?

16 A No.

17 Q Would that ever be appropriate in your view?

18 A My view, no.

19 Q Now, I don't know if I asked you this or if
20 counsel asked you this, but were you asked if you ever had
21 yourself, started a procedure knowing that the patient was not
22 anesthetized?

23 MR. WRIGHT: I object. This counsel asked that
24 yesterday.

25 THE COURT: I'm assuming he's trying to --

1 MR. WRIGHT: Well, this was asked and answered. He's
2 the one that asked it.

3 THE COURT: I mean, it's been two days so maybe --
4 are you reasking the question? Are you --

5 MR. STAUDAHER: I guess I'm -- I'm trying to
6 orientate him but --

7 THE COURT: -- orientate him to --

8 MR. STAUDAHER: I want to make sure we know. Okay.

9 MR. WRIGHT: He wants to repeat it and that's why I
10 object, Your Honor.

11 THE COURT: Well, there's always some repetition in
12 redirect examination so --

13 MR. WRIGHT: He's redirecting his direct, Your Honor.
14 That's my objection.

15 THE COURT: Go on, Mr. Staudaher. Just be mindful
16 not to, you know --

17 MR. STAUDAHER: I'll try, Your Honor.

18 THE COURT: -- repeat through direct -- the direct
19 testimony.

20 MR. STAUDAHER: Fair enough.

21 THE COURT: Although in all fairness, there may be
22 some memory lapse as to --

23 MR. STAUDAHER: My own memory lapse, Your Honor.

24 THE COURT: -- who asked what and when, you know, if
25 it was asked or not so.

1 Q Now, getting past September 21, just going to
2 CRNAs and whether they switch rooms. Okay?

3 A Okay.

4 Q When there are two CRNAs operating in the two
5 separate rooms.

6 A Right.

7 Q Okay. Lunchtime they relieve one another --

8 A Yes.

9 Q -- one gets to go to lunch, one stays --

10 A Correct.

11 Q -- right? And the -- if one CRNA goes to lunch
12 for what, half-hour?

13 A I think it was 30 minutes.

14 Q Thirty minutes. Then the other CRNA would like
15 complete a procedure in the room he's in. Okay?

16 A Yes.

17 Q And then go to the next room and do a procedure?

18 A Yes.

19 Q And always CRNA totally completes a procedure,
20 start to finish, correct?

21 A Correct.

22 Q Because they're there monitoring and making sure
23 this patient is going to survive, right?

24 A Right.

25 Q They don't walk out, go get a cup of coffee or

1 go make a phone call or go potty, correct?

2 A Correct.

3 Q And in your -- you have never seen a CRNA like
4 leave the room and run over and start someone else on
5 propofol?

6 A Correct. I've never seen that.

7 Q Okay. And if you did you would have -- if you
8 see something like that you would have stopped it.

9 A I think so, yes.

10 Q And so lunch, come back and forth between rooms,
11 half hour's up and the other CRNA works two rooms while the
12 other guy gets half hour lunch, right?

13 A Right.

14 Q Okay. And then you were asked yesterday that if
15 the CRNAs would switch rooms, go room to room, other than
16 lunch for like bathroom breaks and I think you answered I
17 think that happened, it wouldn't be unusual?

18 A I remember that.

19 Q Okay. Now that -- do you recall what you told
20 the Metropolitan Police Department about that?

21 A No. I don't remember but I -- I don't remember.

22 Q Okay. Do you recall telling them that it
23 never --

24 MR. STAUDAHER: Objection, Your Honor. He said he
25 doesn't remember. If he wishes to use something to refresh

1 his memory --

2 MR. WRIGHT: I'm trying to refresh his recollection
3 with my question.

4 THE COURT: Mr. Wright --

5 MR. WRIGHT: I'm sorry.

6 THE COURT: -- show him the -- if you have the
7 transcript or whatever. And before you do that, can I see
8 counsel up here?

9 (Off-record bench conference.)

10 THE COURT: Ladies and gentlemen, this might be a
11 good transition time to take our lunch break. Why don't we go
12 until 1:20 for the lunch break. And before I excuse you, I
13 must remind you that you're not to discuss the case or
14 anything relating to the case with each other or with anyone
15 else. You're not to read, watch, listen to any reports of or
16 commentaries on the case, person or subject matter relating to
17 the case. Don't do any independent research and please don't
18 form or express an opinion on the trial. If you would please
19 all place your notepads in your chairs and follow the bailiff
20 through the rear door.

21 (Jury recessed at 12:15 p.m.)

22 THE COURT: Doctor, you're free to go to lunch. Are
23 we going to finish with him today or --

24 MR. WRIGHT: Yes.

25 THE COURT: Okay. All right, everybody go to lunch.

1 (Court recessed at 12:15 p.m. until 1:19 p.m.)

2 (Outside the presence of the jury.)

3 THE COURT: Would you let the bailiff know we're
4 ready?

5 MR. WRIGHT: He was just getting the jurors last --

6 THE COURT: What's that?

7 MR. WRIGHT: He was just bringing in the last juror.

8 THE COURT: Oh, okay. So -- yeah, I mean if they're
9 all back.

10 MS. STANISH: Judge, did you say 9:00 on Monday after
11 all?

12 THE COURT: Well, it will be in the morning, 9:30 I
13 think --

14 MS. STANISH: Okay.

15 THE COURT: -- as long as Ms. Weckerly can now
16 tell --

17 MS. STANISH: Get the doctor back?

18 THE COURT: -- her witness -- no, actually we can
19 start at 9:30 --

20 MS. STANISH: I see.

21 THE COURT: -- because the lawyers on the evidentiary
22 hearing agreed to move that so.

23 MS. STANISH: Okay.

24 THE COURT: And we're having -- just a heads up,
25 we're having trouble find -- as of right now, a lot of people

1 are in trial next week so we're having a little difficulty
2 finding coverage, so hopefully we'll find coverage. There's a
3 possibility we won't be able to start at nine everyday
4 depending on, you know, who's available and whatnot. I'll
5 probably have to do -- wind up doing my own civil calendar. I
6 have a reluctant volunteer for Tuesday and I'm still looking
7 for Thursday so. But if those trials all plead then more
8 people will be available so. Oh, and also a heads up on
9 scheduling. We asked the jurors if they wanted to have an
10 early day on the Friday before Memorial Day and they do.

11 MS. STANISH: I bet they said yes.

12 THE COURT: I'm sorry?

13 MS. STANISH: I bet they said yes.

14 THE COURT: So I'm thinking like starting at nine and
15 maybe ending at like one or so and then obviously no lunch
16 break. Does that impact your scheduling?

17 MS. WECKERLY: Well, not -- I'll -- I'll confer with
18 counsel --

19 THE COURT: Okay.

20 MS. WECKERLY: -- to see how long but I don't
21 think --

22 THE COURT: Okay.

23 MS. WECKERLY: -- we have two that are not that long.

24 THE COURT: If it does, I mean, we can go later
25 but --

1 MS. WECKERLY: No, I get why they want to --
2 THE COURT: Right. And then I'm thinking --
3 MS. WECKERLY: I do too.
4 THE COURT: -- I mean, that works for me but --
5 MS. WECKERLY: I'll confer with counsel when we're On
6 our next break and tell --
7 THE COURT: Okay.
8 MS. WECKERLY: -- who I'm thinking on that day. They
9 have the week except for one more person.
10 THE COURT: Okay. So just to give you guys a heads
11 up.
12 (Jury reconvened at 1:23 p.m.)
13 THE COURT: All right. Court is now back in session.
14 Mr. Wright, you may resume your cross-examination.
15 BY MR. WRIGHT:
16 Q I'm going to have you look at three pages, 77 to
17 79 of your statement through the police and the district
18 attorney before the grand jury.
19 MR. STAUDAHER: Is there a question pending? I
20 don't --
21 THE COURT: When we took our break there had --
22 MR. WRIGHT: I was going to finish.
23 MR. STAUDAHER: Okay.
24 THE COURT: Okay.
25 MR. STAUDAHER: Go ahead.

1 THE COURT: There had been a question and then he was
2 going to refresh his recollection and then he -- Mr. Wright
3 found it and then we took our lunch break. So I believe
4 you're refreshing or attempting to refresh recollection at
5 this point?

6 MR. WRIGHT: Yes. Regarding CRNAs room between room
7 breaks, lunch --

8 MR. STAUDAHER: And the pages again? I'm sorry,
9 counsel.

10 MR. WRIGHT: Seventy-seven through 79.

11 BY MR. WRIGHT:

12 Q Read all the way through because it's
13 interspersed with other topics and read it to yourself. And
14 once again, the highlighting is my own.

15 THE COURT: And for the record, he's looking at his
16 own statement or somebody else's?

17 MR. WRIGHT: His own statement of March 3, 2010.

18 THE COURT: All right.

19 THE WITNESS: Okay.

20 BY MR. WRIGHT:

21 Q And where we had started on this is I had asked
22 you if on direct examination when asked about switching rooms
23 for bathroom breaks, you answered I think that happened, it
24 wouldn't be unusual. Okay?

25 A Okay.

1 Q Now, reading your grand jury -- refreshing your
2 recollection, do you believe that that did not happen?

3 A Well, I'm sorry that this is ambiguous and I
4 don't mean to be disingenuous here but it's hard for me to
5 remember whether or not CRNAs on every bathroom break switched
6 off with each other. And like I testified before, to my best
7 recollection and my memory of how it worked and I've testified
8 this way before, CRNA -- CRNAs tended to stay in their rooms.
9 Now when asked would it be possible, would you be surprised?
10 I answered yes, I'd be surprised. I remember on September
11 21st after Kevin Rubino, I left the -- the room and I went to
12 the medical side. So it's hard for me to know what happened
13 if there's any movement back and forth after I left.

14 Q Okay. Did you tell the grand jury, I knew CRNAs
15 stayed in one room. They didn't go back and forth unless
16 there was a lunch break?

17 A Yes, I did.

18 Q Okay. Were you asked, "Now you had said just a
19 moment ago about CRNA not going back and forth between the
20 rooms except for a lunch break or something like that.
21 Correct. Or I assume like a bathroom break or something along
22 those lines too." And did you answer, "Yeah, usually bathroom
23 breaks were rare. I mean they would be in and out quickly and
24 there wouldn't have to be a switch in the room." Correct?

25 A I would say that's accurate to the best of my

1 recollection.

2 Q Okay. And that -- that's because these are
3 ongoing procedures taking 10 minutes, 12 minutes, eight
4 minutes, 15 minutes, correct?

5 A Correct.

6 Q And there's five minutes in between, correct?

7 A What does that mean five minutes in between?

8 Q In between procedures. New patient rolling in.

9 A Right.

10 Q Okay.

11 A There could be some time for a break.

12 Q Right. I mean, in between patients is
13 approximately five minutes, correct?

14 A Correct.

15 Q Okay. And if someone needed to go to the
16 bathroom that's when you would go, correct?

17 A To the best of my recollection that sounds fair.

18 Q Okay. And I mean this is -- this was further
19 back -- closer to the time, correct? Your statement -- a
20 couple of years ago --

21 A Yes.

22 Q -- right? And then you said, "It would be rare
23 any bathroom breaks. And I mean they would be in and out
24 quickly and they wouldn't switch rooms." Right?

25 A Right.

1 Q And then you reiterated again, "And the only
2 time -- again, the only time I'm aware of them moving is when
3 the lunch breaks occurred." Correct?

4 A Correct.

5 Q And you were asked if you'd be surprised to
6 learn that there was an instance where they changed rooms and
7 you said, "I'm surprised. For being there so many days I have
8 never seen that happen, they stayed in one room and they
9 switched at lunch," correct?

10 A That's what I said, yes.

11 Q Okay. But here on direct you answered I think
12 it happened, it wouldn't be unusual.

13 A So, again, I apologize for the ambiguity. I'm
14 trying to remember and think back on a day-to-day basis
15 whether CRNAs during bathroom breaks switched. And as I think
16 back on that, I don't remember if they switched --

17 Q Okay.

18 A -- I -- I -- that testimony I gave is what I
19 gave and that's how I remember it.

20 Q And would that -- that was how long ago? Three
21 years ago? Your memory would have been better then, correct?

22 A Perhaps.

23 Q Don't you think so? I mean, don't you think
24 when we're going back eight years it's tougher than if you're
25 going back four years?

1 A Perhaps, I --

2 Q You don't know?

3 A -- I have a pretty good memory.

4 Q Okay. So your memory was pretty good at the
5 grand jury on it, right?

6 A Okay, yes.

7 Q And even when the prosecutor challenged you on
8 it you stuck with it and said you had never ever seen that,
9 correct?

10 A That's what I said.

11 Q A thing I forgot to address when we were talking
12 about the quality care and safety at the clinic. Okay?

13 A Okay.

14 Q The -- first of all, your own quality care,
15 meaning performing procedures. Okay?

16 A Okay.

17 Q The -- how many perforations have you ever had?

18 A To date?

19 Q Yes.

20 A Two.

21 Q Okay. Out of how many procedures?

22 A I would say about 40,000 colonoscopies.

23 Q Okay. And two is not good for the two people --
24 patients --

25 A Correct.

1 Q -- but two is a very superb record would you
2 say?

3 A Yes.

4 Q Okay. Because like a perforation we're talking
5 about an accidental what?

6 A A perforation is an accidental breach of the
7 colon. The colon's a tube. It's a breach of the colon so
8 that there's a hole in the colon that is a threat to the
9 patient's well-being and life if it's not identified and
10 addressed because you cannot have leakage of material into the
11 abdominal space without surgical correction.

12 Q Okay. And like to put it in perspective, you're
13 aware of the national averages for lack of a better word of
14 number of perforations per colonoscopy or something?

15 A Yes.

16 Q And what is it?

17 A Well, Medicare has done studies on this and
18 several years ago I saw a study in which Medicare reported
19 that on average their statistics indicated that for one out of
20 every thousand standard routine colonoscopies there was a
21 perforation and for one out of every 500 diagnostic, meaning
22 there was a reason to do the colonoscopy, bleeding, abdominal
23 pain, rather than just a check-up colonoscopy there was a --
24 there were perforations.

25 Q Okay. So one out of a thousand for diagnostic

1 colonoscopies?

2 A It was for routine screening colonoscopies.

3 Q Okay. And routine screening is the majority of
4 what you all did at the clinic?

5 A Yes.

6 Q Okay. And did -- are you aware that Dr. Desai
7 never had any perforations in his entire career?

8 A No, I was not aware of that.

9 Q Okay. Do you think he has?

10 A I think he may have. I think we may have talked
11 about it --

12 MR. STAUDAHER: Your Honor, may we approach please?

13 THE COURT: Sure.

14 (Off-record bench conference.)

15 BY MR. WRIGHT:

16 Q How about at the -- the clinic at the time you
17 were there, how many transfers out from the clinic like to the
18 hospital were required over all your years there?

19 A I remember very few. I can actually remember
20 two. It doesn't mean there were not more than two. I wasn't
21 there all day every day, but I remember two transfers to the
22 hospital. One was the patient who required protection of the
23 airway and the other was an asthma attack post procedure.

24 Q Now I believe when you were testifying on direct
25 regarding a meeting with Dr. Desai where the issue had come up

1 on 31 minutes and you had learned from your lawyer in the
2 Rexford case that the plaintiff's, the other lawyers were
3 asking for all of the billing records around -- anesthesia
4 records around the Rexford incident. Do you recall what I'm
5 focusing in on?

6 A Yes.

7 Q Okay. And so when you were asked -- and you
8 learned that from your -- your lawyer that hey, they're asking
9 about anesthesia records and times and then you went to Dr.
10 Desai, correct?

11 A Incorrect.

12 Q Okay.

13 A I did not learn about that request from my
14 attorneys; I learned about that request through Tonya Rushing
15 who told me that that request had come through.

16 Q Okay. Thank you. I misunderstood it. The --
17 but when you learned it, that they now were asking for the
18 records, you went and talked to Dr. Desai, correct?

19 A Yes.

20 Q To tell him they are now asking for the billing
21 records?

22 A Yes.

23 Q And I think on direct examination, tell me if
24 I'm wrong, but I think you said you walked in and said they're
25 asking about billing records and is there any problem with the

1 billing and Dr. Desai answered there is no billing fraud. Is
2 that what you testified to?

3 A Yes.

4 Q Okay. Is -- isn't it a fact that you went and
5 saw Dr. Desai and said they are asking questions about the
6 billing records regarding billing fraud, you using that word,
7 and he answered that there is no billing fraud?

8 A I don't remember it that way, sir.

9 Q Okay. Page 38 --

10 MR. STAUDAHER: Which -- which one?

11 MR. WRIGHT: Metro. Approach the witness?

12 THE COURT: You may.

13 BY MR. WRIGHT:

14 Q This one's all marked up, but I'm showing him
15 the top five or so lines, but read all you want.

16 A Okay.

17 Q Am I misreading that?

18 A No, but this is sort of a thought process that
19 -- as I read it, that my thought process was that this is
20 stated here.

21 Q Oh, okay. So I'm just going to read it. Okay?

22 A Okay.

23 Q And in the request apparently he asked also for
24 every anesthesia sheet. Are you talking about the request
25 that came in from the lawyers?

1 A Right.

2 Q Now, I'm reading again, "So I went back to
3 Desai's office and I said, 'You know there's this request, is
4 making this request sort of suggesting that there's a billing
5 fraud issue here?'"

6 A Again, as I read that, that's not -- this part
7 of it is not what I remember as saying. This is my thought
8 process related to that, this is not a full quote to my
9 recollection.

10 Q Okay. Well look, I'll tell you when the quotes
11 end, let me read it. I mean -- "You know there's this
12 request," blank, there's an intelligible word, right?

13 A Yes.

14 Q "Blank is making this request, sort of
15 suggesting that there's a billing fraud issue here. He's
16 looking, he wants every one of these records." Right?

17 A I see that.

18 Q Okay. Then Desai said, "There's no billing
19 fraud." Correct?

20 A I see that as you -- as you pointed out to me.

21 Q Okay. What am I reading?

22 A I'm just -- I'm just saying to you that it's --
23 that what looks to be a quote of mine is more -- I'm just
24 extemporaneously talking about what I was thinking here. I
25 don't remember saying that he's looking for fraud.

1 Q But that -- that's what you said then, correct?

2 A Again, I can't remember if I said those words to
3 him. I'm not sure that's my --

4 Q Well, it's a transcript.

5 A I understand that.

6 Q This isn't a report. I mean, do you think
7 there's a transcription error?

8 A I'm thinking that when I -- when it says here is
9 making this request sort of suggesting there's a billing fraud
10 issue here. That's my thought process talking to the person
11 interviewing me. This is not my kind of -- my kind of words
12 that I would be using. I don't really speak like that, sort
13 of suggesting, it's my thought process.

14 Q Okay. On that -- going back to your direct --
15 direct examination on the endoscope purchase. Okay? Recall
16 that?

17 A Endoscope purchase?

18 Q The endoscope purchase. Maybe I have the words
19 wrong. I'm talking about the time they got something new at
20 UMC and you thought --

21 A Oh, the endospot.

22 Q Endospot, I'm sorry. The endospot purchase.
23 That was a new piece of equipment and you talked -- or -- was
24 it you personally or the other physicians talked to Dr. Desai?

25 A Well, I don't remember if I spoke to Dr. Desai

1 directly about it. I may have spoken to the, you know, the
2 nurse manager about purchasing this.

3 Q Okay. But it was new equipment, beneficial to
4 the practice?

5 A New product.

6 Q Okay. And you and others said we ought to get
7 that?

8 A Yes.

9 Q Answer came back no, right?

10 A As I recall it.

11 Q Okay. Other physicians said I'll buy it myself,
12 right?

13 A Yes, Dr. Faris.

14 Q Okay. And the clinic went ahead and then bought
15 it, correct?

16 A Yes.

17 Q He didn't have to buy it himself and the clinic
18 got it?

19 A I think that's correct.

20 Q I want to go to this Stacy -- patient Stacy
21 Hutchinson and you being the boss issue. Okay?

22 A Sure.

23 Q You're familiar with that issue, correct?

24 A Yes.

25 Q Okay. And Stacy Hutchinson is -- was a patient

1 who was treated on September 21st, correct?

2 A Yes.

3 Q Okay. And she had come in to the clinic to see
4 -- for a consultation with Dr. Desai, correct?

5 A Are you talking about the medical clinic or the
6 endoscopy side?

7 Q I think the medical side.

8 A After the --

9 Q After the procedure.

10 A After the procedure, yes.

11 Q Okay. I mean this was -- she had a procedure
12 done and I don't -- it's all of record. On September 21st she
13 had a procedure done.

14 A That's correct.

15 Q Okay. And then she came down with -- got
16 hepatitis C, correct?

17 A Yes.

18 Q Okay. And when she is coming in to see Dr.
19 Desai she's -- has hepatitis C, right?

20 A Yes.

21 Q Okay. And she had blood tests and everything
22 already showing it, correct?

23 A Yes.

24 Q Okay. And yet this is before the CDC knocks on
25 the door?

1 A I don't think it was before. I think it was
2 after the CDC knocked on the door.

3 Q Okay. I'm -- I'm not sure either. Was it
4 before or after?

5 A It was -- to my recollection it was afterwards.

6 Q Okay. And so she comes in and she has hepatitis
7 C, right?

8 A Yes.

9 Q Okay. And she's -- she's seeing Dr. Desai,
10 right?

11 A Yes.

12 Q And then you see her, right?

13 A Yes.

14 Q And then if I followed this right, you were then
15 asked are you Dr. Desai's boss?

16 A No, that's not how it happened.

17 Q Okay. I know it's not how it's happened, I'm
18 going over your direct examination.

19 A Okay, go ahead.

20 Q I thought the impression was left, you're not
21 Dr. Desai's boss and you were asked, did Dr. Desai just pass
22 her off to you and you answered yes.

23 A Okay.

24 Q Okay. And is that what happened? He just
25 simply passed her off to you?

1 A No, he asked me to see her. He asked me to come
2 into the room and talk to her and help manage this problem.

3 Q Okay. It wasn't a just passing her off,
4 correct?

5 A No -- no, if -- that's a pejorative phrase. It
6 was he asked me --

7 Q That was the question that was asked --

8 A Right, so --

9 Q -- and it was asked by Mr. Staudaher and --

10 A -- I understand.

11 Q -- you answered yes.

12 A I understand.

13 Q And it's not a fair characterization, is it?

14 MR. STAUDAHER: Objection. Argumentative and
15 mischaracterizes his current testimony.

16 THE COURT: Well, he's talking about the past
17 testimony so you can answer the question, Doctor.

18 BY MR. WRIGHT:

19 Q Is that a fair characterization of what
20 transpired?

21 A No.

22 Q Okay. Now, what -- you tell me, she's in there,
23 she is crying, correct?

24 A Yes.

25 Q She has Hepatitis c, acute, correct?

1 A Correct.

2 Q And Dr. Desai goes to the person, as he has done
3 in the past, for most knowledge about care, correct?

4 A Yes.

5 Q Asks you to come in and treat her, consult her,
6 correct?

7 A Correct.

8 Q And you did that?

9 A Yes, I did.

10 Q And you -- you looked at all of her, what you
11 look at, blood results, everything else?

12 A Blood results, yes.

13 Q Okay. And at that time you believed it -- her
14 tests were improving, correct?

15 A Yes.

16 Q Okay. And -- and I think you testified you told
17 her that it may well be that she is going to self-clear that
18 -- the virus and not have to go through treatments, correct?

19 A I did say that to her.

20 Q Okay. And you understand that Dr. Desai in the
21 exchange, in some way, referred to you as I'm going to get the
22 boss to assist you, correct?

23 A Now, I heard about that after the fact, some
24 other time in the future. I didn't hear it then and there.

25 Q I understand but that -- that was something that

1 you've been asked about, correct?

2 A Correct.

3 Q And when asked about it, you explained that that
4 was, in your opinion, a term of endearment and respect by Dr.
5 Desai to you because you are the boss of hepatitis C, for lack
6 of a better word. Am I characterizing it correctly?

7 A Yes, you are.

8 Q Okay. Now, Dr. Desai's cost cutting measures,
9 is it fair to say that he was extremely conscious of wasting
10 supplies, product, anything in the business?

11 A I think that's fair to say.

12 Q And if there's two things that he -- was his
13 oddity for lack of a better word, is that he didn't want waste
14 and he didn't want people standing around. Were you aware of
15 that?

16 A That's fair.

17 Q Okay. And if he came in, if you didn't have
18 anything to do, start polishing a scope or whatever you do,
19 because he's going to get mad if people are standing around,
20 right?

21 A Yes.

22 Q And in all of his -- using the KY Jelly. Okay?

23 A Sure.

24 Q Taking a little roller like you put on a
25 toothpaste tube and make sure it's empty before you throw it

1 out, skimping on KY Jelly, on complaining about gown changing,
2 your gowns, reuse of bite blocks, on those things did you ever
3 perceive those at any time as being a risk to any patient or
4 patient safety?

5 A No.

6 Q And you -- at times you would -- and the other
7 physicians would roll their eyes at his anti-waste campaigns;
8 is that fair to say?

9 A That's fair to say.

10 Q And things like reusing a hard plastic bite
11 block, that was put in the Medivator and sterilized, correct?

12 A Cleansed. I mean sterilization requires an
13 autoclave.

14 Q Okay. Disinfect -- a high level disinfectant?

15 A Correct.

16 Q Okay. And it -- and in your opinion those
17 things were unnecessary? Meaning, reuse and skimping on
18 gowns, bite blocks, chux being cut in half, no patient safety
19 issue ever on those?

20 A I agree with you.

21 Q And it -- I mean, I think you've said in reading
22 your testimony that it was embarrassing because you're the
23 biggest and best clinic, correct?

24 A Yes, I've said that.

25 Q And basically, this type of micromanaging is

1 going on for silly reasons.

2 A Did I use the word silly then --

3 Q I think so.

4 A -- okay.

5 Q I mean to you it was silly, correct?

6 A Yes.

7 Q You were asked on direct examination about a
8 partners -- or a physicians meeting in which the suggestion
9 was made to utilize saline in addition to propofol in the
10 sedation process. Do you recall that?

11 A Yes.

12 Q And if I understood your direct testimony
13 correctly, you stated that the purpose for doing this was so
14 there's a little tiny microscopic amount of propofol still
15 left in the heplock after the injection of the propofol and so
16 Dr. Desai was saying to get that little tiny, tiny bit left
17 and not waste it, you guys use saline.

18 A That's the way I understood it, yes.

19 Q Okay. And that's -- do you -- that's what you
20 testified to, correct?

21 A Correct.

22 Q You think that's a fair characterization of that
23 meeting and what the purpose of the saline was?

24 A Yes.

25 Q Metro report, 60 -- page 65 and 66. Read those

1 two pages to yourself.

2 MR. STAUDAHER: Is there a pending question that he's
3 asking to refresh on instead of just having him --

4 THE COURT: I think it's something relating to the
5 last --

6 MR. WRIGHT: I'm going to have him refresh his
7 recollection and then ask him again if he thinks it's a fair
8 characterization of what --

9 MR. STAUDAHER: Is that -- I just want to make sure
10 that's what we're talking about.

11 THE COURT: I understood that was where Mr. Wright
12 was going.

13 THE WITNESS: Okay.

14 BY MR. WRIGHT:

15 Q Do you still think your testimony on direct was
16 a fair characterization in that meeting?

17 A Yes, I do.

18 Q Okay. Do you -- what was the purpose of the
19 propofol? Pardon me. What was the purpose of the saline
20 flush?

21 A The purpose of the saline flush, as I understood
22 it, was to clear the -- any remaining amount of propofol in
23 that heplock into the circulation.

24 Q Okay. Did you state, "I remember this is
25 important. It wasn't that saline would be used in lieu of

1 propofol -- additional propofol, he had told us that Dr.
2 Nayvar had -- had given him an idea on how to make the
3 propofol circulate better in patients." Is that correct?

4 A Is that correct physiologically or is that what
5 I said? Is that what you're asking me?

6 Q Is that what you said?

7 A That's what I -- it's written there, yes.

8 Q Okay. And is -- and is that what happened at
9 the meeting?

10 A I don't remember.

11 Q Okay. You don't remember the meeting?

12 A I do remember the meeting.

13 Q We -- we were given -- I strike that. I -- "We
14 were giving through a heplack and Desai said the idea was that
15 after the propofol was given by the IV -- was given by the IV
16 push, that would be followed immediately by a flush of sterile
17 saline."

18 A Yes.

19 Q Correct?

20 A Yes.

21 Q "He said he mentioned this to us and he said you
22 know, don't grumble about it, don't -- don't disparage me
23 about it, it's -- I think it's a good idea that Nayvar gave me
24 to help the propofol circulate through." Correct?

25 A Correct.

1 Q And it wasn't being given like at the end or at
2 any point to -- in lieu of propofol, right?

3 A Correct.

4 Q It was being given -- propofol dose then saline
5 to increase the circulation of the propofol, correct?

6 A No. It was to clear the heplock of remaining
7 propofol --

8 Q Okay.

9 A -- because it doesn't make physiologic sense
10 that the circulation of that molecule, propofol, would be
11 enhanced by giving more saline behind it. Once it's in the
12 venous system it circulates as a part of cardiac function.

13 Q Okay, and is that --

14 THE COURT: All right. The jury needs a break. So
15 ladies and gentlemen, let's go ahead and just take a 10-minute
16 break, that will bring us to 2:15. And once again, I must
17 remind you of the admonition not to discuss the case or
18 anything relating to the case, not to read, watch, or listen
19 to any reports of or commentaries on the case, person, or
20 subject matter relating to the case and not to form or express
21 an opinion on the trial. Notepads in your chairs and follow
22 the bailiff through the rear door.

23 (Jury recessed at 2:03 p.m.)

24 THE COURT: All right. Well, we can all take a break
25 now too.

1 MS. WECKERLY: We -- just to let the Court know, we
2 have that witness at 9:30.

3 THE COURT: Oh, terrific. So we'll start at 9:30 on
4 Monday and apparently we found a judge to volunteer for next
5 week, maybe his trial went away. So we're good to have early
6 starts all next week.

7 (Court recessed at 2:04 p.m. until 2:11 p.m.)

8 (In the presence of the jury.)

9 THE COURT: All right. Court is now back in session.
10 And Mr. Wright, you may resume your
11 cross-examination.

12 BY MR. WRIGHT:

13 Q Okay. Go back on the saline flush of propofol.
14 Okay?

15 A Okay.

16 Q Were you asked, "Do you recall there --", pardon
17 me, "Do you recall there being a meeting of all of the doctors
18 when Desai actually made a presentation and discussed the use
19 of saline near the end of a procedure instead of giving
20 additional propofol?". That's the question. Okay?

21 A That's the question.

22 Q And then you answered, "I remember, this is
23 important. It wasn't that saline would be used in lieu of
24 additional propofol. He told us that Dr. Nayvar had given him
25 an idea on how to make the propofol circulate better in

1 patients. We were giving them through a heplock and Desai
2 said the idea was that after the propofol was given by IV push
3 that would be followed immediately by a flush of sterile
4 saline. He said he mentioned this to us and he said, 'You
5 know, don't grumble about it. Don't -- don't disparage me
6 about it. It's -- I think it's a good idea that Nayvar gave
7 me to help the propofol circulate through.'" That's -- that's
8 what you say thus far. Now, is all of that correct to your
9 understanding of what was said at the meeting?

10 A That's what I recall. But again, it's -- I'm
11 referring to the -- the material in the heplock, in the flush.

12 Q Okay. We're talking about a saline flush,
13 sterile saline being pushed into the veins, right, through the
14 heplock, ostensibly to make propofol circulate quicker into
15 the bloodstream, right?

16 A No.

17 Q No?

18 A No. We're talking about the use of a saline
19 flush to clear the remaining propofol from the heplock into
20 the circulation, not to improve the circulation of the
21 propofol that's already in the blood because it -- to me it
22 doesn't make physiologic sense. The --

23 Q I didn't -- go ahead, I'm sorry.

24 A -- the propofol, once it's in the circulation to
25 -- to my understanding, is not going to be aided to get to the

1 brain any faster.

2 Q Well, those were my words --

3 A Okay.

4 Q -- I don't even know where it goes.

5 A And that's where it goes.

6 Q Okay.

7 A To -- to -- through a saline flush. I hope I'm
8 being clear, I'm sorry if I'm not, but that's the way I
9 understand it.

10 Q Okay. I'll continue. And this would reduce the
11 amount of propofol needed. So we're talking about reducing
12 the amount because he was concerned that the nurse anesthetist
13 was giving 300 milligrams, 400 milligrams of propofol and it
14 was too much. Do you recall that?

15 A Yes.

16 Q So he said, "This would -- this is a way to a --
17 to give -- to use less propofol and then it -- I thought it
18 was silly and I thought it was unnecessary and I think a lot
19 of people rolled their eyes at that.". Right?

20 A I said that, yes.

21 Q Okay. "But then a couple weeks later he said,
22 yep, it's working, we're using less propofol.". Correct?

23 A Correct.

24 Q Okay. And then after a little more exchange you
25 went on and said, "So again, I want you to understand that it

1 wasn't that saline slush would be given at the end of the
2 procedure rather than giving more propofol, it was a flush
3 right afterwards."

4 A Correct.

5 Q Is that correct?

6 A Yes.

7 Q Now were -- did you ever attend another propofol
8 meeting with the partners or anyone?

9 A Not that I recall.

10 Q Okay. Do you -- do you recall any meeting where
11 multi-use of propofol was discussed and debated among the
12 physicians?

13 A I do not recall that.

14 Q Do you recall any meeting -- if someone were to
15 say there was a meeting and it was at the time the propofol
16 purchases were going from 20s to 50s, there was a meeting
17 called to discuss that?

18 A I actually don't remember personally that
19 meeting.

20 Q Okay. Show you what's been marked as Defense
21 D-1.

22 A Okay.

23 Q Do you recognize that?

24 A Yeah, the letter I wrote to Dr. Desai, a thank
25 you letter.

1 Q Okay. In March 6th, 2007?

2 A Okay.

3 MR. WRIGHT: Move it -- move for the admission.

4 THE COURT: Any objection?

5 MR. STAUDAHER: No objection.

6 THE COURT: All right. What is -- what's the number
7 or designation, it would be a letter.

8 MR. WRIGHT: D-1.

9 THE COURT: All right, D-1 is admitted.

10 MR. WRIGHT: First exhibit?

11 THE COURT: No, D -- or we're doing letters but Mr.
12 Lakeman's exhibits are letters and then the designation two to
13 indicate they were introduced by Mr. Lakeman and then Dr.
14 Desai's are letters and followed by the number one to indicate
15 that they were introduced by Dr. Desai.

16 (Defendant's Exhibit D1 admitted.)

17 MR. WRIGHT: Thank you.

18 BY MR. WRIGHT:

19 Q It's a letter to Dr. Desai from yourself
20 thanking him, correct?

21 A Yes.

22 Q Okay. And it says, "It meant a great deal to me
23 personally when you acknowledged my effort at endoscopy
24 center. I feel a great sense of relief with your solution,
25 which will allow me to continue performing at this level

1 safely and accurately. As always, I look forward to our
2 continued success together. With great appreciation and
3 gratitude I remain. Sincerely, Clifford Carrol." Correct?

4 A Correct.

5 Q Okay. And what -- what had transpired then that
6 he worked with you that you're talking about?

7 A Now, that's March, 2007 so I think I was writing
8 a letter to him thanking him for trying to figure out a way
9 for me to have my call covered so that I could be ready and
10 awake and alert every morning to do the procedures, the best I
11 recall.

12 Q Okay. I think you testified about that already
13 that he -- he -- when I was asking you about how hard the work
14 was --

15 A Yes.

16 Q -- whether you were content or not --

17 A Yes.

18 Q -- that he had arranged a -- a method by which
19 you could work -- get more sleep and more efficiently and do
20 your job?

21 A That's what I think I was writing him about.

22 Q Okay. Now, you have an immunity contract in
23 this case, correct?

24 A Yes, I have an immunity statement, immunity
25 protection.

1 Q Okay. Let me show you Exhibit E, proposed E-1.

2 A Okay.

3 Q Do you recognize that?

4 A Yes.

5 Q Is -- is that your Immunity Agreement?

6 A Well, this is a letter to my attorney outlining
7 the agreement. Whether this is the actual agreement or
8 there's another document, I'm not sure.

9 Q Okay. Well, I don't think there is. I'll ask
10 the -- I think this is the Immunity Agreement? Okay, Mr.
11 Staudaher acknowledged yes. It actually says if you agree to
12 all of it, sign it and return it --

13 A Okay.

14 Q -- okay; is that correct?

15 A Yes.

16 MR. WRIGHT: I move the admission of E-1.

17 THE COURT: Any objection?

18 MR. STAUDAHER: No, Your Honor.

19 THE COURT: All right. That will be admitted, E-1.

20 (Defendant's Exhibit E1 admitted.)

21 BY MR. WRIGHT:

22 Q Do you see that?

23 A Yes.

24 Q Okay. This is to your attorney, correct?

25 A Yes.

1 Q And February 22, 2010, "It's my understanding
2 your client, Clifford Carrol, M.D., desires to make a proffer
3 to the State, which will be useful in making an evaluation of
4 our position in this case." This letter sets forth the ground
5 rules for such a proffer, correct?

6 A Correct.

7 Q And this letter is from the District Attorney's
8 Office, correct?

9 A Yes.

10 Q That you were aware you were being investigated
11 at the time criminally?

12 A Yes.

13 Q "First, your client agrees to provide complete
14 and truthful information. This provision obliges your client
15 not only to provide truthful responses to any areas of
16 inquiry, but also to volunteer any and all information related
17 to the subject areas that are being explored." Correct?

18 A Yes.

19 Q You have to tell the truth, right?

20 A Yes.

21 Q And the next paragraph will be what the State
22 promises you. "The State will not use any statement made by
23 you or your client or other information provided by you or
24 your client during the proffer against your client in any
25 criminal case." Correct?

1 A Yes.

2 Q So essentially, you waive your Fifth Amendment
3 right, go in there, talk to them and ultimately testify
4 truthfully, right?

5 A Right.

6 Q And it cannot be used against you, correct?

7 A Correct.

8 Q Except "In any criminal case except for
9 cross-examination or impeachment, should your client ever
10 testify contrary to the information he provides during the
11 proffer." Now you understand that?

12 A Yes.

13 Q Okay. Because pursuant to this proffer you're
14 going to go in there and tell them what you know, right?

15 A Right.

16 Q And they're saying we won't use it against you
17 but we get to use it against you if you ever say anything
18 differently than what you tell us, correct?

19 A Yes.

20 Q Okay. And they can use in a prosecution for
21 perjury, right?

22 A Right.

23 Q Okay. So you don't have immunity for perjury
24 but they can use it in a prosecution for perjury where the
25 information that you give them may be used to prove your

1 client testified untruthfully or contrary to the information
2 provided in the proffer. Do you understand that?

3 A I think I do, yes.

4 Q Okay. That means you're going in, you're
5 telling them your story, and if you ever change it they get to
6 prosecute you for perjury for saying something differently.
7 Do you understand that?

8 A Yes.

9 Q The State -- and then there's an extra -- the
10 next paragraph deals with derivative use, that just means any
11 leads they get from you, from what you tell them they can't
12 use against you. Do you understand that?

13 A Yes.

14 Q "Then as the State discovers what your client
15 has to say and what he is willing to do for the State, our
16 unilateral evaluation of his position will be undertaken in
17 good faith." Do you understand that?

18 A Yes.

19 Q Okay. So under those rules they're saying bring
20 him in for a proffer and we'll not only see what he has to say
21 but we'll see what he's willing to do for us and then we'll
22 decide if we'll take him. Is that fair?

23 A Okay.

24 Q So you then, with this agreement, go talk to the
25 police, go to the grand jury, right?

1 A That's correct but it wasn't -- as far as I
2 remember I didn't -- I agreed to speak to the district
3 attorney at his invitation, not as a condition or after
4 signing this. This came afterwards.

5 Q You -- I'm misunderstanding what you're saying.
6 Let me -- you're -- the district attorney and -- secret notes.

7 THE COURT: It's not so secret because it's up on
8 there.

9 MR. WRIGHT: Thank you.

10 BY MR. WRIGHT:

11 Q The district attorney invited you in for a
12 proffer. Is that what you're telling me?

13 A Initially he invited me in for an interview.

14 Q Okay. Well, okay, an interview. Proffer's like
15 a legal term. He invited you in for an interview, correct?

16 A Yes.

17 Q And your lawyer Frank Cremen said, okay, we'll
18 do an interview but only with certain conditions, correct?

19 A You know, I don't remember exactly the time
20 line. I remember that my -- Frank Cremen said the district
21 attorney wishes to speak to you, would you be willing to speak
22 to him. I said I -- I answered yes, I would. And then he
23 arranged the meeting with the district attorney. I honestly
24 don't remember the time frame between that -- acceptance of
25 that invitation and this immunity statement.

1 Q Okay. Well, do you think you were interviewed
2 before you went in and sat down for an interview before the
3 immunity proffer agreement?

4 A I don't remember. I bet we can find out, but I
5 honestly don't remember.

6 MR. WRIGHT: Okay. Well, I'm -- I'm -- I'm quite
7 certain that this is his first interview after the proffer
8 agreement; is that correct?

9 MR. STAUDAHER: I believe so.

10 BY MR. WRIGHT:

11 Q I believe so also. The -- you -- you understood
12 that we -- we call this a Immunity Agreement?

13 A Okay.

14 Q Okay. And you understand that provision, the
15 last one I read about if you ever say anything differently
16 than what you tell us during the sit down, do you understand
17 that that's a lock in testimony provision?

18 A Well, I don't understand the term lock in
19 testimony.

20 Q Well, that means once you tell us something, if
21 you back up and say something different all bets are off and
22 we get to prosecute you for perjury.

23 MR. STAUDAHER: Actually, Your Honor, that's not
24 correct as far as what a proffer is concerned and maybe we
25 need to approach?

1 THE COURT: Well, sure.

2 (Off-record bench conference.)

3 THE COURT: All right. Mr. Wright, go ahead.

4 BY MR. WRIGHT:

5 Q Before you went and gave the interview, your
6 attorney met with the district attorney, correct?

7 A I don't believe he met personally with him
8 before I went in. I think there were conversations, but I may
9 be wrong on that I don't remember if he met personally with
10 him.

11 Q Okay. Well do you remember your lawyer wrote
12 you a letter and said he had --

13 MR. STAUDAHER: Objection. Hearsay, Your Honor, as
14 to his lawyer now talking to him, communication?

15 THE COURT: Yeah, I mean that's --

16 MR. WRIGHT: It's not privileged when I get a copy of
17 it in discovery.

18 MR. STAUDAHER: Well, it's hearsay.

19 THE COURT: Well, that's true. I mean --

20 MR. WRIGHT: It's a letter to him. I'll introduce
21 it.

22 THE COURT: Well, what's the -- okay. I'll see
23 counsel up here again.

24 (Off-record bench conference.)

25 THE COURT: Is there anyone who didn't hear the

1 conference at the bench? All right. Well, you know, I had
2 told Kenny that he should go over there and tell jokes or
3 something and I saw him do it at least once but he must have
4 run out of material. So -- all right, Mr. Wright go on.

5 BY MR. WRIGHT:

6 Q I'm going to show you the letter to yourself
7 from Mr. Cremen. Read it to yourself. Okay? We'll see if it
8 refreshes your recollection of when I'm asking you about did
9 Mr. Cremen tell you about a meeting with the district
10 attorney's office.

11 THE COURT: All right. And just so it's clear --

12 MR. WRIGHT: About speaking -- speaking -- about
13 speaking with the district attorney involved.

14 THE COURT: Okay. Just so it's clear, Mr. Wright, so
15 we don't get into any privileged communications and Dr.
16 Carrol, just so it's clear to you, Mr. Wright is only allowed
17 to ask you about what was actually -- the information conveyed
18 in the letter. Other conversations that you may have had with
19 Mr. Cremen are privileged and they're not subject to
20 questioning by Mr. Wright or the prosecutors or anyone else.

21 MR. STAUDAHER: And for the record, we'll object to
22 hearsay if it's actually getting into what was said other than
23 what his subjective belief was.

24 THE COURT: Right. The letter is only relevant as to
25 what the witness's subjective knowledge and belief were at the

1 time he made the proffer, not as to any -- the truth of any
2 communications as to what Mr. Cremen may have conveyed.

3 BY MR. WRIGHT:

4 Q I think all those others are just fax
5 transmissions.

6 A Right, they're duplicates.

7 Q Right.

8 THE COURT: So just the first two pages.

9 BY MR. WRIGHT:

10 Q Yeah, the first two pages of the letter, the
11 rest is just a trail. And just so you understand, sir, that
12 was produced in discovery I mean is why -- I wouldn't want you
13 to think Mr. Cremen handed me his letter or something.

14 A Okay. I've read it.

15 Q Okay. Did -- did -- did you understand -- does
16 that refresh your recollection about the chronology?

17 A Yes.

18 Q Okay. Did you understand that Mr. Cremen had --
19 your lawyer, had spoken with the district attorney's office
20 and learned information that they wanted to question you about
21 and accusations against you?

22 A Yes.

23 Q Okay. So that you had advance notice to prepare
24 for what you can -- what you were willing to do for the State,
25 correct?

1 MR. STAUDAHER: Objection to the -- the form of the
2 question, Your Honor.

3 THE COURT: Well, overruled. I mean, it -- he can --
4 if he can answer. He can agree with that statement or
5 question or not agree with it.

6 THE WITNESS: I just don't understand what you mean,
7 sir, about what I was willing to do for the State.

8 BY MR. WRIGHT:

9 Q Well, I was reading from your proffer agreement.
10 You entered into this and it said, "They will see what he is
11 willing to do for the State."

12 A I understand that that's in the proffer.

13 Q Okay. And then in preparation for you going in
14 to talk to them and show them what you are willing to do, they
15 -- prosecutors disclosed to your attorney to talk with you
16 certain subjects that they were interested in, correct?

17 A I agree that this is an outline of certain
18 subjects of interest.

19 Q Right. And so you knew and had plenty of time
20 to talk to Mr. Cremen about this, correct?

21 A I have -- I knew about this letter and I spoke
22 to Mr. Cremen about it, yes.

23 Q Okay. And about the subjects of interest?

24 A Yes.

25 Q Okay. So that when you went in you were

1 prepared to be interviewed, correct?

2 A Well, when I went in I did not know what would
3 be asked entirely. I had this letter, I sat for four and a
4 half or five hours it took and answered the questions.

5 Q Okay.

6 A Okay?

7 Q Yeah. I marked -- I'd offer that letter, a
8 clean copy.

9 THE COURT: All right. Well, the Court will reserve
10 ruling on that and that would be, what, next in order? Is
11 that E or F? That would be next in order is F-1.

12 MR. WRIGHT: Thank you. I think that wraps it up for
13 me, sir.

14 THE WITNESS: Thank you.

15 THE COURT: All right. Let's move into redirect.

16 REDIRECT EXAMINATION

17 BY MR. STAUDAHNER:

18 Q I'm going to go ahead and start off by going
19 back to -- remember when Mr. Wright had you up there with this
20 whole thing about the saline flushes. Do you recall that?

21 A Yes.

22 Q And had you actually read a set -- he actually
23 read a section of that transcript. Do you recall that?

24 A Yes.

25 Q And it was all about the whole issue, the

1 circulation thing?

2 A Yes.

3 Q You went I think over and over again saying that
4 it was related to the actual part -- little bit that was in
5 the heplock, the needle -- or that catheter part in the
6 heplock, that that would get flushed into the patient and that
7 that would be what would be essentially reducing the propofol?

8 A Correct.

9 Q And that's what Dr. Desai said to you?

10 A As I recall, yes.

11 MR. STAUDAHER: May I approach, Your Honor?

12 THE COURT: You may.

13 BY MR. STAUDAHER:

14 Q Same page, 65, just below the area that counsel
15 read into the record about that very issue. Would you read
16 those next couple of lines?

17 A Can you point out where you'd like me to start?

18 Q Midway down, those lines.

19 A Read it to myself?

20 Q Yes, just yourself.

21 A Yes.

22 Q In fact, isn't it true that you basically said
23 exactly your explanation here in court just following that
24 paragraph that Mr. Wright read?

25 A Yes, it is.

1 Q And it was what you were referring to
2 specifically, at the time, during the exact interview, that it
3 was that little bit inside the heplock that was being flushed
4 in?

5 A Correct.

6 Q You also were asked some questions about -- in
7 part of that, one of the reasons why that Dr. Desai wanted to
8 have that sort of plan implemented was because the CRNAs were
9 giving 300 to 400 milligrams of propofol at a time or for a
10 patient and that that was too much, his words?

11 A That's how I recall it.

12 Q And now you've been -- you -- I think you've
13 even said you've done 40,000 plus colonoscopies?

14 A Best as I can recall, yes.

15 Q Did you do a lot of those when you were working
16 at the endoscopy center?

17 A Yes.

18 Q Did you ever know the CRNAs, during the time
19 that you worked with CRNAs, to give so much propofol that it
20 caused a problem? Meaning that they gave too much propofol
21 and the procedure's done and the patient's asleep for extended
22 periods of time?

23 A Not that I recall.

24 Q In fact, you said it was a short acting type
25 drug, correct?

1 A Correct.

2 Q Don't give it if a patient wakes up?

3 A Right.

4 Q Was it your impression that in all the
5 procedures you did that there was some problem with the CRNAs
6 giving too much propofol?

7 A No.

8 Q But that's what he said the reason for this
9 whole process was?

10 A As I recall, yes.

11 Q Now, you were asked some questions also with the
12 -- well, let me go back to the beginning. You were asked some
13 questions about how much you made and -- on cross-examination.
14 Do you recall that?

15 A Yes.

16 Q And that you participated, I guess, in CRNA
17 fund, things like that?

18 A Right.

19 Q You were asked some questions related to some of
20 the other doctors, their pay. Did you know how much anybody
21 else made?

22 A No. I -- I knew that fundamentally if I
23 received a check for X amount of dollars as a owner of one
24 share, that everybody else received that same distribution as
25 well as me but I didn't know how anybody else got any extra

1 bonuses or any extra pay for work or for -- for working hard,
2 I didn't know that.

3 Q As far as the CRNA account, did you have any
4 idea even how much money was in it?

5 A No.

6 Q Or how it was distributed?

7 A No.

8 Q You would just get bonuses from it and from
9 other sources?

10 A And from other sources, yes.

11 Q Who knew the information about what everybody
12 made?

13 A I didn't. I can only assume so I -- I don't
14 really -- I can only assume who knew that.

15 Q Was there ever any sort of policy in place that
16 look, we don't talk about salaries or anything like that in
17 the group? Salaries or bonuses or how much everybody makes?

18 A Well, it was sort of understood. I don't know
19 if there was a written policy like that, I never saw such a
20 thing, but it was understood that that was at the discretion
21 of the -- of the managing partner.

22 Q And you were not that person?

23 A Right.

24 Q Now, you -- you were asked a couple of questions
25 about Vishvinder Sharma that he took at some point after the

1 discussion of Dr. Desai possibly retiring and was voted as
2 possibly the successor --

3 A Yes.

4 Q -- are you with me? That he took over some
5 role? Some management role or at least in name.

6 A In name he became a co-manager.

7 Q What did he do?

8 A The answer's I don't know.

9 Q Did you ever see him assert himself making
10 decisions and -- and the like?

11 A No.

12 Q Now, you said that throughout the time that you
13 were working there, that you were -- you felt you were working
14 really hard?

15 A Yes.

16 Q Did you ever feel that you were working so hard
17 that you couldn't continue at the same pace?

18 A Yes.

19 Q And that's you as the doctor doing procedures,
20 correct?

21 A Right.

22 Q What about the staff? Did the staff work
23 equally hard and try to turn over the room -- and get the
24 rooms and get the patients in there and being prepared so you
25 could do your procedure?

1 A Well, remember that when I told -- referred to
2 that, I referred to a -- the global situation for me. Doing
3 many, many procedures every day, then being on call, you know,
4 the staff wasn't on call after hours, weekends, nighttime
5 call. So I'm talking about the entire picture. But the
6 answer is everybody worked hard and -- in the endoscopy and on
7 the medical side.

8 Q Do you think it was difficult to do the numbers
9 of patients every day that you guys were doing it?

10 A I think it was difficult, yes.

11 Q Do you think that it was -- I mean, the very
12 next day after you kind of take over, what is the very first
13 thing you do?

14 A I reduce and limit the number of endoscopy
15 procedures.

16 Q Did you think that that was significant enough
17 that that would be your first act as kind of person in charge?

18 A Yes.

19 Q Does that not just reflect on the stress on you
20 but on the staff as well?

21 A Yes, sir.

22 Q You mentioned a hike that you were on and Dr.
23 Desai called you. Do you recall that?

24 A Yes.

25 Q What was that about?

1 A Well, in the -- I believe it was July or June of
2 2007, in the summer while I was on a hike, Dr. Desai called me
3 to tell me that his cardiologist was concerned about his
4 health and that his cardiologist had recommended that he not
5 do as much work, as many cases and could I step in and do
6 procedures on a daily basis. At that time I was doing it
7 maybe twice or three times per week.

8 Q And he wanted you to do it every day?

9 A He wanted me to do endoscopy Monday through
10 Friday in the morning.

11 Q Well, what did you tell him?

12 A I told him that I think I could do it but I
13 can't do it if I have to be on call as well and I need some
14 help to figure out how to not take call at night and be up and
15 tired and come in to do cases. And he said let me take care
16 of it.

17 Q So what happened?

18 A I think what we -- I began to pay other people
19 to take my call and Dr. Desai agreed to reimburse me for that
20 either from his own funds or from the funds of the center and
21 the practice.

22 Q Did that mean that you were then -- since you
23 were working, doing all the procedures essentially or would
24 be, that you then took over the management portion of the
25 practice in any way?

1 A No.

2 Q So it was basically you were due to work but not
3 manage?

4 A Correct.

5 Q And you had -- is it fair to say that you then
6 -- did you actually do that, pay others to take your call so
7 you could do all the procedures?

8 A Yes. I paid others to take my call so that when
9 I came in every morning I was fresh.

10 Q Okay. So you come in every morning and you're
11 fresh, you're not taking call because you're paying people to
12 do it, right?

13 A Correct.

14 Q And whether Desai reimburses you or not, at
15 least that's the plan?

16 A Right.

17 Q So now you're -- you're like the staff, you're
18 not taking call at night, you're there every day doing
19 procedure, after procedure, after procedure, day in and day
20 out; is that fair?

21 A That's fair except I'm also -- I'm still taking
22 weekend call.

23 Q Not during the week though?

24 A During the week.

25 Q Were you exhausted by the time the weekend got

1 around?

2 A Pretty tired but I still did my -- my
3 responsibility.

4 Q Now you mentioned in some questions regarding
5 Dr. Yee and the anesthesia. Do you remember that?

6 A Yes.

7 Q As Mr. Wright said, that he would -- that Dr.
8 Yee was the go-to guy for anesthesia questions and problems?

9 A I remember that, yes.

10 Q Where did that come from?

11 A Well, I remember back in the early 2000s that
12 when there were questions and issues that Dr. Yee would be
13 called.

14 Q Hold it. When was this?

15 A In the 2000s, early 2000s.

16 Q So is this before the CRNAs come on board?

17 A No, after.

18 Q Afterwards?

19 A Afterwards, yes.

20 Q So initially the CRNAs are hired at I think you
21 said 2000 --

22 A 2000, 2001ish.

23 Q And that Dr. Yee -- you said you never saw him
24 in the facility ever?

25 A Right.

1 Q So what -- how did you even know that he was the
2 one that was being contacted if there was anybody being
3 contacted?

4 A I just -- I -- I know that -- I would hear Dr.
5 Desai talk about calling him or hear Dr. Desai talk about his
6 name.

7 Q Okay. So Dr. -- this information came from Dr.
8 Desai?

9 A As best as I remember, yes.

10 Q So you didn't have a conversation with Dr. Yee
11 about any consultation? You didn't call him up and ask him
12 questions or anything else?

13 A No.

14 Q So Dr. Desai is telling you that Dr. Yee is the
15 one who is filling the role of the co-supervising anesthesia
16 person?

17 A Well, remember that there's -- I never heard the
18 phrase co-supervising. I just heard that Dr. Yee was the
19 person that was the person he asked questions to and
20 consulted.

21 Q State's Exhibit 106, section marked number nine,
22 anesthesia services. You were asked some questions about this
23 as well, were you not?

24 A Yes.

25 Q Have you seen this document before you were

1 shown it in Court?

2 A Yes.

3 Q Was it during the time that you were practicing
4 at the clinic?

5 A No.

6 Q When was that?

7 A When did I first see this?

8 Q Yes.

9 A Sometime after the events occurred in 2008.

10 Q Okay. So while you were practicing you never
11 saw a policy and procedure manual for the staff and how to
12 clean things and how anesthesia was done, anything like that?

13 A No, I never looked through it.

14 Q Why was that?

15 A I just never thought that I needed to or thought
16 that I should.

17 Q And you saw the things that are listed in here,
18 correct?

19 A Yes.

20 Q And it's referring to adequate supervision of
21 anesthesia services provided by the organization is the
22 responsibility of one or more qualified physicians?

23 A Correct.

24 Q Who are approved and have privileges granted by
25 the governing body.

1 A Correct.

2 Q The governing body to you was what?

3 A Well, remember, like I just told you, I had
4 never seen this before until afterwards and now I understand
5 the governing body to be those people who are -- who are
6 responsible for decisions for the endoscopy center.

7 Q People that were responsible for decisions or a
8 person?

9 A People.

10 MR. SANTACROCE: Objection. Asked and answered.
11 Leading.

12 THE COURT: Overruled.

13 BY MR. STAUDAHER:

14 Q Well, did you not say a moment ago because I
15 asked you about Vishvinder Sharma and --

16 A Yes.

17 Q -- I asked you about you --

18 A Yes.

19 Q -- and I asked you about the other doctors. Did
20 you say that anybody else had any -- any say so in how the
21 practice was run and decisions that were being made?

22 A Right. I answered that that no, we didn't.

23 Q So who was the one who had the responsibility
24 for making decisions?

25 A Dr. Desai had that responsibility.

1 Q So essentially was he the governing body then?

2 A See, the answer is I don't know. The governing
3 body actually has a list of names on it.

4 Q Okay. Were you ever -- maybe that's a -- a poor
5 characterization. Let's step back for a second. The
6 governing body, who did you believe was part of it?

7 A Well, I did -- I believed that Dr. Desai, Jeff
8 Refuge and Katie Maley were part of it.

9 Q So some nurses were part of the governing body?

10 A Yes, nurse managers.

11 Q Do you think that they had say so in how the
12 practice was run? I mean nurses?

13 A Well, I don't think they had say so, you know, I
14 think that they -- if they had concerns they would raise them.
15 If they had issues.

16 Q So you don't think they were contributors then?

17 A Yes.

18 Q Okay. Because you as a managing partner, almost
19 second in command, didn't have any --

20 A Remember, I was never a managing partner.

21 Q I'm sorry. Did I say that?

22 A Yes.

23 Q I misspoke. You as one of the partners, and I'm
24 talking about the partners who share -- who get the shares and
25 so forth, right? The money that's divided up.

1 A Correct.

2 Q Because there were employee physicians and there
3 were partner physicians, right?

4 A Right.

5 Q So as one of the partner physicians, you didn't
6 even have any kind of real control over the practice?

7 A No official control.

8 Q Unofficial control?

9 A No.

10 Q Now under the next section here, and I know we
11 got into this thing, it says one and there's another one, I
12 don't know if that's a typo or a continuation or what, but
13 under the first one it says, The attending physician will
14 provide on-site and continuous supervision of the Certified
15 Registered Nurse Anesthetist." Do you see that?

16 A Yes.

17 Q Now, the attending physician was who?

18 A The attending physician refers to what it says
19 in B, one or more qualified physicians who are approved and
20 have the privileges granted. That's how I understand this.

21 Q Okay. Now, who were the physicians who fell
22 into that category?

23 A Those physicians who were on the supervisory
24 agreement.

25 Q Okay. So the supervisory agreement would it

1 have had Dr. Desai and Vishvinder Sharma or just Dr. Desai?
2 Would those be the people you're talking about?

3 A Yes.

4 Q Because we have a couple of different ones.

5 A Correct.

6 Q And you've seen those at some point?

7 A I did see those.

8 Q So the attending anesthesiologist would provide
9 on-site and continuous supervision. It was Dr. Desai or
10 Vishvinder -- well, Vishvinder Sharma didn't even work at the
11 Shadow Lane facility almost at all, did he?

12 A Well, he did. He -- not as much as others but
13 he did procedures there. He had an assigned day that he did
14 procedures there.

15 Q Okay. But it was -- was it a day a week, was it
16 less than a day a week, what was --

17 A I think it was one or two days a week.

18 Q Okay. So he's there. When he's there he would
19 be the guy in charge, or the guy responsible for these CRNAs?
20 Well, at least according to this agreement.

21 A Well, according to this agreement, he's in
22 charge at all times.

23 Q Okay. And Dr. Desai clearly is one --

24 A Yes.

25 Q -- right? Now, when it says provide on-site and

1 continuous supervision, were there times when both Dr. Sharma
2 and Dr. Desai were not on-site?

3 A Yes.

4 Q Based on the policies and procedures of the
5 clinic, that would be something that wasn't happening,
6 correct?

7 A Correct.

8 Q That they weren't on-site and doing continuous
9 supervision?

10 A That's right.

11 Q So was there ever any discussion about what
12 would happen in the situation where both of those individuals
13 would not be there?

14 A No.

15 Q Did you ever think about it?

16 A No, because like -- like I told you before, this
17 piece of the policy book came to my attention in 2008 after
18 the events unfolded. I had never seen this.

19 Q I mean, it wasn't that it wasn't available to
20 you, you just never looked at it; is that right?

21 A I never looked at it nor was I ever counseled or
22 informed of this -- of this supervisory or this part of the
23 document.

24 Q Okay. Because that's what I want to go back to
25 then because you were asked about whether or not Dr. Yee was

1 the go-to guy.

2 A Right.

3 Q And you said that that information came from Dr.
4 Desai?

5 A Yes.

6 Q Was that at a partners meeting, in passing, I
7 mean how did this subject even come up?

8 A Sort of in passing. Just as we were developing
9 the anesthesia part of the practice as nurse anesthetists, Dr.
10 Carrol -- or Dr. Desai and Dr. Yee had -- they had a
11 relationship, they had conversations.

12 Q Well, at least that's something Dr. Desai is
13 telling you?

14 A Right.

15 Q Because you never met with Dr. Yee, never saw
16 him there?

17 A I never saw him there. Dr. Yee and I did cases
18 together at the hospital but I don't recall seeing him at our
19 center.

20 Q And when you saw him in the hospital, did you
21 ever have any discussions about this, hey, I understand you're
22 coming over and you're going to be supervising our CRNAs?

23 A Never.

24 Q From Dr. Desai then, you understood this to be
25 an informal verbal type agreement?

1 A That's what I understood, yes.

2 Q I'm sorry, I didn't mean to interrupt you. You
3 said that you independently at one point looked up the
4 requirements for CRNAs in the State of Nevada.

5 A Yes.

6 Q You actually looked them up and researched it
7 enough that I think you said you made a presentation to Valley
8 Hospital?

9 A Yes.

10 Q Which was rejected, they wouldn't use them,
11 correct? You said that -- that according to the rules, there
12 must be a supervising doctor but it did not have to be an
13 anesthesiologist.

14 A That's correct.

15 Q Now, according to this policy, this written
16 policy that you saw I know afterward, it looks as though
17 there's some sort of supervision, correct?

18 A Correct.

19 Q But if Dr. Yee is not present or -- or a like
20 person, and Dr. Sharma and Dr. Desai are not present because
21 they're physically not there, was that requirement being met?
22 Because you certainly weren't falling into that role, right?

23 A Right. So the answer is the way you just
24 outlined it, that requirement was not being met.

25 Q Do you know why they have a requirement for that

1 at the -- in doing all this research that you did?

2 A Yes.

3 Q Why is that?

4 A Because in the -- in the State of Nevada, but
5 not in every state, nurse anesthetists can or may not,
6 according to individual states, practice independently without
7 a supervising physician. In Nevada, Nevada continued and did
8 not opt out of the Medicare rule, which allowed a state to opt
9 out and let a nurse anesthetist practice without a supervising
10 physician, independently. So in the State of Nevada a nurse
11 anesthetist, in order to practice, needs to be supervised but
12 it doesn't -- it doesn't mean it has to be an
13 anesthesiologist. It has to be a physician, a surgeon or a, I
14 believe, a podiatrist or dentist. We'd have to look it up but
15 it doesn't have to be an anesthesiologist.

16 Q Well, fair. I mean, that's what you've said and
17 you did the research on it, correct?

18 A Yes, yes.

19 Q And I don't think anybody's disputing that.

20 A Okay.

21 Q The issue is that Desai and possibly Sharma are
22 not present, Yee's clearly not there, you never saw him.

23 A Right.

24 Q The only doctor in the facility that's -- like
25 in the morning when the -- you said you started alone would be

1 you?

2 A Yes.

3 Q Or a physician in your -- in your place,

4 correct?

5 A Correct.

6 Q So the only doctor in the whole facility

7 wouldn't even know that they were supposed to be supervising

8 the CRNAs?

9 A Well, remember, that -- you heard how I

10 interpret this.

11 Q Yes.

12 A But the answer to your question is the only

13 doctor in the facility, say me, personally, I had no knowledge

14 of this agreement or this statement or this policy statement.

15 Q Sorry. Was there ever any discussion at any

16 doctors meeting about this issue?

17 A Not that I recall.

18 Q To your knowledge, was there any discussions

19 with Dr. Desai and any of the other doctors at any time about

20 this issue?

21 A Not that I remember.

22 Q And you didn't know until you saw this post

23 event that you were even potentially the person who would be

24 considered an attending physician?

25 A Correct.

1 Q Now, you said that this thing that went on with
2 Valley Hospital, I think counsel actually asked you, brought
3 up the thing that there was a turf war between the CRNAs and
4 the anesthesiologists, correct?

5 A Correct.

6 Q And that the -- the issue proffer -- or the
7 reason proffered to you for not using the CRNAs was it was not
8 safe for patients to just use a CRNA without an
9 anesthesiologist associated with them, correct?

10 A Correct.

11 Q So the hospital felt it was not safe to do it in
12 that manner?

13 A Right.

14 Q Yet you would acknowledge, based on -- and I can
15 show you even the day in question, you've looked at that
16 incident day with all the names on them, correct?

17 A Correct.

18 Q In the afternoon when Dr. Desai isn't there or
19 in the morning when he's not there, depending on which day
20 you're looking at, I mean, Sharma's clearly not there, right?

21 A Correct.

22 Q That wouldn't fall into either category of
23 something that would be allowed? Either the State
24 requirements or this, your own policies and procedures.

25 MR. WRIGHT: That's an absolutely false statement of

1 the law, Your Honor.

2 MR. STAUDAHER: It's not a false statement of the
3 law.

4 THE COURT: I mean, that -- you need to rephrase the
5 -- you need to rephrase the question.

6 BY MR. STAUDAHER:

7 Q Dr. Desai is not present, you or another doctor
8 present and just the CRNA, you with me?

9 A Start again.

10 Q Dr. Desai is not present.

11 A Okay.

12 Q Other doctors are present, maybe even you,
13 you're not doing any supervising of these -- of these CRNAs,
14 correct?

15 A Correct.

16 Q You talked about the charge -- remember you were
17 asked questions about the charging of -- for anesthesiologists
18 and you were -- you gave the whole thing -- or it was given to
19 you the -- the facility charge, and the doctor charge, and the
20 anesthesia charge, right?

21 A Correct.

22 Q So you were -- you were familiar that those
23 kinds of charges were going out to the patients?

24 A Yes.

25 Q So you knew that the facility was charging for

1 anesthesia services provided by the CRNAs?

2 A Yes.

3 Q Now counsel asked you about capitation and about
4 flat fees and all that. Did you know how much was being
5 charged for each procedure for a CRNA?

6 A No. I understood that -- I believed that it was
7 always a fee. I believed it was \$90. I remember hearing that
8 figure as our charge for anesthesia.

9 Q Where did you hear that?

10 A I don't remember, but I heard that it was \$90.
11 I remember that one of the -- one of the insurance companies,
12 one of the major insurance companies had come to that
13 agreement with us and that was \$90. So I believe it is
14 always --

15 Q Did Dr. Desai ever talk about that issue to you?

16 A I don't remember him talking to me personally
17 about it.

18 Q Was it brought up during a doctors meeting at
19 any time?

20 A No.

21 Q But you're --

22 THE COURT: Let me --

23 MR. STAUDAHER: Go ahead. I'm sorry.

24 THE COURT: Oh, I'm sorry. I was going to say maybe
25 we should take our -- our break because we'll have to take

1 another one at the end of the day.

2 MR. STAUDAHER: That's fine, Your Honor. We can do
3 that.

4 THE COURT: So ladies and gentlemen, just a real
5 quick break, no more than 10 minutes, if you can try to keep
6 it to that. And once again, you're reminded of the admonition
7 not to discuss the case or anything relating to the case with
8 each other or read, watch or listen to any reports of or
9 commentaries on the case, person or subject matter relating to
10 the case and please don't form or express an opinion on the
11 trial. Notepads in your chairs and follow the bailiff to the
12 rear door.

13 (Jury recessed at 3:13 p.m.)

14 THE COURT: I'm guessing 5:00?

15 MR. WRIGHT: What?

16 MR. STAUDAHER: We have an issue.

17 MS. WECKERLY: We have an issue that it'd probably be
18 easier to discuss it now.

19 THE COURT: Okay. Should we -- we need to excuse the
20 witness. Sir, this may concern your testimony so I need you
21 to step into the vestibule, please. There's a little
22 conference room there at the -- yes, oh, I'm sorry, one
23 moment. Yes?

24 MR. STAUDAHER: I know the Court has not yet ruled on
25 the bad acts issue and I don't intend to --

1 THE COURT: And we haven't had a Petrocelli Hearing
2 even if the Court --

3 MR. STAUDAHER: -- I don't intend to get into
4 anything related to specific instances or patients or
5 whatever. But I think based on the questioning that has gone
6 forward with this witness alone with Mr. Wright and not Mr.
7 Santacroce per se, but Mr. Wright regarding the quality issues
8 and whether or not there was -- he had [indiscernible] and
9 what?

10 MS. WECKERLY: Quality control certification.

11 MR. STAUDAHER: Yes, and that whole issue about the
12 quality control certification that the AAAHC coming, that they
13 didn't see anything wrong, there were all this -- everything
14 was running above board, that he didn't see any problems in
15 the clinic, that he wasn't aware of any issues with, you know,
16 himself and Dr. Desai. He started even to ask the questions
17 about --

18 THE COURT: Well, he did start saying he was aware of
19 a perforation.

20 MR. STAUDAHER: I think at a bare minimum that the
21 State should be able to ask this question -- this witness the
22 question, are you aware that Dr. Desai was one, sued by the
23 people related to incidents in this case and not this case
24 particularly but the -- and also that he had 31 complaints for
25 -- the State Medical Board for doing various things like the

1 perforation issue that was directly asked by counsel. That
2 that doesn't get into the details of what took place but just
3 what his knowledge would be if he knows it. I think it's a --
4 it's a germane and reasonable question that has been opened --
5 the docr's been open to based on the direct questions of the
6 defense counsel. And that's -- and that's like getting into
7 the substance of what took place or having a witness testify,
8 it's just saying is this witness aware --

9 THE COURT: Well, first of all, how many lawsuits
10 against Dr. Desai are we talking about?

11 MR. STAUDAHER: Well, there --

12 THE COURT: How many malpractice lawsuits?

13 MR. STAUDAHER: -- there were multiple, I don't
14 know --

15 MR. WRIGHT: How many?

16 MR. STAUDAHER: -- every single one --

17 THE COURT: What does multiple mean? Because I
18 mean --

19 MR. STAUDAHER: I don't know -- I don't know the
20 number.

21 THE COURT: -- let me just tell you, many good
22 doctors get sued. So just the fact that there was a medical
23 malpractice lawsuit without a finding of -- of culpability
24 does not mean anything and it's -- I don't think it's that
25 unusual for a reasonably competent physician to be sued more

1 than one time. Now, you know, six, seven lawsuits, I think
2 now that's getting to be a lot of lawsuits.

3 MR. STAUDAHER: Well, we're talking about this case.
4 Not this case --

5 THE COURT: No, no, I'm saying -- I'm saying but how
6 many times was Dr. Desai sued unrelated to the hepatitis C
7 outbreak?

8 MR. STAUDAHER: I don't know the actual number. I'd
9 have to go back and look. It was --

10 THE COURT: Okay.

11 MR. STAUDAHER: I've seen the transcripts. He's on
12 multiple ones of those transcripts, that were at least
13 represented in either as directly by the clinic or by him
14 being named directly.

15 THE COURT: I know and I asked you how many lawsuits?

16 MR. STAUDAHER: I don't know the actual number.

17 THE COURT: Okay. Is it more than five or less than
18 five?

19 MR. STAUDAHER: I don't know.

20 THE COURT: Because like I said, many good doctors
21 are sued and that does not -- that's not evidence of anything
22 that they're a bad doctor, which is what you're trying to
23 suggest. And it may be evidence that he's a bad doctor and it
24 may be evidence that he's not a bad doctor. But what I'm
25 saying is just the fact somebody sued doesn't necessarily mean

1 anything. So that's a problem there.

2 Now the 31 complaints is troubling but I don't have a
3 reference -- I mean that sounds to me like a -- a lot of
4 complaints, 31 complaints.

5 MR. STAUDAHER: Well, and the problem --

6 THE COURT: Sounds to me like a lot of complaints. I
7 don't have a reference point on that. How many complaints --

8 MR. WRIGHT: Individually --

9 THE COURT: -- other doctors have but it sounds like
10 a lot, I give you that.

11 MR. STAUDAHER: I can certainly ask this doctor if he
12 had any complaints at the State Medical Board that he's aware
13 of. He would be aware of those because he would be notified
14 like Dr. Desai was notified. And are you aware if in fact
15 there were complaints -- not only was Dr. Desai notified, and
16 that's what part of the issue is, but he was given essentially
17 a couple of letters saying, look, we're getting all these
18 complaints, you need to change your practice. And part of the
19 practice was the exact issues that are coming up in this case.
20 The speed of procedures, how he handles patients, things like
21 that, it's all come up. Now we have at least three
22 organizations, Quality Consultants, AAAHC, [indiscernible]
23 that has supposedly come in and given them a clean bill of
24 health.

25 The BLC even alluded to as trying to say that they

1 washed their hands of the situation and thought that they were
2 doing okay after -- after the correction letter was given to
3 them. I mean, all of those things are coming in to make it
4 sound like this is just a hunky-dory operation and that this
5 individual believes Dr. Desai is golden. He even produces a
6 letter where this witness --

7 THE COURT: Okay, I get the point.

8 MR. STAUDAHER: -- is saying that this guy's really
9 good.

10 THE COURT: First of all, you can't ask him, you
11 know, are you aware there were 31 complaints because now
12 you're putting in evidence that there's 31 complaints. You
13 can ask him, you know, are you aware of -- of, you know,
14 complaints against Dr. Desai and then see where it goes -- it
15 goes from there. Because again, 31 complaints sounds like a
16 lot. Without knowing the number of medical malpractice cases
17 and the outcomes, I'm inclined not to allow that question
18 because I just don't know how many there were. And I think to
19 lay people a medical malpractice case sounds like oh, my God,
20 there's been this medical malpractice case.

21 As a Judge I know that a lot of times those don't go
22 anywhere and good doctors get sued. Do bad doctors get sued?
23 Yes. So, I mean, I think I would need to know what's the
24 outcome and is this a large number of medical malpractice
25 cases. As I said, the complaints to the medical board, that

1 sounds excessive to me so I think that that may be evidence of
2 something.

3 MR. WRIGHT: I'm going to object to this. I mean
4 before --

5 THE COURT: I assumed you were.

6 MR. WRIGHT: Well, I don't -- so there's 31
7 individual -- I'm asking, 31 individual complaints against Dr.
8 Desai in his individual practice --

9 MR. STAUDAHER: Yes.

10 MR. WRIGHT: -- of patients involving endoscopies?

11 MS. WECKERLY: We -- why can't we just ask, would you
12 hold the same opinion if you knew --

13 MR. WRIGHT: I think this is a misrepresentation.

14 MS. WECKERLY: -- you know, about X amount of
15 complaints. I mean --

16 MS. STANISH: No.

17 MR. WRIGHT: No, because they are.

18 THE COURT: That's totally inappropriate to ask it
19 that way --

20 MR. WRIGHT: I ask -- I asked the question --

21 THE COURT: -- because now you're putting it out
22 there he's had all these complaints and whatever. So, you
23 know, you can ask him if he was aware of the complaints and,
24 you know, or would it -- would it -- you know, how many
25 complaints has he had, you know, is that -- does that sound

1 being used for like saline?

2 A I don't recall at that time discussions of other
3 multi-use preparation; saline, Lidocaine, et cetera. I
4 remember the focus of that exit meeting being the propofol and
5 the observation of the needle change as the most likely
6 mechanism of what happened.

7 Q Okay. And so the -- it -- it -- after that,
8 aside from the propofol injection policy, if I'm correct, you
9 also went ahead and got rid of like common use saline for
10 starting -- in preop for heplocks and went to individual
11 prefilled saline syringes --

12 A We did.

13 Q -- is that correct?

14 A That's correct.

15 Q And that was as a result of the investigation
16 and concerns being raised about possible contamination?

17 A That's right. That -- that occurred during the
18 process. For example, the idea that the flushes that were
19 being used for the IVs or the heplocks, were coming from a
20 single bottle was made to us during the process of that 10
21 days.

22 Q Okay.

23 A And then it's during that time that Jeff Krueger
24 mentioned that to me and said well, you know, you can get
25 prefilled syringes with saline. And I said then go ahead and

1 get them, so we did that.

2 Q Okay. And Lidocaine was another medication --
3 is that a medication or --

4 A Lidocaine is a -- is a topical anesthetic
5 agent --

6 Q Okay.

7 A -- that comes in a large bottle.

8 Q Okay. So that -- that's what we would call
9 multi-use --

10 A Yes.

11 Q -- correct? And so -- and Lidocaine was used by
12 CRNAs to mix with propofol to inject the patient that
13 supposedly removed the sting?

14 A Correct.

15 Q Okay. And so based -- based upon -- during that
16 same period of the inspection and concerns being raised,
17 Lidocaine was changed?

18 A To my recollection we just simply said no more
19 Lidocaine.

20 Q Okay.

21 A No -- no -- just forget using it because of the
22 -- as maybe that could be a problem.

23 Q Okay. So these -- these changes are being put
24 in place by the clinic, correct?

25 A Yes.

1 Q There are -- you know -- I'm in mid-January now,
2 okay? You and -- you were designated to be the representative
3 of the clinic to interface with CDC and Southern Nevada Health
4 District; is that right?

5 A I don't know if it was an official designation,
6 it was sort of a de facto reality --

7 Q Okay.

8 A -- so I was there, I took it upon myself to --

9 Q Okay.

10 A -- to interact with these representatives, to
11 understand what was happening, to help --

12 Q Okay.

13 A -- and participate in discovering what happened
14 and to correct it.

15 Q Okay. I didn't mean like a official, only talk
16 to him, but you were the representative of the clinic
17 interfacing with them the most?

18 A Yes.

19 Q Okay. And as was Tonya and all of the staff
20 that they wanted absolutely cooperated, correct?

21 A Yes.

22 Q And you all opened your doors and did everything
23 possible, everything possible to assist in determining what
24 had happened; is that fair?

25 A That's accurate.

1 Q And everyone in the -- every employee that was
2 there gave blood tests, you yourself did?

3 A Yes, sir.

4 Q That was all to see if it had been employee
5 transmitted in some fashion?

6 A Correct.

7 Q And so you have these changes in place or being
8 implemented in mid-January. Do you see anything on the
9 horizon like is going to come and blow up?

10 A No.

11 Q Okay. The -- in dealing with BLC the State
12 wrote up a report for you all, correct?

13 A Yes.

14 Q Okay. And that was their findings of what they
15 thought was wrong; is that fair?

16 A Fair.

17 Q Okay. And the procedure is you all respond to
18 that in writing and correct any infractions or anything they
19 think is wrong.

20 A Right. During that process and as I was
21 learning how this works because I never experienced anything
22 like this, we needed to prepare a plan of correction, an
23 official detailed plan of correction, in writing, to the
24 Bureau of Licensure in response to their identification of
25 problems or infractions. And we did with the help of Lewis

1 and Roca, the attorneys to make it professional, but we laid
2 out a plan of correction back to the Bureau of Licensure.

3 Q Okay. And so for -- and it's literally a
4 document, we will later see it here in the courtroom from BLC,
5 but it lists here's what we found, and then right -- other
6 half of the same page you all respond as to what you are doing
7 to remedy any problems they have, correct?

8 A Yes, sir.

9 Q Okay. And BLC was satisfied with that?

10 A BLC was completely --

11 MR. STAUDAHER: Objection, Your Honor --

12 THE COURT: Well, he asked whether or not they were
13 satisfied. That's sustained. You can ask it another way.

14 BY MR. WRIGHT:

15 Q Okay. What was -- did the -- what was BLC's
16 response?

17 A I received a phone call from an attorney at
18 Lewis and Roca telling me that the plan of --

19 MR. STAUDAHER: Objection to hearsay, Your Honor, at
20 this point.

21 THE COURT: Well, that's true. It's sustained.

22 MR. WRIGHT: Okay.

23 THE COURT: Well, let's -- I was going to take a
24 break in two minutes.

25 MR. WRIGHT: Okay.

1 THE COURT: Let's take our break now. Ladies and
2 gentlemen, we're going to take our morning recess until 11.
3 During the morning recess you're reminded that you're not to
4 discuss the case or anything relating to the case with each
5 other or with anyone else. You're not to read, watch, listen
6 to any reports of or commentaries on the case, person, subject
7 matter relating to the case. Don't do any independent
8 research and please don't form or express an opinion on the
9 trial. Notepads in your chairs and follow the bailiff through
10 the rear door.

11 (Jury recessed at 10:47 a.m.)

12 THE COURT: All right, if anyone needs a break.

13 MR. STAUDAHER: I just want to make sure that we're
14 clear that I'm going to object to anything that we're going
15 toward of me giving -- having this witness make any legal
16 conclusion that the BLC somehow --

17 THE COURT: Right. He can -- I sustained your
18 objection. I mean, he can say after the BLC report we were
19 allowed to continue to operate or, you know, or they gave us
20 additional direction or whatever, but he can't say what their
21 satisfaction level was or anything like that unless he got a
22 letter, we're satisfied, you know. But, I mean, obviously
23 there -- you know, whatever inference that they were allowed
24 to continue to operate. So Mr. Wright, you need to phrase
25 your questions that way, not as to --

1 MR. WRIGHT: Okay.

2 THE COURT: -- what they may have been thinking or
3 their future plans or anything like that because obviously the
4 witness doesn't know that.

5 MR. WRIGHT: Got it.

6 THE COURT: And if he did he couldn't testify to
7 that. I have a question, just off the record for the State.

8 (Court recessed at 10:49 a.m. until 10:57 a.m.)

9 (Outside the presence of the jury.)

10 THE COURT: All right. If everyone's ready we can
11 see if the jury's ready and get started.

12 Just so you folks know, I have to do an evidentiary
13 hearing that's been moved in a civil matter Monday morning so
14 we're going to start later. I tried to find -- I just found
15 out about it and I tried to find a other -- another judge to
16 hear it but I can't, so it will be me. So we'll be getting --
17 we've all been spoiled by these early start days so --

18 MS. WECKERLY: The -- the -- that's fine. The
19 witness I have scheduled is a doctor so I'd like to give him
20 as much as heads up --

21 THE COURT: Okay.

22 MS. WECKERLY: -- and he was set for the morning
23 so --

24 THE COURT: Oh, I'm sorry.

25 MS. WECKERLY: That's okay. But if you could just

1 tell me then I'll submit it.

2 THE COURT: Okay. So maybe we would start like --

3 MS. WECKERLY: Just afternoon, is --

4 THE COURT: -- yeah.

5 MS. WECKERLY: -- that what you're saying?

6 THE COURT: Just like 12:30.

7 MS. WECKERLY: Okay, I'll have him --

8 THE COURT: No lunch break, we'll start at 12:30.

9 MS. WECKERLY: I'm going to just have them call right
10 now.

11 THE COURT: Okay. If there's a problem let me know
12 and I will send out a blast e-mail to all the other judges and
13 see if somebody will pick it up. But my usual -- my usual
14 sources for help are either not here or have said they can't
15 do it.

16 MS. WECKERLY: Okay.

17 THE COURT: So --

18 MS. WECKERLY: But we'd start like at one, do you
19 think?

20 THE COURT: I would say 12:30.

21 MS. WECKERLY: Okay.

22 THE COURT: And then again, no lunch break, we'll
23 just tell them -- bring them in.

24 (Jury reconvened at 11:01 a.m.)

25 THE COURT: All right. Court is now back in session.

1 Mr. Wright, you may resume your cross-examination.

2 MR. WRIGHT: Thank you, Your Honor.

3 BY MR. WRIGHT:

4 Q BLC you -- you and your lawyers, the clinic,
5 when I say you I'm talking about the clinic, had prepared a
6 plan of correction and submitted it to the BLC, correct?

7 A Yes.

8 Q And BLC could revoke licenses, close the clinic
9 if they wanted to?

10 A To my knowledge they have that authority.

11 Q Okay. And after the submission and
12 communication back from your lawyers and your understanding of
13 the position, were you planning to close the clinic?

14 A No.

15 Q Okay. So as far as BLC goes, you believed the
16 -- the -- the concerns and issues had been addressed and you
17 all would be going forward, a bigger, better clinic than ever?

18 A Well, the plan of correction was accepted.

19 Q Okay. And you didn't see still yet on the
20 horizon what was going to come?

21 A I didn't foresee this, no.

22 THE COURT: And I don't know if this is clear, the
23 BLC is what again?

24 THE WITNESS: The Bureau of Licensure for the State
25 of Nevada.

1 THE COURT: Okay.

2 BY MR. WRIGHT:

3 Q Now, the -- when -- going forward, do you first
4 learn of a plan for notification?

5 A I first learned of the plan for public
6 notification at a meeting at the Health District office and I
7 apologize, I do not remember the date of that meeting. But
8 that was a meeting that was called by the Health District to
9 report its -- its findings and recommendations. When they
10 departed they didn't make recommendations or formal findings
11 but this -- they said we'd get back to you in a number of
12 weeks. And this -- this was a meeting that was called by them
13 to discuss the situation.

14 Q Okay. And so when -- when they departed, the
15 exit interview, for lack of a better word, after being there
16 10 days, informally they said we see these as issues;
17 propofol, syringe use and you all responded as you've already
18 testified to, correct?

19 A Correct.

20 Q And -- but you were still waiting for a final
21 conclusion of what the -- of the Southern Nevada Health
22 District, correct?

23 A Yes.

24 Q How about CDC, did you lump those two together
25 in your mind?

1 A In my mind they were lumped together.

2 Q Okay. And so the -- finally -- do you recall it
3 -- it would have been in early February approximately?

4 A Approximately, yes.

5 Q Okay. And so early February you're called to
6 get the results from the Southern Nevada Health District?

7 A Yes.

8 Q Okay. You go and who else?

9 A To my recollection at that meeting it was me,
10 and Tonya Rushing from our practice, Brian Labus, Dr. Sands,
11 the Director of the Southern Nevada Health District, another
12 representative from the Southern Nevada Health District and I
13 believe a representative from the Bureau of Licensure was
14 there.

15 Q Okay.

16 A It's hard for me to remember.

17 Q And so run through that meeting generally.

18 A That meeting was a meeting to inform us of the
19 findings and the conclusions of the evaluation investigation.
20 And during that meeting Brian Labus and Dr. Sands were
21 predominately the people who were communicating to us. We
22 were told that --

23 MR. STAUDAHER: Your Honor, I'm going to -- since we
24 have those witnesses coming in I'm going to object to this at
25 this point for hearsay purposes.

1 THE COURT: All right. What's the purpose you're
2 offering it for that's nonhearsay.

3 MR. WRIGHT: To put in context what they then did.

4 THE COURT: All right.

5 MR. WRIGHT: I mean, the witnesses are going to come
6 in here.

7 THE COURT: All right. Well, some of this you can
8 ask, you know, a different way based on what they told you,
9 what did you do but, you can go ahead and kind of give us the
10 gist of the meeting.

11 THE WITNESS: Well, the gist of the meeting was that
12 it was concluded that indeed the propofol and the needle
13 change was the mechanism by which the hepatitis C transmission
14 had occurred. And the gist was --

15 THE COURT: Who made that to you -- I'm sorry.

16 THE WITNESS: Brian Labus --

17 THE COURT: Okay.

18 THE WITNESS: -- and Dr. Sands.

19 THE COURT: All right.

20 THE WITNESS: And that since they could not determine
21 how far back this practice went, they were planning to inform
22 all patients who had ever had a procedure at our surgical
23 center, from 2004 forward, that you needed to be tested for
24 hepatitis A, B and C and for HIV. And that they were going --
25 since it was unlikely to be effective by mail only, that they

1 planned to do a public announcement, a date to be ascertained.

2 BY MR. WRIGHT:

3 Q Okay. And was that the -- the first you had
4 heard of any such proposal like that?

5 A Yes, sir.

6 Q Okay. And what was your response?

7 A Well, my response was fear and shock because I
8 understood that that meant that there were going to be
9 approximately 50,000 people in this valley notified that there
10 was a potential foreign infectious transmission and that
11 testing needed to be done. And I -- I protested, I didn't
12 think that was reasonable.

13 Q Okay. And did you suggest at that time, at that
14 meeting or later alternatives?

15 A Yes.

16 Q Okay. And what -- what -- at this time are you,
17 yourself, investigating vigorously and devoting your time to
18 trying to find out what could have happened like on September
19 21st?

20 A It's hard for me to remember when I really
21 started to do that.

22 Q Okay.

23 A It was in and around that time where I started
24 to try to get the information myself, understand who was
25 scoped that day, what the schedule was, who -- who are these

1 patients who acquired hepatitis C. I had -- I had started the
2 process of looking in to this.

3 Q Okay. And so the -- were you concerned that
4 they were incorrect in their determination?

5 A Well, I was very concerned that the
6 determination was incorrect and I made several suggestions --
7 alternatives to them about how to move forward.

8 Q Okay. And what -- what were those suggestions
9 and to whom?

10 A I suggested at the time to Dr. Sands and to
11 Brian Labus and the other participants that perhaps -- that it
12 didn't sound reasonable to do this and perhaps it was a better
13 idea simply to -- to do more investigation and to perhaps do a
14 -- a small further study and take a sample of the patients, a
15 random sample of any of the patients from four years and test
16 for hepatitis C, some number of patients, and see if that
17 incidence of hepatitis C in that sample, was any different
18 than the background expected incidents of hepatitis C.

19 Because like I told you before, we know that there's
20 quote, 1.9 or 2 percent background incidence of hepatitis C or
21 prevalence is better. And if there was an increase, a
22 statistical increase over the background rate, than perhaps
23 then having this testing move forward was reasonable but if
24 there wasn't maybe to reevaluate the conclusion.

25 Q Okay. I want to be certain this is understood

1 what your proposal was and background rates, et cetera. The
2 Health District was proposing -- because of this incident on
3 the 21st and -- of September and July 25th, notify 50,000 plus
4 patients, correct?

5 A Yes.

6 Q And you were suggesting that let's do random
7 sampling of patients by days or whatever mechanism, have those
8 samples tested for hepatitis C, correct?

9 A Correct.

10 Q And see how many of them test positive for
11 hepatitis C, correct?

12 A Correct.

13 Q And you -- you read Brian Labus's Southern
14 Nevada Health District final -- final report, which came out
15 at the end of 2009?

16 A Yes.

17 Q Okay. And you recognize -- do you -- did you
18 understand that the background rate for the people at the
19 clinic -- at the clinic, because of their age, was
20 approximately four percent expected?

21 A I remember reading that.

22 Q Okay. And the -- the rate was -- the expected
23 rate of hepatitis C in the populous of the clinic -- meaning
24 they had it before they ever walked in the door, right?

25 A Right.

1 Q Okay. Expected to be four percent and that was
2 higher than like the national average because we're dealing
3 with mainly baby boomer -- baby boomers, elderly people,
4 getting colonoscopies and they're in the group with the higher
5 incidents --

6 A I think that's reasonable --

7 Q -- is that fair?

8 A -- I think that's fair.

9 Q Okay. So what you were suggesting is we know
10 that the patients in the clinic, four percent of them
11 statistically should have hepatitis C, if you all are right,
12 Southern Nevada Health District, we -- that this was the
13 method of transmission and this has been going on for four
14 years, we can test and see if the patients with hepatitis C
15 have an amount higher than expected, right?

16 A Well, that's correct except for I didn't say at
17 that time four percent expected. You know, I still understood
18 it to be around 2 percent from -- from understanding and from
19 training. But that four percent number appeared later, in the
20 sub-population from --

21 THE COURT: When you said the two percent you weren't
22 factoring in the baby boomers and people have --

23 THE WITNESS: That's --

24 THE COURT: -- colonoscopies at 50.

25 THE WITNESS: -- right, that's a national average.

1 THE COURT: Okay. Young people, super old people,
2 everybody?

3 THE WITNESS: All the population.

4 THE COURT: Okay.

5 BY MR. WRIGHT:

6 Q Okay. But as far -- as far as the math works,
7 whether it's two percent or four percent, grab one month like
8 from each year, test them and presumably you should have so
9 many with hepatitis C, right?

10 A Correct.

11 Q And if there was twice that much there would be
12 an indication that maybe there's a problem and the Health
13 District's right, correct?

14 A Correct. I didn't say twice, I said an
15 increase.

16 Q Right. I mean, I'm just trying to explain what
17 it was when you said please do sampling and compare it to the
18 background incidence of hepatitis C.

19 A That's correct.

20 Q Okay. And they're -- did you get an immediate
21 response from Dr. Sands or Brian Labus to your proposal?

22 A Yes.

23 Q And what was it?

24 A Well, from Brian Sands -- excuse me, from Brian
25 Labus, the response was no.

1 Q Okay.

2 A The response was it doesn't matter because we
3 observed the practice and we don't know how far back it went
4 and we're obligated to inform potential patients that they may
5 have been exposed or have had a transmission. Dr. Sands
6 though --

7 MR. STAUDAHER: Your Honor, and I'm going to object
8 to hearsay again. I let that last part in because I think
9 that that was appropriate but I -- it's a continuing objection
10 here on this so.

11 THE COURT: All right. Well, did Dr. Sands indicate
12 whether or not he would do that or consider it or?

13 THE WITNESS: He indicated he would consider that.

14 THE COURT: All right.

15 BY MR. WRIGHT:

16 Q Okay. And the result of that -- did -- did you
17 then talk to someone else?

18 A Yes.

19 Q Okay. And who else did you talk to about the
20 necessity for this -- the breath of the disclosure they wanted
21 versus your targeted test, see if you're right and then more
22 evaluation, who else did you talk with?

23 A I spoke to the representative from the CDC who
24 had been there during the investigation by telephone.

25 Q Okay. And did -- did you propose -- discuss the

1 same type things we've been talking about?

2 A Yes, I did.

3 Q Okay. And were you -- obviously you weren't
4 successful because we know the notification went forward, but
5 did you get any relief by talking to them?

6 MR. STAUDAHER: Objection, Your Honor. Hearsay
7 again.

8 THE COURT: Well, over-ruled.

9 THE WITNESS: No.

10 THE COURT: Let me ask you this: In your plan then,
11 that wouldn't have tested -- or would it have also tested for
12 HIV/AIDS?

13 THE WITNESS: No. We -- I was -- I was proposing a
14 background evaluation of hepatitis C.

15 THE COURT: Okay.

16 BY MR. WRIGHT:

17 Q Okay. And -- and you were proposing any
18 alternative and asking them for -- to come up with alternative
19 methods, correct? I mean if they wanted to test for HIV also,
20 random, same thing, you would agree to it, right?

21 A Of course.

22 Q And are you during this time conducting --
23 conducting your own investigation trying to verify or debunk
24 their conclusions?

25 A I began the process of evaluating not with the

1 intention to debunk really.

2 Q Okay.

3 A Not to condemn or to vilify but to understand
4 for myself. I had a desperate need to know how this happened
5 so I began the process and I continued after that meeting to
6 understand what happened here. How did this happen and was it
7 true that this proposed mechanism was correct. Now, it didn't
8 -- it wasn't to hurt anybody, debunk, I wanted to just know
9 how it happened and the truth to properly manage this because
10 I thought that -- that notification was excessive.

11 Q Okay. And so how did you go about it
12 individually because the health district still wouldn't share
13 the patients with you, correct?

14 A The fundamental process that I undertook was to
15 gather the names of the patients on our schedule and who had
16 had procedures on that day because that information was
17 available. And I began to separate -- I got a list from our
18 own staff of the patients who had procedures that day, patient
19 X, patient Y, patient Z, patient A, B, C and down the list and
20 began to try to figure out from the patients that were known
21 at the time to have had a hepatitis C transmission or have
22 hepatitis C, where they were in the lineup, when did it occur.
23 And that's when I began to notice some problems in that
24 distribution of the patients.

25 Q Okay. And what did you -- what caused you

1 concerns?

2 A What caused me concern at that time was that at
3 the time there were patients between patients that had an
4 infection that to my knowledge at the time were not infected,
5 were not recognized as having hepatitis C. There were a
6 number of patients between the affected patients who were not
7 and that seemed odd for a -- for this proposed mechanism. And
8 I began to figure out by who the CRNA was because it was
9 listed in our schedule, I began to separate out the two rooms
10 by the CRNAs and I began to understand that it seemed that
11 there were infections in two rooms and I couldn't understand
12 by what the mechanism that was proposed. At the time I didn't
13 understand how it could go from one room to the other. So as
14 I gathered more information about this I decided to go see
15 Brian Labus about it.

16 Q Okay. And this is still before the public
17 announcement?

18 A Right. This is before whatever date is agreed
19 upon to the public announcement.

20 Q Okay. And the -- you go see Brian Labus to
21 express your concerns. Do you take your charts and the
22 information that you have?

23 A I took my papers and the charts that I had to
24 his office just a few hundred yards away from our office --

25 Q Okay.

1 A -- on Shadow Lane.

2 Q And your concern was that the method of
3 transmission that they were believing you -- you were still
4 skeptical of it at that time?

5 A Correct.

6 Q Okay. And so you -- did you lay all of that out
7 to him in greater detail than what you just told us?

8 A Yes.

9 Q Okay. And what was his response?

10 A He told me that that was interesting and I laid
11 it out just like I laid out for you but in much more detail
12 and he said it didn't matter. It didn't matter because of the
13 -- what was observed with the changing of needles and the
14 propofol bottle not being used completely for one patient but
15 being used for the next was sufficient. The observation alone
16 was sufficient that no matter what I'm presenting, no matter
17 what the -- an alternative is or no matter -- it didn't -- it
18 didn't fit, it didn't matter --

19 Q Okay.

20 A -- that still this public announcement had to be
21 made.

22 Q Okay. And it -- and basically the -- they had
23 -- the Southern Nevada Health District had observed what they
24 determined to be unsafe injection practices with the propofol
25 application, correct?

1 A Well, I have to say that that phrase, unsafe
2 injection practices, was never uttered to me and to anybody to
3 my knowledge until the public announcement.

4 Q Okay. Well, maybe that's where I got it but I
5 was just trying to -- they had observed things, which were
6 contrary to aseptic technique, right?

7 A Correct.

8 Q And because of those observations, like reuse of
9 syringe on a patient, a second time a CRNA injects patient
10 first dose, takes the same needle and syringe, takes out a
11 brand new sterile needle, puts it on, goes back into propofol
12 reinjects, right?

13 A Correct.

14 Q Okay. Those type of observations were such that
15 there is a potential that there could have been a -- a method
16 of transmitting blood born disease, fair?

17 A That's a fair statement.

18 Q Okay. And you -- what was being told to you was
19 the -- the hepatitis C outbreak is what got us in there to
20 look and what we saw causes this notification regardless of
21 how the people got hepatitis C, correct?

22 A Correct. And my understanding was the
23 observation alone of these two factors that you just described
24 was sufficient to make the notification.

25 Q All right.

1 A He even said that.

2 Q Right. Even if no one had got -- got hepatitis
3 C, just seeing that is what caused this notification?

4 A Yes. He even said to me at that meeting that I
5 went to him that had this observation been made without any
6 transmission of hepatitis C, it still would have been
7 sufficient to make a notification.

8 Q Okay. And the -- so basically your trip to
9 Brian Labus to try to explain that they may be wrong about
10 this was to no avail because it was going forward because of
11 the -- what they saw, right?

12 A Right.

13 Q Okay. So it's going forward. Do you call other
14 people other than Brian Labus to enlighten them about your
15 findings that there -- it may be questionable on the method of
16 transmission?

17 A I'm not sure who you mean by other people.

18 Q Anyone at the State? Did you make the same
19 presentation you gave to Brian Labus to anyone else?

20 A Yes, I did. I made a presentation just like
21 that to the -- who I believe is the chief epidemiologist of
22 the State of Nevada, whose name I don't remember.

23 Q Okay.

24 A But I did do that by -- through a television
25 hookup and I'm sorry that I don't remember the date --

1 Q Okay.

2 A -- but I did the same type of presentation.

3 Q Okay. Was it pre-announcement?

4 A I believe it was. Again --

5 Q Okay.

6 A -- it's just hard for me to remember the dates.

7 Q Okay. And you're -- once again you were

8 unsuccessful?

9 A Yes.

10 Q So the announcement's going to go forward,

11 correct?

12 A Correct.

13 Q Okay. And that's being planned and you, despite

14 disagreeing, the clinic is still cooperating with the Southern

15 Nevada Health District, correct?

16 A Absolutely.

17 Q All right. So okay, we don't think you should

18 do this but we're on board and we'll cooperate, correct?

19 A Yes.

20 Q And the -- were alternatives suggested like you

21 all -- you all setting up call centers and arranging for the

22 testing for the patients and everything?

23 A Yes.

24 Q Okay. And what were those proposals?

25 A We had proposed that once this -- this

1 announcement was going to be made that we, the practice, would
2 set up a call center for the patients to call in to us about
3 what had happened and what needed to be done. And the idea
4 was that I would man it and Dr. Carrera who speaks fluent
5 Spanish would man it. We also thought that we would try to
6 pay for the testing of any individual who wanted to be tested.
7 And I even made phone calls to Quest to find out if we could
8 buy a bulk of tests because we're talking of 50,000 people to
9 do -- to do that to -- to help out in this situation.

10 Q Okay. Those proposals were made and rejected?

11 A They were rejected.

12 Q Okay. And so you -- you -- you all continued to
13 cooperate, correct?

14 A Yes.

15 Q And it comes to the date it's going to be
16 announced?

17 A Yes.

18 Q And that is late in February?

19 A Yes.

20 Q And the -- when it's announced was that at a
21 press conference?

22 A Yes, it was at a press conference.

23 Q Okay. Once -- once it's announced what happens?

24 A Well there's an immediate media attention to it.
25 Media outfits come to our facility. It's been reported and

1 then the subsequent newspaper articles and then the subsequent
2 news reports and then the cascade of events that have been
3 occurring for five years.

4 Q Okay. And the -- after the news broke, did --
5 did there come a time shortly thereafter where the clinics
6 were closed?

7 A Yes.

8 Q Okay. Had the BLC closed the clinics?

9 A No.

10 Q Okay. Had the Southern Nevada Health District?

11 A No.

12 Q Okay. CDC?

13 A No.

14 Q Okay. How did that come about?

15 A The clinic was closed by none of those
16 organizations. It was closed by the city of Las Vegas
17 Business Department. It began with a tardy fee payment and
18 that was what was used to initiate the closing of our office.

19 Q Okay. And by closing I mean the doors were
20 closed, correct?

21 A The doors were closed. We were quote, shut
22 down.

23 Q Okay. And you were shut down -- not only the
24 endoscopy clinic but also the medical offices, correct?

25 A Yes.

1 Q And -- and do you recall pleading with the
2 authorities to not close the medical offices for what had
3 occurred on the -- allegedly on the endoscopy side?

4 A Yes.

5 Q And the reason for that was what regarding the
6 patients?

7 A The reason for that was when they closed the
8 medical side we had no way to communicate with our hundreds
9 and hundreds of patients about illnesses, medications,
10 renewals of medications, biopsy results, therapy moving
11 forward. The patients were lost, they were absolutely cut off
12 from us. So I pleaded with the authorities who had shut us
13 down to not close the medical side and to let us take care of
14 the patients to no avail.

15 THE COURT: What division of the city shut you down,
16 if you know?

17 THE WITNESS: I don't remember.

18 THE COURT: Okay. And I have a related question. I
19 think at some point you said there was also an office in
20 Henderson?

21 THE WITNESS: We had an office in Henderson.

22 THE COURT: Was that shut down as well?

23 THE WITNESS: Yes.

24 THE COURT: Okay.

25 BY MR. WRIGHT:

1 Q If -- at -- literally it was an avalanche in a
2 flood gate, correct?

3 A An avalanche in a flood gate. Every single one
4 of our offices was closed.

5 Q It was a race between the cities to see who
6 could close you the fastest, correct?

7 MR. STAUDAHER: Objection, Your Honor.

8 BY MR. WRIGHT:

9 Q Is that your impression?

10 THE COURT: Well, sustained. That's sustained.

11 MR. WRIGHT: Okay.

12 THE COURT: Go on.

13 BY MR. WRIGHT:

14 Q Well, it went like dominoes, correct?

15 A Yes.

16 Q And so then with every clinic and every medical
17 office closed, what then happened?

18 A Some -- some time in that process another event
19 occurred in which the FBI came in to all of our offices on a
20 -- apparently on a warrant and searched and seized all our
21 records from all the offices.

22 Q Okay.

23 THE COURT: Was that before or after you'd been shut
24 down by the city of Las Vegas?

25 THE WITNESS: It's hard for me to remember.

1 BY MR. WRIGHT:

2 Q On -- on the day of the search -- and the
3 evidence will show it's March 9th, using that of 2008 -- using
4 that as a -- the date, at that point the authorities -- law
5 enforcement comes in, takes everything, correct?

6 A Yes.

7 Q Computers?

8 A Yes.

9 Q Records?

10 A Yes.

11 Q Tens of thousands of boxes of patient files in
12 storage?

13 A Yes.

14 Q Okay. All of the patient files in the clinics,
15 in the medical offices?

16 A Yes.

17 Q Okay. And all of it taken so that you -- you
18 all had no access whatsoever to any of it, correct?

19 A Correct.

20 Q Okay. And were you -- were you shown a copy of
21 the order that allowed this to happen?

22 A I was -- no, we were not and I have never seen
23 it.

24 Q Okay. Were you told why?

25 A No.

1 Q Okay. Were you told it was sealed?

2 A Yes.

3 Q Okay. Were you told it was sealed because you
4 all were shredding records?

5 A I don't remember that. I wasn't told this
6 directly, I heard that that was the reason, that there were
7 records being shredded.

8 Q Okay. At that time were you shredding records?

9 A No.

10 Q You all were cooperating 100 percent, correct?

11 A Yes.

12 Q Do you have any knowledge of anyone shredding
13 records, destroying evidence?

14 A No.

15 Q The -- that -- that ended the clinics -- the
16 partnership or practice as it then existed, correct?

17 A It effectively imploded, it just ceased to
18 exist.

19 Q Okay. And then the litigate -- the lawsuits
20 started, correct?

21 A Yes.

22 Q And your Rexford case was still pending, right?

23 A Yes.

24 Q Okay. And the Rexford case is where you had
25 been sued in a malpractice suit by a former patient, correct?

1 A Yes.

2 Q And you were preparing to vigorously defend that
3 case, right?

4 A Yes.

5 Q Okay. Because in your judgment what you had
6 done was right, proper, correct and you had experts all lined
7 up to testify?

8 A That's correct.

9 Q And you -- file didn't go forward, right?

10 A Right.

11 Q Okay. Why not?

12 A Well, despite having experts who were going to
13 testify that what I had done was --

14 MR. STAUDAHER: Objection, Your Honor. First of all,
15 relevance to that whole issue; and secondly, that's a single
16 person's opinion as to what the status of the case was and we
17 have specifically not --

18 THE COURT: I'll see counsel up here.

19 (Off-record bench conference.)

20 BY MR. WRIGHT:

21 Q The -- the case you believed was defensible,
22 correct?

23 A Yes.

24 Q And the case was settled and payment of money
25 made, correct?

1 A Yes.

2 Q And the case was settled why?

3 MS. WECKERLY: Objection.

4 THE COURT: Well, I mean, why did you -- did you
5 agree to the settlement --

6 BY MR. WRIGHT:

7 Q Why did you agree to settle the case?

8 A I agreed to settle the case for a number of
9 reasons. One was that the complaint, which was initially an
10 -- alleging missing a colon cancer, was amended to include all
11 of this hepatitis C material. It was a new complaint now. So
12 now it became much more complex and frankly, I was petrified,
13 terrified that there was no way that I could defend this now
14 that -- with all of this media attention to what had happened.
15 And on advice of counsel he agreed, there was no way to -- to
16 ensure a successful defense and the punitive damages were
17 added to the complaint. So it was in my best interest --

18 THE COURT: Yeah, don't get in to what your lawyer
19 advised you --

20 THE WITNESS: Okay.

21 THE COURT: -- or what your insurance carrier may
22 have said --

23 THE WITNESS: But it was I -- I believed it was in my
24 best interest, though I thought it was defensible to settle
25 it.

1 THE COURT: All right.

2 BY MR. WRIGHT:

3 Q Okay. And you believed because of the notoriety
4 of you and the clinic that you could not get a fair trial,
5 correct, sir?

6 MR. STAUDAHER: Objection, Your Honor.

7 THE COURT: Okay. So --

8 BY MR. WRIGHT:

9 Q Well, let's see what you told the grand jury.

10 MR. STAUDAHER: The same issue that we have addressed
11 before this Court in --

12 THE COURT: I'll see counsel up here.

13 (Off-record bench conference.)

14 THE COURT: Counsel, come back.

15 (Off-record bench conference.)

16 BY MR. WRIGHT:

17 Q I'll show you page 80 -- page 90 of your grand
18 jury testimony --

19 THE COURT: Well, he hasn't said he didn't remember.

20 MR. WRIGHT: Oh, go ahead.

21 THE COURT: He hasn't been inconsistent --

22 MR. WRIGHT: Sorry.

23 THE COURT: -- I don't believe.

24 BY MR. WRIGHT:

25 Q I got mixed up on it. You settled the case

1 because of your belief you would never --

2 THE COURT: I'm sorry, Mr. Wright. May I see counsel
3 bench again on a scheduling --unrelated issue?

4 (Off-record bench conference.)

5 THE COURT: All right. Mr. Wright, try your question
6 again.

7 BY MR. WRIGHT:

8 Q Did you settle that case in which you did
9 nothing wrong because of your belief you would never get a
10 fair trial?

11 A Yes.

12 Q Thank you. I want to talk about anesthesia,
13 billing for anesthesia issue. Okay?

14 A Okay.

15 Q You were unaware until let's call it OCDC after
16 January, 2008. Okay?

17 A Okay.

18 Q You were unaware of anesthesia billing being
19 tied to time; is that correct?

20 A That's correct.

21 Q Okay. And because doctors -- medical offices
22 have all kinds of billing, correct?

23 A Correct.

24 Q Okay. We -- we have capitation billing?

25 A Yes.

1 Q Okay. And like capitation billing, would that
2 be like flat fee?

3 A Yes.

4 Q Okay. So that a capitation type billing with
5 the government or insurance companies would be I get \$90 for a
6 procedure or an act or doing something regardless of the
7 amount of time spent; is that right?

8 A It's a bit inaccurate.

9 Q Okay. It's complex, correct?

10 A Complex, yes.

11 Q Go ahead explain it.

12 A Capitation is a -- is a billing -- capitation is
13 a payment concept in which an entity like a group of doctors,
14 a hospital, whatever the entity is, agrees to manage a set
15 number of patients for whatever problem exists for a set
16 amount of money on a per patient basis for all comers in that
17 population. They're very common.

18 Q Okay.

19 A That's distinct though from a set fee for an
20 individual procedure at hand.

21 Q Okay.

22 A So a capitation contract involves all the
23 population. So the group accepting that -- that contract
24 bears some risk to that because there may be patients who are
25 quite expensive or quite involved in their care in which it's

1 possible that the capitation rate is insufficient for the care
2 of those patients. Whereas a fee per item, for agreed item,
3 say an upper endoscopy, we agree to accept this amount of
4 money is different than capitation, it's an agreed upon fee.

5 Q Okay. So there may be -- like if we're talking
6 about anesthesia --

7 A Yes.

8 Q -- per like HPN or Sierra Health, there could be
9 a flat fee for anesthesia services?

10 A Yes.

11 Q Okay. It could be like \$90, correct?

12 A Correct.

13 Q And it would be a flat fee regardless of whether
14 it's a 11-minute period or a two-hour period, correct?

15 A Correct.

16 Q And the -- in -- in -- is it true that before
17 January 2008 you were under the impression that there were
18 some flat fee anesthesia billings?

19 A Yes.

20 Q Okay. Like HPN and Sierra Health Services and
21 PacifiCare?

22 A Yes.

23 Q Okay. And even on your medical side, gastro,
24 where you see a -- you were talking about the consultation for
25 the patients. Okay?

1 A Yes.

2 Q That first time visit before they're going to
3 get their colonoscopy you see the patient, you bill for that,
4 right?

5 A Correct.

6 Q Okay. And you fill out something called CPT
7 codes?

8 A Yes.

9 Q Okay. And there's all this coding where you
10 just put down numbers for the service you did for the patient,
11 right?

12 A Yes.

13 Q Okay. And when you see someone and it's a
14 pre-colonoscopy consultation, what would you call that?

15 A Yeah, a consultation.

16 Q Okay. And so you're -- you are reimbursed for
17 that, right?

18 A Yes.

19 Q And you bill it and that is a flat fee billing,
20 correct?

21 A Correct. We -- whatever I think the service
22 requires I bill for that and that is sent out as a -- we
23 charge a fee. What is paid to us varies upon contracts.

24 Q Okay. But it's the -- you put it down and it's
25 going to be paid regardless of the time you spent with the

1 patient, right?

2 A Correct.

3 Q Okay. So, I mean, we're not talking about flat
4 fee. You're going to get that much whether you spend 10
5 minutes or 30 minutes on that consultation because it's graded
6 by CPT code by the complexity of the issue?

7 A Correct.

8 Q Okay. And during the last six months of 2007 do
9 you recall that there was also billing going on for propofol?

10 A Yes.

11 Q Okay. Now this is -- and the billing for
12 propofol, that was a flat fee, correct?

13 A Correct.

14 Q Okay. And the billing for propofol is once
15 again, it's like a Pc-code on the CPT code?

16 A Yes.

17 Q Okay. And that -- that's where -- I'm on the
18 endoscopy side now, right?

19 A Yes.

20 Q And on the endoscopy side the clinic makes money
21 on a given patient assuming they're insured. Okay?

22 A Okay.

23 Q There's -- there's a billing for a facility
24 charge --

25 A Yes.

1 Q -- right? And then there's a billing for
2 professional charge?
3 A Yes.
4 Q Okay. And we know there's an anesthesia charge,
5 correct?
6 A Correct.
7 Q And those are the three components --
8 A Yes.
9 Q -- am I right?
10 A Right.
11 Q If I'm wrong correct me on it.
12 A That's correct.
13 Q Okay. And so for the last six months of 2007
14 you -- you recall that there was also billing on the facility
15 portion of it, propofol?
16 A Yes.
17 Q Okay. And was that discontinued?
18 A Yes, it was.
19 Q Okay. Why?
20 A It was discontinued in December of 2007 because
21 it became clear that the billing for the propofol itself was
22 not a covered item or an acceptable covered event for almost
23 all insurances. They didn't recognize that as a reasonable
24 charge. So there was -- it was very little reimbursement for
25 the cost of the propofol to the ambulatory surgical center so

1 it was discontinued.

2 Q Okay. And the -- if someone -- no insurance or
3 anything came in and guy's just going to pay credit card or
4 cash, cash customer for a colonoscopy. Okay?

5 A Okay.

6 Q The -- what was the anesthesia fee?

7 A I don't know.

8 Q Okay. Do you recall that there was a flat fee,
9 \$150 for uninsured patients?

10 A I do recall something like that, yes.

11 Q Okay. And the -- so that -- and that would be
12 just what someone has no insurance or anything is billed for
13 the anesthesia piece?

14 A Yes.

15 Q Okay. Once again, it's a -- it's flat and it
16 doesn't matter if it's 46 minutes or six minutes, correct?

17 A Correct.

18 Q In the -- go back, the clinic management
19 partnership type of stuff, going back to the year 2006. Okay?
20 Was there a discussion at the time for partnership meeting
21 about the retirement -- or putting in place a running of the
22 business if Dr. Desai retired?

23 A Yes.

24 Q Okay. And was there -- how did that discussion
25 come about?

1 A Well, the discussion came about because Dr.
2 Desai had mentioned the possibility of retiring --

3 Q Okay.

4 A -- and wanted to make sure that if that occurred
5 there was a smooth transition in managing very complex large
6 business like this.

7 Q Okay.

8 A So there convened a meeting of the partners to
9 actually discuss and vote upon a successor if indeed Dr.
10 Desai retired.

11 Q Okay.

12 A That meeting occurred and I was considered for
13 that possible position as was Dr. Vish Sharma. So the vote
14 occurred and Dr. Sharma was elected or proposed as the
15 successor in the event that Dr. Desai retired.

16 Q Okay. And did you have discussions with Dr.
17 Desai about he not being sure one person could take -- could
18 assume his position --

19 A Yes.

20 Q -- and that it may take two because of the
21 growth, the expansion of the business and all that he did?

22 A Yes.

23 Q Okay. Now, at -- at the -- meeting occurred and
24 it's a partnership meeting so there's voting --

25 A Yes.

1 Q -- and you were considered and Vish Sharma,
2 correct?

3 A Correct.

4 Q Okay. And Vish Sharma was elected, got the most
5 votes, and then became -- in waiting if Dr. Desai retired and
6 he also became co-manager, correct?

7 A Yes.

8 Q Okay. And -- strike that. I forgot to ask you
9 something when we were talking about the patient numbers,
10 patient numbers in the clinic. You testified yesterday that
11 there were times when Dr. Desai would -- would come over to
12 the medical side trying to round up additional upper
13 endoscopies; is that correct?

14 A Yes.

15 Q Okay. And the -- you would presume or maybe you
16 understood that's because there weren't enough patients like
17 to fill out the day, cancellations or something; is that
18 right?

19 A Yes.

20 Q Okay. So it was -- and by coming over from the
21 endoscopy side, he's coming over to the medical offices,
22 right?

23 A Correct.

24 Q And -- and -- and he is asking if there are --
25 and it would have to be an upper endoscopy, correct?

1 A Correct.

2 Q Okay. So we're not talking colonoscopies?

3 A Correct.

4 Q Because for an upper endoscopy there's no prep,
5 correct?

6 A Correct.

7 Q And so there are patients in there -- would this
8 be in the afternoon, late morning or what?

9 A The times varied; it's hard for me to say.

10 Q Okay.

11 A But it would generally be in the -- in the late
12 morning.

13 Q Okay. And what -- what he was asking was if any
14 of the patients there are available, and if they want to, they
15 can have their upper endoscopy done today rather than
16 rescheduling, taking off work or something and doing it later,
17 correct?

18 A Correct.

19 Q And the -- some patients may want to do that,
20 correct?

21 A Yes.

22 Q And it would have to be that they have to have a
23 driver available, right?

24 A Yes.

25 Q Okay. So if a patient or someone could call and

1 say, can you pick me up, mom, right?

2 A Right.

3 Q Okay. So they'd have to agree, they need a
4 driver available. And what else would be necessary if someone
5 said, gee, I have to have an endoscopy, you mean I can have it
6 right this afternoon and get this all done and I'll call my
7 dad to pick me up, what -- is there anything wrong with what
8 I'm talking about?

9 A Well, the -- what would be required, what would
10 be necessary to make it a safe event, well, it would be that
11 there would be no liquid intake for the two hours prior, no
12 food intake for the eight hours prior, a person -- a
13 responsible adult to drive home --

14 Q Right.

15 A -- and importantly, no use of Coumadin, a blood
16 thinner, for five days prior.

17 Q Okay. And so -- and all of those things can be
18 asked, correct?

19 A Yes.

20 Q Okay. And someone could say I didn't eat yet
21 and I'll -- I'll wait two hours because I -- from when I last
22 had a drink of water -- if they wanted to get it done,
23 correct?

24 A Correct.

25 Q And I -- I -- I think that's -- that's what -- I

1 mean, is that your understanding of what Dr. Desai was
2 proposing if there were any patients available who want to do
3 this, we have some spaces open?

4 A That's my understanding.

5 Q You testified yesterday a little bit about what
6 I put on my notes as problems with preps for colonoscopies. I
7 think we were talking about colonoscopy.

8 A Yes.

9 Q And the -- the problem with preps is someone
10 drinks all that stuff the night before so that they can
11 evacuate and be clean, right?

12 A Yes.

13 Q And then they can't eat or drink, right?

14 A Right.

15 Q Okay. So then you come in for the colonoscopy
16 and if -- if -- if there's a long wait, say they're being done
17 in the afternoon, even if they religiously follow all of the
18 procedure, there ends up being some type of build up?

19 A Yes.

20 Q Okay. What's that -- put that in medical terms.

21 A If a period of time passes -- so that a patient
22 who had prepared the evening before has a colonoscopy toward
23 the afternoon, there's a build up of liquid and residue in the
24 colon naturally so that the inspection of the lining of the
25 colon is not -- is not adequate to detect polyps.

1 Q Okay. And you -- you brought up and addressed
2 this issue with other physicians, correct?

3 A I -- yes.

4 Q Okay. And you also had to talk to the CRNAs
5 about it, correct?

6 A Yes, I did.

7 Q Okay. And your -- your suggestion was why don't
8 we have some people prep in the morning so when they have an
9 afternoon appointment they will be cleaner --

10 A That's correct.

11 Q -- right? And other physicians agreed it was a
12 good idea, right?

13 A Yes.

14 Q And the CRNAs agreed it would work because they
15 have their own rules about how long to wait, right?

16 A Correct.

17 Q And in fact it was implemented, correct?

18 A Yes.

19 Q And that was your idea, solution, and you put it
20 in to place?

21 A Best I recall that's true.

22 Q Okay. And as best as you recall, you didn't
23 even talk to Dr. Desai about it?

24 A I don't remember --

25 Q Okay.

1 A -- if I did or not.

2 Q Talk about CRNAs going room to room. Okay?

3 A Yes.

4 Q And of course we're talking about a date like --
5 at Shadow Lane like September 21st or a date when both
6 procedure rooms are operating. Okay?

7 A Okay.

8 Q And so we would have two CRNAs, right?

9 A Right.

10 Q And one's assigned to each room?

11 A Yes.

12 Q Okay. And we would have two doctors but not the
13 same doctors, switching off among the doctor?

14 A Yeah. Sometimes there would be two doctors,
15 sometimes there'd be one.

16 Q Okay. The -- per room?

17 A Sometimes, again, there'd be one doctor per room
18 and sometimes there'd be one doctor for both rooms --

19 Q Okay.

20 A -- going back and forth.

21 Q Okay. But on -- on a day when both procedure
22 rooms are operating with two doctors. Okay?

23 A Okay.

24 Q Because that -- that -- that -- that's September
25 21st, correct?

1 A What do you mean?

2 Q That the example I just gave you, both procedure
3 rooms were going with different doctors in each, right?

4 A No. On September 21st --

5 Q Yeah.

6 A -- the day began with a single doctor, me,
7 starting out the day alone, moving back and forth from room to
8 room, like I described yesterday until around 10:00 or 10:15
9 when I got relief and I exited to do the office. From that
10 moment forward to the end of the day, there were two doctors.

11 Q Okay. And -- and -- and you recall when you did
12 -- on -- when I say, when you recall, you may not recall the
13 exact procedure but you've studied that day, correct?

14 A I did.

15 Q And so you -- you did Mr. Rubino, correct?

16 A Correct.

17 Q And turns out he was the source patient,
18 correct?

19 A Correct.

20 Q Okay. And you -- I mean, you -- you knew that
21 because you were treating him for hepatitis C, correct?

22 A Correct.

23 Q And so you completed Mr. Rubino's colonoscopy
24 and were done --

25 A Yes.

1 Q -- and you were intending to go to the next room
2 to start a new colonoscopy with a new staff and CRNA, correct?

3 A Yes.

4 Q And when you went you saw that Dr. Desai had
5 already come in to relieve you, right?

6 A Correct.

7 Q Okay. And Dr. Desai was already in the process
8 of conducting the colon -- the procedure, right?

9 A To my recollection that's true.

10 Q Okay. And then you were done for the time
11 being?

12 A Yes.

13 Q Okay. Didn't participate at all in that next
14 procedure?

15 A Right.

16 Q Went back to the consultations, back to the
17 medical side?

18 A Correct.

19 Q Okay. And then did you ultimately come back a
20 couple hours later?

21 A A couple hours later when I was done seeing
22 patients and I had an assignment to do the hospital next door
23 I stopped by to lend my hand like I always did, to see if I --
24 any cases needed to be done that I could help with on my way
25 to the hospital.

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
SEP 02 2014 09:04 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

DIPAK KANTILAL DESAI,)	CASE NO. 64591
)	
Appellant,)	
)	
vs.)	
)	
THE STATE OF NEVADA,)	
)	
Respondent.)	
_____)	

APPELLANT'S APPENDIX VOLUME 12

FRANNY A. FORSMAN, ESQ.
Nevada Bar No. 000014
P.O. Box 43401
Las Vegas, Nevada 89116
(702) 501-8728

RICHARD A. WRIGHT, ESQ.
Nevada Bar No. 000886
WRIGHT, STANISH & WINCKLER
300 S. Fourth Street, Suite 701
Las Vegas, Nevada 89101

Attorneys for Appellant

STEVEN S. OWENS
Chief Deputy District Attorney
Nevada Bar No. 004352
200 Lewis Avenue
Las Vegas, Nevada 89155
(702) 671-2750
Attorney for Respondent

INDEX TO APPENDIX VOLUMES 1 through 41

<u>DOCUMENT</u>	<u>VOL.</u>	<u>PAGE(S)</u>
Indictment	1	000001-000042
Amended Indictment	1	000043-000084
Court Minutes 7/21/10	1	000085
Court Minutes 2/08/11	1	000086
Finding of Competency	1	000087-000090
Recorder's Transcript - Hearing: Video Deposition Tuesday, March 20, 2012	1	000091-000129
Indictment (C-12-283381 - Consolidated Case)	1	000130-000133
Second Amended Indictment	1	000134-000176
Third Amended Indictment	1	000177-000212
Defendant Desai's Motion and Notice of Motion for Competency Evaluation	1	000213-000229
Recorder's Transcript - Hearing Re: Defendant Desai's Motion for Competency Evaluation Status Check: Experts/Trial Readiness (All) Tuesday, January 8, 2013	1	000230-000248
Fourth Amended Indictment	2	000249-000284
Notice of Motion and Motion to Use Reported Testimony	2	000285-000413
Reporter's Transcript Re: Status Check: Experts (All) Thursday, March 7, 2013	2	000414-000440

<u>DOCUMENT</u>	<u>VOL.</u>	<u>PAGE(S)</u>
Defendant Desai's Opposition to State's Motion to Admit Foreign Documents Relating to Rodolfo Meana	2	000441-000445
Order	2	000446-000449
Court Minutes 3/21/13	2	000450
Defendant Desai's Opposition to State's Motion to Use Reported Testimony	2	000451-000454
Court Minutes 3/26/13	2	000455
Independent Medical Evaluation, 4/14/13 Filed Under Seal - Separately	2	000456
Reporter's Transcript - Calendar Call (All) State's Motion to Admit Evidence of Other Crimes Tuesday, April 16, 2013	2	000457-000497
Fifth Amended Indictment	3	000498-000533
Reporter's Transcript - Jury Trial Day 7 Friday, May 3, 2013	3	000534-000622
Reporter's Transcript - Jury Trial Day 8 Monday, May 6, 2013	3 & 4	000623-000773
Reporter's Transcript - Jury Trial Day 9 Tuesday, May 7, 2013	4 & 5	000774-001016
Reporter's Transcript - Jury Trial Day 10 Wednesday, May 8, 2013	5	001017-001237
Reporter's Transcript - Jury Trial Day 11 Thursday, May 9, 2013	6 & 7	001238-001517

<u>DOCUMENT</u>	<u>VOL.</u>	<u>PAGE(S)</u>
Reporter's Transcript - Jury Trial Day 12 Friday, May 10, 2013	7 & 8	001518-001784
Reporter's Transcript - Jury Trial Day 13 Monday, May 13, 2013	8 & 9	001785-002061
Reporter's Transcript - Jury Trial Day 14 Tuesday, May 14, 2013	9 & 10	002062-00
Reporter's Transcript - Jury Trial Day 15 Wednesday, May 15, 2013	10 & 11	002303-002494
Reporter's Transcript - Jury Trial Day 16 Thursday, May 16, 2013	11 & 12	002495-002713
Reporter's Transcript - Jury Trial Day 17 Friday, May 17, 2013	12 & 13	002714-002984
Reporter's Transcript - Jury Trial Day 18 Monday, May 20, 2013	13 & 14	002985-003247
Reporter's Transcript - Jury Trial Day 19 Tuesday, May 21, 2013	14 & 15	003248-3565
Reporter's Transcript - Jury Trial Day 20 Wednesday, May 22, 2013	15 & 16	003566-003823
Reporter's Transcript - Jury Trial Day 21 Thursday, May 23, 2013	16 & 17	003824-004014
Reporter's Transcript - Jury Trial Day 22 Friday, May 24, 2013	17	004015-004185
Reporter's Transcript - Jury Trial Day 23 Tuesday, May 28, 2013	18	004186-004384

<u>DOCUMENT</u>	<u>VOL.</u>	<u>PAGE(S)</u>
Reporter's Transcript - Jury Trial Day 24 Petrocelli Hearing Wednesday, May 29, 2013	19	004385-004510
Reporter's Transcript - Jury Trial Day 24 Afternoon Session Wednesday, May 29, 2013	20	004511-004735
Reporter's Transcript - Jury Trial Day 25 Thursday, May 30, 2013	21	004736-004958
Reporter's Transcript - Jury Trial Day 26 Friday, May 31, 2013	22	004959-005126
Reporter's Transcript - Jury Trial Day 27 Friday, June 3, 2013	22 & 23	005127-005336
State's Exhibit 18 - Meana Death Certificate Admitted 6/3/13	23	005337-005345
Reporter's Transcript - Jury Trial Day 28 Tuesday, June 4, 2013	23 & 24	005346-005611
Reporter's Transcript - Jury Trial Day 29 Wednesday, June 5, 2013	24 & 25	005612-005885
Reporter's Transcript - Jury Trial Day 30 Thursday, June 6, 2013	25 & 26	005886-006148
Reporter's Transcript - Jury Trial Day 31 Friday, June 7, 2013	27 & 28	006149-006430
Reporter's Transcript - Jury Trial Day 32 Monday, June 10, 2013	28	006431-006641
Reporter's Transcript - Jury Trial Day 33 Tuesday, June 11, 2013	29 & 30	006642-006910

<u>DOCUMENT</u>	<u>VOL.</u>	<u>PAGE(S)</u>
Reporter's Transcript - Jury Trial Day 34 Wednesday, June 12, 2013	30 & 31	006911-007143
Reporter's Transcript - Jury Trial Day 35 Thursday, June 13, 2013	31	007144-007382
Reporter's Transcript - Jury Trial Day 36 Friday, June 14, 2013	32	007383-007619
Reporter's Transcript - Jury Trial Day 37 Monday, June 17, 2013	33	007620-007827
State's Exhibit 228 - Table 20-1 - Modes of Transmission and Sources of Infection Considered Admitted 7/17/13	33	007828
Reporter's Transcript - Jury Trial Day 38 Tuesday, June 18, 2013	34	007829-008038
Reporter's Transcript - Jury Trial Day 39 Wednesday, June 19, 2013	35	008039-008113
Reporter's Transcript - Jury Trial Day 40 Thursday, June 20, 2013	35 & 36	008114-008361
Reporter's Transcript - Jury Trial Day 41 Friday, June 21, 2013	36 & 37	008362-008537
Reporter's Transcript - Jury Trial Day 42 Monday, June 24, 2013	37 & 38	008538-008797
Reporter's Transcript - Jury Trial Day 43 Tuesday, June 25, 2013	38	008798-009017
Reporter's Transcript - Jury Trial Day 44 Wednesday, June 26, 2013	39	009018-009220

<u>DOCUMENT</u>	<u>VOL.</u>	<u>PAGE(S)</u>
Reporter's Transcript - Jury Trial Day 45 Wednesday, June 27, 2013	39 & 40	009221-009473
Defendant's Proposed Instruction No. 2	41	009474-009475
Defendant's Proposed Instruction No. 3	41	009476
Defendant's Proposed Instruction No. 4	41	009477
Defendant's Proposed Instruction No. 5	41	009478
Instructions to the Jury	41	009479-009551
Verdict	41	009552-009559
Reporter's Transcript - Sentencing Hearing Thursday, October 24, 2013	41	009560-009583
Judgment of Conviction	41	009584-009589
Amended Judgment of Conviction	41	009590-009595
Notice of Appeal	41	009596-009600

1 that we're so traumatized by this that the policy was discard
2 it. It doesn't matter, just discard it and that's why I had a
3 problem because it was that part wasn't being done.

4 Q Okay. And so the -- you -- you thought you saw
5 it, brought Jeff Krueger in, double check, he looked, verified
6 it --

7 A Yes.

8 Q -- and so it was march her upstairs and fire
9 her?

10 A Yes.

11 Q Okay. And she was crying?

12 A I think she was tearful.

13 Q Okay. And then you had told Dr. Desai?

14 A Yes.

15 Q Okay. And then Dr. Desai said -- and she had
16 been a long-time employee, correct?

17 A Yes.

18 Q And Dr. Desai said no or he overruled you?

19 A At some point he did.

20 Q Okay. And -- and you knew that he required
21 retraining?

22 A Yes.

23 Q Okay. Through OSHA and then had her go to the
24 Burnham Clinic.

25 A Yes.

1 Q And do you disagree with that treatment of
2 Linda?

3 A Personally because -- because this had occurred
4 and we were so traumatized and hurt by what was happening and
5 because we wanted this to be without any potential breach at
6 all ever, we had asked that any unused portion of propofol be
7 discarded. And we had them sign off on it. So for me I would
8 have preferred termination but I deferred to Dr. Desai on
9 this. Just personally.

10 Q I just want to be clear. So did you think the
11 decision of retraining her and not terminating her was okay?

12 A I didn't think so but it was -- I deferred.

13 Q Okay. You recall -- you thought it was okay at
14 the grand jury?

15 A I don't recall that.

16 Q Page 93 -- tiny writing. I don't get the big
17 one. Page 93.

18 A Yes, I see that.

19 Q Okay. Is that --

20 A All right. Again, deferring. If Desai felt it
21 was okay, then okay.

22 Q If you stated, I didn't think she would do that
23 again and she didn't use the propofol the way it was specified
24 I thought okay an OSHA course, okay and that she would
25 definitely do what she was supposed to. I mean, I read that

1 as that you were okay with --

2 A I was deferring -- yes, I was deferring to his
3 judgment that that was okay. When you asked me what I would
4 have preferred, I answered it that way.

5 Q Now, your -- do you know how many patients a day
6 you all -- procedures -- how many procedures a day was the
7 average?

8 A Depends on what year. I mean if it was in 2007
9 or 2004, they were different.

10 Q 2007.

11 A I would say around 50 to 60 a day.

12 Q Okay. Would -- is this 53?

13 A I would say -- I mean, I'm guessing now --

14 Q Okay.

15 A -- an average of around 53 to 55 in there.

16 Q Okay. The -- did you tell the grand jury that
17 the average for 2007 was 53 procedures per day?

18 A I'd have to see it. I don't remember.

19 Q Do you recall?

20 A No.

21 Q Would that be right?

22 A I think that would be within the range, yes.

23 Q Okay. Well, we've heard all kinds of numbers
24 about 80's, 90's, 70's, 75 -- 91, where it's yellow.

25 A Okay, yes.

1 Q Is that correct?

2 A Yes.

3 Q And there's really no need to constantly keep
4 speculating about the number of procedures that were done
5 because they are all of record, correct?

6 A Right.

7 Q In fact, if we want to know how many procedures
8 on September 21st, 2007 --

9 A Yes.

10 Q -- all of the records are there, correct?

11 A Correct.

12 Q And if we want to know precisely the number of
13 procedures from oh, October 2007 when Dr. Desai had his first
14 stroke, up until the clinic closed, all of those records,
15 every procedure, schedule and number per day are all in
16 existence, correct?

17 A Yes.

18 Q And we can simply add up every procedure for the
19 month, for the year, divide by the days open, we'll know how
20 many procedures, right?

21 A You can determine an average, yes.

22 Q Okay. It really isn't necessary to bring people
23 in and have them speculate on the numbers per day, correct?

24 MR. STAUDAHER: Objection. Speculation.

25 MR. WRIGHT: That's not speculation.

1 THE COURT: Well, overruled. He can answer.

2 BY MR. WRIGHT:

3 Q Is there any reason why an exercise like this
4 would go on when all of the records are here?

5 THE COURT: Well, that's not a proper question.

6 MR. WRIGHT: Okay.

7 THE COURT: If you wanted to find out how many
8 patients per day, you could look at the records, divide by the
9 number of days and come up with an average, correct?

10 THE WITNESS: Yes.

11 THE COURT: So we don't have to rely -- I think where
12 Mr. Wright's going, we don't have to rely on people's
13 memories.

14 BY MR. WRIGHT:

15 Q Okay. Or you could just count them up for every
16 day because they're -- every record is there, correct?

17 A Right, until the practice had -- was closed --

18 Q Right.

19 A -- we kept a logbook of procedures performed and
20 you could -- you could simply go to the logbook and see.

21 Q And who has those logbooks?

22 A I believe Metro Police still has them.

23 Q Okay. You know Detective Whitely?

24 A I know Detective Whitely, yes.

25 Q Okay. Those -- all of those were taken at the

1 time of the search, correct?

2 A Yes.

3 Q So from that time until now, all of these
4 answers could be known about how many procedures on a given
5 day, right?

6 A If you had the logs, yes.

7 Q So we would be able to determine exactly when
8 after Dr. Desai's stroke, return and your first day and you
9 reduce it to 60 scheduled --

10 A Right.

11 Q -- procedures Shadow Lane Clinic --

12 A Yes.

13 Q -- we can go right to the date and figure out
14 when that happened, right?

15 A You could -- I think so, I don't know where the
16 schedules are but the logbook is a log of procedures
17 performed.

18 Q Okay. Schedules -- and of course with the 60
19 we're talking about scheduled?

20 A Correct.

21 Q And that you'd drop off 10 to 12, meaning 48?

22 A Correct.

23 Q Okay. And if 70 were scheduled you're doing
24 like 58?

25 A Correct.

1 Q And when we talk about the average of 53
2 procedures, we're not talking about scheduled, we're talking
3 about the actual procedures per day, correct?

4 A Correct.

5 Q On -- strike that.

6 MR. WRIGHT: Can we approach the bench, Your Honor?

7 THE COURT: Sure.

8 (Off-record bench conference.)

9 THE COURT: Ladies and gentlemen, we're going to go
10 ahead and take our evening recess at this point. We will
11 reconvene tomorrow morning at nine a.m. During the evening
12 recess you are reminded that you are not to discuss the case
13 with each other or with anyone else. You're not to read,
14 watch or listen to any reports of or commentaries on this
15 case, any person or subject matter relating to the case.
16 Don't do any independent research and please do not form or
17 express an opinion on the trial. If you would all please
18 place your notepads in your chairs and follow the bailiff
19 through the rear door and we'll see you back tomorrow.

20 (Jury recessed at 3:23 p.m.)

21 MR. STAUDAHER: At what time, Judge?

22 THE COURT: Nine a.m.

23 MR. STAUDAHER: Nine, okay.

24 THE COURT: And Dr. Carrol, once again, please don't
25 discuss your testimony during the evening recess.

1 THE WITNESS: Judge, is it possible to have a sense
2 of how much time I will be needed here tomorrow?

3 THE COURT: It's not up to me. How much longer for
4 cross, Mr. Wright, do you think?

5 MR. WRIGHT: Through the morning.

6 THE COURT: So until lunchtime roughly at noon, so
7 another three hours?

8 MR. WRIGHT: Yes.

9 THE COURT: And then obviously, you can't know how
10 much redirect based -- because you don't know what's going to
11 come out, but based on what we've heard so far, how much
12 redirect do you think?

13 MR. STAUDAHER: Probably 20 minutes.

14 THE COURT: Okay. So maybe a total of an hour or so
15 of redirect? So that's four hours and we've got a few juror
16 questions so that usually probably will generate maybe another
17 20 minutes, 15 to 20 minutes. And then there may be some
18 recross. So, you know, I'd bank on mid to late afternoon,
19 late afternoon being five. You know, mid to afternoon being
20 like right now.

21 THE WITNESS: Does anyone think this will go to
22 Monday?

23 THE COURT: I doubt it, no.

24 MR. WRIGHT: No.

25 (Court recessed for the evening at 3:25 p.m.)

CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

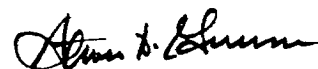
KARR REPORTING, INC.
Aurora, Colorado


KIMBERLY LAWSON

(COPY)

Electronically Filed
03/11/2014 12:38:20 PM

TRAN



CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,)	
)	
Plaintiff,)	CASE NO. C265107-1,2
)	CASE NO. C283381-1,2
vs.)	DEPT NO. XXI
)	
DIPAK KANTILAL DESAI, RONALD)	
E. LAKEMAN,)	
)	
Defendants.)	TRANSCRIPT OF
)	PROCEEDING

BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE

JURY TRIAL - DAY 17

FRIDAY, MAY 17, 2013

APPEARANCES:

FOR THE STATE:	MICHAEL V. STAUDAHER, ESQ. PAMELA WECKERLY, ESQ. Chief Deputy District Attorneys
FOR DEFENDANT DESAI:	RICHARD A. WRIGHT, ESQ.
FOR DEFENDANT LAKEMAN:	MARGARET M. STANISH, ESQ. FREDERICK A. SANTACROCE, ESQ.

RECORDED BY JANIE OLSEN COURT RECORDER
TRANSCRIBED BY: KARR Reporting, Inc.

KARR REPORTING, INC.

002714

I N D E X

WITNESSES FOR THE STATE:

CLIFFORD CARROL

Cross-Examination By Mr. Wright (Continued) 6

Redirect Examination By Mr. Staudaher 154

Recross Examination By Mr. Santacroce 261

E X H I B I T S

DEFENDANT'S EXHIBITS ADMITTED:

PAGE

D1 142

E1 144

A2 266

1 LAS VEGAS, NEVADA, FRIDAY, MAY 17, 2013, 9:12 A.M.

2 * * * * *

3 (Outside the presence of the jury.)

4 THE COURT: All right the jurors are all now here,
5 but before we bring them in a couple of thing on the record,
6 includes you Mr. Wright.

7 Just for the record, when we concluded the
8 cross-examination of the doctor by Mr. Santacroce yesterday
9 afternoon Mr. Wright approached the bench and said he needed
10 about an hour and a half to confer with his client in order to
11 prepare for his cross-examination. At that time we took our
12 evening recess and that was at 3:30 yesterday afternoon. I
13 think it was almost exactly 3:30 when we took the recess
14 because obviously to give him an hour and a half it's 5:00 and
15 that's time to quit. So I just wanted to put that on the
16 record that he's now had the hour and a half plus whatever
17 additional time over the evening break to confer with his
18 client to prepare for his cross-examination.

19 Correct, Mr. Wright?

20 MR. WRIGHT: That's correct.

21 THE COURT: All right. A second issue. Just as I
22 was walking in the door just now, my marshal started informing
23 me that Ms. Booker in chair -- the second chair in the back
24 row, correct?

25 THE MARSHAL: Yeah.

1 THE COURT: Believes she knows one of the witnesses.
2 This may be the witness we've already discussed but --

3 THE MARSHAL: She said that they [inaudible].

4 THE COURT: Oh, okay. And so Kenny told her to write
5 down what her information was so we could see it. But in a
6 nutshell, what did she tell you?

7 THE MARSHAL: She just basically said that she went
8 to high school with this gentlemen and that she now worked
9 with him, she doesn't talk to him very much, she didn't even
10 know his last name. So I told her to write down a brief
11 summary of how you know him to the extent and how long and how
12 well you know him and what his full name was.

13 THE COURT: And did she indicate how she figured this
14 out?

15 THE MARSHAL: I believe that he talked to her after
16 -- or something like that, sent her an e-mail asking her and
17 she said I don't know what you're talking about and stuff like
18 that. So she didn't -- never said that she was on the jury or
19 anything like that. She just told him that she didn't know
20 what he was talking about.

21 MS. WECKERLY: We haven't talked to him yet.

22 THE COURT: Okay. Yeah, I was going to say -- well,
23 let's --

24 MS. WECKERLY: We wouldn't have recommended that.

25 THE COURT: Well, you know, maybe he was being

1 conscientious. He wanted to make sure before we made a big to
2 do about it, it was really her. That explains however -- and
3 I think addresses any issue of misconduct on her part in not
4 disclosing it because she didn't know his last name and that's
5 kind of what we had surmised that, you know, sometimes you
6 know people for years and years and you never really know
7 their name or you certainly don't their last name. It's just
8 somebody you say, oh, hi, how are you. So we'll pursue that
9 later. I just wanted to make everyone aware of it as soon as
10 I became aware of it.

11 So why don't we then just bring in the jury and we'll
12 -- is -- is the witness here?

13 MS. WECKERLY: He is, he's just in the anteroom.

14 THE COURT: Okay. You can just go get him or
15 whatever, bring him in.

16 (Jury reconvened at 9:17 a.m.)

17 THE COURT: All right. Court is now back in session.
18 The record should reflect the presence of the State, the
19 defendants and their counsel, the officers of the Court and
20 the ladies and gentlemen of the jury.

21 Dr. Carrol, you are of course still under oath. Do
22 you understand that?

23 THE WITNESS: Yes.

24 THE COURT: All right. Mr. Wright, you may begin
25 your cross-examination.

1 MR. WRIGHT: Resume it.

2 THE COURT: Oh, I'm sorry. Resume it, you're
3 correct.

4 CLIFFORD CARROL, STATE'S WITNESS, PREVIOUSLY SWORN

5 MR. WRIGHT: Thank you.

6 CROSS-EXAMINATION (Continued)

7 BY MR. WRIGHT:

8 Q Good morning.

9 A Good morning.

10 MR. WRIGHT: You've just got a secret one working.

11 THE COURT: Oh, okay. All right. I'll turn off the
12 secret one.

13 MR. WRIGHT: Everyone else is on.

14 THE COURT: The secret one has now been turned off.

15 BY MR. WRIGHT:

16 Q In preparation for your testimony here, not
17 today but yesterday, did you review anything?

18 A I reviewed my interview with the detective and I
19 reviewed briefly my testimony to the grand jury, but I didn't
20 review it word for word.

21 Q Okay. And that -- that would have been the --
22 the interview with the detectives would have been the
23 interview with Mr. Staudaher, the detectives, prior to your
24 grand jury appearance?

25 A That's correct.

1 Q And then your grand jury testimony --
2 A Correct.
3 Q -- you reviewed briefly?
4 A Briefly, yes.
5 Q Okay. And did you review anything else?
6 A No.
7 Q Okay. Did you meet with anyone to prepare?
8 A No.
9 Q Okay. Did you meet with the district attorney?
10 A Oh, yes.
11 Q Okay. I mean just for a pre -- a prep -- just a
12 -- like where your testimony's going type session?
13 A Yes, it was a preparation.
14 Q Okay. Anyone other than that?
15 A No.
16 Q Okay. Now I want to talk to you a little bit
17 about -- because you're a specialist in hepatitis C, I want
18 you to answer -- explain to the jury some -- some things about
19 hepatitis C, its transmission, its prevalence in the
20 population, in the community, and the types of it because you
21 -- you're totally familiar with that, correct?
22 A Yes, sir.
23 Q And you have given like talks to other doctors
24 or the community about it?
25 A Yes, sir.

1 Q Okay. Well, just like this is a community talk,
2 explain to them hepatitis C, what the virus is, how prevalent
3 it is, and how many people have it, those type of things.

4 A Okay. Hepatitis C is a virus. It's a viral
5 infection that is transmitted from a person to another person
6 or from a tainted blood product to another person. The virus
7 enters the bloodstream and then infects predominantly but not
8 exclusively the liver cells. Hepatitis C used to be call
9 hepatitis non-A, non-B. We've known about it for generations
10 but we didn't know what it was or had a name for it until the
11 technology allowed us to understand exactly what it was and
12 actually measure its level in people's blood. It turns out
13 that hepatitis C virus is a family of viruses.

14 There are about six different viruses worldwide.
15 It's as if they were a group of cousins in a room, they're all
16 the same, they're related, but they're not exactly the same.
17 In the United States we have predominately type one, type two,
18 and type three and then there are subtypes of even those.

19 When I was in training we learned that the prevalence
20 of the disease or how many people likely have it in the United
21 States is approximately two percent of the population. So
22 that translates to approximately two percent of 300 million
23 people. The transmission of the virus, when I was in training
24 and practice, is typically by a blood transfusion before 1992,
25 an operation where there may have been a contamination of

1 surgical instruments, being incarcerated is a risk factor,
2 intravenous use of drugs, heroin use, nasal cocaine use, being
3 incarcerated is a risk factor, and tattoos before about five
4 years ago when tattoo parlors became aware of this.

5 The principal way that people get hepatitis C is by
6 using intravenous drugs back in the '70s, '80s, and perhaps
7 '90s or blood transfusion before 1992. When the virus is
8 transmitted it can cause no symptoms and only detected years
9 later, that's the most common presentation. A patient goes to
10 the doctor, gets a screening test for hepatitis C and
11 surprisingly it's positive without having any symptoms. Or it
12 can be acute where several weeks after the inoculation the
13 patient will have fever and chills and what we call
14 constitutional symptoms, malaise, fatigue, even fever, yellow
15 -- yellowing of the eyes, dark urine, yellowing of the skin
16 and it may or may not become chronic. Chronic hepatitis C
17 infection is when it persists and it doesn't go away on its
18 own.

19 There are a number of patients who get acute
20 hepatitis C who clear the virus on their own. Their own
21 immune systems clear it and they don't have a chronic
22 infection. Generally, when I was in training, the -- the
23 information was that once a patient acquired hepatitis C it
24 would be between 15 to 20 years before cirrhosis or scar
25 tissue of the liver would occur. The treatment for hepatitis

1 C has really evolved. When I was in training in 1992 to 1995
2 we had one medicine and that was Interferon, which was a
3 medicine that you injected into your own skin once -- Monday,
4 Wednesday and Friday. It caused side effects like muscle
5 aches, joint aches, fever, fatigue, suicidal thoughts,
6 homicidal thoughts, depression, anemia, insomnia and a host of
7 others. And at that time we almost never cured anybody of it.
8 It was about a three percent effective rate.

9 Then I went into private practice. The next big
10 events in the treatment of hepatitis C was not a new drug but
11 was a drug in addition to Interferon and that's called
12 Ribavirin. So the Interferon was an injection and the
13 Ribavirin is a pill. So the treatment's standard for a good
14 number of years was Interferon Monday, Wednesday and Friday,
15 shots and Ribavirin pills everyday.

16 Now, the treatment for hepatitis C depends on which
17 one of those types you have. If you have type one, that
18 treatment is generally 48 weeks and if you have type two or
19 type three, it's six months or 24 weeks. And it's -- it's
20 remarkable that one of the types, type one, is the most
21 difficult to treat. It's the one that is the -- is the least
22 responsive to therapy, whereas type two and type three are
23 very responsive to therapy. So with Interferon and Ribavirin
24 we were successful in treating people, that means getting rid
25 of the virus 30 percent of the time and for types two and

1 three it was about 60 to 80 percent of the time.

2 Patients didn't like it. It caused all these side
3 effects. They were giving themselves needles Monday,
4 Wednesday and Friday. They had to be in the doctor's office
5 every month monitoring blood tests, monitoring side effects,
6 treating side effects, preventing suicidal thoughts,
7 preventing depression.

8 The next major event was a change in the Interferon.
9 The molecules changed in such a way that it didn't need to be
10 given Monday, Wednesday, Friday, it could be given just once a
11 week. So now the treatment was once a week Interferon plus
12 the Ribavirin and the efficacy or the ability to cure type one
13 jumped to around 40 percent, 35 to 40 percent after treatment.
14 And I treated many people with type one, type two and type
15 three hepatitis C over the years. And I went to support
16 groups to help people understand what the treatments were.

17 So for a number of years that was the standard of
18 care treatment. Then the next major event was not a new
19 medication but an additional medication. So now we had a
20 three-drug cocktail. The three-drug cocktail, Interferon,
21 Ribavirin plus a new class of medications that directly kills
22 the virus made the efficacy or the ability to cure the disease
23 in type one go from 30 to 40 percent to around 60 percent.
24 That was about a year, year and a half ago we started giving
25 that treatment.

1 However, we had some problems because when I talked
2 to you about the toxicity of the prior treatment, this
3 treatment was much more toxic. Now we had a problem with more
4 side effects. One of the medications was associated with a
5 rash that, believe it or not, could kill a person if that rash
6 became out of control, it became a systemic problem. So I
7 treated only a few patients with this regimen for fear of
8 toxicity.

9 But now we have a revolution in the treatment of
10 hepatitis C whereas we might -- we will have at the end of
11 this year, treatment that does not include Interferon at all,
12 no more needles. There is a new treatment coming out, which
13 is the Ribavirin plus a new molecule that has been shown in
14 trials to be nearly 100 percent effective in type two and
15 three hepatitis C in clearing it and curing it for 12 weeks,
16 just two pills, no more shots.

17 For type one in 2015 or late 2014 we expect to have a
18 similar regimen with not just -- not two pills but one pill,
19 that's all, no injections, for 12 weeks once a day with a
20 nearly 100 percent effective rate in killing type one
21 hepatitis C. Why? Because these drugs are not like all the
22 old drugs, these drugs are directly virucidal or they kill the
23 virus directly.

24 So in the world of treatment of hepatitis C, it's all
25 about to change and it's -- it's one of the most remarkable

1 scientific improvements I have ever seen in practice where
2 we'll go from a treatment that's toxic and difficult to one
3 that has no side effects and is nearly 100 percent effective.

4 So I'm telling my patients now to hold off and just
5 wait because I'll be able treat them very soon with this
6 regimen.

7 Q Thank you. Ask you a few questions on it. If I
8 contact -- contracted hepatitis C virus today --

9 A Yes.

10 Q -- okay, and as I understand it, I then have --
11 if I have a sufficient viral load -- you know, I contact
12 enough to where I've got it, okay?

13 A Yes, sir.

14 Q I may or may not have symptoms?

15 A That's correct.

16 Q Okay. And the majority of the people who
17 contracted do not have symptoms?

18 A That's correct.

19 Q But -- but they still have it?

20 A Yes.

21 Q Okay. And that -- that's why I believe the
22 majority of the population that has hepatitis C right now
23 doesn't even know it.

24 A Is it the majority? I don't know, but it's a
25 significant proportion.

1 Q Okay. And like the baby boomer generation, my
2 generation, doesn't -- like CDC within the past year recommend
3 that every single person in baby boomer age get a hepatitis
4 test?

5 A That's right. The Centers for Disease Control
6 last year recommended that not only patients who have some
7 risky history of behavior that could make them at risk for
8 hepatitis C get tested, but it's recommended that every
9 American no matter what, between -- born between 1945 and 1965
10 gets a screening test for hepatitis C. Why? Well, it's just
11 so that the epidemiology tells us that that group of people is
12 at the highest risk for getting hepatitis C. And the CDC
13 recognizes that these -- these new treatments are so powerful
14 and so effective that a potential cure of this disease is on
15 the horizon and no more liver cancer from it or cirrhosis from
16 it.

17 Q And --

18 THE COURT: I don't know if you mentioned this, but
19 it can be sexually transmitted as well.

20 THE WITNESS: It can be sexually transmitted.

21 THE COURT: That was a question --

22 THE WITNESS: That's actually a low risk
23 transmission, whereas hepatitis B, a different virus, is
24 almost universally infectious that way. But hepatitis C is
25 not -- is -- can be, but it's a low risk.

1 THE COURT: Okay.

2 BY MR. WRIGHT:

3 Q On -- some statistics I'll ask you about. Are
4 those infected with hepatitis C, about 85 percent end up with
5 the chronic version of this viral illness? In layman's terms
6 that means 85 percent are not symptomatic; is that --

7 A That means that 85 percent of those people who
8 have had an inoculation or an exposure, will become chronic.
9 Now, it doesn't mean that all 85 percent of those patients
10 didn't have some inkling or some symptom of something wrong.
11 It simply means that the rate at which the virus becomes
12 chronic is 85 percent. In contradistinction to something like
13 hepatitis B, whereas an adult, if I became infected today, my
14 chance of clearing the virus and not having a chronic
15 infection with hepatitis B is 95 percent. So only a five
16 percent risk of a chronic form. So the what the 85 percent
17 refers to is the indolence of this virus, hepatitis C, and
18 that the great majority, 85 percent, will have a chronic form
19 and not clear it on their own.

20 Q Okay. And in -- in the instances we are talking
21 about at the -- that is the subject of this case, the patients
22 on the 21st of September and the 25th of July, those patients
23 that are on the chart and everything that got hepatitis C,
24 those were chronic patients -- pardon me, used the wrong word,
25 acute patients?

1 A Yes, sir.

2 Q Okay. They were symptomatic?

3 A Yes.

4 Q And I can -- I can start out -- and if I'm
5 exposed to hepatitis C like at -- at the clinic, if I am going
6 to be acute normally it occurs within how many months?

7 A The -- the period of time between the
8 inoculation and the development of symptoms varies somewhat
9 but it's generally between four to 12 weeks.

10 Q Okay. So if I'm exposed at the clinic and I'm
11 -- I'm either going to be non-acute --

12 A Correct.

13 Q -- and may not even know it -- about it or then
14 four to 12 weeks on -- generally I would have symptoms and
15 have acute hepatitis C?

16 A I think that's accurate.

17 Q Okay. And -- but if -- if we wanted to know if
18 even a person doesn't know it, if we wanted to test every
19 person for three weeks that went to a given clinic that is
20 getting a blood sample and doing specific tests to count the
21 stuff you count, liver enzymes or something?

22 A Yes.

23 Q Okay. So you could find out whether someone has
24 contracted hepatitis C regardless of whether they have
25 symptoms?

1 A Correct.

2 Q Okay. In the U.S. approximately four million
3 people have chronic hepatitis C. That would be like two
4 percent they're talking about?

5 A Yes.

6 Q Around 75 percent of Americans with chronic C
7 hepatitis are unaware of their condition. The -- these are
8 from CDC when they put out the recommendation to get tests for
9 baby boomers. One of every 33 baby boomers, those born
10 between '45 and '65, are living with hepatitis C infection.
11 Those all make sense to you?

12 A Yes.

13 MR. STAUDAHER: Just for the record, I don't
14 necessarily object to this but I'd just like to know what the
15 basis of the statistics -- what year it was done and what the
16 information entails.

17 THE COURT: Would you show that to Mr. Staudaher.
18 While he's doing that, I'm just curious, why -- if you know,
19 is the baby boomer generation at particular risk for hepatitis
20 C?

21 THE WITNESS: The baby boomer generation --

22 THE COURT: Is it that crazy behavior of the '70s or
23 what?

24 THE WITNESS: It's a combination of crazy behavior in
25 the '60s and '70s and lack of knowledge about its transmission

1 as more invasive surgical procedures, blood transfusions
2 became available.

3 THE COURT: Okay.

4 MR. WRIGHT: And the -- just -- just so it's clear
5 for the record, I am talking about statistics and conditions
6 from August, 2012 --

7 THE COURT: All right. Thank you.

8 MR. WRIGHT: -- when I'm using these statistics.

9 BY MR. WRIGHT:

10 Q Now, when someone -- you talked about a patient
11 having hepatitis C and clearing up on their own?

12 A Yes.

13 Q Okay. Explain what that means.

14 A That means that if I were to be inoculated right
15 now with hepatitis C and I had an acute form of the infection,
16 in four to six weeks from now I became tired, fatigued, my
17 urine turned brown, my eyes turn yellow. I was having acute
18 hepatitis C infection. My liver is inflamed, the liver enzyme
19 test would be elevated. There is a probability or certain
20 percentage of patients whose own immune system reacting to
21 that infection will neutralize it.

22 Well, how do we know? Well we would test patients,
23 measuring the actual amount of hepatitis C in the virus. We
24 have blood tests that can measure antibodies too, but we also
25 have blood tests that measures the amount, the number of

1 viruses per milliliter. Those numbers can go in to the
2 millions.

3 You can have a test result where there's 10 million
4 viruses per cc or seven or eight million. But sometimes that
5 number quickly drops off to under a million, to under a
6 hundred thousand, to under ten thousand suggesting that the
7 immune system is clearing it on its own. There are a certain
8 number of patients who don't require therapy who will clear it
9 and be immune to it or better that particular viral infection
10 is cleared. It's not clear that they'll be immune forever for
11 another infection.

12 Q Thank you. Now, I want to move on back to the
13 clinic, the endo clinic, when you were there. Tell me about
14 the quality control and certifications that took place. I'm
15 talking about prior to CDC, so like 2006, 2007 time frame.

16 A They were -- surgical centers are -- well, can
17 be certified to operate by Medicare, by an organization called
18 J-Co or an organization called AAAHC. It's an acronym. If
19 you'll forgive me, I always forget what it stands for. But
20 that's an organization that will accredit an ambulatory
21 surgical center based on a number of quality factors and
22 evaluations.

23 Our center was accredited by AAAHC twice. And the
24 last accreditation and I don't remember, sir, the exact date
25 of that but it was I think in 2006 or '07. That accreditation

1 was a three-year accreditation to our organization, which was
2 for them the highest level of accreditation. We had Medicare
3 accreditation and AAAHC accreditation at the highest level for
4 three years.

5 Q The -- the process -- the most recent AAAHC
6 accreditation, tell the jury about what the process and
7 on-site inspections, exactly how it all worked.

8 A To the best of my memory, the evaluation
9 occurred with two people. One was an anesthesiologist
10 interestingly and the other was an evaluator. And for a
11 number of days, I believe two or three, these two people
12 evaluated our clinic looking at every aspect -- our surgical
13 center, looking at every aspect of its operation from how
14 patients were processed, how procedures were done, the
15 paperwork, the history and physicals, the way the medications
16 were used, the way the medications were stored, every aspect
17 of the operation was evaluated. For a comprehensive list of
18 -- of those you would have to refer to the -- to that
19 organization.

20 Q Okay. And at -- at the time they watched
21 procedures, correct?

22 A Yes.

23 Q Okay. And looked at all of the books and
24 records?

25 A Yes.

1 Q Okay. And do you recall at -- and ultimately
2 there was an ending -- end of accreditation meeting?

3 A There was a meeting. There was a meeting before
4 these two gentlemen left where they would sit down with us,
5 sort of an exit meeting, and tell us about their -- their
6 observations and their experiences. And I remember one of
7 them saying that not only did we pass and not only would we
8 get the highest accreditation, he called our endo center a
9 model unit.

10 Q Okay. Did you believe that at the time,
11 correct?

12 A Yes.

13 Q And when you were working there, we have heard
14 evidence maybe you have heard from reading the papers,
15 anecdotal stories about feces being all over the walls, on the
16 ceilings and just being a filthy place. Is any -- any of that
17 accurate?

18 A I don't believe so. I never saw that. I don't
19 believe that's accurate.

20 Q Okay. Was -- I mean, this was a modern
21 operating up to standard clinic that you were proud of and the
22 other physicians were proud of; is that correct?

23 A I would say that that's accurate. Was it --
24 were there other issues? Of course there are issues in any
25 business that need to be addressed, but your statement is

1 accurate.

2 Q And was -- was there -- and it was accredited by
3 Medicare?

4 A Yes, it was.

5 Q Okay. And how about Quality Care Consultants?
6 Do you know about that?

7 A You know, I know only a little about that.

8 Q Okay.

9 A I know that Quality Care Consultants who I had
10 never met before, was an independent company that purported to
11 accredit or evaluate surgical centers. I know that they were
12 hired. I didn't hire them, but they were hired to evaluate
13 the operations, to give us an independent view of the surgical
14 center.

15 Q Okay. With AAAHC, do you remember the
16 deficiency they identified?

17 A There was one deficiency that I recall that they
18 identified and that was -- the only concern that they gave to
19 us was that our history and physical form that we had for the
20 patients before a procedure wasn't consistent. Some patients
21 had a printed out dictated history and physical, some patients
22 had a form filled out in the clinic before the procedure. So
23 they asked that we make that more consistent and as soon as
24 they did I generated a -- a universal form that we could use
25 in response to that one deficiency that was recognized.

1 Q And -- and do you recall at that time them
2 expressing -- or I'm not sure at that time, do you recall
3 testifying about how impressed and in awe you were of Dr.
4 Despair because of his ability to manage all of that clinic
5 and get that accreditation?

6 A I do remember that, yes.

7 Q Okay. And that's true, correct?

8 A Yes, it is.

9 Q This is a rigorous national accrediting of the
10 organization that gave you all the highest rating available?

11 A That's correct.

12 Q Now, the patient numbers at the clinic -- I'm
13 going to ask you questions about how it operated and the
14 efficiency of the procedures themselves and how you were able
15 to safely accomplish the numbers that were accomplished. I
16 asked you yesterday about your procedures back in Buffalo. Do
17 you recall that?

18 A Yes, I do.

19 Q Okay. And that was in -- you were right out of
20 -- well, right out -- right out of a long schooling but you
21 were just getting your feet wet, correct?

22 A That's right.

23 Q And you've become better at your practice the
24 more you practice.

25 A That's true.

1 Q Okay. And at that time, in Buffalo, on your
2 endoscopy day at the hospital you were doing, I think you
3 said, like 14 to 17, that range?

4 A That range.

5 Q Okay. Cf procedures, correct?

6 A Correct.

7 Q And here -- we're moving up to the 2006, '07 --
8 or 2007 time frame -- I'm unclear as to the time frame but
9 you, I believe, were doing -- you yourself 24 or 28 to 34
10 procedures I recall testimony of.

11 A Correct.

12 Q Okay. So you were -- you in your room at the
13 Shadow Lane clinic on a given full day, right?

14 A Correct.

15 Q Okay. Were doing 28 to 34 procedures, correct?

16 A Correct.

17 Q And what -- what is it about the way the clinic
18 operates and is set up and it's equipment and employees that
19 allows that many practicing -- that many procedures to be done
20 and explain why they are safely done?

21 A Well, it was -- it was set up in a way to be
22 very efficient. So when patients arrived, the intake process
23 was done efficiently, the IV line was placed, the patient was
24 -- by the time I arrived at 6:45 or 6:50 in the morning,
25 usually two patients were already ready to be -- to undergo a

1 procedure. The sedation is -- acts quickly where -- when I
2 told you yesterday that I used to do Versed and Demerol and
3 give that sedation, that could take three, four, five minutes
4 to work, but propofol can take 15 to 20 seconds to work. So
5 in 15 to 20 seconds the patient is perfectly and adequately
6 sedated so that is a highly -- a high improvement in
7 efficiency. A patient is sedated, comfortable, the sedation
8 is better, the patient's more comfortable so the procedure
9 goes well.

10 Now, I told you yesterday about using Demerol and
11 Versed when I was first in practice and in training. Doing a
12 colonoscopy that way, I would have to stop and give more and
13 more medication for many patients because it was
14 uncomfortable. But with propofol, patients are very well
15 sedated and comfortable. So that improves the efficiency
16 dramatically.

17 Also we -- we purchased a -- a system to make a note.
18 Whereas when I was in practice in Buffalo and even in Stony
19 Brook as a trainee we dictated every report. So that means I
20 left the area, I sat down at a table like this, I either used
21 a dictaphone or a telephone and I dictated the entire case.
22 Well, that takes time. We bought a system called ProVation,
23 which was a computer system that as soon as I was done with
24 the procedure, I walked two steps to the computer and with a
25 number of clicks of the mouse a note was generated in real

1 time and that took a minute to do once you got used to it.

2 So a patient is sedated quickly, after doing
3 thousands and thousands of procedures and many of the doctors
4 again doing thousands of procedures were quite efficient at
5 this skill. Once the procedure's over the note is generated
6 in a minute and that note is printed and given to the primary
7 care doctor and is part of our record. So when I finish that
8 note I simply walk to the next room, which is a few feet away
9 and the patient is ready to be examined endoscopically.
10 Patient's already been pre-op'd, the patient's already been
11 interviewed, the IV line is in.

12 So there's -- I look at the chart. I make sure the
13 history and physical's on the chart and if it wasn't I didn't
14 the procedure. It's to make sure I'm doing the right
15 procedure, to make sure the indication's correct, to make sure
16 everything is correct. Then I start that procedure and the
17 process starts again.

18 Now, while I'm doing that, the other -- in the other
19 room the patient is -- has been wheeled out to recovery and
20 the next patient is being processed to get ready. So in that
21 way the efficiency is very high so I can do, comfortably, four
22 to five procedures per hour that way. Now, an upper endoscopy
23 takes three or four minutes or five minutes. A colonoscopy,
24 like I told you yesterday, varies.

25 If the anatomy's very easy and the patient is very

1 comfortable it can -- it can take me one to two minutes to get
2 to the end of the colon. In a patient who's in his 70s or
3 80s, especially a woman who's had any operations, that could
4 take much longer, it varies. So I could comfortably do four
5 to five procedures per hour. That -- that sometimes changed.

6 If I had a difficult case it would go down to three.
7 If I had a number of upper endoscopies, it might go to six or
8 even seven in an hour because there's -- there's relatively
9 easy to do technically. Once you learn how to pass the
10 endoscope safely, it's only thick as my pinky, the procedure
11 is -- is only about two or three feet into the intestine so
12 it's very easy. So that's how these -- the clinic was set up
13 to be efficient.

14 Q Okay. And the -- when you are -- you have
15 completed and you go over to the computer or the ProVation
16 program and essentially you make -- finalize your report and
17 notes and with that are actual photographs and the document
18 all that you are reporting, correct?

19 A That's correct.

20 Q And then a -- a report -- I don't know if it's
21 that report or does something else then go to the discharge
22 nurse to talk to the patient?

23 A That note goes to the discharge nurse.

24 Q Okay, that note. And the -- you have done --
25 normal procedure, you or another physician with the practice

1 would have seen the patient prior to this procedure?

2 A Absolutely.

3 Q On the medical side?

4 A Yes.

5 Q And that's normally when the history and
6 physical's taken and you were figuring out what -- is a
7 procedure needed and what's the procedure going to be and
8 that's written up and then those records are there waiting
9 when the patient comes in for procedure day?

10 A That's correct.

11 Q Okay. And then you do -- do the procedure and
12 then -- of course the patient has been sedated and you don't
13 go out and consult and sit down and go over everything with
14 the patient at that time, you schedule a return visit
15 normally?

16 A Normally, yes.

17 Q For the patient to come in, to explain any
18 issues, correct?

19 A Correct.

20 Q And so the discharge nurse gives a brief
21 explanation like went okay, whatever, sets up the appointment,
22 correct?

23 A Right.

24 Q Now on those -- those procedures and my -- my
25 estimate, 28 to 34 as being an average for you on a day where

1 you worked full-time --

2 A Yes.

3 Q -- there, that's accurate, correct?

4 A Yes.

5 Q Okay. And on one day you actually did 50
6 procedures; is that correct?

7 A I did, yes.

8 Q And you were -- you hadn't planned on it?

9 A No.

10 Q Okay. It was patients all scheduled and one of
11 the other physicians, who was that?

12 A Dr. Carrera became acutely ill and needed to go
13 to the hospital. He was scheduled to take over, he couldn't
14 breathe because of asthma and I was -- I had to continue and I
15 continued for an actual full day, from 6:45 until 3:30, 4:00.
16 I didn't stop because these patients were there, they were
17 prepared, it was unfair to have them just be canceled so I --
18 I was -- I was okay, I did it.

19 Q Okay. And -- and you did it safely --

20 A Yes.

21 Q -- correct? I mean you were tired and it takes
22 stamina?

23 A Yes.

24 Q But you didn't at any time cut corners, skip
25 things or anything like that?

1 A No.

2 Q And you -- you never have in the practice, not
3 just on that 50 patient day, but any day, correct?

4 A Correct.

5 Q It was -- I can't remember -- you have already
6 testified and I don't remember who was questioning you, but
7 about the different, we call it speed, how fast someone is in
8 performing a colonoscopy --

9 A Yes.

10 Q -- or an upper endoscopy and you called it
11 efficiency?

12 A Yes.

13 Q And you -- you are very efficient?

14 A Yes.

15 Q Okay. Other -- other doctors take longer if we
16 look at it in time to accomplish the same thing?

17 A Correct.

18 Q And it depends a great deal on the person's
19 skill and expertise, correct?

20 A Correct.

21 Q And you were aware that Dr. Desai has the same
22 skill and expertise in your judgment?

23 A Correct.

24 Q And Dr. Desai looked up to you for your
25 expertise and clinical skills; is that correct?

1 A I believe that's true.

2 Q Okay. And he manifested that by consulting with
3 you, correct?

4 A Yes.

5 Q Asking advice?

6 A Yes.

7 Q Referring complex patients -- complex matters to
8 you --

9 A Yes.

10 Q -- correct? And not just Dr. Desai but other
11 physicians in the clinic say they had an acute hepatitis C
12 case or some novel issue, they would come to you for
13 assistance, correct?

14 A Yes.

15 Q Now, on the colonoscopy, we've heard testimony
16 about the insertion of the endoscope all the way to the end,
17 the cecum, okay?

18 A Yes.

19 Q And we heard about using air, water to assist
20 getting it in there, the endoscope, correct?

21 A Yes.

22 Q And then it's withdrawn and -- is inspection
23 taking place on the way in too?

24 A Yes.

25 Q Okay. So on the way in -- and as you're putting

1 it in, you're looking at a monitor -- I mean you're actually
2 watching it on the screen, correct?

3 A Yes.

4 Q The room at that time is darkened?

5 A Yes.

6 Q Okay. And the GI tech would be assisting you
7 and if -- even at times if you needed to move the patient a
8 certain way or apply pressure because you are navigating the
9 colon, correct?

10 A Correct.

11 Q And it is -- that -- during that trip pain would
12 be involved, correct?

13 A Correct.

14 Q And the -- the patient is feeling no pain
15 because they are under the effect of propofol?

16 A That's right.

17 Q And the patient even may be moving around,
18 correct?

19 A Correct.

20 Q Okay. So it's -- someone could think like the
21 patient is hurting but the patient is feeling nothing and is
22 -- I mean the patient is not cognizant of any pain.

23 MR. STAUDAHNER: Objection. Speculation, Your Honor.

24 THE COURT: Well, I mean if -- if you know.

25 MR. STAUDAHNER: The patient -- what the patient's

1 actually feeling.

2 MR. WRIGHT: Well, I'm just not verbalizing it well.

3 THE COURT: Okay. Then maybe say it a different way.

4 BY MR. WRIGHT:

5 Q A patient can be moving and twitching in
6 different movements, correct?

7 A Yes.

8 Q Okay. And does that mean the patient is
9 hurting?

10 A Well, that's a difficult question because you're
11 asking about a perception. Pain is a perception. Pain is the
12 generation of an impulse through the nervous system to the
13 brain where it's perceived as pain. So that the stimulus
14 that's causing this problem can be addressed. Either move
15 your hand away from the hot fire or otherwise. So even if a
16 patient is moving or twitching a bit, it's because there's
17 some -- there are still some responses generated in the brain
18 to that stretching of the colon that makes the patient move.
19 But is it an awareness or is the patient cognizant of pain? I
20 believe that that's not the case.

21 Q Okay. That's what the propofol is for?

22 A Yes.

23 Q Okay. And propofol has this amnestic effect
24 that the patient isn't even going to remember -- amnestic,
25 like amnesia, right?

1 THE COURT: Amnesia. So if they did experience pain,
2 they're not going to remember it anyway?

3 THE WITNESS: Well, remember that propofol is a deep
4 sedative so when the patient awakens from a deep sedation like
5 that, they'll be -- they'll be no memory of any event that's
6 occurred.

7 BY MR. WRIGHT:

8 Q Okay. I -- I may have -- like with an upper
9 endoscope I wouldn't even know it happened but I might like
10 have a sore throat after it happens?

11 A That's possible but I took pride in never doing
12 it to -- in such a way that the patient had a sore throat.

13 Q Okay. So -- I mean if -- or if there might be
14 some discomfort or something because I underwent the
15 procedure?

16 A Right. You might have a little distention in
17 the belly from the air that was used, you might have a little
18 ache from the stretching that had occurred, you might have a
19 sore throat from the scope being passed into the esophagus,
20 yes.

21 Q Okay. And you testified yesterday and the
22 questions were being asked at the time about giving more
23 propofol at the end of the procedure. Okay?

24 A Yes.

25 Q Whether the CRNA should give an additional dose

1 because this is monitored incremental anesthesia being
2 provided, correct?

3 A Yes.

4 Q And you don't want -- I mean you, the CRNA --
5 the goal is not to overmedicate, correct?

6 A Correct.

7 Q Because there -- there can be all those bad side
8 -- or results?

9 A Yes.

10 Q Okay. And so you have -- in a colonoscopy you
11 talked about reaching the end and then coming back out,
12 withdrawing the scope. That is the easy part as far as no
13 pain?

14 A That's right.

15 Q Okay. Because it was getting it in there, now
16 it's just sliding it out?

17 A That's right.

18 Q And so once you are in there and starting to
19 slide it out, you are -- you saw what you saw going in, right?

20 A Correct.

21 Q And now you're coming out and you have a good
22 sense as the physician, how close you are to the end of the
23 procedure, correct?

24 A Yes.

25 Q And when you testified about you would say to

1 the CRNA I'm almost done or I'm pulling out or I'm at the end,
2 you all are working as a team?

3 A Yes.

4 Q And you -- what you are indicating to him is
5 that you mean no more propofol may be needed because I'm done,
6 I'm going to be finished; is that fair?

7 A That's fair.

8 Q And if -- maybe you're partway out, there's
9 polyps or whatever you need to do with the additional
10 procedures, you may say I'm going to be a little bit longer,
11 right?

12 A Yes.

13 Q Okay. And a CRNA who is monitoring the patient,
14 the blood, the oxygen, watching the patient, is going to make
15 a determination whether it to addition -- give an additional
16 dose, correct?

17 A Correct.

18 Q But as far as communicating to the CRNA, I'm
19 almost done or I'm pulling out, that is a signal that no more
20 propofol is needed?

21 A That's correct.

22 Q Now, on the colonoscopy there was testimony of
23 another physician who talked about at the end -- he went like
24 this and talked about looking at the other -- other end of the
25 rectum on the way -- a final look. Do you know what I'm

1 talking about?

2 A It's called retroflexion.

3 Q Retroflexion, that's it. And do -- do some
4 physicians do that at the beginning?

5 A Well, I don't know. I know that my training and
6 practice was to do that at the end.

7 Q Okay. Do you know how other older physicians
8 were trained?

9 A No, I don't.

10 Q Okay. Now -- while I think of it, you would
11 work at UMC on occasion?

12 A Yes.

13 Q Okay. And you all -- were you assigned to a
14 particular hospital to be on call or did you go to various
15 places if you got a call when you're not working in the endo
16 clinic?

17 A When we were on call we had beepers at that
18 time, at 5:00 if I was on call, then that meant that I was on
19 call for every hospital that the group covered, every hospital
20 and that could mean when I started eight hospitals, then nine
21 hospitals and then finally 12 hospitals.

22 Q Okay. And the work that the Gastro Center of
23 Nevada did for UMC, you were aware of you and Dr. Desai and
24 the other doctors treating the uninsured and indigent patients
25 at UMC; is that correct?

1 A Yes, sir.

2 Q Okay. And you're aware that that went on from
3 1981 approximately, all the way up to the closing of the
4 clinics, correct?

5 A Yes.

6 Q And that was something that you as a partner and
7 the clinic undertook at UMC to provide that care and that was
8 -- free care on your part, correct?

9 A Yes.

10 Q And do you recall in 2007 an award being given
11 and a clinic being recognized for that service?

12 A I don't remember that.

13 Q Okay. Do you recall going to a meeting with the
14 UMC -- what were they called, Internal Medicine Residency
15 Program with Dr. Wahid and yourself and Dr. Carrol --

16 A Well, I'm Carrol so --

17 Q I'm sorry. You guys all look alike.

18 A I know, we all look alike.

19 Q Yeah. Do you recall a meeting where you went
20 and it was a discussion of recognition for you all for giving
21 this free treatment and a -- a thank you for the teaching
22 practices that you all were doing?

23 A We had a number of meetings at that time. It's
24 important to understand this. It's hard to understand, but we
25 were a private practice, we were not hired by UMC, University

1 Medical Center. University Medical Center is -- at that time,
2 was the only hospital in this valley that had residents and
3 taught medical students from Reno. Dr. Desai had started a
4 relationship with UMC long before I arrived that was very
5 solid and very strong in which even as private practitioners,
6 we took those residents on and every month had an assigned
7 physician to take those residents on a GI service and see
8 consultations no matter what the insurance, it didn't matter.

9 So the students and those residents were taught by us
10 and it was a very valuable part of UMC's residency program.
11 They have to have cardiology and pulmonologist and
12 gastroenterology services to be accredited program. We
13 provided all that care in the middle of the night, a patient
14 with complex problems, no matter -- and independent of the
15 insurance. Of course, the University Medical Center was
16 pleased and happy with that because we provided such a
17 service. We even went to their -- their free clinic and
18 provided service and we were available 24/7, 365 to that
19 hospital.

20 So, yes, there was recognition for that from UMC and
21 we had many discussions about how to make it better and how to
22 improve the teaching. And I even came up with a GI jeopardy
23 idea to teach the residents in a game show format so they
24 could learn GI very well. We were proud of that. Was it
25 difficult? It was terribly difficult. Did I grumble? Did

1 people grumble when a host of patients with no chance of ever
2 reimbursing us occurred? Yes. But we did it because Dr.
3 Desai had established this relationship.

4 Q Thank you.

5 THE COURT: Those were students out of University
6 Nevada Reno Medical School?

7 THE WITNESS: Yes, residents, students, interns.

8 BY MR. WRIGHT:

9 Q Now, you testified yesterday about after Dr.
10 Desai's first stroke and -- and I'm focusing in on October --
11 October, 2007. Okay?

12 A Yes.

13 Q And he had gone to India for vacation, correct?

14 A Yes.

15 Q Okay. And then he was -- didn't come back as
16 expected?

17 A Right.

18 Q Okay. And you all learned that there -- that he
19 had had a stroke?

20 A Yes.

21 Q Okay. And the -- I want to be clear on the --
22 first, I'm going to talk about the time frame of it. You
23 testified about a meeting that was called, correct?

24 A Yes.

25 Q And that was -- do you recall which doctor

1 called the meeting?

2 A To my recollection Dr. Nayvar was adamant that
3 we needed to have such a meeting to clarify the situation and
4 to understand how to move forward if Dr. Desai was ill and
5 incapacitated.

6 Q Okay. And so that's -- and that meeting -- it
7 -- it's given in the records that the stroke occurred on
8 September 29th, 2007. Okay?

9 A Okay.

10 Q So using that as a benchmark, when he ultimately
11 returned it would have been into October, 2007. Okay?

12 A That's right.

13 Q And you had the meeting -- and that's the
14 meeting that Dr. Nayvar called and that's the meeting you
15 testified about in which he stated, if I get this correct,
16 that he -- he appeared and he didn't look healthy, correct?

17 A Correct.

18 Q And he stated that he expected he would be out
19 for three to six months?

20 A That's the best of my recollection, yes.

21 Q Okay. And it was at that meeting that he
22 assigned yourself to Shadow Lane, correct?

23 A Yes.

24 Q And Dr. Sharma to the new Rainbow clinic?

25 A Yes.

1 Q Dr. Mason to Burnham. Did I get that right?

2 A Yes, you did.

3 Q Okay. And thereafter -- so if -- if -- if this
4 -- do you recall if this mid-October, do you know?

5 A I don't remember the date.

6 Q Okay.

7 A I think it was early October but I don't
8 remember the date.

9 Q Okay. And thereafter, for a period of about two
10 weeks, you were managing the practice, running Shadow Lane?

11 A Yes.

12 Q Okay. And then you testified that Dr. Desai
13 returned, correct?

14 A Yes.

15 Q And he incrementally came back into the
16 practice?

17 A Yes.

18 Q You testified about him rebuking you because of
19 some of the changes you had made, correct?

20 A Correct.

21 Q And when he came back, first it was a period of
22 only seeing patients, correct?

23 A That's right.

24 Q And I -- I think that was -- do you recall that
25 time frame?

1 A I recall that he came back, he began to see
2 patients in the clinic but was not ready to do endoscopy
3 because of the weakness in -- as I recall the right hand.

4 Q Okay. And I -- I think the time frame is that
5 within eight weeks from the meeting he -- he was back full
6 bore; is that fair?

7 A Well, I think it's fair. Again, it's hard for
8 me to remember exactly this -- these weeks that passed but I
9 think that that assessment is accurate.

10 Q Okay. And so -- and -- so we would be early
11 December? I mean if this was -- started in October, October,
12 November, by December 2007, by being fully back, I'm talking
13 about he's back working the way he had been before, correct?

14 A That's accurate.

15 Q Okay. And aside from -- aside from all of his
16 management of the practice, he also carried a full load as a
17 partner, correct?

18 A To the best of my recollection he -- he resumed
19 a full load.

20 Q Okay. Now, I'm talking about before his first
21 stroke and after.

22 A So just be a little bit more specific.

23 Q Okay. I just want it clear that even though he
24 was managing the entire practice, on top of managing the
25 entire practice he was working just as hard as you were?

1 A I think that's reasonable.

2 Q Now, I want to move to the CDC coming in and
3 that's January, 2008. Okay?

4 A Yes.

5 Q Now, you all -- all the physicians, everyone at
6 the clinic had no idea of any hepatitis C transmission or
7 issues, correct?

8 A That's absolutely correct.

9 Q Okay. However, certain patients of the clinic
10 had come into the clinic with hepatitis?

11 A Yes.

12 Q Okay. And these were patients that turned out
13 had had a procedure like on -- on September 21st, right?

14 A Right.

15 Q Okay. And then they became ill, symptomatic,
16 and their physicians referred them to the specialists --

17 A Which were us.

18 Q -- and so you were seeing -- and I don't mean
19 all of them, but a few patients that had turned out were
20 September 21 patients, right?

21 A Yes.

22 Q Did you answer?

23 A Yes.

24 Q Okay. The -- and still there was no recognition
25 in any of that by you or anyone that it was any -- their

1 having hepatitis C may be connected to your clinic?

2 A Yes. To be clear, those patients -- some of
3 those patients did come back to our practice because, like I
4 told you, we were experts in the management of hepatitis C.
5 None of those patients though came back to me personally --

6 Q Okay.

7 A -- but they did come back to the practice and to
8 my knowledge there was no recognition that these few patients
9 that came back with acute hepatitis C had had the transmission
10 at our facility.

11 Q Okay. And so we come to January and once again
12 it's -- it's of record that January 9, 2008 was the day CDC
13 knocked on the door. Okay?

14 A Okay. I'll take -- that's true.

15 Q And you were at the clinic or at the Gastro
16 Center?

17 A Yes.

18 Q Okay. And it was in the afternoon?

19 A To the best of my knowledge I think that's true,
20 in the afternoon.

21 Q Okay. And what -- how did you first learn what
22 was happening?

23 A I first learned what was happening through a
24 phone call on my cell phone from Dr. Vish Sharma telling me to
25 go -- please go see Tonya Rushing because there are some

1 representatives from the Health District and from the CDC
2 there, in her office on the fourth floor, and he told me then
3 and there that they say that there may have been a hepatitis C
4 transmission at the Endoscopy Center so please go see what's
5 happening.

6 Q Okay. And so you immediately went?

7 A I went up to the office.

8 Q Okay. And it was Tonya Rushing, she's the Chief
9 -- COO, the business manager; is that fair?

10 A That's fair.

11 Q And at that time in the meeting there were a
12 number of people, correct?

13 A Correct.

14 Q And they were representatives from the Southern
15 Nevada Health District?

16 A That was one, Brian Labus.

17 Q Okay, Brian Labus. There were how many from
18 CDC?

19 A I think there was just one.

20 Q Okay.

21 A A female. And then there was a representative
22 from the Bureau of Licensure, to the best of my recollection.

23 Q Okay. And we've called that the BLC in here.

24 A Okay.

25 Q And tell me what you recall about that meeting.

1 A That meeting was to tell us that this had --
2 this had possibly occurred and Brian Labus said that there was
3 evidence that one patient had had a transmission of hepatitis
4 C on July -- July 25th, 2007 and that three patients had had a
5 transmission on June -- excuse me, September 21st, 2007. And
6 we were informed that the -- they needed to do an
7 investigation and an analysis of the -- of the practice to try
8 to understand what happened.

9 Well, you can imagine, I was shocked and I didn't
10 believe it because I never heard of that before. Remember, I
11 went through all the risk factors of hepatitis C. I had never
12 heard of a transmission in an endoscopy center before. But we
13 immediately agreed. I said of course you can look. And they
14 -- they said they'd be back tomorrow to start the process.

15 Q Okay. And were -- do you recall that you were
16 skeptical that the transmission was related to the clinic?

17 A I was initially skeptical, yes.

18 Q Okay. And do you recall questioning them about
19 -- are -- I mean they -- they were reporting acute hepatitis C
20 cases they were talking about, right?

21 A Yes.

22 Q And do you recall questioning them about are you
23 sure? What tests, you know, how did you verify and confirm
24 that?

25 A I don't recall using that phraseology.

1 Q Well, that's my phrase.

2 A I don't recall asking what tests were used to --
3 to acquire that information. I do remember saying are you
4 sure.

5 Q Okay.

6 A I didn't believe it.

7 Q And at -- at that initial meeting before -- you
8 agreed we're going to completely cooperate, correct?

9 A Of course.

10 Q And who else was present on the clinic side;
11 yourself, Tonya Rushing?

12 A There was -- to the best of my recollection, I
13 mean this is five years ago, it was me and Tonya Rushing.

14 Q Okay. Do you recall Jeff Refuge being there?

15 A I don't recall that.

16 Q Okay. Do you recall that at that meeting an
17 overview was given of the clinic to the reviewers?

18 A I don't recall that. What do you mean by
19 overview? Of how -- how it operated?

20 Q Correct.

21 A By the people -- the CDC and the Health
22 District?

23 Q No --

24 A Or that we gave it to them?

25 Q Right, like by Jeff, Tonya and yourself

1 explaining to them what the clinic was, the procedures, and
2 how you all did it?

3 A I don't recall that, sir, at the first meeting.
4 I could be wrong, I just don't remember that.

5 Q Okay. Do you recall the -- at -- at the first
6 meeting discussing propofol?

7 A No.

8 Q Okay. Let me show you something and see if it
9 can refresh your recollection.

10 A Sure.

11 Q Dorothy Simms interview. I'm going to let you
12 read this to yourself.

13 MR. STAUDAHER: Your Honor?

14 THE COURT: Yes.

15 MR. STAUDAHER: He's going to use another witness's
16 interview to refresh this witness's recollection?

17 THE COURT: He can use anything if his recollection
18 -- you can look at it and then see if your recollection is
19 refreshed. If it's not refreshed by this other person's
20 interview --

21 MR. STAUDAHER: And that's a hearsay statement that
22 he's --

23 THE COURT: Well, he's not seeking to -- I mean, it's
24 the old plate of spaghetti example from law school. You can
25 show him anything to refresh his recollection but then,

1 Doctor, you don't have to say your recollection's refreshed if
2 it's not truly refreshed. Do you understand?

3 THE WITNESS: Yes.

4 THE COURT: So look at it and then Mr. Wright will
5 ask you --

6 THE WITNESS: If it is you have to say it is.

7 THE COURT: Well, he has to tell the truth, whatever
8 that may be. So look at it and Mr. Wright's going to direct
9 you somewhere and then he'll ask you if your recollection is
10 refreshed by looking at that.

11 BY MR. WRIGHT:

12 Q I'm going to show you pages nine, 10 and 11.

13 MR. STAUDAHER: Is this of the grand jury or the
14 Metro?

15 MR. WRIGHT: The Metro interview.

16 MR. STAUDAHER: Okay.

17 BY MR. WRIGHT:

18 Q And grand jury pages 38 to 43, Dorothy Simms, of
19 the BLC. Would you --

20 THE COURT: Just read that over quietly to yourself.

21 BY MR. WRIGHT:

22 Q Right. This is simply the cover page so that
23 you know and then the grand jury testimony about the
24 interview --

25 THE COURT: Well, just let him look at it, don't, you

1 know, you don't need to explain it all.

2 And just to be clear for the record, Mr. Wright,
3 you're showing him statements that another person made,
4 correct?

5 MR. WRIGHT: That's Dorothy Simms from the BLC.

6 THE COURT: All right.

7 THE WITNESS: Okay, I've read this.

8 BY MR. WRIGHT:

9 Q Does that refresh your recollection at all?

10 A I still don't remember this interaction
11 occurring that we talked about propofol at that first meeting.

12 Q Do you recall at a later meeting?

13 A Yes.

14 Q Okay. Do you recall that you all, the clinic,
15 told them you multi-used propofol?

16 A No.

17 Q You don't recall that?

18 A Recall telling them that we multi-used propofol?

19 Q Correct.

20 A I -- I personally don't remember that.

21 Q Okay. You -- you -- at any meeting?

22 A That I attended? No, that I remember.

23 Q Okay. You knew you multi-used propofol.

24 A When did I know this?

25 Q At this meeting.

1 A Which would be the second meeting?

2 Q You tell me which meeting.

3 A I never knew --

4 Q Okay.

5 A -- that we quote multi-used propofol. I didn't
6 understand that term --

7 Q Okay.

8 A -- or that concept until this event occurred.
9 So the answer is no, I did not know that there was any unusual
10 or any -- any unacceptable, quote, multi-use of propofol.

11 Q Okay. I didn't say unacceptable. I was just
12 asking, were you there when Jeff Krueger stated that we use
13 propofol multi-use?

14 A I don't remember that.

15 MR. STAUDAHNER: Objection. Hearsay, and that's an
16 improper --

17 THE COURT: Well, he's already said he doesn't
18 remember. I think maybe Mr. Wright was trying to get him to
19 acknowledge that he adopted that or something like that. The
20 witness has said he didn't remember that occurring. So Mr.
21 Wright's going to move on.

22 BY MR. WRIGHT:

23 Q Okay. I'm done with that. Okay. Now, at
24 the --

25 THE COURT: So the evidence is that that didn't --

1 there's no evidence that it ever occurred because he doesn't
2 remember. That's the state of the evidence right now.

3 MR. WRIGHT: I understand.

4 BY MR. WRIGHT:

5 Q The -- I want to proceed with the CDC. Okay?

6 A Yes.

7 Q So you are -- they come in and they are
8 investigating and inspecting, correct?

9 A Yes.

10 Q And that's BLC, CDC and SMHD, right?

11 A Correct.

12 Q And it goes on for about 10 days?

13 A Yes.

14 Q And the -- you yourself also start trying to
15 investigate, correct?

16 A Well, not yet.

17 Q Okay.

18 A I didn't do anything formally, I didn't look at
19 records yet.

20 Q Okay.

21 A I just -- I just -- I just did what they asked
22 us to do like everybody else during their investigation.

23 Q Okay.

24 A But there was -- there came a time when I did
25 begin to look at how the patients were distributed on that day

1 once the information started to come in. It's hard for me to
2 recollect the time frame.

3 Q Okay. Okay. Well, first of all, you wanted to
4 know the patients, correct?

5 A Yes.

6 Q Okay. Because they're telling you patients from
7 your clinic have hepatitis C and they are investigating to see
8 if they got it there, right?

9 A I remember that and I asked who are these
10 patients.

11 Q Right. And you told them that you needed to
12 know because imperative is quick treatment, correct?

13 A Yes.

14 Q Okay. I -- I mean and that is true that the
15 faster you can get on top of it, the -- the better -- the less
16 the risks, the better the possible outcome?

17 A That's correct.

18 Q Okay. And you -- you expressed that, maybe not
19 those words, but you wanted the identities of your own
20 patients.

21 A They were our patients. I wanted to know who
22 they were because in acute hepatitis C, it's a rare event by
23 the way, it's very rare to have acute hepatitis C, in those
24 patients who are identified as acute hepatitis C, the
25 literature suggests that if you can identify them quickly and

1 treat with Interferon alone you have a 90 percent chance of
2 clearing the virus if you treat them. So I said I want to
3 know who these patients are, they're our patients.

4 Q And their response?

5 A Sorry, we won't give you that information
6 because it's a HIPAA violation.

7 Q Okay. Even though they're your patients --

8 A Right.

9 Q -- they wouldn't tell you who they were and you
10 expressed the need to get them treatment?

11 A I think I did.

12 Q Okay. And that -- that -- that posture or that
13 stance, that position by Southern Nevada Health District
14 continued? The we won't share, correct?

15 A Correct.

16 Q And the -- you were -- were you aware that more
17 patients were identified as hep C positive incrementally as
18 the month went on?

19 A Yes, sir.

20 Q And you -- you learned that because you were
21 getting reports, briefings, shared information from CDC and
22 Southern Nevada Health District?

23 A I learned that there were other patients in
24 addition to the quote three that had been reported that first
25 meeting, not by any transmission of information from a CDC or

1 Health District representative but on my own --

2 Q Okay.

3 A -- from getting the information from other
4 doctors in our group calling me and saying, you know, patient
5 X has hepatitis C, did that patient have a procedure on
6 September 21st? And by that mechanism I was able to identify
7 the other three patients.

8 Q Okay.

9 A Not by any other means.

10 Q Okay. So they -- they -- the authorities,
11 rather than saying all of the agencies that were there dealing
12 with you, they did not prepare -- they did not share and
13 provide the information other than there were three at the
14 beginning, right?

15 A Correct.

16 Q And you learned like over the month of January
17 -- I mean intermittently you would learn of other hep C
18 patients, you would find out who they are from one of your
19 partners.

20 A Correct.

21 Q And then you'd look at September 21 and bingo,
22 you found additional ones who were hep C positive and had come
23 in to you all for treatment.

24 A That's correct.

25 Q And utilize -- now I'm going to stop there and

1 go back to what was going on with Southern Nevada Health
2 District, CDC, there came a point -- and BLC. There came a
3 point after like 10 days or so where they were done on-site
4 inspection, right?

5 A That's correct.

6 Q And they -- did they have exit interviews or
7 just how did that work?

8 A There was one exit interview. I can't recall if
9 it was the day they left but there was an exit interview up in
10 Tonya's office at which time I first heard the concept of the
11 needle change on a syringe as a possible mechanism by which
12 this had occurred.

13 Q Okay. And that -- and that would be coming from
14 like Brian Labus or CDC?

15 A Brian Labus is the one who communicated that to
16 me. He said that it had been observed by the CDC
17 representative.

18 Q Okay.

19 A I asked are you sure; he said yes.

20 Q Okay. And did they tell you -- give you
21 recommendations going forward as to what -- what you should
22 change and do differently?

23 A I remember that there was a discussion and a
24 recommendation from Brian Labus, the epidemiologist to make a
25 policy to address this and to make it so that no needle

1 changes occur and new syringe each time.

2 Q Okay. And it's in that discussion where Brian
3 Labus or CD said do you have a policy?

4 A That's correct.

5 Q And what we're talking about is do you have a
6 policy on injection practices for anesthesia, correct?

7 A Correct.

8 Q And they were talking about a written policy in
9 place, do you all have that, correct?

10 A That's correct.

11 Q And the answer was, no, we don't, correct?

12 A Yes.

13 Q And you're -- and it was because -- or you tell
14 me what you told them as to why it happened.

15 A Well, the why not is that I never heard or
16 thought or had any inkling that such a policy was necessary.
17 It's like saying there's a policy on how to turn the knob on
18 the endoscope. Well, there's no policy for that because we
19 spent years training on how to do that. So there's no policy
20 on how to do an injection toward a professional individual who
21 spent years and has a master's degree in how to do that.

22 Q Okay. Because just like you don't have a policy
23 in place in writing on how to do the endoscope --

24 A Correct.

25 Q -- and you are responding CRNAs are the trained

1 experts and, no, we don't have a written policy on how -- how
2 they're supposed to use a needle and syringe, correct?

3 A That is correct.

4 Q And Brian Labus suggested that you should have
5 one?

6 A Yes, he did.

7 Q As a recommendation.

8 A Yes.

9 Q Okay. And that's what prompted you to go ahead
10 and write it up and have everyone's -- the CRNAs sign it,
11 correct?

12 A Correct.

13 Q And that was the one bottle, one needle-syringe,
14 one use of needle and syringe anytime it's used at all for
15 entry, toss it?

16 A Yes.

17 Q And one bottle of propofol will be used per
18 patient?

19 A Correct.

20 Q And never -- and then tossed if it's not
21 completely used?

22 A Correct.

23 Q Okay. And other recommendations -- I mean, do
24 you recall other things like discussions about multi-use of --
25 when I say multi-use, I'm talking about a -- a common vial