

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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Tracie K. Lindeman  
Clerk of Supreme Court

DIPAK KANTILAL DESAI,	)	CASE NO. 64591
	)	
Appellant,	)	
	)	
vs.	)	
	)	
THE STATE OF NEVADA,	)	
	)	
Respondent.	)	
_____	)	

**APPELLANT'S APPENDIX VOLUME 18**

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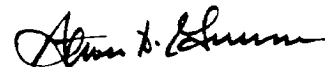
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DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

STATE OF NEVADA,

Plaintiff

vs.

DIPAK KANTILAL DESAI,  
RONALD ERNEST LAKEMAN,

Defendants

)  
)  
) CASE NO. C265107-1,2  
) CASE NO. C283381-1,2  
) DEPT. NO. XXI  
)  
)  
)

Transcript of  
Proceedings

BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE

JURY TRIAL - DAY 23

TUESDAY, MAY 28, 2013

APPEARANCES:

FOR THE STATE:

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Chief Deputy District Attorneys

FOR DEFENDANT DESAI:

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

FOR DEFENDANT LAKEMAN:

FREDERICK A. SANTACROCE, ESQ.

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

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004186

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1 LAS VEGAS, NEVADA, TUESDAY, MAY 28, 2013, 12:45 P.M.

2 (Court was called to order)

3 (Outside the presence of the jury.)

4 THE COURT: Ma'am, just have a seat there in your  
5 normal juror chair. I got your letter this morning and I -- or  
6 actually this -- it was still morning -- and I wanted to follow  
7 up on some things. I don't want you to think that we're being  
8 unsympathetic.

9 JUROR NO. 1: Okay. No, I understand and it's -- you  
10 know, I know understand.

11 THE COURT: But, you know, as you can appreciate, we  
12 have to make sure we have enough jurors and --

13 JUROR NO. 1: Oh, no. I understand.

14 THE COURT: -- and I wanted to, though, follow up on a  
15 few things. With respect to your MS, I don't think that that  
16 was something we discussed in jury selection, was it?

17 JUROR NO. 1: No, it wasn't. What happened was I did  
18 -- and I don't know if I wrote it in. I don't think I expressed  
19 it. I had contacted my neurologist like about two days after I  
20 had the interview and said do you think this is an appropriate  
21 thing to write a letter to the judge and they said, oh,  
22 absolutely. Because stress, you know -- you know, is one of the  
23 worst things. And I don't know what happened. The letter  
24 didn't get sent for a whole week, so by then it was -- I had  
25 already been selected and so I just kind of went, okay, I'm just

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1 going to --

2 THE COURT: Now, do you find this -- have you found  
3 this stressful?

4 JUROR NO. 1: Well --

5 THE COURT: Being on a jury, I mean.

6 JUROR NO. 1: Well, I think just because of the type  
7 of jury or type of trial it is and the length and the fact that  
8 I'm still kind of doing both jobs. I'm at school at 7:00 and I  
9 go back after this and I'm at school --

10 THE COURT: Now --

11 JUROR NO. 1: -- until 7 or --

12 THE COURT: Now, they can't --

13 JUROR NO. 1: -- 8 or 9:00.

14 THE COURT: -- require you to do that. You understand  
15 that? I mean, if you're working at your school that's strictly  
16 voluntary because --

17 JUROR NO. 1: No, I understand.

18 THE COURT: -- your employer has to excuse you.

19 JUROR NO. 1: I understand. There's just nobody else  
20 to do what I can do and they promised -- and I think that was  
21 one of the questions that they asked, if they would get a  
22 substitute for me. And at that time I thought the answer was  
23 yes, and I didn't realize that they had to have the same  
24 qualifications that I did because I do a special gifted --

25 THE COURT: You do the --

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1 JUROR NO. 1: -- and talented program.  
2 THE COURT: -- GATE; right?  
3 JUROR NO. 1: Right. And they didn't have anyone to  
4 do it, so I have pieces of projects all over my room. And so  
5 like this morning I went in and taught two classes and tomorrow  
6 I have --  
7 THE COURT: Let me ask you this. I understand the  
8 school year is going to be over soon.  
9 JUROR NO. 1: Right.  
10 THE COURT: And so that would alleviate any --  
11 JUROR NO. 1: Right, it would. It's just been a  
12 really hard time because I'm moving schools. I mean, you know.  
13 THE COURT: Right.  
14 JUROR NO. 1: The big -- my big -- I mean, where that  
15 is total concern, my biggest concern is the other issue.  
16 THE COURT: Right.  
17 JUROR NO. 1: I mean, it is stressful. I mean, the  
18 multiple sclerosis, I mean, it's something new I'm kind of  
19 learning to --  
20 THE COURT: To live with and --  
21 JUROR NO. 1: -- live with and deal with, and I do  
22 find, you know, to be extremely fatigued. And when stress comes  
23 I do -- the only way I can describe it is the strength just  
24 being sucked out of my muscles and it especially affects that  
25 side. And there is that scary part to me since I am learning

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1 about all of this is how much damage this is going to do in the  
2 long run, you know, and --

3 THE COURT: Right.

4 JUROR NO. 1: So that's where I am right now.

5 THE COURT: Now, in terms of your doctor appointment,  
6 we will accommodate that. I mean, we would prefer that you do  
7 it either early in the morning or late in the afternoon so we  
8 don't have to interrupt the middle of the day, but if you need  
9 to see your neurologist, absolutely. We'll accommodate you for  
10 that. Or if you need to go and get an injection of, you know,  
11 some kind of medication, anything like that. As long as you let  
12 us know ahead of time, and by that meaning, you know,  
13 coordinating with the bailiff, we can accommodate -- accommodate  
14 you there.

15 JUROR NO. 1: Right. And I just -- I had -- you know,  
16 I had cancelled the one appointment and immediately made a  
17 follow up making it June 13th, thinking that this would all be  
18 over with at that point, but now kind of thinking that --

19 THE COURT: Right.

20 JUROR NO. 1: I'm not sure.

21 THE COURT: Well, as I said, I mean, if --

22 JUROR NO. 1: So that's --

23 THE COURT: You know, as long as you tell us and maybe  
24 if you can, you know, maybe make that earlier or later in the  
25 date we'll accommodate your appointment. That's not -- that's

1 not an issue.

2 JUROR NO. 1: Okay.

3 THE COURT: Getting to the other issue, you did, I  
4 believe, discuss your grandmother and the possibility of a  
5 medical malpractice lawsuit. I think that did --

6 JUROR NO. 1: Right.

7 THE COURT: -- come up in the questioning or in the  
8 questionnaire. You didn't get into specifics. At least I don't  
9 recall specifics. And so can you tell me more specifically, you  
10 know, her situation, who were doctor was if you remember, what  
11 the group was, and, you know, what happened there.

12 JUROR NO. 1: Well, and unfortunately I don't know who  
13 the doctor was and I haven't -- you know, I did talk to my  
14 brother, but not about the case, but about my grandmother's  
15 situation before I wrote the letter because I did -- and it is  
16 one of those things. When -- you know, when I did bring this up  
17 or when I was asked that question and I, you know, spoke a  
18 little bit about earlier, I -- you know, you don't connect  
19 everything until, you know, I've been sitting here for three  
20 weeks listening to all these different things and I go, oh, man,  
21 you know, that's so similar and that's like, you know.

22 And so she went into Valley Hospital. She had -- she  
23 called it a spasm. They said, oh, it's an easy procedure,  
24 there's some blockage. So that's when they did the -- the upper  
25 endoscopy. We didn't find out --

1 THE COURT: And you're sure it was an upper endoscopy?  
2 JUROR NO. 1: I'm pretty sure it was. That's what my  
3 brother remembers, too. So, I mean, that's all I can go on.  
4 THE COURT: Okay.  
5 JUROR NO. 1: I mean, they did something down. That's  
6 what we remember.  
7 THE COURT: Down the throat.  
8 JUROR NO. 1: Right. That's all I can say is that's  
9 what we remember. And that's why I didn't contact any other  
10 family members because I didn't want to get into --  
11 THE COURT: Right. Okay.  
12 JUROR NO. 1: -- you know. But there was a  
13 perforation, they went to emergency surgery, and she passed away  
14 about a month and a half --  
15 THE COURT: Did she --  
16 JUROR NO. 1: -- later.  
17 THE COURT: Did they recognize the perforation right  
18 away? I'm assuming she's a patient at Valley Hospital. And was  
19 she admitted through the ER with spasms or what happened? How  
20 is she even there?  
21 JUROR NO. 1: You know, my uncle took her and so I'm  
22 not --  
23 THE COURT: Okay.  
24 JUROR NO. 1: -- 100 percent sure if it was an  
25 emergency and then he took her. I -- I don't know.

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1 THE COURT: Okay.

2 JUROR NO. 1: I know that that -- that this procedure  
3 was actually planned. She had been in the hospital a day or two  
4 under observation before they actually did the procedure. And  
5 they told us, oh, it's a simple in and out thing, you know, and  
6 she'll be fine and be released in, you know, a day.

7 THE COURT: Uh-huh.

8 JUROR NO. 1: And then it turned into this horrific  
9 nightmare.

10 THE COURT: Okay.

11 JUROR NO. 1: And they --

12 THE COURT: And then they --

13 JUROR NO. 1: -- they did --

14 THE COURT: I'm sorry. They didn't diagnose the  
15 perforation right away or --

16 JUROR NO. 1: They -- during that consultation that we  
17 -- and there were several of us there because I've got lots of  
18 cousins in town. They did not mention the perforation. We met  
19 with the doctor. I do not personally remember his name. My  
20 brother didn't either. Didn't say anything about a perforation.  
21 Later on, a day or two later, we had a doctor that came to us  
22 kind of upset about the whole situation and said, you know, they  
23 should have said something to you immediately because the  
24 perforation was huge. I remember them holding up their fingers  
25 and us gasping at like how could, you know -- and them saying we

1 knew, they knew that there was a perforation and they should  
2 have told you to not --

3 THE COURT: When did they operate on the perforation?

4 JUROR NO. 1: As I recall they -- they called my uncle  
5 about -- we're going to say about 45 minutes later, and they --  
6 of course they had to get his approval. And so I remember all  
7 the cousins and everybody standing around having this  
8 discussion. And finally one of the nurses says if you don't --  
9 because we didn't understand what --

10 THE COURT: This is 45 minutes after the endoscopy  
11 procedure?

12 JUROR NO. 1: After we had the consultation with the  
13 endoscopy procedure.

14 THE COURT: Okay. So almost immediately then she goes  
15 back into surgery -- or into surgery to repair this perforation?

16 JUROR NO. 1: Right. But --

17 THE COURT: Okay.

18 JUROR NO. 1: But it was -- well, yes. And then, you  
19 know, finally one of the doctors or nurses said to us, you know,  
20 we don't know -- you're wasting time because this is a matter of  
21 life or death. But, you know, we didn't understand everything.  
22 We're sitting there trying to make the right decision and --

23 THE COURT: Okay. And then she passed away,  
24 unfortunately, about a month later, a month and a half later?

25 JUROR NO. 1: Correct.

1 THE COURT: And did they link her death to the  
2 perforation or -- or --  
3 JUROR NO. 1: Yes, ma'am, they did.  
4 THE COURT: Okay. And you don't -- nothing else you  
5 recall about the doctor who performed the upper endoscopy?  
6 JUROR NO. 1: The doctor who had the consultation, I  
7 remember he had an extremely thick accent because it was -- we  
8 -- we all had to kind of get together and go, okay, you know, we  
9 were all getting different parts of it. I -- I want to say that  
10 he was Indian. That he had --  
11 THE COURT: Okay.  
12 JUROR NO. 1: -- Indian background.  
13 THE COURT: I mean, did he appear that he could be,  
14 you know, Asian or Indian or --  
15 JUROR NO. 1: Oh, I mean, definitely yes.  
16 THE COURT: Okay.  
17 JUROR NO. 1: I mean, my impression was that he was  
18 Indian. You know, I don't want to -- you know, I couldn't say  
19 I'm 100 percent for sure. I would say I was 99 --  
20 THE COURT: I mean, he could have been Pakistani or  
21 Bangladeshi or --  
22 JUROR NO. 1: I suppose.  
23 THE COURT: -- Sri Lankan?  
24 JUROR NO. 1: I suppose. I just remember that being  
25 in my mind.

1 THE COURT: Okay. And then -- and why do you think --  
2 in looking at your letter you say you think it's possible that  
3 it's one of the doctors from the endoscopy center. And why do  
4 you think that?

5 JUROR NO. 1: Well, I just said that it was a  
6 possibility. I mean, I'm not saying that it was. I, you know,  
7 certainly didn't go look up names or anything like that. I just  
8 -- I just -- you know, as you're sitting here, you're trying to  
9 put the whole puzzle together as a juror is supposed to do.

10 I keep -- you know, my mind just keeps traveling back  
11 to when all of this happened and, you know, learning about  
12 privileges that doctors have and realizing that several of them  
13 have mentioned privileges at Valley Hospital. And I just went,  
14 you know, it's a possibility.

15 THE COURT: Okay.

16 JUROR NO. 1: And that's where I, you know --

17 THE COURT: I believe the only Indian  
18 gastroenterologist we've heard from was Dr. Vishvinder Sharma.  
19 That was not the person.

20 JUROR NO. 1: You know what, I would -- it happened in  
21 2006, so I could not give you --

22 THE COURT: Okay. But when --

23 JUROR NO. 1: -- identification.

24 THE COURT: -- he came in you didn't recognize him or  
25 anything like that?

1 JUROR NO. 1: I wouldn't recognize anyone anyway.  
2 THE COURT: Okay.  
3 JUROR NO. 1: I mean, I --  
4 THE COURT: All right.  
5 State, would you like to follow up?  
6 MR. STAUDAHER: Just a couple.  
7 Ma'am, now Vishvinder Sharma is the only Indian doctor  
8 that we've had come in.  
9 JUROR NO. 1: Right.  
10 MR. STAUDAHER: And he testified that he worked  
11 primarily at the Burnham clinic, that area over there.  
12 JUROR NO. 1: Uh-huh.  
13 MR. STAUDAHER: I don't know what his frequency at  
14 Valley Hospital, if he was there at all, was. But he did not --  
15 I just want to be clear on this.  
16 JUROR NO. 1: Right.  
17 MR. STAUDAHER: When he got in here and testified, and  
18 he testified for quite a long time.  
19 JUROR NO. 1: Right.  
20 MR. STAUDAHER: At any time during the time that he  
21 was being questioned or was in court where you observed him, did  
22 you have any inkling, you know, hey, that guy looks familiar to  
23 me, he voice, anything like that?  
24 JUROR NO. 1: No, sir. There would be no way that I  
25 would -- I mean, I just -- I don't remember what he looked like

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1 at all.

2 THE COURT: And I'm sorry. Let me ask you this. You  
3 said this was in 2006. Was it a younger doctor, middle-aged  
4 doctor, older person?

5 JUROR NO. 1: I'm going to say middle-aged. I don't  
6 know. I don't think he was younger. I think that might have  
7 been something that I would have noticed and said I don't think  
8 he was younger. I'd certainly think he was probably middle age  
9 to older.

10 MR. STAUDAHER: And when you -- when he was speaking,  
11 although he does have a little accent, I mean, clearly he was  
12 articulating words --

13 JUROR NO. 1: Right.

14 MR. STAUDAHER: -- that everybody didn't have to --

15 JUROR NO. 1: Right.

16 MR. STAUDAHER: -- be interpreted.

17 JUROR NO. 1: No, that's true. Also, though, you have  
18 to realize that we were under great stress at the time, too,  
19 and --

20 MR. STAUDAHER: Sure.

21 JUROR NO. 1: -- you know, so I -- and I'm -- I'm not  
22 saying that it was specifically Vishvinder Sharma. I'm just  
23 saying that, I mean, it seems like there's been other, if I  
24 remember correctly, that there's been other -- that I thought  
25 that there were other people that it could fit the bill.

1 THE COURT: Other Indian gastro --  
2 JUROR NO. 1: Right.  
3 THE COURT: Because I believe the other Indian  
4 physician who testified was the anesthesiologist.  
5 MR. STAUDAHER: Yes, and he did not work at the --  
6 THE COURT: Right. He was --  
7 MR. STAUDAHER: -- clinic.  
8 THE COURT: -- an anesthesiologist.  
9 JUROR NO. 1: Oh, I know. I mean, and like I said,  
10 I'm not 100 -- like I said, I couldn't be 100 percent sure. I  
11 just -- this has just been on my mind and I have to, you know --  
12 MR. STAUDAHER: Certainly.  
13 THE COURT: No, absolutely.  
14 JUROR NO. 1: -- say that.  
15 THE COURT: We appreciate --  
16 JUROR NO. 1: I mean, this is --  
17 THE COURT: -- the disclosure and you did the right  
18 thing by disclosing it. Now we just need to, you know, get  
19 the --  
20 JUROR NO. 1: Right.  
21 THE COURT: -- get the details, as much as you can  
22 remember. And I appreciate 2006 it was a very stressful time  
23 and, you know, probably everything was a blur and so I  
24 understand it's difficult to understand specifics, but --  
25 JUROR NO. 1: And it's been -- I mean, and as I've

1 stated -- I'm sorry. I didn't mean to interrupt. It's just  
2 been extremely difficult, too, just for me. Just, you know, I  
3 had a nice cry yesterday with my brother, you know. And it's  
4 just, you know, all this being brought back up. It's -- it's --  
5 it's hard to sit here --

6 THE COURT: It's emotional.

7 JUROR NO. 1: -- and listen to this.

8 MR. STAUDAHER: And I don't mean to pry into the --  
9 into the actual things with your grandmother, but you said she  
10 had -- to the best of your knowledge she had an upper endoscopy  
11 procedure; correct?

12 JUROR NO. 1: Yes, sir.

13 MR. STAUDAHER: And you said the reason that she came  
14 in was because of some spasms someplace?

15 JUROR NO. 1: Right. In -- like right around here is  
16 what I recall.

17 THE COURT: And you're indicating the upper abdominal  
18 kind of --

19 JUROR NO. 1: Right.

20 THE COURT: -- by the ribcage?

21 JUROR NO. 1: Right. Up in this area.

22 MR. STAUDAHER: When you say that there was a  
23 perforation or a tear or whatever it was --

24 JUROR NO. 1: Yes.

25 MR. STAUDAHER: -- and you mentioned -- you motioned

1 it was about, oh, gosh, almost two inches long or something?

2 JUROR NO. 1: That's what I remember the doctor doing.

3 MR. STAUDAHER: Do you recall if this was in the

4 esophagus or the stomach or the pylorus or someplace downstream

5 of where it was?

6 JUROR NO. 1: You know, I think it was more --

7 THE COURT: Oh, the pylorus. Absolutely.

8 MR. STAUDAHER: The opening --

9 THE COURT: Everyone is going to know.

10 MR. STAUDAHER: I'm sorry. The opening between the

11 stomach and the intestine.

12 JUROR NO. 1: You know what, I don't know. I think

13 when you questioned me about this earlier I said esophagus. I

14 went back later and went, why did I say that? That definitely

15 was not the correct word. I think it had to do something in the

16 lower intestines. Or not the lower intestines, but in the

17 stomach area or upper intestine area.

18 MR. STAUDAHER: But it was recognized fairly quickly,

19 and even though she had surgery and didn't have a good outcome

20 it was something that whether they told you immediately or 45

21 minutes later, it happened within a relatively short period of

22 time; is that right?

23 JUROR NO. 1: I guess. We were frustrated that we

24 weren't told immediately so we could make a decision

25 immediately. Obvious -- I mean, we wasted -- to us it seemed

1 like we wasted a lot of time, you know. But that's -- you know,  
2 put it in our perspective.

3 I don't know if that's a long time in doctor  
4 perspective. It just seemed like they should have come out and  
5 been honest with us and said this is what happened and we need  
6 to get her into emergency surgery immediately and can you give  
7 us the permissions that we need. That was how we felt.

8 MR. STAUDAHER: And to the best of your -- and I know  
9 it's limited on whether you think there might be a connection  
10 somewhere, but to the best of your knowledge of the people that  
11 have come in and testified, the witnesses on the list that you  
12 reviewed before you -- you know, when you were selected as a  
13 juror initially, is there anybody there you would point to and  
14 go that's the guy, I think I remember?

15 JUROR NO. 1: No, there's not. No, sir.

16 MR. STAUDAHER: Anything about that issue that -- I  
17 mean, I know it's certainly something that occurred to you  
18 personally, but is that something that is so affecting you that  
19 you don't think you could be fair in this case?

20 JUROR NO. 1: Well, you know, as I said before, you  
21 know, I am going to do my absolute best to be fair. That's the  
22 kind of person that I am, you know. But has it affected me  
23 personally? Oh, absolutely. If it hadn't, then I wouldn't have  
24 written a letter.

25 But, you know, I have waited to hear -- you know, to

1 kind of let things unfold before I wrote the letter. I mean,  
2 you know, there were things that I had questions about, you  
3 know. I don't remember exactly, you know, when things started  
4 kind of unraveling in my mind, you know, information. So I  
5 don't know.

6 I just felt like this was the right time before it got  
7 any further in the case to say that, yes, this is emotionally  
8 very stressful for me and, you know, it's something that I think  
9 about during every testimony when they start talking about it.  
10 That's --

11 MR. STAUDAHER: I have nothing further.

12 THE COURT: Mr. Santacroce, do you have any questions  
13 for Ms. Pomykal?

14 MR. SANTACROCE: Ms. Pomykal, the only thing I'd like  
15 to know is since the reopening of this wound for you, has -- has  
16 it affected your opinion as to the guilt or innocence or Dr.  
17 Desai and Mr. Lakeman as they sit here today?

18 JUROR NO. 1: It gives me a different perspective on  
19 everything. I have to admit that. I mean, have I made a  
20 decision 100 percent whether they're guilty or innocent? No, I  
21 haven't. I'm trying -- I'm trying my absolutely best to keep an  
22 open mind. But has it changed my perspective on the whole  
23 medical issues of different things like this? I -- yes, it has.

24 THE COURT: Can you --

25 JUROR NO. 1: I mean --

1 THE COURT: Can you elaborate? When you say it's  
2 changed my perspective, can you tell us what you mean?

3 JUROR NO. 1: Well, I mean, you -- you go in with a  
4 trust when you have certain procedures done. You go -- you  
5 know, all these people went in having a -- I'll never have a  
6 colonoscopy done. I'll tell you that right now. You know, I'm  
7 over 50. They told me many times you need to go have this done.  
8 I'll never have it done.

9 And, you know, you trust when, you know, you have --  
10 you know, you're there at the hospital that people are going to  
11 do the right thing. And then, you know, you keep hearing what  
12 appears that people have not done the right thing. Yeah, it  
13 changes your perspective on everything. And it -- it makes you  
14 lose faith in the medical field, doctors. I mean, I don't know  
15 exactly the right words, but, yeah, it does.

16 THE COURT: I mean, do you think that happened to you  
17 as a result of what happened to your grandmother, or are you  
18 saying that's happening as you're listening to the testimony in  
19 the trial or --

20 JUROR NO. 1: Well, I think it's -- it's added to as  
21 I've listened --

22 THE COURT: Okay.

23 JUROR NO. 1: -- to the testimony.

24 THE COURT: So you had that perception just based on  
25 your personal life experience with your grandmother? Is that --

1 is that --

2 JUROR NO. 1: Well, I mean, you have a little bit of  
3 that. You try to overlook it. I mean, I have a second -- I  
4 think I mentioned that we had someone say that we had a good  
5 case for a malpractice. I have a cousin that after the -- after  
6 my grandmother had passed away, at the funeral and everyone was  
7 gathered, you know, at one of the houses, we had -- several of  
8 us sat down and had a long talk with her because she's a nurse  
9 in Texas.

10 And then part of the end of her career she became, and  
11 I'm not exactly sure of the terminology, she was like a mediator  
12 between families that had things like this happen to them and  
13 hospitals. And so when we sat down and we talked to her, you  
14 know, and all the family members that were here in Vegas, you  
15 know, when we just kept telling her different parts of the story  
16 and everything, at the end of it she goes I know you're not  
17 going to do a lawsuit, she goes, but you would have an extremely  
18 good case to do it.

19 THE COURT: How old was your grandmother?

20 JUROR NO. 1: She was almost 90.

21 THE COURT: Yeah.

22 JUROR NO. 1: However -- however, I've got to say  
23 this. She still drove, she still worked, and the --

24 THE COURT: She worked?

25 JUROR NO. 1: She still worked.



1 THE COURT: Out of the home?

2 JUROR NO. 1: No, she drove to work every day. She  
3 was a seamstress and she did alterations at a drycleaners. And  
4 she hated -- she tried to retire several times and she couldn't  
5 stand it. And she drove all the way from like the Highland --  
6 Highland Hills area into like Valley View and Charleston. I  
7 mean, she worked five, six, seven hours a day and then would  
8 drive home.

9 And the Saturday before she -- or the Sunday before  
10 she went into the hospital I took her and we walked all over  
11 Super Wal-Mart. As long as she had that shopping cart, she  
12 could go faster than I could. So she was still very active and  
13 very alive and had lots of plans. There was nothing wrong with  
14 her mind. And, you know, yeah, she had little ailments. She's  
15 90.

16 THE COURT: Right.

17 JUROR NO. 1: But we buried her in her party clothes,  
18 you know, that was --

19 THE COURT: Mr. Santacroce, I didn't mean to cut you  
20 off.

21 MR. SANTACROCE: Do you think that you can still be  
22 fair and impartial given this experience that you're having with  
23 your grandmother?

24 JUROR NO. 1: I hope I can be. I mean, I'm going to  
25 admit to you it's going to be a little bit harder now. Just --

1 just listening to everything and putting the two and two  
2 together, I mean, that's one of the reasons I brought all this  
3 up. I mean, I will try my best. That's all I can -- you know,  
4 but it's --

5 MR. SANTACROCE: When you say it's going to be a  
6 little bit harder for you, is it going to require an added  
7 effort by the defense to convince you one way or the other?

8 JUROR NO. 1: Possibly.

9 MR. SANTACROCE: Okay. I have nothing further.

10 JUROR NO. 1: I'm just being honest. I'm sorry.

11 THE COURT: No, and that's all -- that's all we can  
12 ask for is honesty. I don't know if I said this to you during  
13 the initial selection, but all we look for are honest answers.  
14 You know, there's no right or wrong answer.

15 Mr. Wright or Ms. Stanish?

16 MR. STANISH: Ms. Pomykal; right?

17 JUROR NO. 1: Pomykal.

18 MR. STANISH: Again, let me add, thank you for being  
19 candid. In reviewing your letter -- and this kind of tags on  
20 what Mr. Santacroce was saying. In your letter you say that you  
21 brought this to our attention in part because you cannot get it  
22 out of your mind that one of the doctors associated with this  
23 clinic was the one who caused your grandmother's death.

24 JUROR NO. 1: Well, I didn't say they were. I'm just  
25 saying after several people had mentioned privileges at Valley

1 Hospital, it could be. I mean, you know, I understand that it's  
2 certainly not a 100 percent possibility. I'm just saying -- I'm  
3 sorry. I didn't mean to interrupt you.

4 MR. STANISH: No, that's okay. I just wanted you to  
5 clarify that because you've said -- twice in your letter you  
6 talk about that being in your mind, the potential involvement of  
7 one of the doctors associated with the clinic, and you kind of  
8 close your letter with -- that the added stress of this  
9 particular court case, most significantly the parallelisms this  
10 trial has with the many probably medical negligence associated  
11 with your grandmother's death. Can you elaborate on that?

12 JUROR NO. 1: Well, I just -- I mean, you know, we've  
13 been talking about perforations in here, possible, you know,  
14 that that was one of their fears, you know, the different ways  
15 that it was done.

16 I mean, you know, I -- and I know accidents happen. I  
17 understand that. And, you know, the best doctors, accidents  
18 happen, you know, but it is hard to separate at this point. You  
19 know, if they probably had never said privileges at Valley  
20 Hospital, you know, I might would have never written that letter  
21 to you. But it's -- now it's really hard to separate it.

22 MR. STAUDAHER: May we approach of a moment, Your  
23 Honor?

24 THE COURT: Sure.

25 (Off-record bench conference.)

1 THE COURT: All right. Ms. Stanish, go on.

2 MR. STANISH: You had mentioned, Ms. Pomykal, that  
3 this doctor did a consultation? Is that what I --

4 THE COURT: Yes, that's -- I --

5 MR. STANISH: Do you mean with respect to your  
6 grandmother separate and apart from the hospital?

7 JUROR NO. 1: No, it was -- it was immediately. He  
8 still had on his scrubs and everything as I recall and she had  
9 gone in for the procedure and came out. We were all -- they --  
10 they -- we were in a little waiting room. We came out. It  
11 seems like it happened in the middle of a hallway as much as --  
12 as best as I can remember. Listen to me. I sound like a juror  
13 or something.

14 And -- and I don't -- honestly, I can hardly even  
15 remember what he said. It was -- because everything is just a  
16 blur. But, you know, just telling us that, you know, whatever  
17 the procedure, there was a blockage, and whatever it was, that  
18 they had removed the blockage and -- and then he went away. I  
19 mean, it was relatively short.

20 And -- and then we all went away thinking that she  
21 was, you know, going to be in recovery for a short while and  
22 then wheeled back down to her room. So we went back down to  
23 another waiting room. And I would think some of the cousins  
24 went home because, you know, there's eight of us in town.

25 MR. STANISH: Without having you discuss or share with

1 us your perception of specific evidence --

2 JUROR NO. 1: Okay.

3 MR. STANISH: -- is it -- I'm understanding you to say  
4 that what you've heard in the courtroom thus far has opened up  
5 an old wound, and Mr. Santacroce described it. Is that a fair  
6 statement?

7 JUROR NO. 1: Yes, it is.

8 MR. STANISH: And with this wound open now, what's  
9 most pressing to us is whether you can be that black slate and  
10 presume our clients to be innocent.

11 THE COURT: Well, wait a minute. This issue --  
12 Can I state this --

13 MR. STANISH: Sure.

14 THE COURT: -- a different way?

15 The issue -- you know, as you've heard evidence, you  
16 know, you -- again, we tell you to keep an open mind. But set  
17 aside the evidence because that's one thing and -- and, you  
18 know, you're entitled to hear it and -- and as it comes in, even  
19 though we want you to keep an open mind, obviously, you're, you  
20 know, hearing things. And as each witness testifies you may be  
21 making preliminary assessments as to how credible they were, you  
22 know, how did I -- and I don't want you to talk about any of  
23 those things.

24 I think the issue is, you know, is are you -- you  
25 know, is your grandmother's situation, is that going to play a

1 part in any way in your deliberations, or can you put that aside  
2 and, you know, base your verdict solely upon what's been  
3 presented here in this case and not about, you know, the  
4 misfortune that happened to your family or, you know, something  
5 that may have been told to you at the Valley Hospital or  
6 something, this other physician that said, hey, he should have  
7 told you about the perforation. You can't bring in any of that  
8 in.

9 JUROR NO. 1: Right.

10 THE COURT: You know, we don't -- I mean, obviously,  
11 it's part of who you are. It always will be, unfortunately.  
12 But, you know, I think that's really -- really the issue. And  
13 if your mind has changed somewhat and it says the result of the  
14 evidence, you know, don't talk about that.

15 What we're really interested in is the situation with  
16 your grandmother and how that, you know, may -- may affect you.  
17 Because we don't want you to think, oh, well, I was told by this  
18 doctor at the Valley Hospital. You know, that has to all be set  
19 aside. And as you sit here, you know, can you do that?

20 JUROR NO. 1: You know, like I say, I try to be open  
21 and honest and as fair. That's probably why I'm on this jury  
22 right now is because I said --

23 THE COURT: Right.

24 JUROR NO. 1: -- I could be. I'm sure there were  
25 plenty of people who said they couldn't be. And, you know, I

1 like to think of myself as someone who can be. But, you know,  
2 is it more difficult at this point now that I have different  
3 things and, you know, the whole parallel situation? Yeah, it's  
4 going to be more difficult. I mean, am I going to try my best  
5 to? Absolutely, I will. I mean, that's the kind of person I  
6 am. Is it going to be harder? Yeah, it probably will be. I'm  
7 just being honest with you.

8 THE COURT: Okay. Because, you know, it's okay if --  
9 if -- I mean, I don't want anyone to feel sad. But if you feel  
10 sad as you think about that situation, that's okay. But you  
11 can't let your sadness, you know --

12 JUROR NO. 1: Right. Right. And I don't think it's  
13 as much the sadness part as it is just the way the testimony  
14 that I've heard and the similarities as to what happened.

15 THE COURT: Okay.

16 JUROR NO. 1: And I think that's where I'm having  
17 issues in my brain right now, you know. And, yeah, I mean, I'll  
18 always be sad about my grandma. But it's -- and if it -- if  
19 this were a different type of medical case, obviously it  
20 wouldn't have an effect. But I think because of the  
21 similarities, yeah, it's going to have an effect. I can't help  
22 but say that. I'm sorry.

23 THE COURT: Ms. Stanish, any follow up?

24 MR. STANISH: No, Your Honor.

25 THE COURT: Mr. Staudaher, any additional follow up

1 with Ms. Pomykal?

2 MR. STAUDAHER: No, Your Honor.

3 THE COURT: All right. Ms. Pomykal, thank you again.

4 JUROR NO. 1: Okay. Thank you. I appreciate everyone

5 listening and I --

6 THE COURT: And I'm going to have you go back in the

7 jury room.

8 JUROR NO. 1: Okay.

9 THE COURT: Obviously, you can't discuss your letter,

10 your situation, what we discussed in here. They -- they

11 probably know better than to ask you, but they may say, oh, what

12 was going on in there, something like that. Obviously, you're

13 directed you can't discuss anything that's just transpired in

14 the courtroom with the other -- I'm sorry, the other jurors.

15 All right? Thank you. Go ahead and --

16 JUROR NO. 1: Thank you so much.

17 THE COURT: -- follow Kenny from the courtroom.

18 (Juror No. 1 exits the courtroom.)

19 THE COURT: State, I mean, are you moving to have

20 her --

21 MR. SANTACROCE: Yes.

22 MR. WRIGHT: Yes.

23 MR. SANTACROCE: We're going to --

24 THE COURT: -- excluded?

25 MR. STAUDAHER: -- move to have her excused, Your



1 Honor.

2 THE COURT: State?

3 MR. STAUDAHER: I mean, I think that at this point,  
4 no, we would -- we would oppose that. There's a couple things.  
5 First of all, she -- she did say although it would be more  
6 difficult because of the parallel, she didn't say that she now  
7 would, because of her grandmother, vote guilty or that they had  
8 any extra burden at this point.

9 I mean, clearly after three weeks of -- of testimony  
10 in this particular case, we do not -- we're not at the same  
11 position we were at before. And if she feels that the evidence  
12 is starting to mount in her own mind, that's a different -- a  
13 different situation.

14 THE COURT: Well, that's a different thing, and that's  
15 why I tried to make that --

16 MR. STAUDAHER: Right.

17 THE COURT: -- clear to her. You know, it's not about  
18 that, it's about the grandmother, solely about the grandmother.

19 MR. STAUDAHER: And I don't think she was ever, you  
20 know -- ever came out and said I cannot be fair anymore based on  
21 the parallels with my grandmother's situation. She said that it  
22 would be difficult for her to do based on the fact that there  
23 were parallel events, but not that she would not just assess  
24 this case based on the evidence that's presented to her, which  
25 of -- part of which she has already heard in this case.

1           So I think that the fact that she's got three weeks of  
2 testimony under her belt is not exactly the same -- same  
3 situation as if we had asked you these same questions before we  
4 ever started. I mean, she's clearly heard things. We, to the  
5 degree that --

6           THE COURT: Well, that's why -- I mean, I may -- and I  
7 may not have done it very artfully, but I tried to separate, you  
8 know, what she's heard from what -- well, let me think about it.  
9 We can argue about this later. Let's get started.

10          MR. SANTACROCE: Can we just --

11          THE COURT: Yeah, can we do this later because --

12          MR. STANISH: Your Honor --

13          THE COURT: And it'll be fresh in your mind and --  
14 Yes?

15          MR. STANISH: I had a motion in limine.

16          THE COURT: Yeah, I was going to say let's move on to  
17 your motion in limine.

18          MR. STANISH: The next witness, Ms. Karen Peterson, at  
19 least reviewing her Metro interview, she refers to what we  
20 consider to be 404B evidence that we were not given notice of.  
21 And -- and that has to do with billing fraud in connection with  
22 the doctor's procedures, as opposed to what's charged --

23          THE COURT: The anesthesiologist.

24          MR. STANISH: -- in the indictment. And there was a  
25 gastro tech who mentioned something about what sounded to me

1 like being upcoding. We didn't object because we didn't want to  
2 highlight it. But this next witness --

3 THE COURT: Mr. Staudaher, are you going to ask this  
4 next witness about any falsification or fraudulent billing with  
5 respect to the doctor's time?

6 MR. STAUDAHER: The doctor's time?

7 THE COURT: Yeah.

8 MR. STAUDAHER: No.

9 MR. STANISH: It's not doctor's --

10 MR. STAUDAHER: Not doctor time.

11 MR. STANISH: It's not doctor's time. It's procedure  
12 code, Your Honor.

13 THE COURT: Oh.

14 MR. STANISH: And as I --

15 THE COURT: With procedure coding?

16 MR. STAUDAHER: Well, we're going to -- I'm going to  
17 ask her -- she was asked -- she was asked to falsify records.  
18 That's why she quit. I mean, it's not like they haven't had  
19 notice of this witness, her statements, and they know what she's  
20 essentially going to come in and talk about. This witness's  
21 test -- is going to come in and testify that she worked at the  
22 clinic for a day, and that based on what they wanted her to do  
23 at the clinic for a day --

24 THE COURT: Which included upcoding.

25 MR. STAUDAHER: Yeah, and falsifying records, and

1 putting down false information on the -- on the nurse's notes or  
2 whatever it was. That based on that she couldn't do it. She  
3 called them the next day and told them why she couldn't do it  
4 and that she quit as a result of it.

5 I mean, that's -- that's been out there. This isn't  
6 -- this isn't something that we're hiding from them or that it  
7 was -- was laying in wait. This is something that's been out  
8 there from the very beginning and this is a witness that's  
9 coming in to testify about her independent, percipient  
10 experiences in the clinic.

11 THE COURT: Well, they're saying it's a prior bad act  
12 or --

13 MR. STANISH: I'm sorry. I'm not --

14 THE COURT: -- contemporaneous bad act evidence. Is  
15 that what you're saying?

16 MR. STANISH: I start --

17 MR. STAUDAHER: How so since we have had the entire  
18 time period that we've been talking about with witnesses at  
19 different stages essentially saying the same kinds of things?  
20 Although in those situations they didn't quit.

21 THE COURT: I think what Mr. Staudaher is trying to  
22 say is it's not bad act evidence because it's just part of the  
23 total conduct of the offense, that it's not, you know, like  
24 separate bad act evidence. It's just part and parcel of  
25 fraudulent records, just like we talked about the nurses

1 pre-charting --

2 MR. STANISH: First off --

3 THE COURT: -- which is just part of the whole thing.

4 MR. STANISH: First off, as --

5 THE COURT: It's not really a bad act.

6 MR. STANISH: -- I understand this upcoming witness,

7 she does talk about the pre-charting that we've already heard

8 about. That's not what I'm objecting to.

9 THE COURT: No, I understand. But I'm saying --

10 you're saying it's bad act evidence and it's --

11 MR. STANISH: The bad act evidence that I see, and

12 with this witness and one that's scheduled to come up later this

13 week, Ms. Johnson, I believe her name is, who is a billing

14 person who only billed the procedure codes, billing is complex.

15 And the anesthesia billing is separate and apart. It's a whole

16 different set of codes, a different technique of billing.

17 We were not given discovery of the billing invoices

18 or, I'm sorry, the claims and the payments relating to the

19 procedure codes. And what this witness does in her one day

20 there, she describes for the investigator what she sees as

21 potentially they're upcoding and billing a tray fee.

22 And I just -- you know, we're getting into a whole

23 different area of billing fraud that we haven't been given

24 sufficient discovery to even defend, yet it's something that

25 they're throwing on the wall to see if it sticks, and it's

1 another bad act.

2 MR. STAUDAHER: It is part and parcel to the fact of  
3 fraudulent billing practices in this clinic, which has been  
4 actually part of the indictment itself for what these  
5 individuals are charged with.

6 Now, there's -- I don't -- I mean, I'm a little lost  
7 here with counsel in saying that a specific aspect of the  
8 billing coding that wasn't delineated in the indictment or  
9 something is a bad act. It's part and parcel to the exact  
10 activity that was going on throughout the entirety of this  
11 practice.

12 We have Dr. Desai directly involved in -- in directing  
13 people to falsify the records for the purposes of billing.  
14 Whether that is minutes or whether that is changing procedure  
15 codes or -- or the like is part and parcel to the same thing.  
16 It's billing. It's the fact that he is trying to get money for  
17 services that have not been rendered in the way that they have  
18 been charged to the insurance company. The insurance company  
19 has -- they will come in and say it. I mean, a portion --

20 THE COURT: Well, who's going to say that -- I mean,  
21 that this tray fee isn't an allowable thing? Is it just her  
22 thinking I'm not supposed to bill a tray fee?

23 MR. STAUDAHER: No, what --

24 THE COURT: Or is --

25 MR. STAUDAHER: -- she talks -- I'm sorry.

1 THE COURT: I mean, okay, she's going to testify they  
2 wanted me to bill a tray fee and I didn't feel that was right,  
3 so I quit. Is that essentially what she's going to say?  
4 MR. STAUDAHER: That's not the only thing she's --  
5 THE COURT: Well, I'm hoping.  
6 MR. STAUDAHER: -- going to say.  
7 THE COURT: I'm hopeful that's not --  
8 MR. STAUDAHER: Right. The tray fee is that it was --  
9 it -- regardless of the procedure, regardless of whether they  
10 actually opened one up or not or did anything along those lines  
11 that they charged for every single one of them. Every single  
12 person that rolled through got that fee whether they --  
13 THE COURT: Now, is that --  
14 MR. STAUDAHER: -- had the thing done or not.  
15 THE COURT: -- not allowable? I mean, I guess my  
16 question is, Mr. Staudaher, whether it's a bad or not, what's  
17 the context of that? Because, I mean, how -- is that not  
18 allowable in billing or is it allowable? How do we know?  
19 MR. STAUDAHER: Well, we have a billing person that's  
20 going to be coming in to testify and that certainly can address  
21 that issue.  
22 MR. STANISH: As far as --  
23 MR. STAUDAHER: I mean, that's the -- that's the  
24 thing.  
25 THE COURT: Well, it's your case. I mean, you

1 might --

2 MR. STAUDAHER: We believe that it's --

3 THE COURT: -- have to put it in context.

4 MR. STAUDAHER: -- that clearly it's charging for

5 things that -- services that were never rendered or supplies

6 that were never given. And --

7 THE COURT: I mean, well, except there was a tray.

8 It's just like these court appointed lawyers, none of these

9 people here, obviously, who write the same brief over and over

10 again and make \$300,000 from the County a year, I won't mention

11 names, submitting the same briefs over and over again that

12 they're not rewriting. I mean, is that legal? Apparently,

13 because they keep paying them for it. You know what I'm saying?

14 So, I mean, a tray is used. Maybe you can bill every

15 time the tray is used whether you open a new tray or not. I

16 don't really know. And I suspect that you don't really know,

17 either.

18 MR. STAUDAHER: What, that you can bill for materials

19 that you don't -- that you don't chart -- or you don't use?

20 THE COURT: I don't know.

21 MR. STAUDAHER: No, you cannot do that.

22 THE COURT: Like I said, we've got lawyers billing the

23 County every day for briefs that they've been using for the past

24 decade and they keep rebilling it.

25 MR. STANISH: Judge, my issue is also that, you know,



1 based on the witnesses at the Grand Jury who represented the  
2 insurance companies, these people, as well as the documentation  
3 on which they testify, was confined to the anesthesia.

4 THE COURT: That's all the testified in the Grand  
5 Jury?

6 MR. STANISH: Yes. There was not any paperwork, and I  
7 don't have any discovery that deals with the procedure side of  
8 the house, which is entirely different and we're not prepared to  
9 defend against it. And when you have a G.I. tech speculating  
10 that they're upcoding, you know, the foundation is not there.  
11 But this is not what was charged in the indictment, and we don't  
12 have -- if they're now going to open up this whole new area of  
13 billing fraud, we need to investigate further and get our  
14 experts to further --

15 THE COURT: What's wrong with --

16 MR. STANISH: -- evaluate it.

17 MR. STAUDAHER: It's not just billing fraud. It's the  
18 fact that they're having -- they're having these people write  
19 down things, and this has come up over and over and over again,  
20 write down things that have occurred when they haven't occurred,  
21 write down assessments that were made when, in fact, assessments  
22 weren't made. I mean, it's all a part and parcel to the fact  
23 that --

24 THE COURT: Okay. Well, what's she going to say?  
25 What's she going to testify to?

1 MR. STAUDAHER: She's not a billing person. The only  
2 thing that she's going to testify to on that issue is that she  
3 was instructed to mark off a box for an item that was never used  
4 on a patient, essentially. I don't think that there's a problem  
5 with that.

6 THE COURT: If that's all that she's going to say,  
7 then that's fine.

8 MR. STANISH: All right.

9 THE COURT: All right. Anyone that needs a two or  
10 three-minute break, take it now and then we'll get started with  
11 the testimony.

12 (Court recessed at 1:29 p.m., until 1:33 p.m.)

13 (Inside the presence of the jury.)

14 THE COURT: All right. Court is now back in session.  
15 The record should reflect the presence of the State through the  
16 deputy district attorneys, the presence of the defendants and  
17 their counsel, the officers of the court, and the ladies and  
18 gentlemen of the jury.

19 And the State may call its next witness.

20 MR. STAUDAHER: State calls Karen Peterson.

21 THE COURT: Ma'am, just follow the marshal right over  
22 here by me.

23 KAREN PETERSON, STATE'S WITNESS, SWORN

24 THE CLERK: Thank you. Please be seated. Please  
25 state and spell your first and last name for the record.

1 THE WITNESS: Karen, K-A-R-E-N, Peterson,  
2 P-E-T-E-R-S-C-N.

3 THE COURT: Okay. And then see that black box there  
4 on the table, that's the microphone.

5 All right. Mr. Staudaher, you may proceed.

6 DIRECT EXAMINATION

7 BY MR. STAUDAHER:

8 Q Mr. -- or Ms. Peterson, I'm sorry, what do you do for  
9 a living?

10 A I'm a nurse.

11 Q And how long have you done that work?

12 A Since about 1968, with about 10 years I was not  
13 nursing.

14 Q What kind of nurse are you?

15 A A registered nurse.

16 Q Have you been -- I mean, where did you go to school to  
17 get your training?

18 A At College of Marin in Kentfield, California.

19 Q So you said there was a ten-year hiatus somewhere  
20 along the line. Was that ten contiguous years, or was it --

21 A Yes.

22 Q -- intermittent?

23 A Yes.

24 Q So all together.

25 A Right.

JRP TRANSCRIPTION

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1 Q Where -- the types of practices or -- or situations  
2 you've been in over the years, what kinds of places have you  
3 worked?  
4 A Hospitals, two hospitals, one family practice  
5 physician, and a large multi-specialty clinic.  
6 Q Okay. Have you also worked in an ambulatory care  
7 center?  
8 A Right. Yes.  
9 Q Okay. So about four different types of medical  
10 situations?  
11 A Uh-huh.  
12 Q And office, clinic, procedure clinic, and hospital --  
13 A Right.  
14 Q -- is that fair?  
15 A Right.  
16 Q During the time that you worked at those various  
17 things, let's talk about the ambulatory care center. Was that  
18 one place or more than one of those types of facilities?  
19 A More than one.  
20 Q Where were they located at?  
21 A One was in Seattle, Washington, at the Polyclinic in  
22 Seattle.  
23 MR. SANTACROCE: I'm sorry. I didn't hear the last  
24 part of that.  
25 THE WITNESS: At the Polyclinic in Seattle.

1 MR. SANTACROCE: Thank you.

2 THE WITNESS: And the other one is Digestive Disease  
3 Center in Las Vegas, and the Shadow Lane office for one day.

4 BY MR. STAUDAHER:

5 Q Okay. We're going to get to that -- that day in a  
6 minute. So of the ambulatory care centers, one was a digestive  
7 disease center?

8 A Right.

9 Q What kinds of things did they do there?

10 A They do colonoscopies and upper endoscopies.

11 Q Now, this place at the Polyclinic that you said in  
12 Seattle --

13 A Right.

14 Q -- what kinds of procedures did they do there?

15 A We did -- it's -- it was a large multi-specialty  
16 clinic, so we had a surgery center and we also had an endoscopy  
17 center. I mainly was working in the endoscopy center for most  
18 of my 16 years there. We did colonoscopies, upper endoscopies,  
19 bronchoscopies, and some liver biopsies.

20 Q So fair to say your experience as a nurse, a large  
21 portion of it has been in endoscopy type clinics?

22 A Yes.

23 Q Doing sort of gastroenterological type work?

24 A Yes.

25 Q So three different locations of just doing that alone?

1 A Correct.

2 Q Now, you mentioned this one day that you worked at the  
3 700 Shadow Lane location. Can you describe for us how it was  
4 that you even started working there in the first place?

5 A When I was leaving Seattle to come down here to move,  
6 I had asked one of the representatives, one of our vendors, if  
7 he knew of any places down here that I might want to apply to if  
8 I wanted to get a job. And he gave me a list of about five.  
9 His name was Todd Steele, and he worked at Conmed.

10 Q Okay. So these -- of these five places, which ones  
11 did you go look at?

12 A I only called this one, the -- the Shadow Lane office.

13 Q And is this the Endoscopy Center of Southern Nevada?

14 A It is.

15 Q And when you say 700 Shadow Lane, is that here in town  
16 located in Clark County?

17 A Yes.

18 Q When you applied -- did you apply for the job or did  
19 they just give it to you or how did it work?

20 A I think I cold called it, and then I -- I ended up  
21 sending my resume in. And interviewed with Katie Maley, and she  
22 offered me a full time position.

23 Q Right out of the box?

24 A Yeah. Yeah. Initially I wanted just part time, but  
25 then I decided I would take the full time.

1 Q So you moved -- did you stay in Las Vegas after that  
2 for any length of time? I mean, do you live here now?

3 A Yes.

4 Q So this was a place you were moving to, then?

5 A Correct.

6 Q After you started or while you interviewed with Ms.  
7 Maley, what happened? What was the next step?

8 A I had about a week or so later was my first day in the  
9 clinic, and I followed a preceptor that day.

10 Q Okay. And who was the preceptor to the best of your  
11 knowledge?

12 A Linda -- Lisa Falzone.

13 Q Is that the person that kind of showed you the ropes?

14 A Right.

15 Q Now, prior to going to work on the first day, did you  
16 have any -- and your initial talking and being hired by Katie  
17 Maley, was there any other interactions you had at the clinic?

18 A No, it was just an in the office interview.

19 Q You ever meet with any doctors, anything like that  
20 during the time you were there?

21 A On that day that I worked, yes, but --

22 Q But not prior?

23 A But not prior.

24 Q So nothing happens until you get up to the point where  
25 you're going to start working that day; correct?

1           A     Correct.

2           Q     Now, had you been given some sort of orientation,  
3 anything like that beforehand?

4           A     About between 9:00 and 9:45 I was given an employee  
5 handbook and papers to fill out in their lunch room, which is  
6 what I did.

7           Q     And who gave you that information?

8           A     Katie Maley.

9           Q     Did she explain things to you or just said here's your  
10 stuff and --

11          A     Read it over and then you will follow Lisa Falzone for  
12 the day.

13          Q     Okay.

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

15               THE COURT: You may.

16 BY MR. STAUDAHER:

17          Q     I'm going to show you what has been previously marked  
18 as State's Proposed 161. And counsel has already had a chance  
19 to look at this. But would you flip through that and tell me if  
20 you recognize it, and then tell me what it is.

21          A     This is the employee handbook that I was given.

22          Q     Okay.

23          A     Yes.

24          Q     Now, what is the time frame that you were at the  
25 clinic on -- on that one day?



1           A     It was April 23, 2007.

2           Q     Now, the date on this employee handbook is January  
3 2006. Is this the book or facsimile of the book that you were  
4 actually given when you went there on April of 2007?

5           A     Yes.

6           Q     Okay. Was there any indication that there was a newer  
7 version that you were to follow, or is this the version that  
8 they provided to you?

9           A     This is the only version they gave me.

10          Q     Okay.

11               MR. STAUDAHER: Move for admission of State's Proposed  
12 161, Your Honor.

13               MS. STANISH: No objection.

14               THE COURT: All right. That'll -- no objection?

15               MR. SANTACROCE: No objection.

16               THE COURT: That'll be admitted.

17                       (State's Exhibit 161 admitted.)

18 BY MR. STAUDAHER:

19          Q     Now, I'm going to show you a portion to that in a  
20 little -- a little bit, but I want to ask you some additional  
21 questions first. Okay?

22          A     All right.

23          Q     You're at the clinic, you get the booklet, you filled  
24 out your paperwork, and now you're going to follow Ms. Falzone.  
25 Are you with me?

1           A     Yes.

2           Q     Tell us kind of how the day goes.

3           A     Approximately 9:45 or 10:00 I followed her into a  
4 procedure room, and the nurse basically does computer work in  
5 the procedure room. There is a technician in there, there is a  
6 nurse anesthetist, and the physician. And basically she was  
7 showing me how to fill out the paperwork, how to work the  
8 computer, their software system, that type of thing.

9           Q     Was this similar to what you had had experience with  
10 in the other locations you had been at?

11          A     Where -- not where I work currently and not where I  
12 worked previously. In Seattle we had -- we did not use a nurse  
13 anesthetist. We administered the medication under the direction  
14 of the physician or he administered the sedation. We did not  
15 use propofol, either, where I was from in Seattle, and it was a  
16 nurse assisting the physician in the procedure room.

17          Q     Did they tell you what role you would play in the  
18 procedure room if you were in there?

19          A     Basically by following her, that's -- that -- by  
20 following Lisa, that is what I was expected to do. I was  
21 expected to do the paperwork. If the technician stepped away or  
22 if I was the nurse then and the technician stepped away, I was  
23 to step up and fill in to assist the physician with the  
24 procedure.

25          Q     Tell us how it goes. Keep going.

JRP TRANSCRIPTION

1           A     On that particular day?

2           Q     Yes.

3           A     Okay. For me, one of the things that -- that bothered

4 me on that day, we had -- it was towards the end of the day and

5 Lisa had stepped out of the room. The technician was not

6 available and the physician was doing the colonoscopy. And they

7 were irrigating through the colonoscopy --

8           Q     Scope?

9           A     -- scope. And you use a large 60 cc syringe just

10 filled with water. Well, when you're done with that, then you

11 just -- the physician usually sets it on the bed or the little

12 table beside him. I realized he was done using it. I went

13 over, I picked up the syringes. I refilled them with water off

14 of the stand, and I set them there so he could reuse them again

15 if he needed them to clear his field.

16          Q     Now, this is on the same patient; correct?

17          A     This is, yeah, all on the same patient.

18          Q     Okay.

19          A     And he did not use -- need to reuse them again. So

20 when the procedure was over and the patient was moved out, I

21 told the technician that was working that day that the tray was

22 contaminated. And she said that that's okay. And the nurse

23 anesthetist said to me, in quotes, that's the way they do it

24 here.

25          Q     Well, how did -- did that have an effect on you when

1 you heard that?

2 A It did. I just couldn't believe it.

3 Q And when you say you couldn't believe it, what --

4 what's the problem with that?

5 A Because -- because you've got a contaminated syringe

6 sitting up there that had the propensity to be used for another

7 patient.

8 Q So is that a problem?

9 A It is because you've got cross-contamination.

10 Q Is that something that is contrary to any place you've

11 ever worked before?

12 A Yes.

13 Q I mean, have you ever seen anybody do that, say --

14 A No.

15 Q -- that that was okay?

16 A No.

17 Q Now, the syringe itself, I mean, does it -- is this

18 something you said that was used to irrigate out the inside of a

19 scope?

20 A It is because you get debris in there or maybe your

21 field of vision isn't good, maybe the -- the prep wasn't

22 adequate, and so the physician clears his field of vision using

23 water. It can be just tap water because it's not a sterile

24 thing, but it's just used to clear the field of vision.

25 Q So is there potential for fecal material to get in the

1 syringe or something?

2       A     It is. And in the same channel, the same channel  
3 that's used to irrigate is also -- can be used for biopsies.

4       Q     So material and things are coming back out?

5       A     They can be, yes.

6       Q     After -- after you experience that, what do you do? I  
7 mean, I know we're at the end of the day, we're going to go  
8 back, but what happens right then? Do you go tell anybody? I  
9 mean, is -- what -- what happens?

10      A     Well, I -- I told -- yeah, I told -- I just told the  
11 technician and I told the nurse anesthetist. You know, the  
12 nurse anesthetist corroborated that that was the kind of  
13 procedure they did there. And like I said, it was towards the  
14 end of the day and I don't remember what we had after that.

15      Q     Okay. So let's back up a little bit. So you're in  
16 there initially with Lisa Falzone. Do you remember who the --  
17 was it just one single procedure, or did you do multiple  
18 procedures throughout the day?

19      A     We did multiple procedures during the day, but that  
20 happened towards the end of the day.

21      Q     Was it the same physician, same staff throughout the  
22 day or did that change?

23      A     The -- the staff changed. Most of the time Linda  
24 Hubbard was the nurse anesthetist in the room, but there was a  
25 male that came in, and I don't remember if it was Keith or Ron

1 that came into the room to relieve her at some point in time.  
2 Q Okay. So at least there are some switching out of  
3 personnel, is that fair?  
4 A Right.  
5 Q Now, did you remain in the same room or did you go  
6 between rooms during the day?  
7 A I was in the same room all the time.  
8 Q Was Lisa with you the whole time?  
9 A Except when she had stepped out.  
10 Q So the time -- when you're in that room and you're  
11 with Lisa, what are the things that you're actually doing?  
12 A I'm expected to write procedure times down there.  
13 You're expected to finish filling out fee tickets that were  
14 done, that type of thing.  
15 Q What do you mean by that?  
16 A A fee ticket is -- they're procedure codes for the  
17 procedure, and there's a diagnosis code for the diagnosis. So  
18 you're expected to write the times that, you know, the starting  
19 minute times of the procedure. They also wanted you to exactly  
20 write a post assessment time two minutes after the end of the  
21 procedure.  
22 You were expected to write that the IV was DCed  
23 exactly five minutes after the post assessment time, and that is  
24 really done in the recovery room. It's not done in the  
25 procedure, even if the recovery room nurse is signing off for

1 it. I was still -- or Lisa was expected to write that down.  
2 And you were also expected to write that at that same time the  
3 physician -- no, at -- at five minutes -- let me -- let me go  
4 back here. At two minutes after you were -- you were expected  
5 to do the post procedure, at five minutes after you were  
6 expected to write the IV or hep-lock DC.

7 Q And DC means discontinue?

8 A Discontinued.

9 Q Okay.

10 A And then that time was also supposed to correlate with  
11 the time that the physician saw the patient in the recovery  
12 room. And I had asked Lisa during the day, I said does the  
13 physician always see the patient in the recovery room? And she  
14 said no. And then exactly 30 minutes past the hep-lock time you  
15 were supposed to put the discharge time which was supposed to  
16 be, again, signed off in the recovery. But I was not  
17 responsible for the -- for DCing the procedure, DCing the  
18 hep-lock, or discharging the patient. So really those times  
19 should not have been put down.

20 Q Did that bother you?

21 A Yes.

22 Q A lot?

23 A Yes.

24 Q Had you ever done that before?

25 A No.

1 Q Had there been any time in your career that that had  
2 even remotely come up in any location?

3 A No.

4 Q Other than this one day?

5 A That is all.

6 Q So at this time -- I mean, how are you feeling? Are  
7 you upset, are you calm? I mean, what's going on?

8 A No, I'm upset. I'm upset with the way that the  
9 healthcare was there. I just didn't feel it was up to par.

10 Q When you say healthcare, are we talking about these  
11 times or something else?

12 A I'm -- I'm talking about the times, the syringe, the  
13 fact that I didn't see Linda Hubbard wear two gloves when she  
14 was starting IVs. I just -- I just felt that it was poor  
15 patient standards.

16 Q Now, at the time that you're there, this is your first  
17 day, I mean, what -- what do you do as a result of this?

18 A Well, I called Katie Maley the next day prior to when  
19 I was supposed to come in. I was supposed to be there at 9:00  
20 and I called at 8:45. She returned my call around 9:30 that  
21 morning and I told her that I could not come in because I had  
22 issues with the clinic. And I explained to her what my issues  
23 were, the syringe, the times, the gloves, that kind of thing,  
24 and she told me that she was unaware of it and she would look  
25 into it.



1 Q Okay. Now, this is in -- do you remember the date  
2 that you were there?

3 A I was there April 23rd.

4 Q Of 2007?

5 A 2007, yes.

6 Q So April 23, 2007. Besides Katie Maley, do you make  
7 anybody else aware of the concerns that you have at the clinic?

8 A No, she was the director of nurses, so she was the one  
9 I told. When I got my letter, I got a letter from Tonya Rushing  
10 stating that I had not given proper notice during my  
11 probationary period, so I put a call into her to explain why I  
12 left. And she called me back, but I was out at the time. I  
13 called her a second time, but I never heard back from her again.

14 Q Okay. So beside the -- and let's talk about the  
15 records that they asked you to do the times. Besides filling  
16 out the times that were not right on the record, was there  
17 anything else that you were supposed to fill out that wasn't  
18 right?

19 A I had one incident with the fee ticket that I had  
20 filled out. You're supposed to take the, you know, the  
21 diagnosis, you fill in the diagnosis for the physician off the  
22 -- off the notes. And on one of them the diagnosis was  
23 constipation. And I know from doing coding in the past that  
24 constipation isn't necessarily covered by insurance. And at the  
25 end of the procedure, and I don't recall the physician, but the

1 physician told Lisa to tell me to change it to changing bowel  
2 habits, which is a covered diagnosis code.

3 Q So that was something that obviously hadn't occurred,  
4 and you were asked to falsify that as well?

5 A Right.

6 Q Now, was there any other thing that you can think of  
7 that -- during the time there that was of concern? I mean, were  
8 there -- and I'm talking about supplies at this point. You  
9 talked about the gloves issue with -- with Ms. Hubbard. You  
10 talked about the syringe and so forth. Were there any other  
11 supplies like gowns, four-by-fours, K-Y jelly, anything like  
12 that that were of concern that --

13 A It was -- it was just a hearsay, but --

14 MS. STANISH: Objection, then.

15 MR. STAUDAHER: Well, again --

16 MS. STANISH: Hearsay.

17 THE WITNESS: Well --

18 BY MR. STAUDAHER:

19 Q What did you experience?

20 A Well, my experience was what somebody told me.

21 THE COURT: Okay. Then -- then don't answer at this  
22 point.

23 Unless, Mr. Staudaher, you want to --

24 MR. STAUDAHER: I'll maybe approach it a different  
25 way.

1 BY MR. STAUDAHER:  
2 Q Without saying who said what to you --  
3 THE COURT: Or what they said.  
4 BY MR. STAUDAHER:  
5 Q -- or what they actually said, was there any issue  
6 with you having to conserve on supplies while you were there?  
7 A Not me personally, no.  
8 Q Is this something you overheard somebody else talking  
9 about?  
10 A Right.  
11 Q Okay.  
12 MS. STANISH: Objection. Hearsay.  
13 MR. WRIGHT: Hearsay.  
14 MR. STAUDAHER: I'm trying to find out what it is.  
15 THE COURT: That's sustained.  
16 MR. WRIGHT: Right. And that -- well, it's hearsay.  
17 THE COURT: Well, he was --  
18 MR. WRIGHT: You can't.  
19 THE COURT: Mr. Staudaher --  
20 MR. STAUDAHER: I'll move --  
21 THE COURT: -- is going to --  
22 MR. STAUDAHER: I'll move on.  
23 THE COURT: -- move on. I think he was trying to  
24 endeavor to find out how she knew about the supply issue,  
25 whether it was something with her. She said, no, that was not a

1 situation with her, and so Mr. Staudaher is going to move on.  
2 BY MR. STAUDAHER:  
3 Q Okay. I want to go back to the times for a minute.  
4 When you're in the room, I mean, obviously you're there for the  
5 procedure. And I'm not talking about the times that you were  
6 putting on the record for the next part that you weren't at;  
7 correct? Are you with me so far?  
8 A I'm sorry. Repeat, please.  
9 Q The times that you mentioned, exactly two minutes  
10 after procedure time for the -- I think it was the post --  
11 A Post assessment.  
12 Q -- assessment time, the five minutes later, the five  
13 minutes later, the 30 minutes later, that kind of thing. All of  
14 that, if I understood you correctly, was taking place outside in  
15 the recovery area where you were not going to be?  
16 A Correct.  
17 Q And were you ever out there working during that day?  
18 A Never. Never.  
19 Q So you're doing -- you're taking that information,  
20 supposedly putting it on the chart before the chart even leaves  
21 the procedure room?  
22 A Yes.  
23 Q Okay. When the patient left the procedure room, did  
24 you follow the patient out or did you stay in the room?  
25 A I believe I stayed the room.

1 Q So the patient rolls out. So the chart that you would  
2 have filled out would have gone with the patient --  
3 A Right.  
4 Q -- is that fair?  
5 A Yes.  
6 Q Did you do that? Did you mark these times down like  
7 the wanted you to?  
8 A I'm sure I did it on a couple of charts.  
9 Q Okay. Did that make you feel uncomfortable?  
10 A Yes.  
11 Q The times that were on the chart that related to  
12 things that actually happened in the room that you were in, the  
13 procedure room, how were those times put down on the chart,  
14 meaning the procedure time. Did you look at the clock? I mean,  
15 did you have to follow something?  
16 A I believe they were taken off of the data scope  
17 readings in the room.  
18 Q Are you talking about like the tape read with the  
19 monitor --  
20 A Right. Yes.  
21 Q -- itself? So you took those times off of the tape  
22 monitor, put those down on your procedure chart. Did that  
23 actually coincide pretty much with what actually happened in the  
24 room?  
25 A I think it did. It's -- it's a little hard to

1 remember that right now.

2 Q Have you ever done that in -- in another place, in any  
3 of those other places you ever worked?

4 A Taking --

5 Q Taking the times off of a monitor as opposed to just  
6 looking at the clock or your watch or whatever.

7 A Sometimes.

8 Q Okay. So that wasn't out of the ordinary.

9 A No.

10 Q But the other part was the thing that bothered you so  
11 much?

12 A Right.

13 MR. STAUDAHER: Court's indulgence, Your Honor.

14 BY MR. STAUDAHER:

15 Q I want to get back now to the one last thing I wanted  
16 to ask you about, which was the procedure book. Okay? And for  
17 counsel -- and, again, the portion of this that's highlighted is  
18 actually my highlighting. It's not in the procedure book as --  
19 as you provided it. But it's page 6 of that procedure book, and  
20 I want you to take a look at that, and I'm going to zoom in here  
21 a little bit.

22 THE COURT: We can't see it. Oh, yeah, now you can  
23 see it.

24 MR. STAUDAHER: If you can move it down just a bit.

25 / / /

1 BY MR. STAUDAHER:

2 Q And the section entitled code of conduct, do you see  
3 that?

4 A Yes.

5 Q Now, this is part of your -- the procedure book they  
6 give to you. And under code of conduct, the highlighted  
7 portion, can you read that to yourself just for a moment? Just  
8 let me know when you're done.

9 A Yes.

10 Q So on here where it's talking about unacceptable  
11 behavior and it talk -- gives you examples of things that are  
12 unacceptable that could subject you to termination or discipline  
13 or something like that; correct?

14 A Uh-huh. Right.

15 Q And the very first one is falsification or making a  
16 material omission on forms, records, or reports, including  
17 patient records. Do you see that?

18 A Yes.

19 Q Now, what you were asked to do, did you consider those  
20 that category of record --

21 A Yes.

22 Q -- patient records?

23 A Yes.

24 Q Before you actually started working there, did you  
25 have a chance -- or did you review this code of conduct?

1 A I don't recall reading that, no.  
2 Q Okay. Have you subsequently read it?  
3 A Yes.  
4 Q Was there some irony that you saw in that they were  
5 asking you to do something that they could have terminated you  
6 for?  
7 MR. SANTACROCE: I'm going to object --  
8 MS. STANISH: Objection.  
9 MR. SANTACROCE: -- as to relevance, Your Honor.  
10 THE COURT: That's sustained.  
11 BY MR. STAUDAHER:  
12 Q But clearly what's depicted in the employee manual  
13 they hand to you on the day and then ask you the very same day  
14 was contrary to what's in this manual; correct?  
15 A Yes.  
16 MR. STAUDAHER: Pass the witness, Your Honor.  
17 THE COURT: Who would like to go first? Ms. Stanish?  
18 CROSS-EXAMINATION  
19 BY MS. STANISH:  
20 Q Good afternoon, ma'am.  
21 A Hello.  
22 Q You had mentioned, and I'm hoping that you can clarify  
23 something or educate us on an issue. I understood you to  
24 mention that the syringes -- well, maybe -- I don't know what  
25 you said. Is in the colonoscopy room, is this a sterile



1 procedure?

2 A No.

3 Q Will you please educate us about what it means to have  
4 a sterile procedure versus what occurs in your experience in a  
5 colonoscopy clinic?

6 A Well, a colonoscopy procedure is not a sterile  
7 procedure. The equipment is high-level disinfected. Some of  
8 the equipment is sterilized. For instance, if you're using  
9 biopsy forceps it might be a single use item or something that  
10 has to be sterilized because that breaks the mucosal barrier, so  
11 that does have to be sterile.

12 Q What is it -- because, you know, we all -- most of us  
13 know -- what we know about the medical profession is what we see  
14 on TV. And I'm guessing Nurse Jackie isn't real life. What --  
15 what is -- what does it mean with scrubbing and washing for a --  
16 is that a sterile requirement? Let me strike that. That's a  
17 bad question. Is a sterile procedure required when there is a  
18 penetration of tissue?

19 A If it's in the -- if it's in the GI tract, it doesn't  
20 have to be sterile just if you're going to look in an upper  
21 endoscopy or a colonoscopy. But if you -- if you have to do  
22 biopsies, then you have to use equipment that is sterile because  
23 you're breaking the mucosal barrier.

24 Q What is the mucosal barrier?

25 A The -- the skin. You're taking a piece of tissue.

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1 Q Okay. And so that part of the -- that part would have  
2 to be done with a sterile instrument?

3 A Yes.

4 Q But the environment itself, the room, does it need to  
5 be disinfected each time, in between each patient?

6 A It needs to be wiped down.

7 Q The whole room?

8 A All the areas where the -- close to the equipment  
9 needs to be wiped down. Your tray should be changed out, which  
10 I know wasn't done at least once. And the side equipment needs  
11 to be washed off. As patients are in and out of beds, that all  
12 needs to be washed down and -- and redone.

13 Q Okay. And the -- the two syringes that you noticed  
14 that were not used by the doctor after you refilled them, as I  
15 understand your explanation for the syringes, that's a flush  
16 that is done -- is it done in the beginning of the procedure to  
17 clear out the colon because the person didn't prep well or  
18 something?

19 A It can be done at any time during the procedure --

20 Q Okay.

21 A -- if the field of vision is poor or if something is  
22 clogging the scope.

23 Q And I know we're asking you to go back to the year  
24 2006. In this particular incident that you described, do you  
25 recall if the flush that the doctor did was in the beginning of

1 the procedure to clear the colon initially?  
2 A I don't know.  
3 Q Do you recall whether or not the doctor -- well, could  
4 a doctor do a biopsy without first flushing?  
5 A Yes.  
6 Q He could do it without first flushing? Do you --  
7 A Yes.  
8 Q -- recall if a biopsy was done in this -- during this  
9 particular procedure that you described?  
10 A I do not.  
11 Q And you don't recall who the physician was?  
12 A No, there were several physicians in the room that  
13 day.  
14 Q You mean alternating?  
15 A Yes.  
16 Q And you had -- moving now to your testimony about the  
17 monitors. I understand it you were directed to use the vital  
18 monitor times for the beginning and the end of the procedure?  
19 A Correct.  
20 Q And so tell us how that actually worked. I mean, did  
21 the CRNA start the monitor, or did somebody else?  
22 A I assume it was the CRNA.  
23 Q And -- and then when you got the -- did somebody  
24 actually hand you the tape so that you could get the times off  
25 of the -- the vital tape?

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1           A     I honestly can't remember.

2           Q     You don't remember that part? But your memory is that  
3 you used the start time of the procedure and the end time of the  
4 procedure from the vital monitor strip?

5           A     Correct.

6           Q     And did I understand your testimony to be that that  
7 time would closely reflect the procedure time?

8           A     Yes.

9           Q     Did you observe, if you recall, the CRNA interviewing  
10 the patient to do the assessment for anesthesia?

11          A     I don't really recall what she said to the patients.

12          Q     But do you recall Ms. Hubbard having a conversation  
13 with the patient while you were in the room?

14          A     I'm sure she must have, because she started a number  
15 of IVs in the room.

16          Q     And it's your experience that the -- I know you worked  
17 in the past with the anesthesiologists. Have you ever worked  
18 with CRNAs other than this one day at the gastro clinic?

19          A     I -- I've worked with CRNAs, but only really as  
20 friends, not as --

21          Q     Is it a fair statement to say that the CRNA would have  
22 had to have had a conversation with the patient in order to  
23 assess the -- the anesthesia that was going to be given to them  
24 or whether they were a candidate --

25          A     They --

1 Q -- for it?  
2 A They should.  
3 Q Did you see that occur, or you don't remember?  
4 A I don't recall.  
5 Q Are you an expert on procedure codes?  
6 A I am not an expert.  
7 Q Okay. I don't have anything further. Thank you,  
8 ma'am.  
9 A Uh-huh.  
10 THE COURT: Mr. Santacroce.  
11 MR. SANTACROCE: Thank you.  
12 CROSS-EXAMINATION  
13 BY MR. SANTACROCE:  
14 Q I want to go back to April 23, 2007, and focus in a  
15 little bit about what the CRNA did or didn't do, okay. You  
16 testified that you, I believe, went in and started a procedure  
17 room at about 10:00 in the morning; is that correct?  
18 A Yes.  
19 Q Do you recall which procedure room you were in?  
20 A I don't know the number. It was on the right hand  
21 side of the building.  
22 Q Okay.  
23 A Closest to the lunch room. That's all I know.  
24 Q How many procedure rooms did they have at the clinic?  
25 A Two, I believe.

1 Q Were both procedure rooms being used on the day that  
2 you worked there?

3 A Yes.

4 Q I believe you testified that you were in a room with a  
5 CRNA named Linda Hubbard; is that correct?

6 A Yes.

7 Q Were you in that room most of the day with Linda  
8 Hubbard?

9 A Yes.

10 Q Except at one time when she had to be relieved for  
11 some reason?

12 A And I don't know if it was more than one procedure. I  
13 don't recall.

14 Q You don't know if what was one procedure?

15 A You said she -- she wasn't there for one procedure.  
16 What I'm saying is it might have been more than one that  
17 somebody relieved her for.

18 Q Well, at some point in the day she was relieved;  
19 correct?

20 A Correct.

21 Q And what part of the day was that?

22 A I don't recall.

23 Q You don't know if it was morning or afternoon?

24 A No, I don't.

25 Q How many procedures did you do with her in the morning

1 when you started at 10:00 a.m.?

2 A I don't have a number.

3 Q Do you remember how many procedures you did all day?

4 A No.

5 Q You don't recall who relieved Linda Hubbard?

6 A No, there were two other CRNAs there that day. There  
7 was a Keith and a Ron Lieberman.

8 Q Ron who?

9 A I think it was Lieberman.

10 Q Were you introduced to these CRNAs?

11 A Yes. I was either introduced or someone told me their  
12 names.

13 Q You have no recollection of whether or not you were  
14 introduced?

15 A No.

16 Q Okay. I want you to tell me a little bit about the  
17 procedures Ms. Hubbard used that you witnessed in the procedure  
18 room. How did she administer the propofol to the best of your  
19 recollection?

20 A I was not watching her administer the propofol.

21 Q You mentioned that the reuse of the scope syringes, 60  
22 cc syringe bothered you; correct?

23 A Yes.

24 Q And you mentioned that the CRNA Linda Hubbard, I  
25 presume, told you that's how they do things here.

1 A Correct.

2 Q And that was Linda Hubbard?

3 A Yes.

4 Q And why did that bother you?

5 A Because it should have been discarded at the end of  
6 the procedure along with the rest of the items on the tray.

7 Q So when you said that the colcnoscopy procedure room  
8 is not a sterile environment, that particular aspect of it is?

9 A It's not sterile, but it's clean. It should be clean.

10 Q Okay. What's the difference between sterile and  
11 clean?

12 A Well, if it -- if -- clean is, for instance, if you  
13 have a package of two by -- four by fours, you can take some  
14 out, set it on a tray that just has a clean field, a clean towel  
15 or something on it, okay, and that's just clean. It's -- it's  
16 not sterile. It's not ripped specifically cut of a package and  
17 -- and put on a sterile field so that there is absolutely no  
18 contamination of any bacteria, hands or anything.

19 Q Was that syringe that you were concerned about reused  
20 on a subsequent patient?

21 A I didn't see it be reused, but it had the potential to  
22 be reused.

23 Q And the concern would be that possibly if that was  
24 reused on another patient that could have passed some kind of  
25 infection or disease; is that correct?

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1 A Yes.

2 Q But you didn't witness that happen?

3 A I did not.

4 Q When Ms. Hubbard was relieved at some point in the  
5 day, do you know how long she was gone for?

6 A I don't have the time period, no.

7 Q You -- you do recall that she did come back to that  
8 room; correct?

9 A Yes.

10 Q The CRNA that relieved her, can you tell me anything  
11 about that person?

12 A I don't recall any specifics.

13 Q Did you see that person, that other CRNA administer  
14 any propofol?

15 A Not that I recall.

16 Q You said you were concerned that Linda Hubbard only  
17 wore one glove during the procedure; is that correct?

18 A Starting IVs.

19 Q Did the other CRNA that relieved her wear two gloves?

20 A I don't remember seeing them start IVs.

21 Q So the only concern you had about the two-glove issue  
22 was the starting of the IVs, not the administration of the  
23 propofol; correct?

24 A Right. Yes.

25 Q So the subsequent, the second CRNA that comes into the

1 room, you don't recall if that person started an IV on the  
2 patient?

3 A I do not recall that, no.

4 Q And you don't recall if that person had two gloves or  
5 one glove?

6 A Right.

7 Q Do you recall how that person administered the  
8 propofol?

9 A No.

10 Q Do you know where the propofol was kept in the room?

11 A I do not.

12 Q The person that relieved Linda Hubbard, did that  
13 person bring anything with them?

14 A I do not know.

15 Q I don't have any further questions. Thank you.

16 THE COURT: Redirect.

17 MR. STAUDAHER: Nothing, Your Honor.

18 THE COURT: Any juror questions for this witness?

19 Ma'am, thank you for your testimony. Please don't  
20 discuss your testimony with anyone else who may be a witness in  
21 this case. Thank you and you are excused.

22 State, call your next witness.

23 MR. STAUDAHER: State calls Vincent Mione to the  
24 stand.

25 / / /

1 VINCENT MIONE, STATE'S WITNESS, SWORN

2 THE CLERK: Thank you. Please be seated. Please  
3 state and spell your first and last name for the record.

4 THE WITNESS: Vincent, last name M-I-O-N-E, Mione.

5 THE COURT: Vincent, V-I-N-C-E-N-T?

6 THE WITNESS: Yes.

7 THE COURT: All right.

8 Mr. Staudaher, go ahead.

9 MR. STAUDAHER: Thank you, Your Honor.

10 DIRECT EXAMINATION

11 BY MR. STAUDAHER:

12 Q Mr. Mione, what do you do for a living or what did you  
13 do?

14 A I was a certified anesthetist.

15 Q How long had you done that work?

16 A Since 1965.

17 Q From '65 up until when?

18 A 2008.

19 Q Okay. Have you worked as a CRNA since that time,  
20 since 2008?

21 A No. No, I haven't.

22 Q Okay. And there's a microphone there. We're taking  
23 all the words down, so it's kind of important to speak up if you  
24 would, please. Okay.

25 THE COURT: Did you get your training in the military?

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1 THE WITNESS: No, after I discharged I went to school  
2 after that.

3 THE COURT: Okay.

4 Go on.

5 BY MR. STAUDAHER:

6 Q Okay. And that's -- and that's where I was going to  
7 go with that. Can you tell us a little bit about -- a little  
8 bit about your background and training that led you to become a  
9 CRNA?

10 A I went to nursing school at Jersey City Medical  
11 Center. It was a two-year nursing program at the time. And I  
12 was applying for anesthesia school, but I was drafted. So I  
13 decided to sign up for the military. But because I have a  
14 visual acuity, not up to their stuff, I did my tour of duty from  
15 1962 to '65. And when I got out, a month later I started  
16 anesthesia school at Chestnut Hill Hospital in Philadelphia.

17 Q How many places have you worked as a CRNA?

18 A After graduation from Chestnut Hill?

19 Q Uh-huh.

20 A Start there? North Bend Hospital in Philadelphia,  
21 Doylestown Hospital in Pennsylvania, and Grandview Hospital also  
22 in Pennsylvania. And after I -- from Doylestown Hospital, that  
23 was the last hospital I worked at in Pennsylvania, I moved to  
24 Florida in 1971 and worked at Hollywood Memorial Hospital in  
25 Hollywood, Florida, for almost 30 years. I retired from there

1 in 2001. And after that I worked a little bit. I had my -- had  
2 a few stents put in. I had a little coronary blockage and --

3 Q Yourself you mean?

4 A Myself, yes.

5 Q Okay.

6 A And with that I decided to -- we decided to move from  
7 Florida, mainly due to Eric and Andrew. That sort of convinced  
8 us to move. And we came here in 2001. And I didn't work for  
9 about probably close to two years, and then I was invited to an  
10 anesthesia meeting, and that's when I was told about a position  
11 at the gastric clinic. And I decided I could, you know, work  
12 for a little while, and I started working there in 2003 until  
13 the clinic was closed in 2008.

14 Q So many, many years as a CRNA, then?

15 A Yes. And in Florida we became nurse practitioners. I  
16 was sort of grandfathered in, of course, but we were able to  
17 have practitioner status also.

18 Q Okay. So -- and but prior to coming to Las Vegas was  
19 it pretty much hospital based anesthesia that you did?

20 A Yes, mostly they were all hospital based.

21 Q Did you ever work in any sort of outpatient ambulatory  
22 care centers, anything like that?

23 A We had some which were associated with the hospitals

24 Q So the hospital --

25 A They were part of --

1 Q -- you worked at --  
2 A -- the hospital.  
3 Q -- and then you also worked with an adjacent or  
4 associated ambulatory care center?  
5 A Yes, I -- with the group I worked for, which is  
6 Sheridan Health Corp. now, they had several hospitals in the  
7 Florida area and the Hollywood area. About three outpatient  
8 clinics. And we were sent to wherever they needed us. I mostly  
9 stayed at Hollywood Medical Center when that was first opened,  
10 and memorial hospital.  
11 Q So this is the 30-year stint that you did in --  
12 A Yes.  
13 Q -- in Florida?  
14 A Yes, it is.  
15 Q Now, you said group. Were you part of an anesthesia  
16 group of some nature?  
17 A Yes, it was called Anesthesia Associates of Hollywood,  
18 and they changed their name a couple of times. The last one was  
19 Sheridan Health Corp.  
20 Q Same group of people, just the names change?  
21 A Well, the -- the elders were taking on new  
22 anesthesiologist and anesthetist. We had -- and it just kept  
23 growing.  
24 Q Now, you mentioned anesthesiologists and anesthetists.  
25 A Yes.

1 Q Did this group contain both?

2 A Yes, it did.

3 Q How many of each were there to the best of your --  
4 your memory? I know it's a long time ago.

5 A We started with about ten or more anesthesiologists,  
6 and about -- it was probably about eight or ten of us, and that  
7 was in 1971. And it just kept growing until we had somewhere in  
8 the area between 40 and 50 of each.

9 Q So when you're working in that group, I know you're  
10 predominantly in one hospital setting, but you -- is it fair to  
11 say that you also moved around and did anesthesia at other  
12 places as well?

13 A Yes. Uh-huh.

14 Q And that's all part of this group?

15 A Yes, it is.

16 Q Now, during the time that you're part of the group and  
17 you're doing these anesthetic procedures, I mean, how do you  
18 keep track of that and how does the people -- or does the group  
19 bill for your services, for example?

20 A They had their billing services. I have no idea.

21 Q So you didn't actually do the physical billing?

22 A We had -- no, we had nothing to do with billing.

23 Q Did you have to supply them with some sort of face  
24 sheet or document saying, okay, this is the patient I worked on  
25 and this is the procedure that was done, anything like that?

1       A     Primarily from their -- I guess their anesthesia  
2 records.

3       Q     That's what I mean. Did you -- when you go into the  
4 facility to do --

5       A     Yes.

6       Q     -- whatever facility it was to do a procedure --

7       A     Uh-huh.

8       Q     -- did you have to collect anything to give back to  
9 your anesthesia group to -- so they could bill for your  
10 services?

11      A     Well, usually they just use the charts to -- to do the  
12 billing. I really don't remember.

13      Q     Okay. But did -- somehow or another they had to know  
14 that you were at the facility; correct?

15      A     Yes.

16      Q     Okay. And when you were at the facility did you keep  
17 an anesthesia record?

18      A     Yes, for each case.

19      Q     Okay. And the anesthesia record, what is the purpose  
20 of that? Why do you keep that record?

21      A     It was to monitor the patient condition during the  
22 procedure.

23      Q     Okay. And does that record go to your group so they  
24 can bill it as well?

25      A     Yes.



1 Q I mean, is that typically how it's billed?  
2 A Yes.  
3 Q Okay. So you did that for the 30-odd years. You come  
4 out to Las Vegas. Now, when you came out to Las Vegas, you said  
5 you had some medical procedures yourself before you came out  
6 here --  
7 A Yes.  
8 Q -- is that fair?  
9 A Yes.  
10 Q The position that you took at the clinic here, which  
11 clinic was it that you were working at?  
12 A I think the only one at that time was the  
13 gastroenterology clinic here in -- I don't even remember the  
14 street name.  
15 Q Well, there's a couple of them in town.  
16 A Over by -- what was it -- what was it called?  
17 Gastroenterology of Las Vegas, I think.  
18 Q Okay. Is it over by Shadow -- or by Shadow Lane?  
19 A Yes, it was on Shadow Lane.  
20 Q Okay. So that's -- is that the first place you worked  
21 when you came here?  
22 A Yes.  
23 Q Is that the only place you ever worked while you were  
24 in Las Vegas?  
25 A No.

1 Q Where else did you work?

2 A Shortly after I took employment there, Dr. Desai, I  
3 guess, had a contract going or something with the military and  
4 the -- I volunteered to work over at the VA clinic on the other  
5 side of town. I can't remember the name of the street there  
6 either, but I worked there almost -- a little over three and a  
7 half years.

8 Q So we're talking about Las Vegas. Are all these --

9 A Yes.

10 Q -- places in the Las Vegas valley?

11 A That's in Las Vegas, yes.

12 Q Okay. So the VA hospital, you worked there.

13 A And the other one was the Burnham -- the Burnham  
14 clinic.

15 Q So three places in town?

16 A Three places, yes.

17 Q So Burnham, the VA, and for a better name we'll call  
18 it Shadow Lane. Okay?

19 A Okay.

20 Q And do you recall if it was the Endoscopy Center of  
21 Southern Nevada, if that's the name of it?

22 A I don't -- I couldn't tell you for sure. I don't  
23 remember the names.

24 Q But it was located over on Shadow Lane?

25 A This is the one on Shadow Lane by, what is -- is that

1 -- no, it's not Rancho. Charleston. It's off of Charleston.

2 Q Now, let's talk about those facilities. When you were  
3 working at the VA hospital did you ever also work at the other  
4 clinics, one or the other?

5 A Yes, in the afternoons on several occasions when they  
6 needed relief in the afternoon. I would be called back to  
7 either the Shadow or -- or the Burnham clinic.

8 Q Besides the Shadow -- I mean, when talking about  
9 Shadow and Burnham, which place did you work at more?

10 A More at Burnham, actually. It was closer to the VA  
11 clinic.

12 Q Did you ever work with -- you mentioned Dr. Desai.  
13 Did you ever work with him?

14 A Yes, I worked with him at the Shadow Lane clinic?

15 Q Did you work with him at Burnham at all?

16 A He wasn't there very -- I don't believe I did.

17 Q Did you work with him out the VA?

18 A He was hardly ever there.

19 Q So your experience with Dr. Desai was at the Shadow  
20 Lane facility?

21 A Yes.

22 Q Do you see him in court today?

23 A Yes.

24 Q Can you point to him and describe something that he's  
25 wearing for the record, please?

1           A     A dark jacket and dark tie and a blue shirt.

2           MR. STAUDAHER: Will the record reflect the identify  
3 of Dr. Desai, Your Honor?

4           THE COURT: It will.

5 BY MR. STAUDAHER:

6           Q     So let's -- let's focus for a moment on the Shadow  
7 Lane. The times that you're working there, the times that  
8 you're working with Dr. Desai, let's -- let's -- let's get into  
9 that a little bit. Okay?

10          A     Yeah.

11          Q     First of all, between the two -- the three facilities,  
12 VA, Burnham, Shadow Lane, which was the most busy?

13          A     Oh, definitely Shadow Lane.

14          Q     When you say definitely, what do you mean?

15          A     Well, their --their patient load was extremely high.  
16 Over the -- over the years it just kept increasing and  
17 increasing more. Every time I go back there were 20-some  
18 patients, 40, 50, and it's gone as high as 80.

19          Q     Was that an issue when you were working there, the  
20 patient load?

21          A     Well, for me it wasn't because I didn't really want to  
22 work there as much because it was just too much -- too much work  
23 there.

24          Q     That's what I mean. When you are there, though, is  
25 the --

1 A Yes.

2 Q -- patient load significant to you

3 A Yes, it -- it was.

4 Q Okay. Was it a problem at all for you when you were  
5 working there?

6 A Yes, it was -- it was very stressful and I -- we just  
7 tried to do the best we could under the circumstances.

8 Q Did you ever talk to anybody, Dr. Desai, anyone about  
9 trying to maybe reduce the numbers a little bit?

10 A Well, you couldn't talk to Desai very -- Dr. Desai  
11 very often. He's -- but if we had any complaints, usually we  
12 went through Tonya Rushing.

13 Q Okay. Why couldn't you talk to Dr. Desai?

14 A He was just busy. He was -- was not always in the  
15 work area. He was either there or in his office or back and  
16 forth.

17 Q Was there a problem if you did see him in a -- in a  
18 procedure room talking to him, though?

19 A Well, on occasion.

20 Q Did you do that?

21 A Yes.

22 Q We're going to get into some of that in a minute. But  
23 are you familiar with the anesthetic drug propofol?

24 A Yes, I am.

25 Q Prior to coming to Las Vegas had you used that drug?

1 A Yes, I did.

2 Q And is this back in Florida or one of the prior places  
3 you worked?

4 A In Florida.

5 Q Did you use it a lot there?

6 A Yes.

7 Q Now, as far as your use of it out here, I mean, at the  
8 time did you have to get any special training or were you  
9 familiar with it enough that you could use it here?

10 A No, we were very familiar with it. Actually, we were  
11 using as a -- before it went on the market in Florida.

12 Q You were using it before it went on the market?

13 A They -- they -- Concerro (phonetic) Hospital is where  
14 you could -- you know, who were using it and get some feedback,  
15 etcetera. That was, I believe, in the '80s sometime, the early  
16 '80s.

17 Q Now, that particular drug, do you have to be a person  
18 like yourself or an anesthesiologist typically to use it?

19 A Yes.

20 Q Is this something that the average physician,  
21 gastroenterologist, family practice doctor, whomever, is able to  
22 just use?

23 A They have on occasion, yes.

24 Q Now, in the setting that you were in, were you the  
25 primary person that would -- not you specifically, but your type

1 of individual, a CRNA, were you primarily the persons that would  
2 use that drug during the procedures?

3 A Well, we all use -- I didn't quite understand that.

4 Q Bad question. The CRNA, did the CRNA use the propofol  
5 during the procedures?

6 A Yes.

7 Q Okay. Now, during the -- the typical procedure that  
8 you're going to have, and we understand there are two different  
9 types predominantly. There are upper endoscopies and  
10 colonoscopies, is that fair?

11 A Yes.

12 Q Was there a difference in the length of time that  
13 those procedures took?

14 A Yes. The endoscopy took less time than the  
15 colonoscopy.

16 Q Was there a difference between the operator, Dr. Desai  
17 versus the other doctors as far as the speed of the procedures?

18 A Well, most of the procedures that Dr. Desai did were  
19 very fast.

20 Q Okay. Was there ever an issue with how fast the  
21 patients turned over while you were in the room?

22 A There were a lot of --

23 Q I'm talking about your experience at Shadow Lane for  
24 the moment.

25 A Right. I don't quite understand how to explain it.

1 Q Well, how -- how rapid was the turnover?

2 A Oh, well, they were -- they were rather fast and  
3 everybody -- everybody was very uptight and tense when Dr. Desai  
4 was doing cases because he always was trying to rush everything.

5 Q Now, what do you mean by trying to rush everything?  
6 What would he do to try and rush procedures?

7 A Well, you know --

8 MR. WRIGHT: Foundation.

9 THE WITNESS: What?

10 BY MR. STAUDAHER:

11 Q We're talking about Dr. Desai during the times that  
12 you were working with him at Shadow Lane.

13 A Yes. Well, the help would -- they'd get very upset  
14 when he was there because he was always trying to move things  
15 along rapidly and they'd be taking patients out of the room  
16 ahead of time. Sometimes they were still connected to their  
17 oxygen mask or the blood pressure cuff, and we'd have to stop  
18 them and disconnect them before they'd go out of the room to  
19 bring the next patient in. He was, you know -- if somebody  
20 wasn't doing something right he'd berate them in front of  
21 everybody else, doctors or employees.

22 Q Was it stressful to be in an environment where he was  
23 present?

24 A Yes. Yes, because things are going so fast you -- it  
25 was very uncomfortable and confusing at times.



1 Q So when they're trying to take a patient out and he's  
2 still hooked up to the lines and the oxygen and so forth, I  
3 mean, how -- I mean, how often would that kind of thing happen?

4 A Well, when he was in the -- in the area working, it  
5 happened a lot from my part of the --

6 Q Anybody ever get whiplash or anything with the --

7 A No.

8 Q -- oxygen?

9 A No, you just sort of grab the stretcher and tell them  
10 to stop for a minute.

11 Q Okay. Now, you said as soon as the patient, though,  
12 gets out of the room, the next one was ready to come in pretty  
13 much?

14 A Pretty much they'd try to push the next patient in  
15 because they'd be prepared out in the -- in the preparation  
16 area.

17 Q Would you have enough time to leave the room, or would  
18 you have to stay there mostly?

19 A A lot of times I'd stay in the room, but on occasion  
20 I'd go out with the stretcher to the holding area for a moment  
21 or two because --

22 Q And then you'd be back in the room?

23 A And I'd be right back in the room, yes.

24 Q When you're in the room and the next patient -- before  
25 the next patient -- you know, the first one, however you get

1 them disconnected, rolls out and the next patient rolls in,  
2 about how much time are we talking about between those patients?

3 A Just several minutes. Not very much. Maybe five  
4 minutes, if that.

5 Q How long were the procedures themselves taking with  
6 Dr. Desai?

7 A Most of the -- most of the procedures probably  
8 anywhere from 10, 15 minutes, if that.

9 Q Okay. Are we talking about the colonoscopies?

10 A The colonoscopies were very fast, yes.

11 Q And what about the upper endoscopies?

12 A The endoscopies --

13 Q Would they be shorter?

14 A -- sometimes they'd be five minutes.

15 Q Now, during the -- the time that -- in the interim  
16 between patient rolling out and the next patient rolling in, was  
17 there anything happening in the room where you were at? Were  
18 they doing something to the room or was the patient just rolling  
19 in?

20 A Well, they didn't do very much in the room. The  
21 stretcher was basically the piece of equipment that was moved in  
22 and out.

23 Q Okay.

24 A And they just came in and hooked them up with the --  
25 the oxygen and the -- the oxygen oximeter and blood pressure

1 cuff and EKG machine.

2 Q When you started the day, was there anything you did  
3 in preparation for the first patients rolling in that would -- I  
4 mean, getting prepared for those patients, what would you do?

5 A When we first came in in the morning, we'd draw up  
6 several syringes of propofol, about --

7 Q So you'd have them --

8 A 10 or 15.

9 Q -- all lined up?

10 A And we'd line up all the syringes so we'd have enough  
11 to use for each patient without taking a lot of time refilling  
12 them.

13 Q Was there much time to be able to use -- to even go  
14 back into a bottle and refill it?

15 A Well, when we had a break, then we'd take some more  
16 syringes and needles and fill up a few more so we would not get  
17 behind.

18 Q Did you get behind sometimes, though?

19 A Yes.

20 Q Was that because of the speed that you've described?

21 A Yes, mostly. Yes.

22 Q Did that give you concern at all at any time, this  
23 rapid turnover, the speed of the patients, things like that, in  
24 doing your job?

25 A Yes, it was a concern, but it seemed to be the way

1 they practice at the clinic and that's the way I was told, you  
2 know. We were told to practice like that.

3 Q So even though it was a concern, you were just told to  
4 do it and you just did it?

5 A Well, we were -- yes --

6 MR. WRIGHT: Foundation, please.

7 BY MR. STAUDAHER:

8 Q Again, I'm talking about Shadow Lane --

9 A Yeah.

10 Q -- the times that you're there with Dr. Desai --

11 MR. WRIGHT: Can I have a year?

12 BY MR. STAUDAHER:

13 Q -- and he's present? What -- what years were you at  
14 the -- well, actually, let's talk about that.

15 THE COURT: I think he means when -- I mean, when did  
16 you become concerned or when were you instructed to -- to do  
17 that?

18 MR. STAUDAHER: We'll go through that.

19 THE COURT: Okay. Well --

20 BY MR. STAUDAHER:

21 Q During the time that you're there, you said that the  
22 patient load ramped up; is that right?

23 A Oh, yes.

24 Q When you're talking about --

25 MR. WRIGHT: What year? Foundation.

1 MR. STAUDAHER: I'm getting there.

2 THE COURT: When did the patient -- okay. When did --  
3 when did the patient load -- I'm sorry. It's been a long --  
4 it's been a long month. When did the patient load ramp up  
5 about?

6 THE WITNESS: Well, initially when I started there  
7 there was only one room, and --

8 THE COURT: And how many patients about a day?

9 THE WITNESS: At that time I think there were probably  
10 20, 25.

11 THE COURT: A day?

12 THE WITNESS: A day, yes.

13 THE COURT: Okay. And then at some point in time  
14 there are now two rooms; correct?

15 THE WITNESS: Several years while I was away and  
16 coming back they got another area and opened up several -- yeah,  
17 two more rooms.

18 THE COURT: Okay. And do you recall about when that  
19 was?

20 THE WITNESS: Well, probably around 2006, I would say,  
21 '07.

22 THE COURT: Okay.

23 THE WITNESS: I'm not sure.

24 THE COURT: And about how many patients are going  
25 through a day at that point?

1 THE WITNESS: Well, it started, I believe, around 35  
2 or 40, and then every time I came back there would be like 45,  
3 then it went up to 50 or so. And by I guess around 2007 or so  
4 they were -- they were up to over 70 patients, and sometimes --  
5 I think we even hit the 80 mark at times.

6 THE COURT: And then you mentioned, well, you'd go  
7 away and then you would come back. Was that personal leaves you  
8 were taking?

9 THE WITNESS: No, I mean I was working primarily at  
10 the VA at the time.

11 THE COURT: I see.

12 THE WITNESS: And I'd be called back in the afternoon.  
13 Every time I'd come back there'd be another surprise.

14 THE COURT: Okay. So you'd be gone, you'd be working  
15 at the VA, and then you'd come back and there'd be another room  
16 opened or something like that?

17 THE WITNESS: Yes. Mostly relieving in the  
18 afternoons.

19 THE COURT: Okay.

20 Go on, Mr. Staudaher.

21 BY MR. STAUDAHER:

22 Q So let's stay with that for just a moment. You're at  
23 the VA. What's the patient load there?

24 A We did -- we did around 10 to 15 or 16 patients a day.

25

1 Q Well, let's talk about Burnham. What was the patient  
2 load out at Burnham? And I'm talking around the 2007 time that  
3 you were discussing.

4 A I think that was -- I'm not sure. Probably around 30  
5 or so, 35, something like that.

6 Q Okay. And now we're back at Shadow. And you said  
7 we're in the 70s or whatever?

8 A Yes. Uh-huh. High.

9 Q Okay. So clearly a difference in patient load between  
10 the three areas?

11 A Yes, there was.

12 Q When you're at Shadow, and I'm talking around the 2007  
13 time period when the numbers are as high as you said, did that  
14 give you concern for the patients and how they were moving in  
15 and out so quickly?

16 A Well, being an employee of the corporation, how much  
17 can you have to say? You know, we -- you can mention things,  
18 but, you know, I didn't run the -- I didn't run the corporation.  
19 We were just working as given the anesthesia work and I don't  
20 think we had much to say about it really.

21 Q Okay. I know you didn't have much to say. Who did  
22 have the say?

23 A Dr. Desai ran -- he ran the program.

24 Q So beside the fact that you didn't feel like you had  
25 much input, did you have concern with those numbers that were

1 rolling through?

2       A     Yes, I did, but I felt we were doing a fairly decent  
3 job of getting things -- you know, getting the patient taken  
4 care of properly.

5           THE COURT: Was there a particular physician or  
6 physicians that you were working with at the VA?

7           THE WITNESS: Some -- some of the physicians from  
8 Shadow were sent over there. There were a few of them. Not all  
9 came over there.

10          THE COURT: Okay.

11 BY MR. STAUDAHER:

12       Q     When you're there, and it sounds like you're not  
13 getting out of the room very much during the time that you're  
14 working at Shadow Lane; correct?

15       A     Right. Correct. Yes.

16       Q     Were there times, though, that you got relieved at  
17 least for lunch or a bathroom break or anything like that?

18       A     Yes, we had -- we had lunch most of the time, yes.

19       Q     So beside the lunch relief, did you ever have to go  
20 take a bathroom break or be relieved for any other reason?

21       A     I presume I did. I mean, probably, yes.

22       Q     Okay. In those instances, who would relieve you,  
23 another CRNA?

24       A     If someone was free, yeah. If another CRNA was free  
25 they'd come and relieve us.



1 Q Now, the doctors that were there working with you, you  
2 mentioned Dr. Desai being one of them, were there some other  
3 doctors there as well?

4 A Dr. Carrol. I think he was like second in charge, and  
5 Carrero -- Carrera. Yeah, Eladio Carrera. Yeah, he was there  
6 and several other doctors. I just can't remember their names.

7 Q Okay. And you mentioned the -- the syringes that you  
8 would line all up. I mean, what size syringes were those?

9 A These are boxes of 10 cc syringes.

10 Q So you didn't have larger ones? The 10 ccs were --

11 A No, there were 10 cc syringes, and boxes of, I think,  
12 21 gauge needles.

13 Q So those are the needles and the syringes. Now,  
14 you're -- you're in an anesthetic procedure with somebody, okay.  
15 You mention that you would try to draw up the syringes in  
16 advance when you could --

17 A Yeah.

18 Q -- is that fair?

19 A Yes.

20 Q When the numbers are -- and the turnover is getting to  
21 the point where you -- I think you said that there were times  
22 that you fell behind.

23 A Yes.

24 Q How would you deal with the situation when you fell  
25 behind?

1           A     I would just have to draw them up when I needed them  
2 and try to get a few more ahead of the game during the day as  
3 much as we could.

4           Q     Now, most of the anesthetic procedures, and we've got  
5 some charts here if we need to look at them, appear as though  
6 there are multiple doses of propofol given during the  
7 procedures. Is that common?

8           A     Usually we go through between 120 or 200 milligrams.

9           Q     And what size bottles of propofol were you using?

10          A     Initially we were using 20 -- 20 cc bottles.

11          Q     Did that change?

12          A     When I returned -- I don't remember what year, either.  
13 It was -- I -- I wasn't there when they made the change, so it  
14 was probably 2006 or 2007. I'm not sure. But they ended up  
15 having 50 cc vials of propofol.

16          Q     Would that allow you to draw more of these up in  
17 advance?

18          A     And you could draw up four or five syringes out of one  
19 -- one vial.

20          Q     Now, on a single patient, a patient comes in and needs  
21 more than -- and if I understand correctly, a cc or milliliter  
22 of the drug propofol has the equivalent of 10 milligrams of the  
23 drug; is that right?

24          A     Yes, it does.

25          Q     So 100 milligrams would be 10 ccs?

1           A     Yes.

2           Q     Did you use any kind of a lidocaine solution in your  
3 syringe to help with the initial dose that you gave a patient?

4           A     Yeah. When we prefilled them we'd use like a quarter  
5 or a half cc of 1 percent lidocaine.

6           Q     So there would be less than 10 ccs in each syringe;  
7 correct?

8           A     Yes, there would be.

9           Q     So if you have a 20 cc bottle, even using two syringes  
10 you're going to have some left over in the bottle; correct?

11          A     Yes.

12          Q     If you used a 50, would it be the same thing, that you  
13 used five syringes, you're still going to have some left over at  
14 the end?

15          A     There would still be some residual, yes.

16          Q     With regard to the syringes themselves, did you ever  
17 -- and stay with me for a moment because I'm going to give you  
18 two different scenarios. Did you ever take a single syringe, go  
19 into a patient, and then go back into a bottle with that same  
20 syringe?

21          A     On occasion if it was the last amount in the bottle I  
22 would use the last remaining propofol for that patient.  
23 Everything was discarded after that.

24          Q     Okay. So the same -- so a single syringe you might  
25 reuse on a single patient --

1           A     Yes.

2           Q     -- correct?

3           A     Correct.

4           Q     Into a bottle of propofol?

5           A     Yes.

6           Q     Did you ever use open bottles of propofol from one  
7 patient to another?

8           A     Well, we refilled our syringes from the bottles.

9           Q     Let me -- let me give you the scenario again so that  
10 we have it. You've got a bottle of propofol that you have drawn  
11 cleanly medication out of.

12          A     Yes.

13          Q     That bottle is sitting down.

14          A     Uh-huh.

15          Q     You administer your drug to the patient. Next patient  
16 rolls in. You haven't touched that bottle again. Could you or  
17 have you reused that bottle, the propofol end, on a new patient?

18          A     Yes, with another sterile syringe and needle we would  
19 withdraw some more propofol from that bottle.

20          Q     If you had taken a syringe that you had used on a  
21 patient more than once and gone back into that bottle, what  
22 would be the state of that bottle?

23          A     It would be contaminated.

24          Q     Would you ever use that contaminated bottle on a new  
25 patient?

1           A     No.

2           Q     Why -- why not? What would be the problem?

3           A     Well, it would just be a chance of some blood backing  
4 up into the -- the syringe.

5           Q     Now, you've worked with many CRNAs at the time;  
6 correct?

7           A     Yes.

8           Q     And you worked with CRNAs even in your own -- at  
9 Shadow Lane and Burnham and the like?

10          A     Yes.

11          Q     Is that generally known that that's -- that's not a  
12 good practice using contaminated bottles potentially on a new  
13 patient?

14          A     Yes, that is generally known.

15          Q     Is that part of the training that you go through, an  
16 aseptic technique?

17          A     Yes.

18          Q     I mean, how to handle syringes and needles and  
19 medication, things like that?

20          A     Correct.

21          Q     Any big surprise or secret there, or do they keep a  
22 special book where they only let certain people know that?

23          A     I don't believe so.

24          Q     Okay. Now, let's -- let's move on. If you have this  
25 situation where you've got the syringes drawn up and they're

1 sitting -- where -- where do you put them? Do you put them in a  
2 special place?

3 A In one room we had a pretty good countertop where we  
4 kept the syringes. I know that times --

5 MR. WRIGHT: Foundation.

6 THE COURT: What time --

7 BY MR. STAUDAHER:

8 Q Again, the time frame --

9 MR. WRIGHT: As which clinic.

10 BY MR. STAUDAHER:

11 Q -- I'm going to talk to you about --

12 THE COURT: He's -- he's going to do it.

13 BY MR. STAUDAHER:

14 Q -- is the 2006/2007 time frame that you were  
15 describing earlier. Okay?

16 MR. WRIGHT: And --

17 THE COURT: Well, you said at one time we did this,  
18 and then it changed to a different procedure. When -- when did  
19 it -- when did you start doing something different?

20 THE WITNESS: I don't --

21 THE COURT: Okay. Maybe Mr. Staudaher --

22 THE WITNESS: I don't understand.

23 BY MR. STAUDAHER:

24 Q Well, let me reask that. That's a bad question. You  
25 had mentioned that when you were over at Shadow Lane during the

1 time that you were working there that you would try to draw up  
2 these syringes in advance. Is that fair?

3 A Yes.

4 Q Now, during the 2006/2007 period you said the numbers  
5 got high enough that you sometimes got behind. Is that fair?

6 A Correct. Yes.

7 Q In the situations where it got behind, I think you  
8 said that you might draw them up as you went.

9 A Correct.

10 Q Now, I'm talking about in the situations during that  
11 time period where you had the opportunity at the beginning of  
12 the case or maybe a break or something to do the drawing up of  
13 the syringes. Okay? Are you with me so far?

14 A [Nods head yes].

15 Q You've got to say yes.

16 A I think so.

17 Q Okay. So when you had multiple syringes drawn up --

18 A Uh-huh.

19 Q -- where would they go? Where would you put them?

20 A In one room. We used the countertop. I -- I used the  
21 countertop. We used to put them on the countertop.

22 Q Okay. What about the other room?

23 A The other room was very small and there was like a  
24 little window ledge or a see-through thing by the wall and there  
25 was a little tray there and that's where we would put those, on

1 that little tray.

2 Q Okay. In situations where you had an open bottle  
3 where you had used it cleanly on one patient, would sometimes  
4 you set that bottle aside and -- and not use that even on the  
5 next patient because you had some syringes drawn up or -- or  
6 something like that.

7 A Yes, I'd put it -- I would put it aside.

8 Q At some point, though, would you see a patient where  
9 you might be able to use that, that medication?

10 A I could, yes.

11 Q In those instances would you then grab that bottle and  
12 then draw some up to use on a new patient?

13 A Yes, I would do that. Yes.

14 Q Okay. When you're dealing with the syringes that are  
15 all laid out, whether it's on the shelf in the one room or the  
16 tabletop in the other room, let's go through this. You have a  
17 patient that's going to take clearly more than one syringe.  
18 Pretty much is that -- is that the way it was? It took --

19 A Yes.

20 Q -- more than one syringe on most patients?

21 A Usually, yes.

22 Q Okay. Because you mentioned that you couldn't get a  
23 full 10 ccs with the lidocaine in each syringe; right?

24 A Correct.

25 Q So if you're giving even 100 milligrams you'd have to



1 use more than one syringe.

2 A Right.

3 Q Is that fair?

4 A Yes.

5 Q Okay. So when you're using at least two syringes on  
6 each patient, at the end of the procedure, if this is drawn up  
7 and let's say you used 140 milligrams or 150 or something,  
8 you're going to have a sizeable amount of propofol left in a  
9 syringe; correct?

10 A Yes.

11 Q Okay. What would you do with that -- with that  
12 propofol?

13 A It was used or it would be discarded.

14 Q Were you ever in a room with Dr. Desai where that --  
15 when that situation happened, where you ended up with a syringe  
16 that had propofol left in it?

17 A There were many times where I would go to reinject it  
18 and he'd say, you know, hold off, they had enough propofol.

19 Q Okay. I'm not talking about that. We'll get to that  
20 in a minute.

21 A Okay.

22 Q But when you're in a situation where you have used  
23 propofol and you have some left over in a syringe and Dr. Desai  
24 in the room, what would happen?

25 A The syringe would be sitting there when we were done

1 and it would be discarded.

2 Q Would he say anything about you discarding a syringe  
3 of propofol?

4 A Not to -- he hasn't to me, no.

5 Q He didn't to you?

6 A [Shakes head no].

7 Q Okay. So you would throw the syringe away or you  
8 would waste the medication into a container?

9 A Usually I would squirt -- I would squirt it into the  
10 container that it was being thrown into. There were other  
11 large --

12 Q When the patients are rolling through, and you  
13 mentioned pretty rapidly; correct?

14 A Yes.

15 Q If you have a situation where you got a syringe that's  
16 not completely used up, did you ever set that down on a table  
17 with the other syringes before the next patient rolls in?

18 A I may have, yes.

19 Q Do you ever recall if sometimes it would -- there were  
20 so many numbers there coming through that you might have gotten  
21 mixed up and grabbed that one thinking that you had not used it  
22 on --

23 A I'd say it's not impossible, but not likely either.  
24 But it could happen.

25 Q Well, did you have situations happen where you --

1 where patients were coming through so quickly that you may not  
2 have disposed of the propofol in the syringe?

3 A Yes, possibly.

4 Q Did Desai ever give you any hard time about use of  
5 propofol?

6 A He wanted to use it -- he always mentioned to me not  
7 to use too much. That was about it. He --

8 Q Well, did you ever see him administer propofol during  
9 a case?

10 A On occasion he reached across and administered with  
11 the syringe that was in the patient's arm. He'd reach over and  
12 put some more in.

13 Q Now, why would that be the case? Why did he do that?

14 A Just --

15 MR. SANTACROCE: Objection. Calls for speculation.

16 THE COURT: Yeah, that's --

17 BY MR. STAUDAHER:

18 Q Well, unless he -- unless he told you. What was going  
19 on at the time when this happened?

20 A Well, I may have been preoccupied with something else  
21 and he reached over and did it. You know, I don't really  
22 remember exactly why, but on occasion he'd just reach over and  
23 push some in.

24 Q Was the patient asleep at the time or was the patient  
25 going to go to sleep?

1 A Well, moving around a little bit.

2 Q So he would reach across and just inject propofol  
3 himself?

4 A Yes, sometimes. Not very often.

5 Q When you relieved at lunch time, do you ever remember  
6 going into a room where other CRNAs syringes, bottles of  
7 propofol were -- were out?

8 A Yes.

9 Q Would you use other CRNA's set ups?

10 A If they told me they just drew up, I would -- yes,  
11 I've used them if they said they just reloaded it to use on the  
12 next patient, I would use it.

13 Q So you would necessarily -- I mean, you would walk  
14 over and would they have the same thing, some syringes lined up?

15 A They had the -- yeah, setups were similar in each  
16 room.

17 Q Okay. So you -- but clearly you didn't see them draw  
18 those syringes?

19 A No. If they told me they were. If they didn't,  
20 usually I'd draw up my own.

21 Q But my point is did you see them draw the syringes up  
22 when you went over there --

23 MR. WRIGHT: Foundation as to --

24 BY MR. STAUDAHNER:

25 Q -- and used their setup?

1           A     No.  
2           MR. WRIGHT:  -- who, when, where.  
3           THE COURT:  Well, it's overruled.  
4 BY MR. STAUDAHER:  
5           Q     Did -- did you see them draw those up, first of all?  
6           MR. WRIGHT:  Ma'am?  
7           THE WITNESS:  No, I didn't.  
8           MR. WRIGHT:  Foundation, please.  
9           THE COURT:  He said he -- he hasn't seen that.  
10          So when you would go room to room, there would  
11 sometimes be syringes with propofol -- when I say, you know, to  
12 relieve somebody for lunch -- that were already set out;  
13 correct?  
14          THE WITNESS:  Yes.  
15          THE COURT:  Okay.  And I think Mr. Staudaher said --  
16 question was you would sometimes use those, then, on the next  
17 patient; correct?  
18          THE WITNESS:  Yes.  
19          THE COURT:  And then what were you saying about -- and  
20 then -- but you never saw those actually being filled?  
21          THE WITNESS:  No.  
22          THE COURT:  Okay.  
23          MR. STAUDAHER:  Court's indulgence one second, Your  
24 Honor.  
25 / / /

1 BY MR. STAUDAHER:

2 Q Let's talk about -- let's stay with the syringe reuse  
3 issue. Based on your experience, your personal experience in  
4 the clinic, and I know it -- what you thought -- or what you  
5 think is acceptable and not acceptable, you've already told us  
6 that, but do you believe that you ever reused syringes on a --  
7 or reused on a patient to the next patient?

8 A I don't believe I have, no.

9 Q Do you believe that there was or did you feel a lot of  
10 pressure in the clinic to cut costs?

11 A Oh, yes, there was.

12 Q And who provided that pressure?

13 A Dr. Desai.

14 Q You mentioned that sometimes Dr. Desai would indicate  
15 that you shouldn't give additional propofol to a patient.

16 A Yes. Correct.

17 Q Were those times that you felt that the patient needed  
18 some more propofol?

19 A On occasion they were starting to move and he would  
20 say, you know, don't give anymore and he'd sometimes end the  
21 case maybe a little faster. I don't --

22 Q Well, what was your --

23 MR. WRIGHT: I didn't hear.

24 BY MR. STAUDAHER:

25 Q -- concern in those situations?

1 MR. WRIGHT: I didn't hear it. I'm sorry.

2 MR. STAUDAHER: Oh, I'm sorry.

3 THE COURT: Can you state your answer again?

4 THE WITNESS: Oh, on occasion he would say don't give  
5 anymore and end the case a little faster than usual, like  
6 extracting the scope and being done.

7 BY MR. STAUDAHER:

8 Q So if he saw the patient move and you were about to  
9 give more propofol, he'd say don't give anymore and then he'd --

10 A If it was getting --

11 Q -- pull the scope?

12 A If it was getting toward the end of the case and I'd  
13 want to, you know, keep the patient a little more comfortable,  
14 he'd say, well, I'm done now and he'd just remove the scope a  
15 little faster.

16 Q Okay. Describe that for us, the removing of the scope  
17 a little faster.

18 A Well, at the end he'd just sort of slide it out.

19 Q So you're describing almost a serpentine sort of  
20 movement --

21 A Yeah, just --

22 Q -- with your hand.

23 A Right.

24 Q That indicates, at least it seems, as though the scope  
25 is in further than just the very end of the body.

1 A Yes.

2 Q Is that fair?

3 A Yes.

4 Q So he would take that scope all the way out quickly?

5 A On occasion.

6 Q And what would happen?

7 A Some fecal matter would fly around the room a little

8 bit and that's it. You know, it just was messy.

9 Q What was your concern when the patient was starting to

10 move around when the scope is inside of them?

11 A I didn't want them moving for fear of punching the --

12 the intestine.

13 Q That was the reason why you wanted to give more

14 medication?

15 A The primary reason, yes.

16 Q So are we talking -- the movement is what I want to

17 ask you about now. So the movement of the patient in those

18 situations with the scope as far in as you've described, was it

19 more than just twitching of the patient? Was it moving around?

20 A Well, as soon as the patient starts to wiggle or twist

21 their body around, it can be -- it can be a problem --

22 Q So clearly --

23 A -- as far as having the --

24 Q -- that would be a patient care issue; correct?

25 A Correct.



1 Q Now, when you did your anesthetic work, I've got a  
2 picture in my mind of a syringe with a needle on it and then you  
3 administer the medication into the hep-lock?  
4 A Yes.  
5 Q Do you give a dose, take it out, cap it or something  
6 and set aside, or how did you mechanically do that?  
7 A We use the -- we use the induction dose and inject.  
8 We get them asleep usually around almost a syringe full. If  
9 there was any residual in there, we'd leave the syringe in the  
10 port in case I had to give some more it stayed there. And if  
11 not, we'd just wait, and if they were moving we'd give them the  
12 rest, take it out, and then we'd introduce another syringe.  
13 Q Was that -- I mean, is that the way you did it or --  
14 A That's the way I did it.  
15 Q -- the way all of you did it or --  
16 A I don't know what the other people did.  
17 Q That's the way you did it.  
18 A That's the way I did it.  
19 Q So you got a syringe in -- in that sort of hep-lock --  
20 A Hep-lock.  
21 Q -- thing.  
22 A Yes.  
23 Q The needle is in there communicating with the person's  
24 vascular system, blood system; correct?  
25 A Yes.

1 Q And you left it like that through -- for the case  
2 until the medication was gone?

3 A Correct.

4 Q Propofol vials, do you know if they're considered  
5 single or multiple use?

6 A They mention in the brochure that it's a single-use  
7 vial.

8 Q All of them; correct?

9 A All of them, yes, but they also supplied them with  
10 injection pins that you could put in through the vial to redraw.

11 Q Okay. But are you saying the packaging, the bottles  
12 themselves say single use only?

13 A Yes. Uh-huh.

14 Q For both the 50s and the 20s?

15 A Yes, they did.

16 Q Now, you had -- when I asked you the questions about  
17 the propofol and Dr. Desai, you said that at times you'd be  
18 about ready to give some more and he would say don't do it,  
19 something to that effect?

20 A Correct. Yes.

21 Q Would he ever complain to you about using too much  
22 propofol beside that issue?

23 A Well, he used to -- he used to complain about, you  
24 know, the cost of it and not to waste it.

25 Q Do you recall an interview with the police? Did you

1 recall talking to police?

2 A I -- yes, I recall an interview.

3 Q Do you recall describing the situation with the  
4 patients rolling in and out --

5 A Yes.

6 Q -- and using particular words and terms for that?

7 A I had a little -- I had a little song I used to hum,  
8 yes.

9 Q Okay. Go ahead. Hum it away.

10 A I used to go, you know, roll 'em, roll 'em, roll 'em,  
11 get those scopes a glowing, get those patients going, rawhide.

12 Q Okay.

13 A And it was moving in and out so fast that, you know,  
14 it just was sort of sick humor, I guess.

15 Q Did you describe it as a factory atmosphere?

16 A Oh, definitely.

17 Q Assembly line type thing?

18 A Yes.

19 Q Do you recall saying that you'd turn around and a new  
20 patient would be right there by the time you turn one way?

21 A As I said many times -- many times the patient would  
22 still be connected before we get them out of there. And when  
23 you turn around the next one would be coming in anyway.

24 Q As far as the -- the propofol, did Desai -- Desai,  
25 wherever it was, meeting, person, whatever, did he ever tell you

1 why he wanted you to use less propofol?

2 A I think it was just the cost of the product.

3 THE COURT: Don't speculate. Only -- the question  
4 is --

5 BY MR. STAUDAHER:

6 Q Based on --

7 THE COURT: -- did he say something --

8 BY MR. STAUDAHER:

9 Q Based on what he --

10 THE COURT: -- to you about it?

11 BY MR. STAUDAHER:

12 Q -- told you.

13 A Well, he just kept saying things cost money. You  
14 know, everything costs money.

15 Q Do you recall ever there being a situation where there  
16 was some meeting with Dr. Desai regarding a saline push,  
17 anything like that?

18 A Yes.

19 Q Can you tell us about that?

20 A I believe it was Dr. Nayyar I think suggested it. And  
21 I sort of went along with it and I said why don't we discuss it  
22 with Dr. Desai. And I think it was probably around a ten-minute  
23 meeting in his office.

24 THE COURT: When was this meeting?

25 THE WITNESS: In Dr. Desai's office at Shadow Lane.

1 THE COURT: Do you recall about when you had the  
2 meeting?  
3 THE WITNESS: I have no idea.  
4 THE COURT: Okay. And who all was there? Dr.  
5 Desai --  
6 THE WITNESS: A couple of the anesthetists and Dr.  
7 Desai and myself.  
8 THE COURT: Okay.  
9 THE WITNESS: I don't think Dr. Nayyar was there. I  
10 don't remember.  
11 BY MR. STAUDAHER:  
12 Q Okay. So tell us about it. What was the --  
13 A And the theory was with a little more saline in the  
14 vial -- in the -- in the syringe with the propofol with the  
15 initial push is a possibility it may allow the propofol to last  
16 a little longer. And --  
17 Q Did he explain how that was supposed to work?  
18 A Not really. We just sort of --  
19 Q Was that to flush out the little tiny bit that remains  
20 in that little tiny catheter in the hand?  
21 A No, no, it was -- it was added. A few ccs were added  
22 to the syringe of propofol and pushed.  
23 Q So let me get this straight. Your take on this was  
24 that he wanted you to dilute the propofol, the drug --  
25 A Yes.

1 Q -- with saline?  
2 A Yes.  
3 Q So it would be even less propofol in the syringe?  
4 A Correct.  
5 Q So if you had a 20 cc bottle and you're diluting it,  
6 it's going to take more than two syringes if you were using them  
7 cleanly; correct?  
8 A Correct.  
9 Q Did you institute that? Did it work?  
10 A It was attempted. Some -- some people tried, others  
11 didn't. And I think it was like a week or maybe two weeks and  
12 we just forgot about it because it didn't do anything.  
13 Q Did you understand how possibly diluting medication  
14 would make it more effective?  
15 A No, I didn't. I had no idea.  
16 Q But that was something that was tried?  
17 A It was tried.  
18 Q I want to talk to you about anesthesia times on the  
19 charts, remember, that you said you filled out?  
20 A Yes.  
21 Q And the -- that's a record, a patient record; correct?  
22 A Yes.  
23 Q What to you is anesthesia -- what -- when does  
24 anesthesia time start?  
25 A The anesthesia time was when the patient went into the

1 room until they left the room.

2 Q So the start of the procedure would be the start. I  
3 mean, the patient rolls in, that's the start?

4 A The patient rolls in there. Yes.

5 Q The patient rolls out, that's the end?

6 A Correct.

7 Q Is that right?

8 A Well, that's -- that's what anesthesia time is. At  
9 the -- at the clinic, because we had two signatures on the  
10 chart, I felt we were responsible for the patients until they  
11 were discharged from the outpatient area.

12 Q So you felt that you could actually write down  
13 anesthesia time to include time that the patient was in the  
14 discharge area?

15 A No, it was just -- it was because there was a request  
16 for 31 minutes on so many of the charts that I assumed that  
17 would cover the time that the patient was in the room, treated,  
18 and then left.

19 Q Okay. But your, if I understand --

20 MR. SANTACROCE: Excuse me. Your Honor, can we  
21 approach?

22 THE COURT: Sure. Let's actually -- I was waiting to  
23 take a break, so let's take our break.

24 Ladies and gentlemen, we're just going to take a break  
25 until about 3:15 for the afternoon recess. And you are reminded

1 that during the afternoon recess you're not to discuss the case  
2 or anything relating to the case with each other or with anyone  
3 else. You're not to read, watch, or listen to any reports of or  
4 commentaries on the case, person or subject matter relating to  
5 the case. Don't do any independent research, and please don't  
6 form or express an opinion on the trial. Notepads in your  
7 chairs, and follow the bailiff through the rear door.

8 And, sir, you may also take a break, but don't discuss  
9 your testimony with anybody else. Okay?

10 THE WITNESS: Okay.

11 (Jury recessed at 3:01 p.m.)

12 MR. SANTACROCE: I just wanted to take a break. The  
13 juror next to Ms. Pomykal has been sleeping through most of Mr.  
14 Staudaher's direct examination.

15 THE COURT: Then why do you want to take a break?

16 MR. SANTACROCE: I just --

17 THE COURT: No, thank you. I needed a break anyway,  
18 so that was good timing.

19 (Court recessed at 3:02 p.m., until 3:17 p.m.)

20 (Inside the presence of the jury.)

21 THE COURT: All right. Court is now back in session.

22 And, Mr. Staudaher, you may resume your questioning.

23 BY MR. STAUDAHER:

24 Q When we left off -- excuse me. When we left off we  
25 were starting to talk about -- or we were talking about the



1 start and stop times for anesthesia. Do you recall that?

2 A Yes.

3 Q And I think you said that you believed it was the  
4 patient comes in the patient room, the patient leaves, there's  
5 the start and stop time, but then later on there was this issue  
6 with 31 minutes?

7 A Yes.

8 Q Describe for us what we're talking about with regard  
9 to this 31 minute thing.

10 A Well, quite often one of the secretaries from the  
11 office, I don't know which office it was from, either Dr.  
12 Desai's office or the billing office, and they used to bring the  
13 charts back and say Dr. Desai wants 31 minutes on this chart.

14 Q So, I mean, was this every --

15 A For the -- I think it was one of the insurance  
16 companies wouldn't pay unless it was 31 minutes. That's what  
17 was explained to me.

18 Q Who explained that to you?

19 A The people that came down and said.

20 Q Did Dr. Desai ever directly tell you any of this?

21 A No.

22 Q So insurance wouldn't pay unless it was the 31  
23 minutes?

24 MR. WRIGHT: Foundation.

25 THE WITNESS: Correct.

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1 BY MR. STAUDAHER:

2 Q What -- how long was this going on?

3 MR. WRIGHT: As -- as to --

4 THE COURT: Well, he's laying the foundation.

5 MR. WRIGHT: Okay.

6 BY MR. STAUDAHER:

7 Q How long did that all happen?

8 THE COURT: Well, when were you told that? Like right  
9 when you started or sometime later?

10 THE WITNESS: I really can't recall. I know it  
11 started around -- we weren't -- I can't remember the time frame  
12 at all. But I know at one point they were bringing the charts  
13 back and wanted 31 minutes. I think it was PacifiCare was the  
14 insurance they mentioned that wouldn't pay for the procedure  
15 unless it was 31 minutes.

16 BY MR. STAUDAHER:

17 Q Now --

18 MR. WRIGHT: Foundation as to whom and like where.

19 THE COURT: Okay.

20 BY MR. STAUDAHER:

21 Q Who did -- who told you the 31 minutes initially?

22 A I don't -- the people that were coming in the room  
23 that were asking for it. I don't know. I don't remember.

24 Q Do you recall, again --

25 A I do not remember.

1 Q Do you remember giving a statement to the police at  
2 one point? Do you remember --

3 A You mean at the previous meeting or wherever?

4 Q Yes. When -- do you remember the police coming and  
5 talking to you and recording a statement that you gave to them?

6 A Okay. Yes.

7 Q Okay. And would it refresh your memory to maybe see a  
8 copy of that --

9 A Yeah, I don't remember the --

10 Q -- regarding that very issue?

11 A Yes. I don't remember what I said then.

12 Q Would it refresh your memory if I showed you a copy of  
13 the transcript on that?

14 A I hope so.

15 Q Okay.

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

17 THE COURT: Sure.

18 BY MR. STAUDAHER:

19 Q And this -- this statement is in two parts, Part A and  
20 Part B. I'm going to show you Part A, page 18. And this is --  
21 you can read as much of this before and after as you need to to  
22 get context, but the area that I am referring to is on page 18.  
23 And go ahead and start at --

24 A This?

25 Q Yeah. Go ahead and start reading -- reading that in

1 there and then tell me does that refresh your memory at all.  
2 And you actually may have to, if you want to, the previous page  
3 as well if you need to look at that.

4 MR. WRIGHT: Which part is that, Mike?

5 MR. STAUDAHER: Part B, the bottom of 17. Actually,  
6 starting at the middle of 17 and going onto 18.

7 MR. WRIGHT: Okay.

8 THE WITNESS: Right here, and --

9 BY MR. STAUDAHER:

10 Q Just -- just go ahead and read it and then tell me if  
11 that refreshes your memory. Take your time.

12 A Okay.

13 Q Does that refresh your memory?

14 A Well, this is what I said.

15 Q Okay. I'm just -- I'm just asking you --

16 A Yes. Yes, it did.

17 Q -- does that refresh your memory? Is that right?

18 A Yes.

19 Q Okay. And who was the one who told you that  
20 initially?

21 A Initially Keith Mathahs mentioned it.

22 Q Okay. So -- and do you recall roughly when that was?

23 A Probably early on. As I said, it was early on working  
24 there, but I cannot recall exactly when.

25 Q As a matter of fact, do you give a number to the

1 police of how many anesthesia records that you think you've done  
2 this with?

3 A Several.

4 Q What?

5 A Several.

6 Q When they talked to you about the number of records  
7 they've reviewed --

8 A Yes.

9 Q -- and talked to you about that?

10 A Yes, I was rather surprised that I wrote it so many  
11 times.

12 Q Okay. So there was a lot of them; right?

13 A Yes, there were.

14 Q Okay. Just so we're clear on this, you were -- I  
15 mean, was there any -- you said this was an insurance billing  
16 thing that they wouldn't pay for it unless it was over the  
17 certain amount is what they told you.

18 A Correct.

19 MR. WRIGHT: They? Is this Keith Mathahs?

20 THE COURT: Is that -- did anyone else tell you that,  
21 or just Keith Mathahs that you can remember?

22 THE WITNESS: Some of the -- the girls used to come  
23 down from the office with the charts and want 31 minutes on it.  
24 And I asked why, and they said -- and I was told, Keith  
25 initially told --

1 MR. WRIGHT: That girl, that what I --  
2 BY MR. STAUDAHER:  
3 Q Keith initially.  
4 A I don't know. There were several secretaries there.  
5 I couldn't tell you who. I don't remember them. It was five,  
6 six years ago.  
7 Q Okay. So Keith initially, and then it was some of the  
8 secretaries that came down and said --  
9 A Yes, they would keep coming down and say Dr. Desai  
10 wants 31 minutes on this -- on this chart.  
11 THE COURT: So had you filled --  
12 THE WITNESS: And we just started writing it in  
13 because --  
14 THE COURT: Had you filled in less than 30 minutes,  
15 and then they'd bring the chart back to you?  
16 THE WITNESS: Yes. Yes, they did.  
17 THE COURT: Is that what happened?  
18 THE WITNESS: Yes, they did.  
19 THE COURT: Okay.  
20 BY MR. STAUDAHER:  
21 Q Now, the accurate time is -- is the patient in, the  
22 patient out; correct? I mean, that's what anesthesia time is?  
23 A That's anesthesia time, yes.  
24 Q Is that the way it has been in all of the many years  
25 you've practiced in other places?

1           A     Yes, it was.

2           Q     Did you ever in any of those 30 plus years practice in  
3 these multiple hospitals, multiple settings, did you ever  
4 continue on anesthesia time when you weren't with a patient or  
5 dealing with a patient?

6           A     No.

7           Q     When you were doing that, meaning the putting the time  
8 down, were you doing something more on the record than just  
9 putting the time down?

10          A     They were adding vital signs, etcetera.

11          Q     Okay. So the vital signs where clearly the patient is  
12 not with you; right?

13          A     Correct.

14          Q     Why did you do that?

15          A     I guess it just made it part of the record that they  
16 -- they wanted to use for the insurance company.

17          Q     In fact, was it not so that in case somebody looked at  
18 them --

19               MR. WRIGHT: Objection. He's leading.

20 BY MR. STAUDAHER:

21          Q     Well, would it refresh your memory to look at a  
22 transcript on that issue?

23          A     Probably.

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

25               THE COURT: Sure.

1 BY MR. STAUDAHER:  
2 Q Page 29 -- actually, may be --  
3 MR. WRIGHT: What page is it?  
4 MR. STAUDAHER: Page 27 --  
5 MR. WRIGHT: Let me see yours.  
6 MR. STAUDAHER: -- to 29.  
7 MR. WRIGHT: Let me see yours a minute. Thank you.  
8 BY MR. STAUDAHER:  
9 Q Bottom of 27, going on to -- actually, you can skip  
10 ahead from 27 to 29. Okay? If you want to. All right.  
11 A Uh-huh. 27?  
12 Q Bottom of 27, and then go ahead to 29 and look at that  
13 one, too.  
14 A Okay.  
15 Q Now, does that refresh your memory on why you may have  
16 done that?  
17 A Well, my --  
18 Q I'm talking about the vital signs, why the vital signs  
19 would be the same as the time.  
20 A I just automatically put them down to match the 31  
21 minutes. My assumption was -- my assumption was that these --  
22 these procedures had a flat rate charge, and I didn't feel that,  
23 you know, it was interfering with anything to do with what the  
24 cost of the procedure was or the anesthesia fees. I didn't even  
25 know they had -- they use that for anesthesia fees.



1 Q Did you -- did you need to see this one more time or  
2 is it --  
3 A I don't.  
4 Q Okay.  
5 A I'm too --  
6 Q The question to you was related to that very -- very  
7 thing. To justify the patient -- that the patient, if any --  
8 any bone -- and I think that's a misspelling -- ever questioned  
9 you on the anesthesia time you made it look like the patient was  
10 still there by recording blood pressures when the patient really  
11 wasn't there. Your answer, yeah, uh-huh.  
12 That's the reason, is it not?  
13 A That's the reason, yes.  
14 Q Okay. So it's to, a better word, cover your tracks,  
15 essentially? Isn't that what's also discussed here?  
16 A Well, that essentially would be right.  
17 Q So if the log -- and you were asked this also -- the  
18 log shows that the procedure is actually maybe a ten-minute  
19 procedure, are you just going to fill it in, the blood pressure  
20 for the whole time that they're there even when they're not  
21 there? Back then.  
22 A Well, it got to a point where it was just so annoying  
23 all the time someone coming in and interrupting during other  
24 cases, I guess we just automatic -- I automatically just filled  
25 it in just so they wouldn't bother me. I didn't realize that it

1 was -- had anything to do financially.

2 Q So you didn't -- hold on. You just said you didn't  
3 think this had anything to do with it financially?

4 A No, I -- no.

5 Q Did you not testify awhile ago in your statement to  
6 the police that you knew that this was for reimbursement for  
7 insurance, that they wouldn't pay if you hadn't done this?

8 A They wouldn't -- yes, they wouldn't -- that particular  
9 insurance company wouldn't pay. Correct.

10 Q So is that fair to say that that has to do with money  
11 coming from an insurance company?

12 A Yes, but it just -- not dealing in any of the finances  
13 for all the time I was in this profession, I just -- I just  
14 didn't realize it, what they were doing, that the time was  
15 important dollar-wise for all the charges.

16 Q Showing you --

17 A Maybe I'm confused.

18 Q -- State's 86. A record from, I will represent to you  
19 -- I don't know if you've seen this. And that'll be my first  
20 question. Have you ever seen anything like this from the  
21 clinic?

22 A No.

23 Q Okay. And here where it's talking about how to figure  
24 the number of units for anesthesia, do you see that?

25 A I see it here, yes.

1 Q And these are for anesthesia charges. Do you see  
2 that?

3 A Yes.

4 Q And then going to State's 82, also from the clinic.  
5 Talking about when anesthesia time starts and stops, as you had  
6 said, personal -- when you're in personal attendance with the  
7 patient.

8 A Yes.

9 Q And that you use the American Society of  
10 Anesthesiologists Relevant Value Guide and Crosswalk for  
11 determining charges; correct? That's what it says here?

12 A Well, that's what the -- yes.

13 Q Have you ever seen this document before?

14 A No.

15 Q You know that as an anesthesiologist working for all  
16 those times and the various things that you did that clearly  
17 what you do, the time you spend with patient, is how -- how it  
18 gets billed out.

19 A Yes.

20 Q Is that right?

21 A Yes.

22 Q Did they tell you anything differently when you came  
23 to work here that we don't bill for anesthesia at all?

24 A I kept asking what the charges were for anesthesia and  
25 the only thing I ever figured out was -- was between \$75 and

1 \$150 flat -- flat fee. That's all I could recall.  
2 Q So why did it even matter --  
3 A Right.  
4 Q -- what times you put down?  
5 A Exactly. Well --  
6 MR. SANTACROCE: Objection. Calls for speculation.  
7 THE COURT: That's sustained.  
8 BY MR. STAUDAHER:  
9 Q Well, if you know. I mean, did -- did they tell you  
10 why it mattered if it didn't -- if you didn't know?  
11 MR. WRIGHT: Objection. Foundation.  
12 THE COURT: Sustained.  
13 BY MR. STAUDAHER:  
14 Q Did you ever see Dr. Desai start procedures before you  
15 had given anesthesia?  
16 A On occasion he would. He'd come in and want to start  
17 them and sometimes I wasn't ready to inject and he'd start them  
18 without -- without asking to inject on several occasions.  
19 MR. STAUDAHER: Pass the witness, Your Honor.  
20 THE COURT: All right. Cross.  
21 CROSS-EXAMINATION  
22 BY MR. WRIGHT:  
23 Q Mr. Mione, my name is Richard Wright. I represent Dr.  
24 Desai. Okay? How many times have you been interviewed for this  
25 testimony?

1 A I believe once.  
2 Q One time?  
3 A Repeat the question.  
4 Q How many times have you been interviewed before your  
5 testimony here?  
6 A Well, once was several years ago.  
7 Q Okay. Was that --  
8 A 2008, I believe, yes.  
9 Q 2008?  
10 A Yeah, I think that year.  
11 Q Was that with the police?  
12 A Yes.  
13 Q Okay. Is that right?  
14 A And some other people in there.  
15 Q Okay. Law enforcement?  
16 A Yes.  
17 Q Okay. Other than that, had you been interviewed by  
18 anyone?  
19 A No.  
20 Q Okay.  
21 A Not that I recall.  
22 Q Okay. And you -- you worked at the center until it  
23 closed; correct?  
24 A Well, I was there when it closed, yes.  
25 Q Okay. You were there when it closed; right?

1       A     Yeah, I was -- I was working at Burnham after the VA  
2 closed because I requested not to be working at this -- at --  
3       Q     Okay. How frequently did you work at Shadow Lane?  
4       A     I couldn't tell you. We just sort of -- they'd call  
5 me over there a lot in the afternoons when they needed extra  
6 help.  
7       Q     Okay. So like a thousand times, a thousand days?  
8       A     For the entire several years I was there?  
9       Q     Yeah.  
10      A     I couldn't put a number on it. I don't know.  
11      Q     Okay. Where did you mainly work?  
12      A     From early on I was working mainly at the VA and  
13 working in the afternoons at times at either Burnham or at the  
14 Shadow Lane.  
15      Q     Okay. Where did you work most of the time, if not at  
16 VA?  
17      A     When not at the VA?  
18      Q     Yes.  
19      A     Is that what you said? A lot of times at Burnham.  
20 It's -- I don't remember which was which, but, you know,  
21 wherever they sent me I went.  
22      Q     Okay. I understand.  
23      A     Okay.  
24      Q     I'm just saying which one did you work at most of the  
25 time when you weren't at the VA?

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1 A Mostly at Burnham.  
2 Q Okay. So you mostly worked at Burnham; correct?  
3 A Yes.  
4 Q Okay. And you infrequently worked at Shadow Lane;  
5 correct?  
6 A Correct.  
7 Q Okay. Because as -- as I read your interview with the  
8 Metropolitan Police Department you came out here two thousand --  
9 well, you started work in 2003 --  
10 A Yes.  
11 Q -- right?  
12 A Yes.  
13 Q Okay. And you worked a couple weeks at Shadow, and  
14 then went to VA for three and a half years; is that right?  
15 A Yes.  
16 Q Okay. And by -- by going to VA, that was a clinic  
17 that was contracted by Dr. Desai's group --  
18 A Yes.  
19 Q -- is that right?  
20 A Yes, it was.  
21 Q Okay. I mean, you were still working for Dr. Desai's  
22 practice --  
23 A Yes, I was.  
24 Q -- but you were assigned to the VA clinic; right?  
25 A Right.

1 Q And was that a separate clinic other than Burnham and  
2 other than Shadow Lane?

3 A Yes.

4 Q Okay. And was that over near the Burnham facility?

5 A Yes, it was.

6 Q Okay. And then if you started in 2003 that was about  
7 three and a half years at VA, did you stop working at VA in  
8 about 2006 or '07?

9 A Yes, somewhere around that.

10 Q Okay. Did -- did the contract end with VA or  
11 something?

12 A I have no idea.

13 Q Okay. Well, did someone replace you there?

14 A No, the clinic closed.

15 Q Okay. The clinic closed.

16 A Yes.

17 Q Okay. That -- that clinic closed down; right?

18 A Yes, it did.

19 Q Okay. So then you worked mainly at Burnham; is that  
20 correct?

21 A Yes.

22 Q That's what I read in your Metro statement; is that  
23 true?

24 A Yes.

25 Q Okay. You worked mainly with whom at the Burnham



1 clinic? Who did you work with?

2 A I'm trying to remember his name. Dr. Mason.

3 Q Dr. Mason.

4 A I'm bad on names. I'm sorry.

5 Q That's okay. That's all right. Now, do you recall

6 when the CDC or the Southern Nevada Health District or various

7 agencies came to the clinic?

8 A I believe I was called over that day because they

9 wanted to draw blood or something, yes.

10 Q Okay. Called over from where?

11 A From Burnham, I presume.

12 Q Okay. You were at Burnham; right?

13 A Yes.

14 Q Okay. And then some day, whenever this happened, and

15 it was -- I'll represent to you it was January 2008, okay?

16 A Correct.

17 Q So in January 2008 your contact with the investigators

18 from the agencies was you were called over to give a blood

19 sample.

20 A Yes.

21 Q And everyone was; correct?

22 A Correct.

23 Q I mean all of the employees; right?

24 A I assume. I don't know.

25 Q Okay. You didn't know?

1 A [Shakes head no].  
2 Q Okay.  
3 A I'm sorry.  
4 Q Were you interviewed at that time?  
5 A Not that I recall.  
6 Q Okay. Were you working when an inspection took place?  
7 A Yes, I remember several women there with clipboards,  
8 and I think one older gentleman was standing out in the work  
9 area.  
10 Q Okay. And did you talk to them, then?  
11 A I don't recall anything but probably saying hello or  
12 whatever.  
13 Q Okay. And would that -- would that have been an  
14 inspection at Shadow Lane or Burnham?  
15 A No, that was at Shadow Lane.  
16 Q Okay. And so did -- you remember a couple ladies with  
17 clipboards?  
18 A Uh-huh.  
19 Q Right?  
20 A Yes.  
21 Q Okay. And you don't recall being interviewed;  
22 correct?  
23 A I don't.  
24 Q And the -- were -- were you working at Shadow Lane  
25 that day?

1           A     Well, I was called over there for the -- I assumed I  
2 was working there that day or put to work there that day. I  
3 don't recall.

4           Q     Okay. Well, would -- is this the same day you gave a  
5 blood test?

6           A     Yes, I was there --

7           Q     Okay.

8           A     -- for that.

9           Q     So you were called over from Burnham for a blood test;  
10 is that right?

11          A     Well, I didn't know why, but I went over there, yes.

12          Q     Okay. And so I just want to be sure that's the same  
13 day we're talking about; right?

14          A     I assume so. I -- I --

15          Q     Ordinarily, I'm asking you.

16          A     I don't remember.

17          Q     Okay. You don't remember. Were you working at Shadow  
18 Lane doing a procedure when all of the surveyors, investigators,  
19 whatever you want to call them, came in and watched you do a  
20 procedure?

21          A     I saw them in the hallway, yeah.

22          Q     Okay.

23          A     I saw no one come in the room.

24          Q     Okay. You didn't see anyone come in and observe your  
25 procedure?

1           A       Not in my room, no.

2           Q       Okay. And you weren't interviewed by them and you  
3 simply gave a blood sample; is that correct?

4           A       Interviewed by whom? These people?

5           Q       Yes.

6           A       No, there was a couple of -- whoever came in to draw  
7 the blood. We went into another office and they said we're here  
8 to draw some blood samples and they're collecting it from  
9 everybody. I said okay. But they weren't the interviewer. I  
10 think there were some -- a couple of young nurses there.  
11 Whoever it was that drew the blood. I don't remember who they  
12 were.

13          Q       Okay. But that was the extent of your interaction or  
14 conversation with them?

15          A       Seeing them, yeah, that's correct.

16          Q       Okay. Now, in -- in 2008 you were interviewed by the  
17 police, okay. You have seen your transcripts of those  
18 interviews; correct?

19          A       I believe I read them. I don't recall.

20          Q       Okay. I mean, you know you were interviewed on two  
21 days and transcripts were prepared; correct? I'm talking about  
22 by the police like in August 2008.

23          A       Yes, I remember one interview. Yes.

24          Q       Okay. One interview. I'm sorry. One interview, two  
25 parts. One day; right?

1       A     I guess. I imagine. It just was one day. So if it  
2 was one or two parts --

3       Q     Okay.

4       A     -- that's what it was. I don't know.

5       Q     Now, at -- at that time you -- I want to go through  
6 some of those statements with you. Okay?

7       A     All right.

8       Q     And then you tell me if they're all accurate. Okay?  
9 Now, at the time you explained that you were -- from your  
10 experience in Florida you were very familiar with propofol;  
11 correct?

12      A     Correct.

13      Q     And you said that here today that you were actually  
14 using it before it was like licensed or readily available;  
15 right?

16      A     Yes.

17      Q     Okay. And when you came to the clinic and were hired,  
18 who interviewed you?

19      A     Dr. Desai.

20      Q     Okay.

21      A     And I believe Tonya might have been there, Rushing.

22      Q     Okay. Tonya Rushing. And who would -- did you talk  
23 to anyone about getting the job there? Did someone refer you  
24 there or anything?

25      A     When I was at an anesthesia meeting it was Keith

1 Mathson. He -- he --  
2 Q Keith Mathahs?  
3 A Yeah. He was at the meeting, too, and he said there  
4 was an opening at the clinic and why don't you interview, which  
5 I did. And I sent in --  
6 Q Okay.  
7 A -- my CV.  
8 Q Okay. And an anesthesia meeting, this would be a  
9 meeting of the anesthesiologists in the community?  
10 A It was a combination of physicians and anesthesiologists.  
11 Q Okay. And is that like a society or club or group or  
12 something?  
13 A It's a -- for ours it's a national organization. For  
14 anesthesiologists and the other ones the American Society of  
15 Anesthesiologists.  
16 Q Okay. So that would be a local meeting in Las Vegas?  
17 A Yes, it was.  
18 Q Of practitioners of anesthesia?  
19 A Correct.  
20 Q Okay. And you heard about the opening from Keith --  
21 Keith Mathahs?  
22 A Correct.  
23 Q Okay. And then you went and applied and you were  
24 hired; correct?  
25 A Correct.

1 Q And did you -- were you already credentialed or did  
2 that take time for or activating your license?

3 A No, I was -- yes, I was working on getting  
4 credentialed here in this state from Florida.

5 Q Okay. And that just means getting your license here  
6 all up to date; correct?

7 A Yes.

8 Q Okay. And you did all of that and then went to work;  
9 right?

10 A Correct.

11 Q Okay. And did -- did anyone have to teach you about  
12 how to give propofol?

13 A No.

14 Q Okay. And you -- you already knew because that's what  
15 you've been doing; right?

16 A Yes.

17 Q Okay. And then who did -- who did you start working  
18 with as far as a CRNA?

19 A Well, at the time when I was working and -- and  
20 accepted the position, Dr. Desai said, you know, your doctors  
21 are -- you would be working with the physicians and you are in  
22 charge of your work, period.

23 Q Okay.

24 A There was no one specifically in charge of -- in  
25 charge of us. We were sort of on our own, but employed by the

1 corporation.

2 Q Okay. And do you -- and do you recall that he told  
3 you you're responsible for your anesthesia and you need to do  
4 what you think is right?

5 A That's correct.

6 Q Correct?

7 A Yeah.

8 Q And has Dr. Desai told you that at the beginning?

9 A Yes, he did.

10 Q Okay. And you told the police that; correct?

11 A I guess so.

12 Q Okay. And the -- did you -- what -- you're working,  
13 when you started in 2003, one room -- one procedure room at  
14 Shadow Lane; right?

15 A Yes.

16 Q Okay. And you worked there for a short period of time  
17 before going to the VA clinic?

18 A Yes.

19 Q Okay. Who were you working with then?

20 A Keith Mathahs.

21 Q Okay. And when you started, what was your -- I want  
22 to start 2003. You just started work.

23 A Uh-huh.

24 Q Okay? And tell me what your practice was.

25 A Well, he said there at the clinic they load up 10 or



1 15 syringes --

2 Q Okay.

3 A -- of propofol.

4 Q Who said that?

5 A Keith did.

6 Q Okay. Keith Mathahs.

7 A And he showed how we set them -- he set them up there.

8 And I said, well, it sounded pretty feasible to me using a

9 syringe, clean syringes and needles for each draw. And we just

10 drew up as many as possible. So a lot of times he'd draw them

11 up in the morning.

12 Q Okay.

13 A And we'd be ready to practice.

14 Q Okay. So you were both working there and Keith is

15 showing you the ropes, for lack of a better word?

16 A Yes. Uh-huh.

17 Q Okay. And the -- you'd get the propofol out in the

18 morning. What size vials then?

19 A At that time I believe they were all 20 cc.

20 Q Okay. They were 20s.

21 A 20s, yeah.

22 Q And you would take -- you'd have a box of clean

23 needles and syringes; right?

24 A Correct.

25 Q Or you and Keith would. And you would take and draw

1 up ten to fifteen 10 cc vials --  
2 A Yes.  
3 Q -- correct?  
4 A Correct.  
5 Q Okay.  
6 MR. STAUDAHER: Objection. 10 cc vials?  
7 THE WITNESS: 10 cc syringes.  
8 MR. WRIGHT: I'm sorry. Syringes. 10 ccs into a  
9 syringe. Thank you.  
10 BY MR. WRIGHT:  
11 Q And so you would then have a supply and all of those  
12 are clean and sterile; correct?  
13 A Yes.  
14 Q So you're taking a 20 cc vial of propofol and you  
15 could feel two needle and syringes out of it; right?  
16 A Yes.  
17 Q Okay. And so if you had like 16 of them filled up,  
18 you would have used eight propofol vials; right?  
19 A Correct.  
20 Q Okay. And then you would toss each one of those in  
21 the trash; right?  
22 A Yes.  
23 Q Okay. And then the patients would start coming in,  
24 okay. The first patient rolls in. What do you do?  
25 A What do mean? To get started?

1 Q Right.

2 A You put on their blood pressure cuff and EKG and all

3 the oxygen.

4 Q Okay. You have -- you have experience having done all

5 that?

6 A Yes.

7 Q Okay. And would you interview the patient?

8 A Yes, they're interviewed prior to going to sleep.

9 Q Okay. Because you're -- you're going to ask them all

10 those questions, allergic to eggs, all that stuff?

11 A Allergies and all that, yes.

12 Q Right. To make sure that they are -- it's appropriate

13 to use propofol; right?

14 A Correct.

15 Q And you would do all of that; correct?

16 A Yes.

17 Q And there is a form and you'd fill it out on their --

18 what do you call it? History and physical --

19 A Anesthesia record, yeah.

20 Q Anesthesia record.

21 A Yes.

22 Q Okay. So then the first patient coming in, did you

23 use lidocaine?

24 A When the bottles were -- when the syringes were

25 filled. Usually Keith said -- suggested we put a quarter -- a

1 half cc of lidocaine in the syringe before we filled it with --  
2 Q Okay.  
3 A -- the propofol. So you had a small amount of  
4 lidocaine because it does burn when you inject it.  
5 Q Okay. Would you do that in every one of them, or just  
6 some of them?  
7 A We usually filled all of them with about a quart, half  
8 cc. It wasn't enough to overdose anybody.  
9 Q Okay. And -- and that, when we're talking about Keith  
10 Mathahs, he's explaining to you the process --  
11 A Yes.  
12 Q -- correct?  
13 A Uh-huh.  
14 Q And you were familiar with lidocaine?  
15 A Yeah.  
16 Q I mean, this wasn't something new. You knew exactly  
17 what he was talking about; correct?  
18 A Correct.  
19 Q And so what you would do is in -- in the brand new  
20 needle and syringe you'd put a small amount of lidocaine in it?  
21 A Yes.  
22 Q Out of a common lidocaine multiuse vial --  
23 A Yes.  
24 Q -- correct?  
25 A Correct.

1 Q That's just the way it was everywhere --  
2 A Yes.  
3 Q -- correct?  
4 A Correct.  
5 Q Okay. And then you'd put in propofol to fill up the  
6 10 ccs in the syringe, set it aside and have your stack, stack  
7 of needles and syringes?  
8 A Correct.  
9 Q Okay. Now, the patients start -- the first patient  
10 comes in. You've done your history and physical. Time to start  
11 the procedure. Hep-lock is in the patient most of the time;  
12 correct?  
13 A Yes.  
14 Q That's put in out in the pre-op area?  
15 A In the -- in the early parts I think a lot of the  
16 times we started --  
17 Q Okay.  
18 A -- a lot of the IVs.  
19 Q Okay. So oftentimes you would start it?  
20 A Uh-huh. Yes.  
21 Q Okay. And so the hep-lock is where you're going to  
22 put the needle and syringe?  
23 A Yes.  
24 Q Okay. And so you -- you put the -- were you one that  
25 normally always dosed 100 to begin with?

1       A     Usually it took around 100, sometimes some more. It's  
2 all according to the weight of the patient, the size, and --  
3       Q     Okay.  
4       A     -- etcetera.  
5       Q     But would you fully inject the first syringe if you  
6 had made the determination the patient is healthy and it's  
7 ready? Would you totally inject the first syringe?  
8       A     Not, as a bolus. I'd probably -- I usually put in  
9 about 40, 50 ccs and wait a little bit, you know, a half minute  
10 or whatever and see if it was reacting, and then --  
11      Q     Okay.  
12      A     -- inject a little more until they're asleep.  
13      Q     Okay. And so -- and the -- the whole time the needle  
14 and syringe is sitting in the hep-lock?  
15      A     Yes.  
16      Q     Okay. And, of course, then you finished, you fully  
17 injected the 10 ccs.  
18      A     Yes.  
19      Q     Okay. And now what would you do with that needle and  
20 syringe?  
21      A     Discard it.  
22      Q     Okay. And the -- do you have a sharps container?  
23      A     Yes.  
24      Q     Okay. And you were always meticulous about that?  
25      A     I hope so.

1 Q Well, I'm asking. I hope so, too. I mean, I'm asking  
2 your normal practice.  
3 A I would -- it was normal to do that, yes.  
4 Q Okay. Because it was done, correct, that needle and  
5 syringe?  
6 A It was finished, yes.  
7 Q Okay. And you weren't going to use it again?  
8 A No.  
9 Q Okay. So you discarded it in the --  
10 A In the sharps.  
11 Q -- sharps. Okay. Now, the patient may need more  
12 sedative, more propofol; correct?  
13 A Correct.  
14 Q Okay. So would -- would you take -- pick up a new  
15 needle and syringe prefilled?  
16 A Yes.  
17 Q Okay. You have to say it for the court --  
18 A Oh, okay.  
19 Q -- record.  
20 THE COURT: It's all being taped and that's why, you  
21 know, we can't --  
22 THE WITNESS: Okay.  
23 THE COURT: -- the -- the court recorder can't  
24 transcribe that.  
25 / / /

1 BY MR. WRIGHT:  
2 Q And so you would use a new needle and syringe on the  
3 patient; right?  
4 A Yes.  
5 Q To give more propofol if the patient needed it?  
6 A Yes.  
7 Q Okay. And most of the time it's never going to go  
8 over 200; right?  
9 A Correct.  
10 Q Most of the time.  
11 A Most of the time that's correct.  
12 Q Okay. Most of the time it's going to be one full  
13 syringe and then either close to a full one or most of a second?  
14 A Yes, correct.  
15 Q Okay. So now you have given -- given either all of  
16 the second or most of the second. So a clean needle and  
17 syringe; right?  
18 A Yes.  
19 Q Okay. And then patient is done, procedure is going to  
20 be ending. Okay? What do you do with that needle and syringe?  
21 A It's disposed of also.  
22 Q Okay.  
23 A You squirt out the rest of whatever is in there and  
24 throw the -- put the -- put them in the sharps box.  
25 Q Okay. And you would never use that needle and syringe



1 on another patient --

2 A No.

3 Q -- correct?

4 A Correct.

5 Q And you would never use that propofol if there's still

6 some remaining in there. You wouldn't use that on any --

7 A No.

8 Q -- other patient or put it back in a bottle?

9 A No.

10 Q You would discard it?

11 A Yes, it would be discarded.

12 Q Okay. And did -- did anyone -- anyone there ever tell

13 you, no, use that left over propofol?

14 A I can't recall, but it may have been mentioned.

15 Q Okay. Who would have --

16 A Dr. Desai may have mentioned it, but I don't recall.

17 Half the time he said a lot of things going on and, you know, I

18 just did what I had to do and --

19 Q You did what you had to do.

20 A And just, you know --

21 Q Okay. Well, did -- did he --

22 A -- if he said something, I would just get rid of it.

23 Q Did Dr. Desai ever tell you to reuse a needle and

24 syringe?

25 A No.

1 Q What?  
2 A Not that I recall.  
3 Q Okay.  
4 A I mean, he mentioned reusing stuff, but it just wasn't  
5 done.  
6 Q Okay. What -- what did he mention reusing stuff?  
7 A He mention, you know, don't waste the propofol.  
8 Q Okay.  
9 A It would be the same thing.  
10 Q I understand don't waste the propofol.  
11 A Right.  
12 Q Okay. What I'm asking you is did Dr. Desai or anyone  
13 there ever tell you reuse a needle and syringe?  
14 A No.  
15 Q Okay. And -- and if they had, you would not have.  
16 A Correct.  
17 Q Is that correct?  
18 A Yes.  
19 Q I mean, you -- if someone said reuse this dirty needle  
20 and syringe on another patient, you would have said hell no, I  
21 presume.  
22 A Exactly.  
23 Q Is that correct?  
24 A That's correct.  
25 Q Okay. Well, when you were saying I was just doing

1 what I was told or something. You were practicing the entire  
2 time you were there what you believed was safe, clean, aseptic  
3 technique; correct?

4 A That's correct. Yes.

5 Q And never did anyone tell you to do differently;  
6 correct?

7 A That's correct.

8 Q Now, in -- in fact, when Keith was explaining to you  
9 the procedures being utilized at Shadow Lane, drawing up  
10 multiple needles and syringes out of the propofol vials, no one  
11 at any time told you to do anything against what you had already  
12 normally been trained to do; correct?

13 A That's correct.

14 Q I mean, that's what you told the police --

15 A Yes.

16 Q -- and I want to be sure that's a correct statement.  
17 So it wasn't when you were learning it and starting out that all  
18 of the sudden you went, whoa, this is dangerous or something.  
19 You knew they were -- Keith was showing you a safe, correct,  
20 aseptic technique; right?

21 A Right.

22 Q Okay. Now, you then went to work at the VA clinic.

23 A Correct.

24 Q About until it closed, about three and a half years.

25 A Yes.

1 Q Okay. The procedures at the VA clinic, who -- who  
2 were the doctors there? Do you happen to remember?  
3 A Dr. Wahid, Dr. -- I mentioned him before. I can't  
4 remember --  
5 Q Okay.  
6 A -- his name. Yeah.  
7 Q They use --  
8 A Several from our clinic. The younger -- a couple of  
9 the younger doctors worked there.  
10 Q Okay.  
11 A Dr. Nayyar and Dr. Wahid primarily.  
12 Q Okay. Dr. Nayyar; N-A-Y-Y-A-R?  
13 A Yes, I imagine.  
14 Q Okay. Common spelling. They -- did they use propofol  
15 at the VA?  
16 A Yes, we did.  
17 Q Okay. And you utilized the same practice there that  
18 Keith showed you and that you were totally familiar with;  
19 correct?  
20 A Yes, I did.  
21 Q Okay. Is that right?  
22 A Yes, I did.  
23 Q Okay. So the -- the practice at VA, did -- did they  
24 -- was there anything different regarding the procedure, the  
25 injection of the propofol at the VA?

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**004338**

1           A     At the VA. Well, what they did is each case the nurse  
2 brought out propofol that was needed and at the end of the case,  
3 whatever was there, everything was thrown out.

4           Q     Okay.

5           A     Everything.

6           Q     The propofol vial?

7           A     Propofol vial, syringes, everything was tossed out  
8 completely. There was nothing that -- if there was a residual,  
9 that was also thrown out.

10          Q     Okay. The needle and syringe?

11          A     The needle and syringe.

12          Q     So whether the residual is in the propofol vial or the  
13 needle and syringe, you would toss it?

14          A     Correct.

15          Q     Okay. Did they have the same type of hep-locks?

16          A     I believe so. I can't recall because we -- we had  
17 them sometimes. Sometimes we didn't. I don't recall.

18          Q     Okay. Did they ever use an IV line?

19          A     Now, at the VA everybody had an IV fluid running  
20 before they came into the treatment room.

21          Q     Okay. So that was a different type of procedure?

22          A     Yes.

23          Q     Okay. So when -- at the VA, patient coming in,  
24 patient already has an IV fluid line running?

25          A     Yes, I -- I usually started them out in the holding

1 area if the nurses couldn't get them started.

2 Q Okay. Explain to the jury what that means because  
3 thus far all we've heard about is hep-locks being inserted on  
4 the back of the wrist.

5 A At most -- at most outpatient facilities everybody  
6 comes in with at least 500 ccs of Ringer's lactate or -- or  
7 saline fluid. And they have an intravenous set up, a drip, and  
8 usually your injection site is up in the IV tubing someplace  
9 rather than right in the -- the pick in the arm or hand.

10 Q Okay. So is that the --

11 A And it's just a variation of the -- the same thing in  
12 a way. But make sure that they're not dehydrated, etcetera. It  
13 was -- it's a little more expensive, but that's what they did  
14 there. And we had needle-less -- needle-less equipment.

15 Q Needle-less.

16 A Needle-less equipment. Right.

17 Q Okay.

18 A They had ports that you just put your syringe on and  
19 inject. You didn't have to inject into a rubber diaphragm or  
20 anything.

21 Q Okay. Let's talk about VA because you were there for  
22 three and a half years.

23 A Yeah.

24 Q This was part of Dr. Desai's clinic; right?

25 A Yes, it was.

1 Q Okay. Because you were an employee. You were  
2 salaried; correct?  
3 A I was salary from --  
4 Q Correct.  
5 A -- gastro. Right.  
6 Q Right. And that -- so you didn't leave and go to work  
7 independently for the VA.  
8 A No, I was -- I guess you'd go with a subcontractor.  
9 Q Okay.  
10 A He subbed me out to there.  
11 Q Okay. And so there, when a patient comes in they have  
12 an -- already an IV line and, what, a little bag above them?  
13 A There's a, yeah, bottle of either Ringer's lactate or  
14 some other fluid.  
15 Q Saline --  
16 A Ringer's lactate fluid or saline --  
17 Q Okay.  
18 A -- IV fluid.  
19 Q Okay.  
20 A Just -- just keep them hydrated.  
21 Q Okay. Now, when you're going to give them, that  
22 patient the propofol, okay?  
23 A Yes.  
24 Q You don't inject it into a hep-lock in the back of  
25 their wrist?

1 A No.

2 Q You inject it where?

3 A In the tubing. It has several injection sites, and we

4 use just one of the injection sites on the tubing and then

5 inject it that way and then run some fluid in the --

6 Q Okay.

7 A -- tubing.

8 Q And that -- so it then flows in with saline solution?

9 A Saline, yes.

10 Q Right? At the VA?

11 A Yes. Saline or Ringer's.

12 Q Okay. And do you remember talking to Dr. Nayyar about

13 that?

14 A No.

15 Q You don't? About the use of saline and propofol at

16 the same time.

17 A That's -- this was -- this was a suggestion for use at

18 -- at Shadow, not at the VA. It was not used at the VA at all.

19 Q What wasn't used?

20 A A push saline injection that you're mentioning.

21 Q Okay.

22 A Do you understand? Can I explain?

23 Q I don't think I understand.

24 A Okay. The IV fluid is running in a tubing and the

25 patient gets their propofol pushed into their IV fluid with the



1 IV dripping in also.

2 Q Okay.

3 A At -- at Shadow Lane, no IVs unless the patient was  
4 getting hypotensive or whatever, we'd start one out in the  
5 holding area to get them -- you know, get some fluid in their  
6 body. But otherwise, IVs were not a common -- a common use at  
7 Shadow Lane.

8 Q Saline was not?

9 A No, the IV fluids.

10 Q Okay. The IV fluid.

11 A Right. Now, the saline that you mentioned from Dr.  
12 Nayyar mentioning putting some in with the propofol and pushing  
13 it was, you know, for either -- it was Shadow Lane, actually.  
14 It had nothing to do with the VA. They had their own protocol.

15 Q Okay.

16 A And --

17 Q I'll get to this Dr. Nayyar saline portion.

18 A Okay. I just want to say it wasn't part of the VA  
19 regime at all.

20 Q Okay.

21 A He never said anything to anybody.

22 Q Okay. But at -- at the VA the propofol was being  
23 injected with the saline.

24 A Yes.

25 Q Okay. But you had been asked questions about dilution

1 and have you ever heard of saline with propofol and the answer  
2 is, yeah, VA for three and a half years; right?

3 A Right, but it wasn't a -- if it's in -- well, if it  
4 was in the hand it wasn't a fast push, it was just dripped in  
5 with the other.

6 Q I understand.

7 A Okay.

8 Q Saline was being dripped into the patient along with  
9 the propofol; correct?

10 A Correct.

11 Q Right?

12 A Correct. Yes.

13 Q Okay. Now, I want to get to -- you know, leave VA  
14 alone now, okay?

15 A Okay.

16 Q And the -- get -- get to a situation, either at  
17 Burnham -- did you -- did you do the same procedures, your same  
18 technique, preload syringes, you did the same at Burnham and  
19 Shadow Lane?

20 A Yes.

21 Q Okay. Your -- your procedures were identical at each,  
22 Burnham and Shadow Lane?

23 A Yes.

24 Q Okay. And so I want to get to a situation where you  
25 don't have any more preloaded syringes.

1       A     Uh-huh.  
2       Q     Okay.  
3       A     Yes.  
4       Q     You still have a box of clean sterile needle and  
5 syringes there; right?  
6       A     Yes.  
7       Q     And you have propofol vials sitting there; right?  
8       A     Yes.  
9       Q     Okay. And so a -- you -- you've used up your supply  
10 of preloads, okay?  
11      A     Okay.  
12      Q     And now a new patient rolls in. What -- what's --  
13 what's your practice? What's your procedure? What's your  
14 protocol?  
15      A     I'd be refilling more syringes with --  
16      Q     Okay. You -- you --  
17      A     -- propofol.  
18      Q     Okay. You would always try to keep ahead --  
19      A     Right.  
20      Q     -- by supply done, reload more syringes; correct?  
21      A     Yes.  
22      Q     And so if like reload five more or six more; right?  
23      A     Correct. Yes.  
24      Q     Okay. And so on each of those, every reload, new  
25 needle, new syringe.

1           A     Uh-huh.

2           Q     Set it aside.  It's sterile; correct?

3           A     Yes.

4           Q     Now, did -- did there come times -- did there come a  
5 time where 50s rather than 20s started being used?

6           A     I can only recall that they were -- when I went to --  
7 back to Shadow Lane, I found there were 50 cc syringes.  And I  
8 think that's around the time that Mr. Lakeman was there, so that  
9 -- for a time frame, that might be about the date.  I don't  
10 know.

11          Q     Okay.

12          A     And I think the reasoning I heard was it was cheaper  
13 to by 50 cc vials than 20 cc vials.

14          Q     Okay.

15          A     And so we, I guess, adjusted our practice to just fill  
16 up more syringes from, you know, a 50 cc vial rather than a 20.

17          Q     Okay.  Because nothing really changed in your  
18 practice, you just now had --

19          A     No.

20          Q     -- a 50 rather than the 20; correct?

21          A     More propofol, yes.

22          Q     Right.  And so instead of filling up four syringes  
23 with two 20s, you'd fill up five with one 50; correct?

24          A     Yes.

25          Q     Okay.  And this -- this -- you -- you were using all

1 of the propofol to fill up syringes; right?

2 A Yes.

3 Q Most of the time.

4 A Yes.

5 Q Okay. If there was a time when like you were done and  
6 there was still some residual left in a propofol vial, what  
7 would you do with that?

8 A You're talking about the 50 cc vials?

9 Q Or a 20.

10 A Yes, if there was enough left, I'd draw it up with  
11 another sterile syringe and needle and use it. And if there  
12 wasn't that much left, it would be discarded.

13 Q Okay. Would you say -- just suppose there's -- the  
14 way it's gone you've used one-fourth out of a cc -- out of a 20,  
15 okay?

16 A Uh-huh.

17 Q It was -- you would then fill a brand new syringe out  
18 of it; right?

19 A How small of an amount? If it was just like a cc or  
20 two, it wouldn't matter.

21 Q Okay. What would you do with it?

22 A Throw it away.

23 Q Throw it away --

24 A Yes.

25 Q -- right?

1           A     Correct.

2           Q     I mean, if whatever, some residual amount in the  
3 propofol vial, you would discard; correct?

4           A     Yes.

5           Q     Okay. Did you -- you didn't save it for the next day?

6           A     No.

7           Q     Okay. And you wouldn't save a half used propofol vial  
8 and get out a needle and draw it up and use it on a new patient,  
9 would you?

10          A     No.

11          Q     Okay. I felt you hesitate a minute.

12          A     No, I'm just -- I'm just trying to understand what  
13 you're -- what you're -- what you're saying, that's all.

14          Q     Okay. Now, there were -- there were times when you  
15 would be at Shadow, correct, and Dr. Desai would be doing the  
16 procedure?

17          A     Yes.

18          Q     Okay. And at -- at times he would tell you don't use  
19 too much; correct?

20          A     Yes.

21          Q     And he would tell you if he is near the end don't give  
22 anymore; is that correct?

23          A     Yes.

24          Q     Now, the 20s and 50s of propofol vials, those -- those  
25 were being used, the contents were being used on multiple

1 patients; correct?

2 A Yes.

3 Q Okay. And you -- you were aware -- well, when did you  
4 become aware that they say single patient use on the vial?

5 A Well, it's in the brochure written on the bottle.

6 Q Okay. Okay.

7 A However --

8 Q However.

9 A -- you know, it was not an uncommon practice to draw  
10 more than one syringe full out of a multiple dose vial.

11 Q Okay. And you said, in fact, everybody does it;  
12 correct?

13 A That was --

14 Q That's what you --

15 A -- what I said.

16 Q -- told the police that everybody was doing it;  
17 correct?

18 A Yes.

19 Q Okay. And you said you're not going to throw away  
20 propofol when it can be used correctly; right?

21 A For the size of the vials, correct.

22 Q Right. And, in fact, you -- you thought the 50s were  
23 multi-use; right?

24 A Yes, I -- with that amount of propofol I assumed it  
25 could be used for multiple doses, which it --

1 Q Okay.  
2 A -- was used for.  
3 Q Well, you told the police that it came with a spike  
4 for it.  
5 A Correct.  
6 Q And you believed it was multi-use.  
7 A Correct.  
8 Q Okay. And so what does the spike mean?  
9 A The spike means you'd be drawing more than one time  
10 from a -- from the large vial.  
11 Q Okay.  
12 A You wouldn't --  
13 Q And tell the jury what a spike is for the propofol  
14 vial.  
15 A It was just a little contraption with a point that  
16 goes into the vial. And you can just put the syringe without a  
17 needle on it and withdraw propofol without puncturing the -- the  
18 diaphragm --  
19 Q Okay.  
20 A -- several times.  
21 Q So can you use a spike on a 20?  
22 A Yes, you can.  
23 Q Okay. But the spikes don't come with 20?  
24 A I don't recall if they did or not.  
25 Q Okay. But you knew they came with 50s?



1           A     Yes.

2           Q     Okay. And so the spike was just something that you

3 would stick in the 50 propofol vial and -- and it served as a

4 little nozzle on top that you could draw propofol out of?

5           A     Yes.

6           Q     And so you didn't even have to use a needle?

7           A     Correct.

8           Q     Okay. Whereas on the 20s -- on the 20s when you

9 weren't using any spike, you would take the needle and syringe,

10 you'd wipe the top of the rubber bladder on the 20; right?

11          A     Right.

12          Q     Then you'd draw it up using a needle and syringe.

13          A     Correct.

14          Q     But on the 50 you were using a spike.

15          A     Correct.

16          Q     Correct?

17          A     Yes.

18          Q     Okay. And so you would just take the syringe and hook

19 it up to the little nozzle or nipple or whatever it is, the

20 spike, and you would draw out 10 ccs.

21          A     Correct.

22          Q     Right?

23          A     Yes.

24          Q     Okay. And then when you take it off, what do you do

25 with it? Put a needle on it?

1       A     Put a needle on the end of it, right.  
2       Q     Okay. At that time you put the needle on.  
3       A     Right.  
4       Q     Put it in your little stack of preloads.  
5       A     Correct.  
6       Q     Right?  
7       A     Yes.  
8       Q     Okay. And when -- never mind. Other than Keith and  
9 other CRNAs, did management or supervisors or anyone every tell  
10 you to load up syringes the way you were?  
11      A     No.  
12      Q     Okay. That's because the way you were doing it was  
13 absolutely safe and proper; correct?  
14      A     Yes.  
15      Q     Did you -- you've testified for me and on direct that  
16 you never reused a needle and syringe on a different patient;  
17 correct?  
18      A     Yes.  
19      Q     Okay. Were there ever occasions when you would reuse  
20 needle and syringe on the same patient you had dosed?  
21      A     That I've done. When there was a little -- little  
22 residual left in a particular propofol bottle I would reuse the  
23 syringe.  
24      Q     Okay.  
25      A     On that same patient and discard it all after that.

1 Q Okay. And that was all totally safe and aseptic  
2 proper technique; correct?

3 A In my opinion it was, yes.

4 Q Okay. And has anyone told you differently?

5 A No.

6 Q Okay. And what you're talking about hypothetically is  
7 if you dosed a patient and you have a propofol vial, say a 50  
8 that still has five in it, okay?

9 A Uh-huh. Yes.

10 Q And the patient needs some more. You'd use the same  
11 needle and syringe to get the residual to use only on that  
12 patient; correct?

13 A I would do that.

14 Q Okay. And then you would toss the needle and syringe  
15 and the propofol vial out; correct?

16 A Yes.

17 Q You were asked did you ever receive orders to reuse  
18 needles and syringes or were you ever admonished by anyone at  
19 any time because you worked reusing needles and syringes? You  
20 said no; correct?

21 A Correct.

22 Q You then said they never really commanded much of what  
23 I did there.

24 A Correct.

25 Q Okay. Because you knew what you were doing; right?

1           A     Yes, right.

2           Q     Did Dr. Desai ever say you are using too many  
3 syringes? No, he just complained that you use too much  
4 propofol; correct?

5           A     That's correct.

6           Q     You would get bonuses, \$5,000 quarterly?

7           A     That was not a steadfast thing.

8           Q     Okay.

9           A     I think we got, if I recall, maybe two or whatever  
10 they were. And eventually it was almost like dangling a carrot  
11 in front of you. And, you know, you'd find -- he said because  
12 you're working so hard, you know, you'll get a bonus. And most  
13 places I worked gave bonuses, you know. It was not an uncommon  
14 practice.

15                     But it got to the point where it was just frustrating  
16 to know if you were getting anything or not, so we just, you  
17 know, gave up on -- on even asking anymore. And I think Tonya  
18 had a -- Tonya had a lot -- you know, she would tell us, you  
19 know, well, we'll -- we'll work on it. And sometimes you'd get  
20 it and sometimes you don't. But the ones -- there was only a  
21 few times we did get that anyway toward the latter part of our  
22 position there.

23           Q     Okay.

24           A     It was not steadfast at all.

25           Q     Do you recall telling the police you got bonuses

1 quarterly, an extra 20,000 a year, and then they stopped --  
2 A Right. Yes.  
3 Q -- at the end of '07?  
4 A Yes, but that wasn't every year. It was probably for  
5 a couple of years.  
6 Q A couple of years.  
7 A Yeah, I can't recall.  
8 Q Okay. And when they stopped, you -- you got a raise  
9 by 20,000; correct?  
10 A That was the -- the last contract I signed. It never  
11 came to fruition anyway. That's correct. They just added it  
12 into the salary and that was the end of bonuses and raises and  
13 whatever. That's correct.  
14 Q Okay. Now, does -- when you get to the hep-lock,  
15 saline -- forget the hep-lock. I want to get to the saline push  
16 mixed with propofol.  
17 A Okay.  
18 Q That -- that was a result of a meeting; correct?  
19 A That was about a -- probably a ten-minute meeting in  
20 Dr. Desai's office.  
21 Q Okay. And whose idea was that?  
22 A Initially Dr. -- Dr. Nayyar suggested it. And I went  
23 along with him and I suggested it to Dr. Desai.  
24 Q Okay.  
25 A And he said, well, if it worked, you know.

1 Q Okay.

2 A It would --

3 Q So this Dr. Nayyar suggested using 5 ccs of saline

4 after the first injection of propofol. Is that what I'm

5 understanding?

6 A Yeah, you inject the propofol and then push the saline

7 which was supposed to prolong the effect of less propofol. But

8 it was --

9 Q It didn't work out.

10 A It didn't go anywhere.

11 Q Okay. But on who it evolved and whose idea it was and

12 the experiment, for lack of a better word, Dr. Nayyar discussed

13 it with you --

14 A Yes.

15 Q -- correct?

16 A Correct.

17 Q And then you tried it for a little while yourself;

18 correct?

19 A Yes.

20 Q After talking to Dr. Nayyar; correct?

21 A Yes.

22 Q And then you took your idea to Dr. Desai; correct?

23 A I'm not sure it worked that way. I don't recall how

24 -- how it worked, I don't recall.

25 Q You don't recall what?

1           A     When we took the idea to Dr. Desai. I don't recall  
2 how that all worked.

3           Q     Do you recall, I mean, telling the police? Sir, let  
4 me get this straight, you came up with the idea, you tried it on  
5 the patients at Shadow and Burnham and then you approached Dr.  
6 Desai with that idea?

7           A     And at that time --

8           Q     Yes.

9           A     No, at that time I couldn't recall my conversations  
10 with Dr. Nayyar.

11          Q     Okay.

12          A     At that time it was a rather rattling time at this  
13 interview.

14          Q     Okay.

15          A     And that -- I missed that part.

16          Q     Okay.

17          A     And I recall that after I read this report that I got  
18 recently.

19          Q     Okay. What report?

20          A     From the meeting several years ago. I don't recall  
21 ever seeing it before.

22          Q     Okay. When did --

23          A     Until now.

24          Q     -- you get it recently?

25          A     Pardon me?

1 Q I thought you just said when you got this report  
2 recently.

3 A Then I recall my talking to Dr. -- or Dr. Nayyar  
4 speaking about this procedure. I didn't recall it at the time.  
5 I just mentioned that I did, I was doing it.

6 Q Okay. When did you get this recently?

7 A To review it?

8 Q Yes.

9 A A few weeks ago, I imaging.

10 Q Okay. From whom?

11 A From the office.

12 Q Okay. From the district attorney?

13 A Yes.

14 Q Okay. So they gave you a copy of it?

15 A Yes.

16 Q So you came in and read it?

17 A No, I have a copy of it.

18 Q Okay. You have a copy. And so they just said read  
19 this to prepare for our meeting?

20 A Yes.

21 Q Is that right?

22 A Correct.

23 Q Okay. And so then is -- is it correct that you talked  
24 with Dr. Nayyar about it?

25 A Yes.



1 Q And do you recall that Dr. Nayyar talked about  
2 propofol being used at the VA where he was?  
3 A Right. But we didn't use it there.  
4 Q Propofol?  
5 A I mean, not propofol. We didn't use that technique at  
6 the -- at the VA.  
7 Q Okay. There it was automatic. The saline was  
8 dripping in automatically; correct?  
9 A Yes.  
10 Q Okay. And so then after talking to Dr. Nayyar, you  
11 tried it yourself --  
12 A Correct.  
13 Q -- right? And then you took the suggestion to Dr.  
14 Desai. Am I right about that?  
15 A Correct.  
16 Q Okay. And you said this -- this may work and it may  
17 give the -- the patient greater comfort; correct?  
18 A Yes.  
19 Q Is that right? I mean, I'm asking that --  
20 A What I'm saying is --  
21 Q -- because that's what I read.  
22 A -- it would probably be using a little less  
23 propofol --  
24 Q Okay.  
25 A -- and come out with the same result. It was just an

1 idea, which didn't work.

2 Q Okay. Did you say it utilized the 5 cc portion of  
3 saline to see if the technique would cut down on the discomfort  
4 of the patient? Your idea.

5 A Probably the wrong terminology, but, yes.

6 Q Okay. Well, I -- those are your words; right?

7 A I imagine at the time.

8 Q Okay. And so you took that and that would use --  
9 well, what would they -- what -- what discomfort does that cut  
10 down on? You use less propofol, less risk on the patient? I  
11 don't --

12 A I don't know.

13 Q Well, it was your idea, sir.

14 A I know. It was -- it was just something we just  
15 thought up --

16 Q We --

17 A -- that did -- did not work.

18 Q Who is the we?

19 A Nayyar. He suggested it and I went along and we said  
20 let's try it.

21 Q Okay.

22 A And it didn't work.

23 Q Okay. I understand. It was discontinued like --

24 A In other words, the faster you're pushing in propofol  
25 with a little dilution, it might have lasted a little longer.

1 Q Okay. And so when we say it would cut down on the  
2 discomfort for the patient, is -- is -- does that mean you don't  
3 have to give them as much propofol?  
4 A I had -- it must have been. I don't recall.  
5 Q You indicated on direct examination that there were  
6 times when Dr. Desai would inject the propofol himself.  
7 A On -- on a few occasions he did.  
8 Q Okay. And so I -- I didn't see that anywhere in these  
9 statements. Did you see it in there?  
10 A I don't recall, no.  
11 Q Okay. When -- when did that come up?  
12 A Over the period of the time when I was working there,  
13 you know.  
14 Q Okay. No, I --  
15 A Not very -- it wasn't a very often thing. It was just  
16 something that he would do. Reach over and push. It happened,  
17 you know, several times, but not many.  
18 Q Okay. When did you remember that?  
19 A Just thinking over things that went on in the last --  
20 Q Okay. Who --  
21 A -- five years.  
22 Q -- did you discuss it with?  
23 A I don't believe I discussed it with anybody.  
24 Q Did you discuss it with the district attorney when you  
25 were interviewed?

1 A I don't recall.  
2 Q You don't recall?  
3 A No.  
4 Q Well, how did he know to ask the question?  
5 MR. STAUDAHER: Objection. Speculation.  
6 THE WITNESS: I have no idea.  
7 BY MR. WRIGHT:  
8 Q Okay. Well, did you see it anywhere in your lengthy  
9 interviews with the police department?  
10 A At that interview I was not of sorts, to be honest  
11 with you.  
12 Q You were not --  
13 A We were rather in a --  
14 Q I didn't hear you.  
15 A -- an uncomfortable situation and I just, you know,  
16 probably wasn't thinking right at the time.  
17 THE COURT: What was that word you used? You said  
18 that was not of sorts?  
19 THE WITNESS: Out of sorts.  
20 THE COURT: Oh, out of sorts.  
21 THE WITNESS: Out of sorts.  
22 THE COURT: I didn't understand.  
23 MR. WRIGHT: That's what I didn't hear.  
24 THE WITNESS: Quite intimidating, actually.  
25 / / /

1 BY MR. WRIGHT:

2 Q Well, he called you a liar; right?

3 A They --

4 Q What?

5 A They were saying things sometimes that I don't recall,  
6 you know, doing or not doing.

7 Q Do you recall that they called you a liar?

8 A If you want to put it that way. I don't know.

9 Q Well, what did they think you were lying about?

10 A I have no idea.

11 Q You don't have any idea?

12 A No.

13 Q Did -- do you recall that you kept insisting that no  
14 one told you ever to reuse syringes? Right?

15 A Well, if they never told me -- I never remember them  
16 telling me if they did, no.

17 Q Okay. No one ever told you to reuse syringes --

18 A No.

19 Q -- right?

20 A No, sir.

21 Q And do you recall what they were calling you a liar  
22 about?

23 A No.

24 Q Were you lying to them?

25 A I don't know.

1 Q Pardon?

2 A I don't -- I can't recall, sir. I don't --

3 Q Okay. I'm not asking what you said. I'm saying were

4 you lying to the police when you were interviewed?

5 A Not that I recall.

6 Q Okay. I mean, you weren't intentionally sitting there

7 telling lies to them, were you?

8 A No.

9 Q Okay.

10 A Okay.

11 Q Now, you have always been a salaried anesthetist?

12 A Yes.

13 Q For your whole career?

14 A That's correct.

15 Q Okay. So you didn't, even when you were in this large

16 group in Hollywood, Florida, you didn't do your own billings?

17 A Not at all, no.

18 Q Okay. And the -- as -- as I understand it, you -- you

19 thought there was a flat fee charge for -- for your -- your

20 anesthesia services?

21 A Correct.

22 Q Correct?

23 A We were salaried.

24 Q I understand that.

25 A And whatever they charged, there was, you know, their

1 -- there was their fees and I don't know exactly how the whole  
2 procedure worked. I never got into all that.

3 Q Okay. And you -- you have indicated that you thought  
4 it was like a flat fee.

5 A For here at the clinic, yes. I thought these  
6 outpatient procedures were, you know, a flat rate and that's  
7 what they charged for anesthetist anesthesia. I know that  
8 physicians bill some other way, but I never really knew how they  
9 did it or looked into it.

10 Q Okay.

11 MR. WRIGHT: Court's indulgence.

12 BY MR. WRIGHT:

13 Q A patient's first injection, propofol, okay. What --  
14 what's the interval before the next injection normally?

15 A Interval?

16 Q Interval, amount of time.

17 A From injection first -- to put them asleep in the  
18 first place? Is that what you're inferring?

19 Q Yeah, put them to sleep.

20 A Okay. So they're going to sleep with the first  
21 injection. If they're not asleep enough or still moving around,  
22 I just titrate a couple of ccs at a time until they're --

23 Q Okay. Until they're asleep.

24 A -- somnolent. Yeah.

25 Q Okay.

1 A Sleeping.

2 Q Now, when you were pre-filling the syringes, needles  
3 and syringes with propofol, you would fill it and then cap the  
4 needle?

5 A Yes.

6 Q Okay. I mean, that's obvious, but I mean you wouldn't  
7 leave just syringes and needles sitting there?

8 A No, I wouldn't.

9 Q Do you recall -- do you have your immunity agreement?  
10 You have immunity?

11 A I don't know.

12 Q Do you have immunity?

13 A I don't know, sir.

14 Q You don't know?

15 A I must be --

16 MR. STAUDAHER: He doesn't -- he doesn't have  
17 immunity. He gave a proffer, Your Honor.

18 MR. WRIGHT: He -- he what?

19 THE COURT: Okay. Did you -- why don't you ask him if  
20 he got a letter or made an agreement or, you know, whatever.

21 BY MR. WRIGHT:

22 Q Do you believe you have immunity for your testimony?

23 A I assume so.

24 Q Okay. And you assume so from talking to the district  
25 attorney or your own attorney, or why do you assume so?



1           A     I just assumed it. I don't know.

2           Q     Okay. Did you get a letter explaining it? Do you  
3 remember?

4           A     I don't recall, sir.

5           Q     Okay. Do you --

6                     (Pause in the proceedings.)

7 BY MR. WRIGHT:

8           Q     Take a look at that. Read it to yourself, Mr. Mione,  
9 and see if you recognize it.

10          A     That was back in -- okay. I don't recognize the  
11 letter, but -- I don't think I received a copy of this. Was I  
12 supposed to receive one of these?

13          Q     You can't --

14                 THE COURT: You don't get to ask him questions.

15                 THE WITNESS: I don't -- I don't --

16                 THE COURT: It's okay. A lot of witnesses do it. Let  
17 me ask you this. Did you -- do you recognize that letter? Have  
18 you seen that letter before?

19                 THE WITNESS: I remember something about a proffer,  
20 but I didn't understand it.

21                 THE COURT: Okay. Did you --

22                 THE WITNESS: And I don't believe I --

23                 THE COURT: Did you get a letter, this letter?

24                 THE WITNESS: I don't believe so, no.

25                 THE COURT: I'm sorry. You don't believe ever --

1 THE WITNESS: I don't believe I did.  
2 THE COURT: Okay. That's fine.  
3 Move on, Mr. Wright.  
4 MR. WRIGHT: Okay.  
5 BY MR. WRIGHT:  
6 Q Do you know who this -- do you know who --  
7 A Yes.  
8 Q -- Daniel M. Bunin is?  
9 A Bunin, yes.  
10 Q Who is that?  
11 A He was a lawyer I hired.  
12 THE COURT: That you hired?  
13 THE WITNESS: Yeah --  
14 THE COURT: Okay.  
15 THE WITNESS: -- that I had to hire.  
16 BY MR. WRIGHT:  
17 Q Let me show you your transcript of your interview with  
18 the police department and see if maybe this refreshes your  
19 recollection about getting immunity. I'm on page 4.  
20 MR. STAUDAHER: And I'm going to object to it. He did  
21 not get immunity. It does not say that, and he keeps asking  
22 about the proffer. A proffer is not an immunity agreement.  
23 THE COURT: All right.  
24 MR. WRIGHT: Can we approach the bench?  
25 THE COURT: Sure. He doesn't remember the letter,

1 so --

2 (Off-record bench conference.)

3 MR. WRIGHT: I don't have any further questions, Your  
4 Honor.

5 THE COURT: All right.

6 Mr. Santacroce, do you want to get started or --

7 MR. SANTACROCE: It's up to you, Your Honor. I'm  
8 going to be past 5:00, I'll tell you that.

9 THE COURT: All right. Well, I guess we can take our  
10 break for the day, then.

11 Ladies and gentlemen, we'll reconvene tomorrow at  
12 12:30. Again, we won't take a lunch break, so eat lunch or  
13 bring a snack or whatever you need to do. Thursday and Friday  
14 we're going to go all day 9:00 to 5:00 and get back into the 9  
15 to 5 routine.

16 So before I excuse you for the evening recess I must  
17 remind you that you're not to discuss the case or anything  
18 relating to the case with each other or with anyone else.  
19 You're not to read, watch, or listen to any reports of or  
20 commentaries on the case, person or subject matter relating to  
21 the case by any medium of information. Don't do any independent  
22 research by way of the internet or any other medium. And please  
23 don't form or express an opinion on the trial. If you would all  
24 please leave your notepads in your chairs and follow Kenny  
25 through the rear door.

1 (Jury recessed at 4:50 p.m.)

2 THE COURT: And, Mr. Mione, you need to be back here  
3 tomorrow before 12:30.

4 THE WITNESS: I'm working.

5 THE COURT: Oh, well --

6 THE WITNESS: I'll try to get it.

7 THE COURT: And you can't discuss your testimony with  
8 anyone else over the evening recess. Okay?

9 THE WITNESS: Okay.

10 THE COURT: Before Mr. Mione leaves for the day, I  
11 told him he needed to be back at 12:30 unless you've got some  
12 unique scheduling thing with another witness or whatever.

13 MS. WECKERLY: No, he can -- we'll finish him.

14 THE COURT: Okay. So, Mr. Mione, we start back up at  
15 12:30, so get here a few minutes early. Okay?

16 THE WITNESS: Thank you.

17 (Mr. Mione exits the courtroom at 4:51 p.m.)

18 THE COURT: All right. Mr. Wright, is there anything  
19 that you would like to put on the record regarding the letter  
20 that was sent to Mr. Bunin or this immunity issue that keeps  
21 cropping up?

22 MR. WRIGHT: Yes. I -- I object each time Mr.  
23 Staudaher objects because he announced to the jury in his  
24 objection that this is not immunity and that -- and that is not  
25 correct. I mean, it's -- his talking objection conveys to the

1 jury that I am misleading them or the witness and I am not. In  
2 fact, the fact is the letter, which I believe, because I got  
3 this from the district attorney because they don't keep copies  
4 of their proffer agreements for some reason, but this is a grant  
5 of use immunity binding on the district attorney's office.

6 THE COURT: And why don't you just read exactly what  
7 paragraph you're referring to.

8 MR. WRIGHT: Oh, I marked -- I marked it.

9 THE COURT: Okay.

10 MR. WRIGHT: It's the entire -- I mean, I can't --  
11 they -- they -- the information cannot be used directly or  
12 derivatively. I mean, whatever they get out of his interview  
13 can't be used against him. If that's not an immunity bath, I  
14 don't know what is.

15 MR. STAUDAHER: It's absolutely not immunity. I  
16 know --

17 THE COURT: Well, Mr. Staudaher --

18 MR. STAUDAHER: It's a proffer.

19 THE COURT: -- it seems to me that what we're dealing  
20 with here are semantics. It's immunity from use, use immunity  
21 from using the statement against him. It doesn't mean you can't  
22 prosecute him, which is full immunity. You're not granting him  
23 full immunity from prosecution.

24 Full immunity means that you agree not to prosecute  
25 him regardless of any other evidence from an unrelated or

1 related source that should come up. That's full immunity. You  
2 are not giving him full immunity. Mr. Wright is not saying that  
3 you are giving him full immunity. Mr. Wright is saying you  
4 agree not to use the statement.

5           Now, I understand immunity means different things.  
6 And, clearly, you can't bind the federal government in any kind  
7 of grant of use or transaction -- transactional immunity is  
8 another term, but you can't bind the federal government from not  
9 prosecuting him for the insurance fraud or whatever they may  
10 choose to prosecute him from. Everybody is on the same page  
11 here, so I think it's -- it's a question of semantics.

12           And are you disputing that in that letter you say that  
13 the State or whoever wrote the letter, whether it was you or Mr.  
14 Mitchell or whoever, the State agrees not to use any statements  
15 in the proffer and they're not going to use any information  
16 gleaned from the proffer? Isn't that in the letter?

17           MR. STAUDAHER: It is in the letter.

18           THE COURT: Okay.

19           MR. STAUDAHER: Unless he is untruthful, then that --  
20 then that information can be used.

21           THE COURT: Right.

22           MR. STAUDAHER: And --

23           THE COURT: And he can be prosecuted for perjury.

24           MR. STAUDAHER: Yes, if -- if he lies, obviously. But  
25 that would be under oath. He can lie to his heart's content in

1 the proffer letter and it's not perjury per se. It would allow  
2 us to use the statements against him if that was shown.

3 But also Mr. Wright stated at the bench, and I want to  
4 make sure we're clear on this, that it doesn't matter from the  
5 State perspective if the federal authorities granted him  
6 immunity for every charge that they can muster against him.  
7 That in no way --

8 THE COURT: It doesn't bind --

9 MR. STAUDAHER: -- binds --

10 THE COURT: -- the State.

11 MR. STAUDAHER: -- the State.

12 THE COURT: You're separate sovereignties. Everybody  
13 knows this.

14 MR. STAUDAHER: And he's --

15 THE COURT: It's the State -- I mean, just like you  
16 can't -- you know, if the State of Texas wants to prosecute him,  
17 they can do that. I mean, you can't bind the federal  
18 government, the federal government can't bind you.

19 MR. STAUDAHER: Right. But that's not what was said  
20 at the bench and that's why I want to make sure we're clear on  
21 that.

22 THE COURT: Well, I don't think that's what Mr. -- Mr.  
23 Wright was saying. I think what -- well, maybe Mr. Wright wants  
24 to tell us what --

25 MR. WRIGHT: No.

1 THE COURT: That's not what I understood, anyway. I  
2 don't remember exactly what he said.

3 MR. WRIGHT: They were -- right in his Metro interview  
4 there were two proffer agreements, one from the feds and --  
5 because Crane Pomerantz was there at the interview.

6 THE COURT: The U.S. Attorney? Someone from the  
7 U.S. --

8 MR. WRIGHT: Yes.

9 THE COURT: -- Attorney's office.

10 MR. WRIGHT: And they have a proffer agreement, which  
11 I don't have because they keep them above the well as well as  
12 the district attorney's office does. And Mr. Whitely explained  
13 the State proffer agreement to him. And so you have both of  
14 them. And then since, Crane Pomerantz has emailed me that every  
15 CRNA was given what federally we call pocket use immunity, I  
16 mean, which is the same as what they -- letter use immunity.  
17 And so they -- they have federal use immunity, and he has state  
18 use immunity, both pocket --

19 THE COURT: Right.

20 MR. WRIGHT: -- informal, promised by the prosecutors,  
21 but equally as binding as if it was court ordered use immunity.

22 THE COURT: Right. Here's the thing. This may come  
23 up in the future. In this situation it didn't really matter  
24 because this witness didn't really know. He didn't seem to --  
25 he hadn't seen the letter, he didn't recognize the letter, he



1 didn't really know whether -- he assumed, but he didn't really  
2 know.

3           So I told Mr. Wright at the bench, you know, if he  
4 knows, he knows. But any further inquiry would probably have to  
5 get into, you know, well, what did Mr. Bunin tell you or  
6 something like that, which, clearly, he can't go into. So, you  
7 know, in the future, if there's a U.S. Attorney sitting there  
8 and they're also promising immunity at the same meeting, as I  
9 understand --

10           Is that what happened, Detective Whitely? You got an  
11 AUSA in there --

12           MR. WHITELEY: There was a proffer --

13           THE COURT: -- and you've got --

14           MR. WHITELEY: -- yes, ma'am.

15           THE COURT: -- a detective and they're both  
16 contemporaneously saying, you know, there's going to be immunity  
17 from the use of your statement, then I think it's fair game for  
18 Mr. Wright to ask him if, you know, if the witness understood  
19 that that was federal as well.

20           Now, obviously, if the U.S. Attorney's Office wasn't  
21 involved or the FBI wasn't involved in the interview and there  
22 was no subsequent involvement with the U.S. Attorney's Office or  
23 the FBI, then we don't get into federal immunity because that  
24 would have nothing to do with any conversation with the State.  
25 But I think in this particular instance with Mr. Mione, you

1 know, you've got the U.S. Attorney sitting right here, or the  
2 assistant U.S. Attorney sitting right there. So I think it was  
3 a fair area of questioning by Mr. Wright.

4           Now, again, clearly if they're not involved, it's  
5 something that didn't happen or it happened much after the  
6 interview with the State or with Metro, then that's not relevant  
7 and it's not really related. But in this case, I think clearly  
8 because it's -- they're -- they're together, they're talking to  
9 him at the same time. I don't think you can say that they're  
10 not related as to what he understood. It's kind of academic at  
11 this point because he didn't really seem to -- to know or  
12 remember or whatever.

13           MR. STAUDAHER: The only concern the State has and I  
14 don't mean to belabor this, but the reason that there is a  
15 stricture on my part regarding this issue of the word immunity  
16 in this context is because if we grant immunity to anybody, we  
17 grant immunity.

18           In fact, we could have -- he could have given his  
19 proffer, which means we can't use the statement unless it's  
20 proved to be false or whatever, we couldn't use the statement  
21 against him. We could have turned around the very -- as soon as  
22 it was over and say we don't like what we heard, we're --

23           THE COURT: Right. And --

24           MR. STAUDAHER: -- prosecuting you.

25           THE COURT: -- we're going to prosecute you.

1 MR. STAUDAHER: There's no immunity there. If we had  
2 come in and said you have immunity or your belief is -- your  
3 subjective belief is that you have immunity before you start to  
4 give us this statement, that is different at the State level.

5 THE COURT: We -- Mr. Staudaher, we all get it. It's  
6 -- we're all --

7 MR. STAUDAHER: Okay.

8 THE COURT: -- on the same page.

9 MR. STAUDAHER: Great.

10 THE COURT: It's just -- it's just semantics. And,  
11 you know, Mr. Wright was going down that path and he wanted to  
12 introduce the letter which explicitly says we can't use your  
13 statement unless it proves to be false, in which case we can use  
14 it or we can prosecute you for perjury. It doesn't say the  
15 State is not going to, you know, prosecute you if other evidence  
16 comes forward or we don't like what you have to say or we think  
17 you're a liar or, you know, you can't remember, you know,  
18 anything or whatever.

19 MR. WRIGHT: Or if you change your story.

20 THE COURT: You know, I mean, that -- I think  
21 everybody -- the letter says what it says. We're just -- you  
22 know, the quibble seems to be about the term use immunity as  
23 opposed to general immunity, or immunity from prosecution or,  
24 you know, like I said -- okay, it comes back to me --  
25 transactional immunity is what we're talking about or not

1 talking about.

2           But it's just -- we're -- you know, Mr. Wright is  
3 using a different -- using the term differently than you're  
4 using it and I don't think -- you know, I think it's fine for  
5 the State to point out that there was no immunity from  
6 prosecution. But I also think it's fine for Mr. Wright to -- to  
7 point out that you understood they couldn't use the statement  
8 against you and, you know, it's kind of like a no-risk thing for  
9 them at that point, you know, unless it's found to be false you  
10 can be prosecuted for perjury.

11           I mean, the letter says what it says and I think Mr.  
12 Wright -- you know, it's fair -- it's fair questioning by Mr.  
13 Wright. And like I said, it's certainly fine for you, then, to  
14 clear up that they can still be prosecuted and that your office  
15 can't bind the federal government. I mean, that's fine, too,  
16 but I think what Mr. Wright is saying is, you know, to -- to  
17 jump up and say, oh, you know, it's not immunity, you know. You  
18 can say it's not immunity from prosecution or something like  
19 that.

20           MR. WRIGHT: That doesn't get into the statute of  
21 limitations because he can't be prosecuted now.

22           MR. STAUDAHER: Well, that has nothing to do with  
23 immunity.

24           MR. WRIGHT: No.

25           MR. STAUDAHER: It has nothing to do --

1 MR. WRIGHT: No, you gave it.  
2 MR. STAUDAHER: -- with immunity.  
3 MR. WRIGHT: He has an absolute pass. Call it what  
4 you want. He cannot be indicted tomorrow. The statute has run.  
5 MR. STAUDAHER: That is not immunity. The fact that  
6 the State doesn't --  
7 THE COURT: What Mr. Wright is --  
8 MR. STAUDAHER: -- does not proceed on a prosecution  
9 is not --  
10 MR. WRIGHT: Okay. But I --  
11 MR. STAUDAHER: -- immunity.  
12 MR. WRIGHT: -- don't want to leave the inference that  
13 they --  
14 THE COURT: That he can still be prosecuted.  
15 MR. WRIGHT: Correct. He can't.  
16 MR. STAUDAHER: He could have been --  
17 MR. WRIGHT: The only way --  
18 MR. STAUDAHER: -- at the time.  
19 MR. WRIGHT: -- he can be prosecuted is if he changes  
20 his story.  
21 THE COURT: For perjury.  
22 MR. WRIGHT: That's the terms of the agreement. And  
23 that's what -- I'm going to offer that in as an exhibit. That's  
24 the best evidence we have of his agreement with the State.  
25 MR. STAUDAHER: They -- I don't have an issue with

1 the --

2 THE COURT: Yeah, it says --

3 MR. STAUDAHER: -- statement coming in.

4 THE COURT: -- what it says.

5 MR. STAUDAHER: But his inference that it was --

6 MR. WRIGHT: So I offer J1.

7 MR. STAUDAHER: -- that it's basically you change your

8 story and we prosecute you and that's the only thing you have.

9 It's if he lies, essentially, if he's found to be lying. The

10 fact if he said statements before and he says different

11 statements now clearly would indicate that there is a problem

12 there. But what happens with him as a result is neither here

13 nor there. The fact that he is not able to be prosecuted on

14 these charges, with the exception of a murder charge if one of

15 the people he dealt with actually died down the road.

16 THE COURT: That's true.

17 MR. STAUDAHER: I mean, so --

18 THE COURT: I mean, there's no statute of limitations

19 on murder, so --

20 MR. STAUDAHER: And we have one of those charges in

21 this case, so I mean it's not out of the realm of possibility.

22 THE COURT: No, I mean, none of his patients are part

23 of the linkage, though, correct?

24 MR. STAUDAHER: The genetically matched ones, no.

25 THE COURT: Right.

1 MR. WRIGHT: Call it a walk, a pass, whatever you want  
2 to call it.

3 THE COURT: Well, here's -- going forward this may  
4 come up again with other nurse anesthetists, so let's just set  
5 some ground rules.

6 Going forward, you know, use the term immunity from  
7 using your statement, and then you can use the term immunity  
8 from prosecution by the State of Nevada or whatever. And then  
9 it won't be suggestive that you are misleading anybody or Mr.  
10 Wright is misleading anybody so that it's clear we're talking  
11 about two different concepts here. Immunity from using the  
12 statement, that the statement can't be used against him, and  
13 then immunity from prosecution, which he doesn't have.

14 So, I mean, I think that's really the crux of this  
15 whole thing so that no one is suggesting that anybody is lying  
16 here or trying to hide the ball or anything like that because  
17 really what we have is a semantic dispute. You know, what --  
18 what we're going to call it, what we're going to call what you  
19 gave him in the letter.

20 MR. WRIGHT: But I get -- but I get to ask any witness  
21 what they're -- what do you understand --

22 THE COURT: Yeah.

23 MR. WRIGHT: -- you have received --

24 THE COURT: What do you understand.

25 MR. WRIGHT: -- in exchange. And if --

1 THE COURT: The problem is arising --

2 MR. WRIGHT: -- and if they call it -- what -- what  
3 matters is what they think, whether they're right or wrong.

4 THE COURT: The problem -- and you're fine to ask  
5 that. The problem is arising when we get like Mr. Mione, well,  
6 I don't know, I didn't understand anything, I don't get it. And  
7 then you say, well, isn't it true you had immunity? And then  
8 Staudaher jumps up and says that's not true.

9 That's the problem, and it's going to happen again and  
10 again because they're all going to come in here and say, oh,  
11 well, I don't really know, I mean, I thought I wouldn't get, you  
12 know, in trouble or something or whatever they say. And then  
13 you -- so let's just sort of have that as sort of a ground rule.  
14 Okay? We'll see you tomorrow --

15 MR. SANTACROCE: Your Honor, are we going to --

16 THE COURT: -- at 9:00 a.m. 9:00 a.m.

17 MR. STAUDAHER: 9:00 a.m.

18 MS. STANISH: Juror No. 1?

19 MR. SANTACROCE: Are we going to address that?

20 THE COURT: Oh, I was going to -- here's what I'm  
21 doing. I asked Janie to have a rough, not filed, not proofread,  
22 rough transcript prepared for me so I can review, again, her  
23 answers. I'm happy to give you guys copies of this rough  
24 transcript, which, understood, it's not an official transcript.  
25 It can't be filed. It can't be used for appellate purposes. It



1 can't be put in a motion or anything like that. I'm just giving  
2 it to you as a courtesy. You know, you have to burn it or throw  
3 it away afterwards, and then I'm going to review what her  
4 answers were and decide and then we can have argument. Okay?

5 MR. SANTACROCE: And what are we going to do with the  
6 guy next to her that slept the whole afternoon?


7 THE COURT: Mr. -- first of all, I did not observe him  
8 sleeping. Kenny, who is shaking his head in the back of the  
9 courtroom, didn't observe him sleeping. I was watching him. He  
10 shuts his eyes and then he opens them right away.

11 So he's done that throughout, and he -- he's up on  
12 stuff. I mean, you can see. He laughs at the -- he laughs at  
13 all my good jokes. So, obviously, he's a very intelligent, very  
14 sophisticated -- no, I mean, he does. When somebody says  
15 something funny he -- he perks right up. So he's listening,  
16 he's just kind of resting his eyes.

17 MR. SANTACROCE: Maybe we can just be mindful of it.

18 THE COURT: All right. Well, I've been watching. I  
19 always -- Kenny -- you know, I always have a system with the  
20 bailiff. You know, if they have their eyes too closed, then I  
21 try to get like another juror to kind of nudge him. And Kenny  
22 even will go over and, you know, make sure they're not sleeping.  
23 And he opens his eyes. You know, I'll look for a minute or two  
24 and then he opens eyes, so I'm not even concerned about it.

25 MR. SANTACROCE: Okay.

1 MS. STANISH: And we're starting at what time  
2 tomorrow?  
3 THE COURT: 9:00 with the --  
4 MS. STANISH: 9:00.  
5 THE COURT: -- the hearing.  
6 (Court recessed for the evening at 5:07 p.m.)  
7 - oOo -  
8 ATTEST: I hereby certify that I have truly and correctly  
9 transcribed the audio/video proceedings in the above-entitled case to  
10 the best of my ability.  
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12   
13 JULIE POTTER  
14 TRANSCRIBER  
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