

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 19

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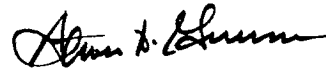
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TRAN



CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,)	
)	
Plaintiff,)	CASE NO. C265107-1,2
)	CASE NO. C283381-1,2
vs.)	DEPT NO. XXI
)	
DIPAK KANTILAL DESAI, RONALD)	
E. LAKEMAN,)	
)	
Defendants.)	TRANSCRIPT OF
)	PROCEEDING

BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE

JURY TRIAL - DAY 24
PETROCELLI HEARING

WEDNESDAY, MAY 29, 2013

APPEARANCES:

FOR THE STATE:	MICHAEL V. STAUDAHER, ESQ. PAMELA WECKERLY, ESQ. Chief Deputy District Attorneys
FOR DEFENDANT DESAI:	RICHARD A. WRIGHT, ESQ.
	MARGARET M. STANISH, ESQ.
FOR DEFENDANT LAKEMAN:	FREDERICK A. SANTACROCE, ESQ.

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004385

I N D E X

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1 LAS VEGAS, NEVADA, WEDNESDAY, MAY 29, 2013, 9:44 A.M.

2 * * * * *

3 THE COURT: All right. State, call your witness.

4 MR. STAUDAHER: Can I check out to see who's out
5 there, Your Honor?

6 THE COURT: Sure.

7 MR. STAUDAHER: Okay.

8 (Pause in the proceedings.)

9 THE COURT: All right. Sir, come on up here,
10 please, next to me. And then just face that lady right there.

11 DHAN KAUSHAL, STATE'S WITNESS, SWORN

12 THE CLERK: Thank you. Please be seated. And
13 please state and spell your first and last name for the
14 record.

15 THE WITNESS: My last name, K-A-U-S-H-A-L. First
16 name is Dhan; D as in David, H-A-N.

17 THE COURT: All right. Thank you. So Kaushal; is
18 that correct?

19 THE WITNESS: Yes.

20 THE COURT: Okay. And is this your witness, Mr.
21 Staudaher?

22 MR. STAUDAHER: Yes, it is, Your Honor.

23 THE COURT: All right.

24 DIRECT EXAMINATION

25 BY MR. STAUDAHER:

KARR REPORTING, INC.

1 Q Dr. Kaushal, can you tell us a little bit about
2 your background and training?

3 A Starting medical school, I did back home in
4 India. I came here in 1984 in this country. Then I did
5 internship in Detroit for one year in 1986. Then I did my
6 residency in internal medicine, starting '89 to '92. Then I
7 did my medical oncology and hematology fellowship from '92 to
8 '95. And in January '96 I came to Las Vegas. I had a job
9 opportunity and I worked with an oncologist from generally '96
10 to December '98 with Dr. Gagliano (phonetic).

11 After that, you know, I was supposed to change the
12 practice, so I did six month internal medicine with one of the
13 doctors in town from January '98 to June '98. And in July '98
14 I started medical oncology, my own practice again with another
15 group, and we are multiple doctor group, too.

16 THE COURT: So that's your specialty, oncology?

17 THE WITNESS: Medical oncology and hematology.

18 THE COURT: Okay.

19 THE WITNESS: Yes.

20 BY MR. STAUDAHER:

21 Q I want to go back to the time that you came out
22 to Las Vegas and I know you started in oncology, you've kind
23 of ended up in oncology, but you said there was a six-month
24 window that you worked in internal medicine; is that right?

25 A Yes, please.

1 Q During the time that you worked with internal
2 medicine, what kinds of -- I mean, what types of things did
3 you do?

4 A I have to do like internist, and I was
5 basically a hospital doctor, hospital physician.

6 Q Were you ever in a position to refer patients
7 for -- for screening and treatment and so forth to
8 gastroenterologists?

9 A Yes, sir.

10 Q Specifically did you ever refer any patients to
11 Dr. Desai or Dr. Desai's group?

12 A Yes, please.

13 Q Tell us about that. I mean, why would you
14 refer to them?

15 A Usually ER patients have blood in the bowels.
16 That usually indicates lower colon problems. And most common
17 is upper GI bleeds in the stomach, peptic ulcer disease. It's
18 very common. So either people have pain upper abdomen or you
19 think something is going in the bowel in the stomach, and in
20 that case we need their help.

21 Q So when you made referrals, and I'm talking
22 primarily about Dr. Desai, when you made referrals to him for
23 these patients that you had, were they for a medical problem
24 or were they for screening, or was it a mixture?

25 A It's usually GI bleed or [unintelligible].

1 THE COURT: So it was a diagnostic --

2 THE WITNESS: Yes, please.

3 THE COURT: -- issue? Okay.

4 BY MR. STAUDAHER:

5 Q Okay. So you send these patients off to Dr.

6 Desai --

7 A To their group.

8 Q I'm sorry?

9 A To their group.

10 Q I'm sorry.

11 THE COURT: To the group.

12 BY MR. STAUDAHER:

13 Q To the group. You send these patients off to
14 the group. Tell me how -- how that goes.

15 A I think they are full of energy. They cover
16 nicely their own patients. They take over quick, within half
17 hour to one hour they are there and they have seen the
18 patient. So there is [unintelligible] and as a hospital
19 physician you feel safe that patient is seen by their own
20 group.

21 Q Okay. Was there any issue that came up during
22 the time that you were referring patients?

23 A I think initial job was excellent when they
24 come. And the problems were in the long run. You know, you
25 see a few things.

1 Q Can you tell us about what you're talking
2 about?

3 A I guess it was basically, you know -- example,
4 you know, the colon checkup, it's a tedious procedure, colon
5 checkup, because I did GI myself a little, rotation training.
6 It's a tedious procedure. So usually patients have to drink
7 like four liters of fluids the night before. It's a big jar.
8 And usually before we call them we convince the patient what
9 you need. And patient knows what they are going to go
10 through. So eventually, you know, they were going to their --
11 patient was seen by their group and they schedule the appoint
12 to do the colon -- colon checkup.

13 Q Are you talking about like a colonoscopy?

14 A Right.

15 Q Okay.

16 THE COURT: Are you talking about a specific
17 patient, or just sort of in general this is --

18 THE WITNESS: See if they can do, you know, either
19 the upper stomach checkup or colon checkup.

20 BY MR. STAUDAHER:

21 Q So when you send patients there for that type
22 of a procedure, you said they had gone through all of this
23 stuff beforehand; correct?

24 A I mean, they -- they give out instructions,
25 though.

1 Q Sure.

2 A Basically, you know, how to proceed with the
3 procedure.

4 Q What was their -- was there any issue with the
5 procedures themselves?

6 A You know, it's just your own expectation as
7 physician, you know, because I was trained for cancer patients
8 and I expected a little more from him.

9 Q Like what?

10 A Like many times, you know, the patients will go
11 to their lab. So either they had a time restrain or the
12 patients are not well prepared, they could be right, but
13 eventually found out many times they will end up going to
14 barium enema from their own procedure place. Because patient
15 is already prepared for both, actually, for colon checkup and
16 for barium enema.

17 Q So are you saying that the patient would be
18 prepared for the procedure?

19 A Right.

20 Q That they would go to the clinic for a
21 colonoscopy?

22 A Yes, sir.

23 Q That then immediately following that they would
24 get a barium enema?

25 A Usually they will make a -- to me it was an

1 excuse, you know. They could not accomplish the procedure.
2 And I'm sure there are little doubts. They should not miss
3 anything. So the patient will go for barium enema from their
4 own place, and eventually they will come [unintelligible] and
5 I ask the patient how did the colonoscopy go? And patient
6 says, Doc, I had a barium enema.

7 Q So did that -- was that causing -- was that an
8 issue for you that he was having barium enemas on these
9 patients you were saying for colonoscopies?

10 A You know, to me it looked like there could be
11 put more effort.

12 THE COURT: So are you saying -- I'm confused. Are
13 you saying the patients weren't cleaned out well enough --

14 THE WITNESS: Yes.

15 THE COURT: So they had to then give them a barium
16 enema?

17 THE WITNESS: Sometimes their excuse is that patient
18 is not well prepared, which I don't see myself.

19 THE COURT: Right. And so then, what, they'd give
20 them a barium enema in the facility or something?

21 THE WITNESS: It was next to their lab --

22 THE COURT: Okay, and is that --

23 THE WITNESS: -- near Valley Hospital.

24 THE COURT: -- is that -- I'm assuming it's what it
25 sounds like. It's an enema made out of barium? Some kind

1 of --

2 THE WITNESS: It's like a fleet enema that we give
3 for constipation.

4 THE COURT: Okay.

5 THE WITNESS: You know, you push the medicine up,
6 up, up. It goes through all the colon.

7 THE COURT: Now, is that like painful for people
8 with cramping and things like that?

9 THE WITNESS: You know, I never asked it and nobody
10 ever complained, either.

11 THE COURT: Okay.

12 BY MR. STAUDAHER:

13 Q Okay. So was the concern because they were
14 having to get the barium enema in addition to having the
15 colonoscopy done?

16 A To me, you know, to my education, I thought
17 that they should have put more effort. They could live
18 without barium enema if they put a little more effort.

19 THE COURT: And where did you see the effort falling
20 short?

21 THE WITNESS: I think it was a time restrain or, you
22 know -- it's just your will, it's just your own will or style,
23 you know, how you do things.

24 BY MR. STAUDAHER:

25 Q When you say time restrain, are you talking

1 about there wasn't enough time to do the procedure or do it
2 properly and so they got the barium enemas?

3 A You know, I was not in their shoes. I'm
4 assuming things, okay. But I think it was a time restrain or
5 you have to have a strong will to accomplish, you know, what
6 you are supposed to do.

7 Q Okay. So let's move forward, then. So you've
8 got this happening. What do you do as a result of this?

9 A I can't do anything, you know. What's done is
10 done and we accept it.

11 Q But you can refer or not refer patients to the
12 clinic; right?

13 A Finally, you know, at some point we end up --
14 we sent patients to a doctor of our own choice all the time.

15 MS. STANISH: I'm sorry. I didn't understand that
16 answer. Could you repeat it?

17 THE WITNESS: We have -- I had a choice for another
18 GI specialist. I can send patients to them.

19 THE COURT: So do you stop sending patients to Dr.
20 Desai's group?

21 THE WITNESS: After a few months I thought, let me
22 try somebody else. Yes.

23 BY MR. STAUDAHER:

24 Q Okay. So you send them to other people. What
25 happens after that?

1 A Then I see a satisfaction rate. You know, how
2 much I feel satisfied, I think that's what my expectation was.
3 So it went up to satisfaction, yes.

4 Q So you were happier with the other group?

5 A Right.

6 Q Was there any interaction that you had with Dr.
7 Desai about this?

8 A I think they can easily figure out in the
9 hospital where patients go. They have a common lab, maybe or
10 maybe not. I'm not sure, though. But somehow they showed
11 their feeling that why I'm not sending patients to them
12 anymore.

13 Q Who?

14 A Dr. Desai and his co-partners.

15 Q So were they -- did they approach you?

16 A They got chance. We -- we meet each other all
17 the time in the hospital, you know.

18 Q That's what I mean, was this a face to face
19 meeting or talk?

20 A Yes.

21 Q Okay. So let's talk about that face to face
22 meeting with Dr. Desai.

23 A Face to face, you know, I think that he heard
24 unexpected what I'm telling you, that I'm looking for, you
25 know, a little more effort and input. And his personal, you

1 know, opinion, well, you know, he not question anything from
2 me, but he said, you know, like a very cool guy. He said, you
3 know, Dhan, these days, you know, we need some volume, too, to
4 survive.

5 Q When you say volume, are you talking -- what
6 are you talking about?

7 A Volume means a little more patients.

8 Q So he came up to you and he was telling you he
9 needed more patients?

10 A And I read that a request for more patients,
11 yes, sir.

12 Q Did you express to him your concerns?

13 A I did. Yes, sir.

14 Q And was part of the concerns you're talking
15 about this whole barium enema thing?

16 A Yes, sir.

17 Q Is that something you can just do as a
18 physician yourself? I mean, do you need a gastroenterologist
19 to order a barium enema on somebody?

20 A Honestly, if there is no -- it's not a first
21 line, a recommendation first line. You know, we always have
22 first line recommendation, second line recommendation. First
23 line is colonoscopy, you know, if I can get it done. My
24 second line is like if patient is from remote area, I'm in a
25 remote area and there is no GI specialist around me.

1 Actually, barium enema was considered a perfect test before
2 the colonoscopies came in. And after the colonoscopies took
3 over, barium enema was left behind.

4 THE COURT: Now, a barium enema, is that just to
5 clean the -- I'm still confused, to clean the patient out and
6 then they do the colonoscopy?

7 THE WITNESS: Yes.

8 THE COURT: So they still use the scope and thread
9 it up there? Or do they clean the patient and then take a
10 picture with the barium enema? Like how does it work?

11 THE WITNESS: I have never sent patient for a barium
12 enema, honestly. And it's always done by a GI specialist.

13 THE COURT: Okay.

14 THE WITNESS: And if patient needed a barium enema,
15 I'm sure that GI specialist knows more what kind of
16 preparation they need.

17 THE COURT: So I -- I'm saying is it a different
18 procedure with the barium enema. Because I know sometimes if
19 you drink barium they take a CAT Scan or some kind of a
20 picture. Is that what they do if you take a barium enema, or
21 do they still do the same threading with the scope and the
22 pictures through the scope? Do you know?

23 THE WITNESS: Actually, what they do is it's just
24 like enema, any enemas.

25 THE COURT: Right.

1 THE WITNESS: It's -- it's -- I'm sure it's a big
2 jar, maybe.

3 THE COURT: Uh-huh.

4 THE WITNESS: So the pump would be the balloon up
5 and up and up so it goes through all the way.

6 THE COURT: Okay.

7 THE WITNESS: And then they take picture, like
8 fluoroscopic. Fluoroscopic means with x-rays.

9 THE COURT: Right. Okay. Just like if you drink
10 the enema --

11 THE WITNESS: Right. The same.

12 THE COURT: You don't drink the enema.

13 THE WITNESS: Right.

14 THE COURT: But just if you drink the barium
15 solution, then they take a picture of maybe your upper GI
16 track or whatever.

17 THE WITNESS: That's more for upper GI.

18 THE COURT: Right.

19 THE WITNESS: What you said. A barium enema is for
20 lower GI?

21 THE COURT: Okay. So it's kind of a different
22 procedure?

23 THE WITNESS: Right.

24 THE COURT: Okay. How many patients are we talking
25 about that you referred that came to you and said, oh, well, I

1 had a barium enema instead of what you had sent them for?

2 THE WITNESS: I'm sure that before the discussion
3 maybe two patients.

4 THE COURT: Okay.

5 BY MR. STAUDAHER:

6 Q So it was enough for you to decide not to refer
7 to them anymore, though; correct?

8 A I mean, I do not feel comfortable after that.

9 Q You didn't feel comfortable?

10 A Right.

11 Q Okay. So once -- and going back to the
12 conversation you had with Desai about this. When he says to
13 you, you know, we need more patient volume, was he asking you
14 to refer him more patients?

15 A In a way, you know, it was a request. I can
16 see that, you know, that that's not -- that's not my job to
17 figure out what to do for GI people. It's their
18 [unintelligible], you know.

19 Q At some point down the road, I mean, you
20 mentioned after the six month period you went back to
21 oncology --

22 A Yes, please.

23 Q -- right?

24 A Uh-huh.

25 Q Did you eventually see patients coming into you

1 that had been seen by Dr. Desai?

2 A You know, after -- we shared same patients
3 because eventually after their GI checkup and somehow they had
4 colon cancer, and eventually for some reason they ended up
5 with me. So then I have to resume their treatment for cancer
6 treatments.

7 Q Well, was there any issue that you were seeing
8 related to the patients that were coming to you now as an
9 oncologist?

10 A It -- I was not -- you know, we get patients
11 from all, but, you know, eventually I could see problems from
12 the group. Not from him only, but from the group, too, that
13 they were, again, in the same kind of practice.

14 Q So the same things you had experienced when you
15 were --

16 A Right.

17 Q -- doing that, you were now seeing --

18 A It's just more -- more happening, you know,
19 same style. It's their style of practice.

20 Q Now, did -- at some point did that prompt you
21 to, you know, file a complaint with the State Medical Board?

22 A Yes, please.

23 Q And when you filed a complaint, what was it --
24 what was it related to? Were there specific patients that you
25 were seeing that you filed a complaint about?

1 A Honestly, I didn't want to send any complaints.
2 Not every doctors do this to begin with. But I think it was
3 their little dominating power. I was in a different hospital.
4 So one of his co-partner sent me a letter. He became like
5 chief of internal medicine. He sent me a nasty letter for a
6 little of my mistake here and there. So I thought now they
7 are trying to -- I mean, basically they're trying to irritate
8 me. And after they irritated me, then I said, you know, you
9 have to keep a little balance with these people.

10 THE COURT: You have to keep what?

11 THE WITNESS: A little balance.

12 THE COURT: Oh, a balance.

13 THE WITNESS: Right.

14 BY MR. STAUDAHER:

15 Q So when you saw these, I mean, eventually it
16 prompts you write a letter to the State Medical Board, though;
17 correct?

18 A Not prompt. I was not desperate. But slowly I
19 was getting their patients and I kept on and per chance it
20 happens. It happened.

21 Q Okay. Would you like to see a copy of the
22 letter that you wrote to the State Medical Board?

23 A I know that.

24 Q Okay.

25 A I'm not --

1 Q So what was --

2 A -- confronting --

3 Q -- the letter about?

4 A Huh?

5 Q What was the letter about?

6 A Usually it was delayed diagnosis. Delayed. I
7 mean, somebody else has to push them to do better job, even
8 the surgeon. You know, it took a little longer time. Over --
9 it could -- I mean, it could be delayed for a year or two.
10 Like the first patient went for [unintelligible] in 2004.
11 They don't find cancer. And then in 2005 after one year, you
12 know, they found cancer.

13 THE COURT: So what you're saying is if somebody, if
14 I hear you right, what you're saying is for someone to have
15 cancer in 2005 that's actually cancer, they would have had to
16 at least have precancer in 2004, something for them to
17 diagnose? Is that what ---

18 THE WITNESS: That's my feeling. They missed
19 something.

20 THE COURT: They should have at least had polyps or
21 something --

22 THE WITNESS: Right.

23 THE COURT: -- earlier --

24 THE WITNESS: Right.

25 THE COURT: -- because you don't just get cancer --

1 THE WITNESS: Right.

2 THE COURT: -- overnight.

3 THE WITNESS: Right.

4 BY MR. STAUDAHER:

5 Q So were you also concerned that the
6 colonoscopies were not complete, that they were not getting
7 them done?

8 A I could not trust their procedure. I could not
9 trust myself.

10 Q So why couldn't you trust their procedures,
11 what they were doing?

12 A Because I thought, you know, it's not a
13 well-done job.

14 Q Why did you think that?

15 A I'm sure there was some kind of restrain on
16 their part, you know. It was their style.

17 Q And when you say style, what are we talking
18 about with regard to style? Are we talking about --

19 A Style means you cannot take it for granted that
20 they did a good job.

21 Q That you mean their group would do a good job,
22 or --

23 A It was actually not all, every doctor in the
24 group, but somehow you can smell it when you hear the story
25 from patient, you know, that something was not right.

1 Q Okay. So you write the letter to the State
2 Medical Board. How many patients were involved in just the
3 letter that you wrote?

4 A You know, you have all that information, too.

5 Q I'm asking you, sir.

6 A All right.

7 Q We're in court.

8 A Yes, sir. So there were five patients.

9 Q Okay. So five patients that you --

10 A That's what I figure out this time now.

11 Q So you write a letter to the State Medical
12 Board and you have concerns over five patients?

13 A Yes, sir.

14 Q And was it the same type of thing for all five
15 patients?

16 A It was same style.

17 Q And when you say same style, is it the delay in
18 treatment, incomplete --

19 A Right.

20 Q -- procedures, things like that?

21 A Yes, please.

22 Q Okay. Now, were those the same -- just to be
23 clear, were those the same kinds of problems you experienced
24 yourself when you were working in internal medicine for that
25 short time?

1 A At that time those -- those patients did not
2 have cancer, but I did not like their style. Like the patient
3 goes from the colonoscopy lab to the barium enema lab.

4 Q Okay. So you --

5 A I mean, they were depending on a double
6 procedure. They were not depending on themselves.

7 Q So you -- okay. What -- now just so we're
8 clear on this, the part that they would be depending on
9 themselves was their -- essentially their own work doing the
10 colonoscopy; is that right?

11 A Yes, sir.

12 Q And that they were then sending people for
13 barium enemas on top of that --

14 A Yes, please.

15 Q -- is that right?

16 A Yes, please.

17 Q Okay. So you said it was a double procedure to
18 protect themselves?

19 A Yes, please.

20 Q Now --

21 THE COURT: Does cancer show up on a barium enema if
22 you have a tumor?

23 THE WITNESS: It does give clue, yes.

24 THE COURT: Okay. So if you didn't catch it in the
25 colonoscopy and somebody had a tumor, then you might see it on

1 the barium enema?

2 THE WITNESS: Yes, please.

3 THE COURT: Is that the idea?

4 THE WITNESS: Yes, please.

5 THE COURT: Okay. Now, what if they just had a
6 precancer or a polyp? Is that going to show up on a barium
7 enema, or are we more looking for something that's already
8 progressed to a tumor?

9 THE WITNESS: It has to be -- I'm not expert.

10 THE COURT: Uh-huh.

11 THE WITNESS: But it has to be fair size, I guess.

12 THE COURT: Okay.

13 THE WITNESS: Yeah, to -- to see that cancer or
14 polyp, big size polyp, too.

15 THE COURT: Okay. Let me ask you this. Of these
16 five patients that you felt should have been diagnosed
17 earlier --

18 THE WITNESS: Yes, please.

19 THE COURT: -- with cancer, do you remember who the
20 doctors were that had -- had performed their colonoscopies?

21 THE WITNESS: You know, they were the same doctors.

22 THE COURT: I mean, but that we've heard about. In
23 the trial we've heard about 12 or 13 doctors.

24 THE WITNESS: Actually, one patient was from Dr.
25 Clifford.

1 THE COURT: Okay. Clifford Carrol?

2 THE WITNESS: Right. Another patient was from Dr.
3 Vish Sharma.

4 THE COURT: Okay.

5 THE WITNESS: And I think -- actually, the patient
6 Vish Sharma missed, and then Dr. Desai found the cancer. The
7 surgeon sent him again because they saw something abnormal on
8 the barium enema.

9 THE COURT: Uh-huh.

10 THE WITNESS: So the surgeon said, no, do it again.
11 So then Desai, Dr. Desai found the cancer.

12 BY MR. STAUDAHER:

13 Q There's a couple things I want to ask you
14 specifically about the letter that you sent to the State
15 Medical Board.

16 MR. STAUDAHER: And I'm talking, for counsel, the
17 November 30, 2005, letter, Bates No. 6694 is where it begins.
18 First page, I think it's one, two, three, four, five, six
19 paragraphs down.

20 BY MR. STAUDAHER:

21 Q Do you remember making comments about what Dr.
22 Desai would say about patients when you were confronting him
23 talking to him, or when he would just be boasting in the
24 hospital about things?

25 A I guess there's not respect of a patient as

1 much as a doctor really should.

2 Q In fact, did you say -- not say that he used
3 foul language like fuck the patients instead of saying hello,
4 that kind of thing to me, he boasted he has all the contracts
5 to help him stay away from him as much as I can, that kind of
6 thing? I mean, those were your words.

7 A He was outspoken, yes.

8 Q Then he would boast about his connections that
9 he had with people, things like that?

10 A At times he did, yes.

11 Q Did that ever give you concern that he might
12 use his influence in some way to affect your business
13 negatively?

14 A Actually, you know, I never -- I was never -- I
15 never thought that way, you know. I thought there is no need
16 to tell me all these things. I don't have to hear all these
17 things personally, you know.

18 Q And was it your belief that Dr. Desai was doing
19 incomplete colonoscopies, I mean, appropriate colonoscopies?

20 A I was not satisfied with his work.

21 Q And did you not say he will not get patients
22 until he does appropriate colonoscopy?

23 A Yes, sir.

24 Q Okay. Was that the way you felt at the time?

25 A Yes, sir.

1 Q Okay. So the things that you've mentioned and
2 the things that are in your letter here, are those the
3 concerns that you had that you were raising to the State
4 Medical Board?

5 A Yes, sir.

6 Q And then you specifically gave him these five
7 patients or whatever it was -- or not him --

8 A Yes, please.

9 Q -- but the State Medical Board, as examples; is
10 that right?

11 A Yes, please.

12 Q Was it limited to just those patients, or had
13 you seen more patients that were coming through?

14 A I think that was limited to those.

15 Q Okay. But was it enough of a concern, was that
16 the reason why you wrote the letter?

17 A Yes, please.

18 Q Had you ever written a letter like that related
19 to any other physician since you've been here in Las Vegas?

20 A Honestly, I got in trouble with one more doctor
21 in town.

22 Q Okay.

23 A He cancelled my chemo

24 Q Cancelled your chemo?

25 A Cancelled my chemo orders in the hospital. And

1 then I gave a letter to the hospital that he shouldn't have
2 cancelled.

3 THE COURT: Uh-huh.

4 THE WITNESS: Then he filed a lawsuit against me.

5 THE COURT: Who was the doctor?

6 THE WITNESS: It was Dr. Sharda, Navneet Sharda, the
7 radiation doctor.

8 THE COURT: Oh, okay.

9 BY MR. STAUDAHER:

10 Q So that was a complaint to the hospital; is
11 that right?

12 A I complained to the hospital in three or four
13 lines, but he filed a lawsuit within those two weeks.

14 Q My question was at the State Medical Board
15 level.

16 A After that I sent -- the patient sent him to
17 the Medical Board, too.

18 Q Okay. So those two --

19 A Those two doctors.

20 Q -- that one related to cancelling the order --

21 THE COURT: So he's -- he's a radiation oncologist
22 and you're --

23 THE WITNESS: Yes, please.

24 THE COURT: -- an oncologist treating with chemo, so
25 you're both treating the same patients? Is that --

1 THE WITNESS: He was on that patient, too. I did
2 not call him, but somebody else called.

3 THE COURT: And so you're giving them chemo, and
4 he's giving him radiation?

5 THE WITNESS: He want to give radiation. He does
6 not want to give chemo at all.

7 THE COURT: I see.

8 BY MR. STAUDAHER:

9 Q The last question I have --

10 A Yes, please.

11 Q -- for you relates back to the barium enema
12 thing and you're confronting Dr. Desai. Did you not say in
13 your letter around May of 1998 Dr. Desai complained bitterly
14 as to why I was calling another gastroenterologist. I
15 explained to him why doesn't he complete the colonoscopy.
16 According to him he needed volume and so he has to order
17 barium enema. And the volume you're talking about is patient
18 volume; correct?

19 A Yes, please.

20 Q Okay.

21 MR. STAUDAHER: Nothing further, Your Honor.

22 MS. STANISH: Your Honor, may we have a break to
23 confer with our client?

24 THE COURT: Sure.

25 MS. STANISH: Thank you.

1 THE COURT: Unless Mr. Santacroce wants to get
2 started?

3 MR. SANTACROCE: I don't have any questions.

4 THE COURT: Okay. We're going to take a quick
5 break. So they're going to go confer in the vestibule and I'm
6 going to take a quick break, and you're free if you need to --

7 THE WITNESS: Okay.

8 THE COURT: -- use -- you know, go in the hall or --

9 THE WITNESS: All right.

10 THE COURT: -- whatever.

11 THE WITNESS: Thank you, please.

12 (Court recessed at 9:32 a.m., until 9:44 a.m.)

13 THE COURT: Ms. Stanish, have you had sufficient
14 time to confer privately with your client?

15 MS. STANISH: Yes, Your Honor.

16 THE COURT: All right. Then you may proceed.

17 MS. STANISH: Thank you.

18 CROSS-EXAMINATION

19 BY MS. STANISH:

20 Q Good morning.

21 A Good morning.

22 Q My name is Margaret Stanish. I represent Dr.
23 Desai. Sir, let me run right to the part where you complained
24 to the Medical Board about Dr. Desai. As I understand your
25 testimony, you come -- you thought that certain patients were,

1 what, not getting complete colons -- colonoscopies? Is that
2 what your complaint is?

3 A Personally, I think something was missing
4 definitely.

5 Q And I want to -- you were -- you were
6 ultimately asked by the Medical Board to be more specific
7 beyond what was in that letter that Mr. Staudaher read
8 portions of?

9 A Actually, the licensing board never asked me
10 any question.

11 Q Did you submit to the licensing board any
12 documentation about the four or five patients that you thought
13 represented a problem?

14 A Yes, please, I did.

15 Q Okay. I want to talk about those --

16 A Yes, please.

17 Q -- patients specifically.

18 A Okay.

19 Q Let's begin with who did the procedure. You
20 said that Dr. Desai did the second procedure on one of the --

21 A The outpatient, yes.

22 Q -- patients; correct?

23 A Yes, please.

24 Q And the other three patients were done by other
25 doctors; is that correct?

1 A One was by Dr. Clifford.

2 Q Clifford Carrol, you mean?

3 A Yes, please.

4 Q Okay.

5 A Another one was Dr. Vish Sharma did the first

6 one, and then he had a barium enema, and then they saw

7 something suspicious. Then the surgeon sent that patient back

8 to Dr. Desai group. Then Dr. Desai did a second colon checkup

9 and found colon cancer.

10 Q Let me stop you right there.

11 A Yes, please.

12 Q That patient is Shahekle (phonetic) Webber;

13 correct?

14 A That was the first patient. It was Donald Lau

15 (phonetic), the --

16 Q Okay. Donald Lau. Thank you. That's the

17 patient that you said was first scoped by Dr. Sharma?

18 A Yes.

19 Q And then a second scope was done by Dr. Desai

20 who detected --

21 A That's -- that's what I remember now, yes.

22 Q Let me finish my question before you answer,

23 okay.

24 A All right. Thank you. Please.

25 Q The -- Dr. Sharma did the first colonoscopy;

1 correct?

2 A Yes.

3 Q And isn't it correct that he transverse -- he
4 went to the transverse colon and there was an obstruction at
5 the transverse colon? Do you recall?

6 A I'm sure there was -- I don't remember that
7 part. But I -- when he was diagnosed with the cancer, only
8 then I saw the papers that first Dr. Sharma looked into and
9 I'm sure for some reason he ordered him an enema. He must be
10 thinking something.

11 Q And isn't it the case, sir, that if the
12 colonoscopy can't get past the mass, there's a part of the
13 colon that still needs to be examined?

14 A Yes, please.

15 Q And they decide we're going to examine that
16 with a barium enema; correct?

17 A You're 100 percent right.

18 Q And so -- and by the way, when Dr. Desai and
19 the other doctors in his group that we're discussing here
20 today, when those doctors do their procedures, they send to
21 you a written consult, correct, summarizing their findings?

22 A Usually the primary doctor sends me the
23 patients.

24 Q Oh, I understand.

25 A Not the gastroenterologist.

1 Q Okay. So you wouldn't even see the -- the
2 final reports of the -- Dr. Desai's and his other doctors?

3 A Many times they would send those papers with
4 the referral, too, yes.

5 Q All right. So let's go back to Mr. -- is it
6 Lau, Donald Lau?

7 A Yes, please.

8 Q Donald Lau was born in 1930; correct?

9 A I guess.

10 Q And we -- well, do you know? He's an older
11 man.

12 A He's still alive. He still calls me.

13 Q Oh, well, you're doing good with him because he
14 was 74 years old in 2005 when this procedure was done;
15 correct?

16 A Yes. Yes.

17 Q Is it true that older patients sometimes have
18 -- it's difficult to -- to do the colonoscopy, or do you know
19 because you're not a GI specialist?

20 A I think if you put the effort you can
21 accomplish more.

22 Q Okay. So you disagree with the effort that Dr.
23 Sharma first used on Mr. Lau?

24 A Right. Right.

25 Q Okay. And then the -- somebody -- another

1 doctor or was it you who recommended have a second colonoscopy
2 for Mr. Lau?

3 A It was Dr. Peter Caravella, the surgeon.

4 Q Okay. So --

5 A I saw the note recently, so that's how I
6 remember now.

7 Q Okay. So the surgeon says let's do a second
8 scope.

9 A Yes, please.

10 Q Because something is wrong here; let's be
11 careful.

12 A I guess he wants to know the extent and size
13 and the location, and he wanted more input.

14 Q And Dr. Desai then does that procedure;
15 correct?

16 A Yes, please.

17 Q And Dr. Desai on April 8, 2005, found that
18 there was a partially -- there was a tumor partially
19 obstructing the colon; correct?

20 A You know, I cannot find the biopsy to pull it,
21 but I guess Dr. Desai found the cancer and eventually patient
22 had surgery.

23 Q And isn't it also the case that this particular
24 patient had a marked history of colon cancer?

25 A I don't remember that.

1 Q You don't remember?

2 A I don't think he had cancer before.

3 Q Okay. Do you still have the medical records
4 for this particular patient?

5 A Yes, I do.

6 Q Did you give them to the district attorney?

7 A Not to this date. They did not ask me; I did
8 not give them.

9 Q All right. Did you give any medical records to
10 the Medical Board of Examiner with respect to Mr. Lau?

11 A Yes, please. I did send the information I had.
12 As much I had, I did.

13 Q Now, the documents that you sent to them, do
14 you recall what they included?

15 A Pardon, please?

16 Q Do you recall if you gave -- well, did you give
17 them all your medical records on Mr. Lau or just certain
18 pages?

19 A Can I get now those papers, I'm sure I sent out
20 those papers which I got this time.

21 Q What do you mean this time?

22 A As to review the papers

23 Q Did you give your -- did you give your entire
24 medical record to the Medical Board of Examiners on Mr. Lau?

25 A When I do first consult, so the records I had

1 up to that point I must have given to the licensing board,
2 yes.

3 Q Can you tell us what that would have included,
4 if you recall?

5 A That first included a procedure by Sharma, Dr.
6 Sharma, and then I had information from the patient and his
7 biopsy reports, surgery reports. So I tried to gather
8 information as much as I can. Finally, I have got a -- what
9 I'm supposed to do next is after the surgery. I come in
10 picture after surgery.

11 Q All right. Let's talk now about another one of
12 the patients, the Shahekle Webber? Am I saying that right?

13 A Yes, please.

14 Q Now, this is another elderly patient who is in
15 their 70s at the time of the colonoscopy referral in March of
16 2004; correct? Another elderly patient, would you agree?

17 A I think she had first iron-deficiency anemia.
18 She had a colon checkup and --

19 Q Sorry. My question was --

20 A Yes.

21 THE COURT: Was she an older woman?

22 BY MS. STANISH:

23 Q -- how old was she? Do you know?

24 A How old is she? You told me that; right?
25 She's elderly. She's still working and she's still alive.

1 THE COURT: Okay. But she was an elderly person?

2 THE WITNESS: She's not that elderly. You know,
3 she's not like 80 or above, you know. I don't really call 70
4 old. We call old after 85.

5 BY MS. STANISH:

6 Q Well, good, I'm glad. I'm still young. This
7 patient was born in 1938. Do you recall that? Do you need to
8 look at any documents.

9 A All right. 38, so she's 50 to 12, 62 --

10 THE COURT: She's almost 80; right?

11 THE WITNESS: No, no, no. 38 -- 62 plus 12 is 74.

12 BY MS. STANISH:

13 Q Okay. 74.

14 A Yeah.

15 Q Okay. And she had a consult with you; correct?

16 A She saw me after colon cancer was diagnosed.

17 Q Diagnosed by whom?

18 A I -- I usually see the surgery report -- my --
19 my job is to render the extent of cancer, how far it has gone.

20 THE COURT: So are you saying first they get the
21 colonoscopy, then they -- they may diagnose cancer, then they
22 go to the surgeon who cuts it out or gives them a colostomy or
23 whatever, and then they come to you and you decide this person
24 needs chemo --

25 THE WITNESS: Right.

1 THE COURT: -- this person needs radiation, this
2 person just needs monitoring, whatever.

3 THE WITNESS: Right.

4 THE COURT: Okay. And you decide whether it's
5 likely the cancer is going to come back --

6 THE WITNESS: Right.

7 THE COURT: -- or if it's in the system --

8 THE WITNESS: Right.

9 THE COURT: -- or metastasized --

10 THE WITNESS: Right. Right.

11 THE COURT: -- or whatever. Okay.

12 BY MS. STANISH:

13 Q So this particular patient, are you saying --
14 when were they referred to -- well, when were they referred to
15 Dr. Desai's clinic, before or after you did the consult?

16 A I reviewed the record this time. As I recall
17 she had iron-deficiency anemia. She had a colon checkup the
18 year before, and then they have -- she has to go through
19 second colon checkup the year after.

20 Q Uh-huh.

21 A At that time she had surgery. So first time
22 maybe it was too small or somehow --

23 Q Are you saying that -- who did the prior
24 colonoscopies?

25 A I don't remember that part, but it was done by

1 their group.

2 Q It was not Dr. Desai; correct?

3 A That I don't know. It's basically their group,
4 though.

5 Q Well, did you get the medical records that
6 relate it to the colonoscopy in -- in that case?

7 A I don't recall much now because too long ago.

8 Q Do you recall that this particular patient had
9 poor preparation as well as adhesions that cause difficulties
10 in the scoping procedure?

11 A I don't recall that much.

12 Q Do you recall that this patient was -- that a
13 barium enema was done in order to view that portion of the
14 colon that could not be accessed by the colonoscopy?

15 A I don't remember that either, please.

16 Q Do you have an understanding, even though
17 you're not a GI expert, do you have an understanding that
18 colonoscopies have a 5 percent miss rate of cancer?

19 A They told me personally, one of the doctors
20 from group. Not him, though, somebody else.

21 Q I'm sorry? I didn't -- I didn't hear.

22 THE COURT: So one of the doctors --

23 THE WITNESS: Dr. -- Dr. Vish Sharma --

24 THE COURT: -- told you that?

25 THE WITNESS: -- told me this thing, that even in

1 standard like UCLA, they miss 10 percent of cancers. But that
2 -- that -- I was not satisfied with that answer, you know.

3 BY MS. STANISH:

4 Q How about barium enemas, do they have a
5 particular miss rate that you are familiar with?

6 A I'm sure barium enema is not a golden standard
7 pass these days.

8 Q My question was do you know?

9 A No, I don't know.

10 Q Okay. Let's move to the third patient, Ira
11 Matlock. What do you recall about Ira?

12 A You know, personally I don't remember much
13 because he had an unrelated problem I was treating. It was --

14 Q I'm sorry. What kind of problem?

15 A Unrelated to colon cancer.

16 Q Okay.

17 A It was multiple myeloma. And he is not alive.
18 He died maybe a few years ago.

19 Q And that -- and was -- did you see him before
20 or after a colonoscopy was performed at -- by one of Dr.
21 Desai's doctors?

22 A I don't remember much about him, but somehow in
23 my notice like this, they do not accomplish colonoscopies so
24 they send him for a barium enema. So that was their style,
25 basically.

1 Q Do you know if -- isn't it correct that Dr.
2 Carrera performed the colonoscopy on Ira Matlock?

3 A I recall, after you tell me now, maybe it was
4 him.

5 Q Right. And it was not Dr. Desai?

6 A Not really.

7 Q And did you -- did you see -- did you
8 understand that Dr. Carrera had difficulties doing a complete
9 traverse of the colon because of anatomical factors that
10 obstructed the colon?

11 A You know, every excuse is right otherwise.

12 Q I'm sorry?

13 A I think, in my opinion, one should put a little
14 more effort. Otherwise, you can have any excuse.

15 Q What do you mean put more effort into it? You
16 mean push the scope harder? I'm not -- I don't understand
17 what you're saying.

18 A Not scope harder. It's a little style,
19 flexibility, it's an art, you know, it's a technique.

20 Q Are you accusing of Dr. Carrera of medical
21 malpractice?

22 A I'm not accusing anybody, but, you know, it can
23 become their style. If you are -- it's like if I don't know
24 something I might -- I may not do the right thing personally.
25 I mean, you have to have an art, skill, and, you know,

1 technique. You have -- you should have a mastery little.

2 Q And you didn't feel that Dr. Carrera had that
3 skill or mastery in this particular case?

4 A Personally, you know, in my opinion they had a
5 time restrain, work load. But it was a little unusual for me
6 to see that every patient -- most patients are getting a
7 barium enema done. It was a little unusual.

8 Q Now, let me back up to your earlier testimony.
9 Let's break this up in two parts.

10 A Uh-huh.

11 Q When you were in internal medicine, what was
12 that, in 1998; correct?

13 A That was from '89 to '92.

14 Q I'm sorry? Say that again?

15 A 1989 to 1992.

16 Q But I understood when you were here in Las
17 Vegas there was --

18 A I came in '96.

19 Q Okay. In that six month period when you were
20 in internal medicine, what year was that?

21 A I was with internal medicine. I was doing a
22 hospital.

23 Q Okay. Was that in 1998?

24 A From January '98 to June '98.

25 Q Okay. Because that's what I understood, and

1 correct me if I'm wrong.

2 A Yes, please.

3 Q That's where I understood that you noticed that
4 you had a difference of opinion --

5 A Yes, please.

6 Q -- as to whether it was appropriate to order a
7 barium enema; correct?

8 A 100 percent.

9 Q And did I understand your testimony to be that
10 there were two patients that you noticed had barium enemas
11 that you disagreed with, that -- that should have been more
12 complete or something?

13 A Yes, please.

14 Q Okay. Two patients?

15 A Yes, please.

16 Q In 1998?

17 A Yes, please.

18 Q And then jumping back now when you're -- you're
19 an oncologist, I want to jump back to these four or five --
20 was it four or five patients that you referred to the -- that
21 you provided records to?

22 A Five.

23 Q Okay. Let's go back to the ones I -- that I --
24 that we were -- let's go back to discussing a couple more of
25 those. Let's talk about Carlos Hernandez. Remember Carlos?

1 A Yes, please.

2 Q And Carlos was approximately 33 years old at
3 the time of his -- his consult with you; is that correct?

4 A Yes, please.

5 Q And he had an extensive family history for
6 cancer; is that correct? If you recall.

7 A I don't recall.

8 Q Okay. Why don't you tell the judge what your
9 issue was with Mr. Hernandez?

10 A Mr. Hernandez, he was 33 years old, a young
11 male. He was referred from Nellis Air Force Base Hospital.
12 And initially he went to Dr. Clifford and he tried to do the
13 endoscope and the cancer was on the left side. It was not far
14 from the rectum anal opening. So maybe colon is 20 centimeter
15 or 25 centimeter or more. I'm not exactly -- but it was
16 close, though. So he made a comment that he could not get
17 through the cancer tumor and quit.

18 Then the same patient went to another GI specialist,
19 Dr. Joseph Fayad, and he went through that cancer, and then he
20 went up to the right side, way up to the other way, and he did
21 biopsies from the other side, too. And actually the patient
22 ended up in surgical resection of his left sided cancer. So
23 that cancer was huge. It was going over the urinary bladder
24 in the middle, and then it extended beyond that even up to the
25 right side.

1 So in my comment, you know, that cancer touched
2 outside the system, did not go through and through in. So
3 basically it was the same cancer coming from the left to the
4 right. So now one GI specialist could not get through,
5 another GI specialist has no -- did not complain, did all of
6 the colon checkup. I think it was a concern.

7 Q Isn't it the case that Dr. Carrol found the
8 obstructing tumor and biopsied it; correct?

9 A You know, I could not find -- I don't recall,
10 but to best of my knowledge, he didn't find cancer diagnosis
11 there. But if he did, I don't remember.

12 Q Do you recall that he recommended that surgery
13 be done?

14 A I'm sure. He has to have surgery either way.

15 Q Well, educate us a bit. If I find -- let's --
16 hypothetically, I find a tumor. Is this the transverse --

17 A Yes, please.

18 Q -- colon somewhere --

19 A Right. Up here.

20 Q -- across this? Up here?

21 A Yeah.

22 Q And if there is -- if a GI specialist finds a
23 tumor there --

24 A Yes, please.

25 Q -- biopsies it, and says, oh, my gosh, it's

1 cancer, you have -- you need to be referred to a surgeon,
2 okay, will that surgeon do exploratory surgery to determine if
3 there is cancer anywhere else besides where it was first
4 detected?

5 A Actually, cancer starts inside the bowel.

6 Q Okay.

7 A It has to be big enough for you to feel from
8 outside. And the proper GI specialist can give you that
9 information, you know, so the surgery can be limited.

10 THE COURT: So you're saying if they had know it
11 ahead of time the surgeon knows, okay, I've got to cut on the
12 left side, I've got to cut on the right side --

13 THE WITNESS: Right.

14 THE COURT: -- as opposed to cutting on the left
15 side and then saying, okay, well, I got to keep going because
16 I see more cancer, I see more cancer, I see more cancer. Is
17 that what you're saying? They know ahead of time where
18 they're going to have to go?

19 THE WITNESS: It gives information how much he
20 should touch around and should do surgery.

21 BY MS. STANISH:

22 Q Am I correct to assume that no surgeon would
23 conduct such a surgery without conducting further evaluation,
24 further testing beyond a colonoscopy?

25 MR. STAUDAHNER: Objection. Speculation.

1 THE COURT: If he knows.

2 THE WITNESS: It depends on the surgeon, too. Up to
3 the surgeon.

4 BY MS. STANISH:

5 Q Are you -- are you a surgeon?

6 A I'm not a surgeon, please.

7 Q Oh, okay.

8 THE COURT: That's why Mr. Staudaher --

9 MR. STAUDAHER: That's why I objected.

10 THE COURT: -- objected because he's not a surgeon.

11 MS. STANISH: Well, he's not a GI specialist,
12 either, Your Honor, but he gets to talk about that.

13 THE COURT: Well, he's talking about as it pertains
14 to a cancer diagnosis. And the issue, I mean, is whether or
15 not, again, you know, he can say, well, you would have seen
16 this as a cancer or you wouldn't have seen it as a cancer and
17 he can talk about, you know --

18 MS. STANISH: Well --

19 THE COURT: I mean, the issue is how, you know -- is
20 this something you should find as a cancer or not find as a
21 cancer or --

22 MS. STANISH: Okay.

23 THE COURT: I mean, that's -- again, that's why --

24 MS. STANISH: Okay. Well --

25 THE COURT: -- Mr. Staudaher objected and I said he

1 can --

2 MS. STANISH: All right.

3 THE COURT: -- answer it if he doesn't.

4 MS. STANISH: Thank you, Your Honor.

5 THE COURT: So you can't attack him, then, for not
6 knowing the answer.

7 THE WITNESS: I'm happy to hear you.

8 BY MS. STANISH:

9 Q Thank you. It was a hypothetical.

10 A It's all right.

11 Q Listen, if I ask you a question and you don't
12 know because you don't -- you lack the specialty --

13 THE COURT: It's beyond your expertise.

14 BY MS. STANISH:

15 Q -- just let us know that.

16 A That's very true. That's very true.

17 Q Just let us know that.

18 A That's very true.

19 Q Okay. So when -- when you -- you basically get
20 patients after they've already been diagnosed with cancer;
21 correct?

22 A Yes, please.

23 Q Would you -- would you get them after the
24 surgeon performed the surgery?

25 A Yes, please.

1 Q When you get that patient would you get the
2 medical records that pertain to the surgery?

3 A Yes.

4 Q Would you get the medical records that pertain
5 to the testing and evaluation done before the surgery?

6 A Most of the time, yes.

7 Q Based on that could you tell us whether or not
8 surgeons do testing or evaluations before conducting surgery?

9 A I always ask patient did you have a colon
10 checkup all the way prior surgery. If he did not, I will send
11 for whole colon checkup after surgery.

12 Q Did I understand you to say a barium enema was
13 a second level test? I didn't understand what you meant by
14 that.

15 A Colonoscopy is considered golden standard test.

16 Q And then a barium enema --

17 A Barium enema is --

18 Q -- is silver?

19 A It's an old test. It's an old test prior to
20 colonoscopies.

21 Q And do doctors, if you know, do doctors,
22 whether it's a GI specialist, yourself, any doctor, do they
23 sometimes want to have more than one test so that they can
24 ensure that the -- ensure the patient's condition?

25 A It's up to the GI specialist.

1 Q It is, isn't it?

2 A It's their -- it's their own satisfaction.

3 Q But it didn't meet your satisfaction as an
4 oncologist; correct?

5 A In my opinion if colonoscopy is done -- is done
6 efficiently, people don't need a barium enema. Even if you
7 don't do a colonoscopy, just do barium enema. You said --

8 THE COURT: I get it.

9 THE WITNESS: -- patient is old.

10 MS. STANISH: Okay.

11 THE COURT: Is it like -- I mean --

12 THE WITNESS: Right.

13 THE COURT: -- this is a poor analogy.

14 THE WITNESS: Yeah.

15 THE COURT: Is it like doing a cardiac stress test
16 after you've given somebody an angiogram? Is that --

17 THE WITNESS: Right.

18 THE COURT: -- kind of a --

19 THE WITNESS: Right.

20 THE COURT: -- similar --

21 THE WITNESS: Right.

22 THE COURT: -- idea?

23 BY MS. STANISH:

24 Q No, that's not correct, is it? Because didn't
25 you earlier testify that barium enemas would be done to view a

1 portion of the colon that was not assessable by the scope? If
2 you know.

3 A If GI specialist has not accomplished whole
4 mission, then he will end up doing barium enema for sure.

5 Q You mentioned in your letter -- oh, I'm sorry.
6 These patients that we just discussed, I had asked you
7 earlier, sir, if you had sent medical records to the Board on
8 Mr. Lau. I want you to -- I want to ask you the same question
9 on Mr. Hernandez. Did you send your medical records on Mr.
10 Hernandez to the Medical Board?

11 A Yes, please.

12 Q Did you send or provide to the district
13 attorney or the Metropolitan police any medical records
14 relating to Mr. Hernandez?

15 A I never gave to these people anything.

16 Q So you never provided to the district attorney
17 or the Metropolitan police --

18 A No.

19 Q -- any medical records?

20 A No.

21 Q Okay. But you did provide some medical records
22 to the Medical Board on Mr. Hernandez; correct?

23 A Yes, please.

24 Q Was it your complete medical records with
25 respect to him?

1 A As much information I had by the time I saw
2 them.

3 Q Okay. And what about Webber, did you provide
4 your complete medical records to the Board regarding Mr.
5 Webber?

6 A As much of her information, again, when she saw
7 me after diagnosis of her cancer.

8 Q Did you have -- after you wrote the letter to
9 the Board, did you have -- did you have occasion to meet with
10 anybody, an investigator or anybody at the Medical Board?

11 A I didn't meet anybody, and as far I know, they
12 were cleared clean by Medical Board by peer reviews.

13 Q So peer reviews who were conducted by the
14 Medical Board.

15 A That's what I know myself.

16 Q You were informed by the Board, were you not,
17 that the finding was that there was no substandard care; is
18 that correct? Or is that your understanding, I should say?

19 A I don't recall, but I think it's all peer
20 review at the licensing board. Yes, please.

21 Q You never saw an actual written finding by the
22 Board that the various doctors did not fall below the standard
23 of care?

24 A No. No, please. I don't -- I have never seen.

25 Q Okay.

1 MS. STANISH: I have nothing further.

2 THE COURT: All right. Any redirect, Mr. Staudaher,
3 based only on what Ms. Stanish has covered?

4 MR. STAUDAHER: No, Your Honor.

5 THE COURT: All right.

6 Doctor, thank you for being here. Thank you for
7 your testimony.

8 THE WITNESS: All right.

9 THE COURT: And please don't discuss your testimony
10 with anyone else who may be a witness in this matter.

11 THE WITNESS: Okay.

12 THE COURT: All right. Thank you, sir, and you are
13 excused.

14 All right. The State may call its next witness.

15 MR. STAUDAHER: The State calls Doug Cooper to the
16 stand, Your Honor.

17 THE COURT: All right. Thank you.

18 Sir, just right up here next to me, please. Just
19 face that lady right there who will administer the oath to
20 you.

21 DOUGLAS COOPER, STATE'S WITNESS, SWORN

22 THE CLERK: Thank you. Please be seated. And can
23 you please state and spell your first and last name for the
24 record.

25 THE WITNESS: Douglas, D-O-U-G-L-A-S, Cooper,

1 C-O-O-P-E-R.

2 THE COURT: All right. Thank you.

3 Mr. Staudaher.

4 DIRECT EXAMINATION

5 BY MR. STAUDAHER:

6 Q Mr. Cooper, what do you do for a living?

7 A I'm an executive director of the State Medical
8 Board.

9 Q And how long have you done that?

10 A I've been there 12 years. I've been the
11 director for four.

12 Q What kinds of things do you do in that capacity
13 at the Medical Board?

14 A The Medical Board licenses, regulates, and
15 disciplines medical physicians, medical PAs, respiratory
16 therapists, and perfusionists.

17 Q Are you a physician also?

18 A No, I am not.

19 Q Okay. So you're a lay person on the Board in
20 an administrative capacity?

21 A I'm a lay person, yes, but I'm not on the
22 Board. The Board consists of nine board members appointed by
23 the governor. I'm staff.

24 Q Staff.

25 THE COURT: Are the board members all physicians?

1 THE WITNESS: No, six of the board members are
2 physicians. Three of them are lay persons by statute.

3 THE COURT: Okay. And then you're paid staff for
4 the Board?

5 THE WITNESS: Right.

6 THE COURT: Okay.

7 THE WITNESS: Right. I'm basically the CEO of
8 the --

9 THE COURT: Okay. So your background would be
10 more of a business background than a medicine medical
11 background or no?

12 THE WITNESS: Usually the director of state medical
13 boards, and there's 72 of them. I know there's only 50
14 states, but there's 72 jurisdictions, are traditionally not
15 physicians.

16 THE COURT: Okay.

17 BY MR. STAUDAHER:

18 Q Now, as far as your role in the Medical Board,
19 I mean, do you have access to the records of the Board itself?

20 A Yes, sir.

21 Q Disciplinary actions, suspensions, anything
22 like that related to --

23 MR. STAUDAHER: I'm sorry?

24 THE COURT: We heard it, so you may as well shut it
25 off.

1 THE WITNESS: I thought I did. I so apologize.

2 THE COURT: It's all right.

3 BY MR. STAUDAHER:

4 Q I'll go ahead and ask the question again.

5 A Thank you.

6 Q In relation to what you do with you having
7 access to certain records of the Board, do those include
8 records of complaints, disciplinary actions, suspensions,
9 anything like that that's done with regard to the Board and
10 physicians in the state?

11 A Yes, sir. I have access to all of that
12 information.

13 Q Okay. In fact, in relation to an investigation
14 into the endoscopy case, are you familiar with that one?

15 A Yes, sir.

16 Q Were you involved at some level at that during
17 the time of the investigation?

18 A Yes. At the time I was the chief of the
19 investigations division and I facilitated the investigation.
20 I did not do the actual leads, I had two investigators who
21 did, but I did run the investigation.

22 Q What do you mean by facilitate?

23 A I told what leads would be run. I wrote the
24 reports that would go eventually to the governor explaining
25 the timelines, explaining what the Board had done so far,

1 where we were at in the investigation, but not the -- not the
2 on the scene investigative reports.

3 Q Fair enough. But you obviously have access to
4 those records and directed the activities of your staff in
5 doing that investigation; right?

6 A Yes, sir.

7 Q In the process of -- of doing that, were you
8 able to look back at Dr. Desai's past record, so to speak?

9 A Yes, it would be normal procedure any time a
10 complaint came in that the -- that the complaint history of a
11 physician would be examined along with the new complaint.

12 Q Beside any complaint history or whatever, which
13 we'll get to in a moment, were you ever present at any
14 meetings or hearings or the like where Dr. Desai was actually
15 brought before the Board for any reason?

16 A Yes, sir, I was.

17 Q And what -- what kind of meetings were those?

18 A One occasion I recall Dr. Desai being brought
19 to the Board of Medical Examiners was during an investigative
20 committee meeting which is a part of the investigative process
21 and is a confidential meeting not open to the public.

22 Q Now, that meeting itself, did that have
23 anything to do with the endoscopy case?

24 A No, it did not. It was prior to the endoscopy
25 case.

1 Q How long before? I mean, what was the time
2 frame?

3 A Well, I recently discovered I had -- I had
4 thought that the investigative committee meeting was in 2006,
5 but it was in March of 2007 that he appeared.

6 Q So March of 2007?

7 A Right.

8 Q So was that for activity that had taken place
9 before that time, obviously?

10 A That was for activities -- one activity
11 specifically, one case specifically, but the reason was also
12 as -- as Dr. Desai was informed was to go over his complaint
13 history as it was voluminous.

14 Q So was that a concern to the Board?

15 A Yes, sir, it was.

16 Q So that's as of March of 2007?

17 A Correct.

18 Q So he's actually brought before the Board at
19 that time and his history is discussed at that -- at that
20 time?

21 A Yes. Yes, sir.

22 Q Now, prior to him coming before the Board in
23 person, were there ever any letter sent to him about the same
24 issues?

25 A Yes, sir, I know of two letters that we refer

1 to as a letter of concern, but at that time were mixed in as
2 closure letters and expressions of concern to the physician
3 when a case was closed.

4 Q Okay.

5 A Two that I recall, and both of them were in
6 2005.

7 Q I'm going to do a little jumping around, but
8 right now I'm going to jump forward in time to the
9 investigation at -- at the endoscopy clinic. At some point
10 does Dr. Desai's license get, you know, voluntarily
11 relinquished, suspended, or placed, whatever, at some point?

12 A Correct.

13 Q His medical license, does something happen to
14 it down the road?

15 A Yes, we -- we got a temporary restraining order
16 from the practice of medicine and started his -- the ending of
17 his medical practice.

18 Q And when was that, roughly?

19 A That was early April 2008.

20 Q Did he eventually relinquish his medical
21 license?

22 A Yes, he surrendered them during investigation
23 -- well, under investigation.

24 Q Now, during the time that he -- the restraining
25 order is in place, up to the point where he relinquished his

1 -- his medical license, was he practicing at all during that
2 time to your knowledge?

3 A Not to my knowledge. He was not to practice,
4 and I have no knowledge that he did.

5 Q Obviously, the Board gets complaints from
6 citizens for various reasons; correct?

7 A Correct.

8 Q During that window of time did additional
9 complaints or any complaints come in related to Dr. Desai?

10 A Yes, they did.

11 Q During that window, how many -- how many
12 complaints are we talking about?

13 A To the best of my recollection I'd say about
14 11.

15 Q 11. So 11 during the window of when to when?

16 A From the -- from the point where his
17 restraining order was effective in 2008 until 2009, sometime
18 in 2009.

19 MS. STANISH: I'm sorry, when in --

20 THE WITNESS: At that time --

21 MS. STANISH: I'm sorry. When in '09? I didn't
22 hear you.

23 THE WITNESS: I can't hear you.

24 MS. STANISH: I didn't hear you.

25 THE COURT: When in '09? What's the window you said

1 from '08 until when in '09?

2 THE WITNESS: I don't recall what month it was that
3 the last case was there, but I do recall it was in 2009.

4 THE COURT: And were those complaints all related to
5 the hepatitis outbreak, or were some unrelated?

6 THE WITNESS: It was a fixture -- or a -- a --

7 THE COURT: A mixture?

8 THE WITNESS: -- mixture.

9 THE COURT: Okay.

10 THE WITNESS: Some were malpractice cases that had
11 been filed sooner, some were medical records cases that had
12 been filed, some were related to the endoscopy case.

13 THE COURT: Okay. And then you -- you testified
14 that prior to that there had been a history, and you used the
15 word of voluminous complaints.

16 THE WITNESS: Correct.

17 THE COURT: What do you mean? How many? What --
18 when you say voluminous, what are we talking?

19 THE WITNESS: When a complaint history goes seven or
20 eight pages of complaints it's voluminous.

21 THE COURT: Okay.

22 THE WITNESS: If there's more -- if there's -- if a
23 physician has been in practice for 10 years and there's -- and
24 there's 18 complaints, that would be voluminous. We would say
25 he has a voluminous compliant history.

1 THE COURT: And Dr. Desai, did he have more than the
2 18?

3 THE WITNESS: He had 44 complaints. Several pages.

4 THE COURT: And that's 44 complaints prior to the 11
5 complaints?

6 THE WITNESS: No, that's -- no, Your Honor. That's
7 44 --

8 THE COURT: Including the --

9 THE WITNESS: -- cases in total.

10 THE COURT: In total. Okay.

11 BY MR. STAUDAHER:

12 Q So he had prior to the last 11 that came in, he
13 had 33 complaints on record?

14 A That would be -- that would be about right,
15 yes.

16 Q Now, at the time of this -- this meeting before
17 the Board where he was actually present in March of 2007, do
18 you know if he -- if he had the 33 complaints on his record at
19 that point or was it a different number?

20 A I don't know exactly. I would hesitate to say,
21 but it was -- the reason he was brought in was because of the
22 -- the voluminous complaints. So he would have had to have
23 had 30 or more in my estimation.

24 Q Now, that was in 2007; correct?

25 A Uh-huh.

1 MS. STANISH: Sorry to interrupt, but just to
2 streamline it, could you provide us a time frame, a foundation
3 of dates for these 30 some complaints, please?

4 THE COURT: Starting like when the first complaint
5 and ending when? If you know.

6 THE WITNESS: That's quite a feat for me to be able
7 to do that.

8 THE COURT: Not each complaint, but like the
9 earliest complaint would have been when, and the last --

10 THE WITNESS: Well, Dr. Desai got his license, Your
11 Honor, in 1980, and the first complaint, I believe, was in the
12 '80s.

13 THE COURT: Okay.

14 THE WITNESS: Up until sometime in latter 2009.

15 MS. STANISH: Okay.

16 THE COURT: Let me -- let me ask this. I believe
17 that for, you know, lawyers and judges there can be complaints
18 filed and no one gets -- the lawyer doesn't get notice unless
19 there is found to be possible merit with the complaint. Is
20 that the procedure followed by the Medical Board as well, that
21 they don't give notice of the complaint unless there is an
22 investigation or there is found to be potential merit, or does
23 a physician get notice of all complaints filed against him or
24 her?

25 THE WITNESS: There are two points to that, Your

1 Honor. To speak to the first point, the physician always gets
2 notified when there's an investigation.

3 THE COURT: Okay.

4 THE WITNESS: But the investigation and the
5 complaint, which we refer to as the citizen complaint, is
6 always -- is confidential by statute. It is never released.

7 THE COURT: Okay.

8 THE WITNESS: We fight it even if it's subpoenaed.

9 THE COURT: Okay.

10 THE WITNESS: But the formal complaint, if that
11 investigation results in the Board wanting to go forward with
12 formal charges for violation of the Medical Practice Act. And
13 the formal complaint and all associated paperwork is public.

14 THE COURT: Okay. So the way I understand it, let's
15 just say hypothetically it's a complaint that would have no
16 merit. You know, so a citizen complains, you know, he was
17 rude and abrasive to me or something like that. I'm assuming
18 you're not going to launch an investigation. So the --

19 THE WITNESS: No.

20 THE COURT: -- physician wouldn't get notice of that
21 kind of a thing. But if there is a complaint where, you know,
22 he touched a patient inappropriately or something like that
23 where there might be a referral to law enforcement or you're
24 going to -- you're going to conduct your own investigation,
25 then the physician would receive notice. Is that essentially

1 how it works?

2 THE WITNESS: Yes, ma'am.

3 THE COURT: All right. So it's very similar to, I
4 think, what they do for -- for lawyers.

5 BY MR. STAUDAHER:

6 Q So am I understanding you that if a complaint
7 comes in and the Board sees no merit in it that the doctor
8 doesn't even hear about it?

9 A Well, by no merit, there's -- if -- if the way
10 we break it down is if it requires a response from the doctor,
11 of course he's going to know about it and we'll tell him about
12 it. But let's say there's a -- the legislature changed the
13 law a few years ago and made us investigate and look at every
14 civil court filing in the state.

15 Now, if we get one that was where there was no --
16 there was a \$5,000 nurse settlement or something and it was
17 about a contract over at the facility that they operate their
18 medical practice out of. That would come to our attention,
19 but we wouldn't necessarily notify the doctor because it's not
20 a violation of the Medical Practice Act --

21 Q Sure.

22 A -- but it is recorded as -- as a civil court
23 action against the physician.

24 Q Did -- as part of the record keeping for the
25 Board, do you -- do you produce these -- I mean, I've seen a

1 number of them in the discovery that we have here at different
2 stages of time called complaint history.

3 A Uh-huh.

4 Q It'll have as of a certain date. Is that
5 something that you generate in the Board to keep track of the
6 complaints and so forth?

7 A Yes, sir.

8 Q Is that what you're relying on to show that
9 there were 44 complaints at the end of his --

10 A Right. That's the official tracking.

11 Q And those -- do you have those with you or a
12 copy of that with you today?

13 A I have a copy.

14 Q Okay. If you need to refer to it to refresh
15 your memory, you can certainly do so at any time.

16 A Okay.

17 Q But as far as that's concerned, does it just
18 get reproduced over and over again and the new complaints
19 added to it so --

20 A Yes, sir.

21 Q -- it gets longer as time goes on if there are
22 additional complaints?

23 A That's correct.

24 Q So the substance of the previous information
25 wouldn't change, if I understand correctly? It would be still

1 there and you would just add the new ones to it?

2 A Only if there was a final action like the case
3 was closed or if the case resulted in a formal complaint.

4 Q Of the -- of the 44 that you're talking about,
5 if you know or to the best of your knowledge if you can tell
6 us, how many of those resulted in notifications to Dr. Desai?

7 A I don't know exactly, but I would say all but a
8 handful.

9 Q So the majority of these?

10 A The majority. Of the 44 I'd say at least -- I
11 know that on one account that I made there were 37 cases of
12 patient complaints, and the patient complaint always goes to
13 the physician.

14 Q So 37 complaints --

15 A Of the 44 --

16 Q -- at the very minimum.

17 A -- I know where merited --

18 Q Okay.

19 A -- for a letter.

20 Q In fact, in the letters that were sent to Dr.
21 Desai and they were both sent in the same year; correct?

22 A Yes, sir.

23 Q And what did you -- what kind of letters are
24 those that you sent?

25 A Well, they're referred to as letters of

1 concern, except at that time we didn't have that exact title.
2 Those were closure letters that expressed concern. So I --
3 that's just a technicality on my part. That's not a true
4 letter of concern, but it is a letter of concern and a closure
5 letter combined together.

6 Q I see. Now, according to the complaint
7 history, at least the one I have, it looks like things started
8 in about 1989 with the complaints. Does that --

9 MS. STANISH: I'm sorry. Could you give me the date
10 of the document that you're referring to, Mr. Staudaher?

11 MR. STAUDAHER: This is the most recent one as of
12 2013, complaint history.

13 MS. STANISH: I don't think I have that.

14 MR. STAUDAHER: We can make a -- can we make a copy
15 of this --

16 THE COURT: Sure.

17 MR. STAUDAHER: -- for counsel?

18 THE COURT: Kenny, can you make a copy, please?

19 BY MR. STAUDAHER:

20 Q And while they're doing that let me go on and
21 ask you a few things.

22 A Sure.

23 MR. STAUDAHER: Can you make two copies? One for
24 Mr. Santacroce. I don't know --

25 THE MARSHAL: Yes.

1 MR. STAUDAHER: -- if he wants one.

2 BY MR. STAUDAHER:

3 Q With regard to the letters --

4 MR. STAUDAHER: And those letters, just for counsel,
5 the Bates numbers on those are 6844 and 6845 respectively.

6 BY MR. STAUDAHER:

7 Q Starting off with 6845 --

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

9 THE COURT: You may.

10 BY MR. STAUDAHER:

11 Q Showing you this -- this letter, I'd ask you if
12 that's familiar to you.

13 A Yes, sir, it is.

14 Q And is that one of the letters you were
15 referring to?

16 A Yes, it is.

17 Q And what is -- what is the issue here? What is
18 he being -- this obviously went to Dr. Desai; correct?

19 A Right.

20 Q What's -- what's being addressed with him here?

21 A A BME case where a prescription by a staff
22 member who stole a pad and wrote narcotics was originally
23 complained to us as a case where it was inappropriate
24 prescribing. But what's really going on is in paragraph two,
25 and I remember this because I was with the committee as the

1 chief investigations at the time, was that they were worried
2 about the pattern of patient complaints and this was used as a
3 reason to call him in. Not to call him in, but to address the
4 patient complaints to Dr. Desai.

5 Q Okay. So it has to do with --

6 A Right.

7 Q -- a prescription, but you used it as a reason
8 to address these other issues with him?

9 A Right. When a case is considered, the
10 complaint history can always be considered also.

11 Q And what is the -- let's -- let's talk about
12 that complaint history as of that letter. Let's go -- what
13 was going on with him at that point? What were the types of
14 complaints that were being --

15 A Well, if I recall -- I don't have the history
16 in front of me, but I recall most of them --

17 Q And if you need --

18 A -- were patient --

19 Q -- to get it out --

20 A -- complaints about --

21 Q -- go ahead and do so.

22 A I left it in my briefcase, my suitcase.

23 Q Oh.

24 MR. STAUDAHNER: I can give him a copy of the one I
25 have.

1 THE COURT: Sure.

2 MS. STANISH: Are we talking about the 2013 history
3 that I don't have or something else?

4 BY MR. STAUDAHER:

5 Q Is that the most recent one that you're talking
6 about, that you're referring to?

7 A From last week, yes.

8 THE COURT: But it would be the same history as --
9 as what the -- you know, the one you printed out before that;
10 correct?

11 THE WITNESS: Uh-huh.

12 THE COURT: Except for the --

13 THE WITNESS: Because no new --

14 THE COURT: -- newer stuff?

15 THE WITNESS: -- cases have been added to it.

16 THE COURT: All right. Well, we've got it here, so
17 now we can --

18 THE WITNESS: Okay. Would you repeat the question,
19 please?

20 THE COURT: Mr. Santacrose, you just lost your copy.

21 MR. SANTACROCE: I know.

22 THE WITNESS: I'll get one for him later on, but it
23 doesn't really pertain to him at this point, Your Honor.

24 THE COURT: Right. It doesn't pertain to Mr.
25 Lakeman, so --

1 BY MR. STAUDAHER:

2 Q With regard to this -- this history, and -- and
3 you said that the reason that the letter was written was to
4 primarily address his complaint history; is that right?

5 A That's correct.

6 Q And the history that you were referring to in
7 the letter, the Board was referring to in the letter up to
8 this point was what?

9 A It was the history of patient complaints from
10 -- from 1989 until early in 2005.

11 Q So -- and during -- and if we -- are these all
12 written kind of in chronologic order?

13 A They're -- they're more by case number order.
14 The case numbers increase as starting from the lowest case
15 number to the highest case number.

16 THE COURT: So that would correspond with
17 chronological order or no?

18 THE WITNESS: No, they don't always.

19 THE COURT: Okay.

20 BY MR. STAUDAHER:

21 Q So we're talking at least it appears as though
22 four or five or six pages of complaints at that point when
23 that letter is generated?

24 A Yes, it would be close to six pages.

25 Q The letter goes out to Dr. Desai. Does he have

1 to follow up or do anything as a result of that letter or are
2 you just putting him on notice of the issue?

3 A No, that is not a respondent letter. That is a
4 letter that was closing the case and telling him that the
5 Board had concerns and that they wanted him to address these
6 concerns. But there is no statutory or implied request or
7 demand for a response.

8 Q In that letter does the Board actually counsel
9 him at all?

10 A Yes, I would -- my opinion it would be
11 considered counseling.

12 Q And when it says specifically it is strongly
13 recommended that you do some introspection to determine how to
14 avoid so many complaints in the future, and then in bold, if
15 the pattern continues it will be necessary for you to appear
16 before the committee. Do you see that?

17 A Correct. I -- in my opinion I would consider
18 that slight reprimand.

19 Q Now, moving forward in time to December 19,
20 2005, there was an additional letter that was sent to the
21 Board, Bates No. 6844.

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

23 THE COURT: You may.

24 BY MR. STAUDAHER:

25 Q I'm giving this to you. Does that look

1 familiar to you, as well?

2 A Yes, sir, it does.

3 Q And what is that?

4 A This is the same type of letter of concern that
5 I described earlier from a different committee chairman
6 expressing concerns about in the last few months since the
7 last letter there has been 12 new complaints and there's been
8 12 new complaints over the last two years and that it was a
9 poor record.

10 Q Okay.

11 A And -- and I believe this is the one where they
12 suggested that he take some ethics in person.

13 MR. STAUDAHER: Your Honor, I know that this is a
14 different type of hearing in the trial, but at this point I'd
15 move for admission of all the case letters.

16 THE COURT: Yeah, I'd like to see the letters.

17 MR. STAUDAHER: Okay. And I'd like to display them
18 and to ask him some questions.

19 THE COURT: All right. And we have to have them
20 marked for purposes of the hearing. So just for purposes of
21 the hearing we'll have those marked as 1 and 2. Obviously
22 they are not marked as trial exhibits.

23 MR. STAUDAHER: And I will be offering the same
24 document also as a -- as an exhibit for the purpose of this
25 hearing, the complaint history as well because --

1 THE COURT: Okay.

2 MR. STAUDAHER: -- he's testifying about it.

3 THE COURT: And that's fine for purposes of just the
4 hearing.

5 MS. STANISH: Well, I'd like there to be a
6 delineation as to what complaints existed, predated those
7 letters as opposed to all these other complaints that come
8 flooding in after --

9 THE COURT: Yeah, I don't --

10 MS. STANISH: -- the press makes --

11 THE COURT: I don't think the --

12 MS. STANISH: -- makes the announcement.

13 THE COURT: -- complaints fully -- I would tend to
14 agree with Ms. Stanish and her implication. The later
15 complaints after the whole endoscopy thing was in the media
16 probably aren't germane. It's the prior --

17 MS. STANISH: And my point, Your Honor, is that to
18 the extent that these informal letters of counseling, whatever
19 these closure letters are labeled, that what's pertinent are
20 the complaints that predated them.

21 THE COURT: Right.

22 MS. STANISH: Okay.

23 THE COURT: I mean, I assume that that will be
24 somewhat evident from the list of the complaints themselves.

25 MS. STANISH: Good luck.

1 BY MR. STAUDAHER:

2 Q Well, with regard to that issue, let me ask a
3 couple of questions. You said that some of these complaints
4 -- you mentioned 37 patient complaints, is that right, that
5 you were aware of that Dr. Desai got notifications of?

6 A Right. I think there were about 37 that
7 required at least an initial response from the physician.

8 Q Okay. So Dr. Desai would have had to have
9 written back some sort of response?

10 A Say again? I'm sorry.

11 Q Dr. Desai would have had to have --

12 A Yes.

13 Q -- written back some sort of a response?

14 A Correct.

15 Q Now, were those complaints that essentially
16 predated this endoscopy outbreak? Because he got his
17 restraining order and stopped practicing shortly thereafter.

18 A I -- I would believe that they did, yes.

19 Q Okay.

20 A But there might have been one or two that
21 didn't. I'm not sure.

22 Q So at least the 37 we're talking about, that's
23 -- that's essentially the number that we -- that you're
24 working with at this point that he had been notified of, is
25 that fair? As of that time.

1 A That would be -- it would be close.

2 Q Okay. And we won't hold you to the actual
3 number, but roughly so we're talking. With regard to the
4 letters themselves, the second letter, let's talk about that
5 one for a moment.

6 MR. STAUDAHER: Does the clerk have those available
7 yet?

8 THE COURT: The December 19th letter?

9 MR. STAUDAHER: Yes.

10 THE COURT: You can have them both back.

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

12 THE COURT: You may.

13 BY MR. STAUDAHER:

14 Q And, Doctor -- or, excuse me, Mr. Cooper, up
15 there there is a screen and you can follow along. But in this
16 particular letter I wanted to go -- this regarding a patient
17 Terri Ward. Is this another situation where that was a
18 complaint, but the Board is using this to address his
19 complaint history again?

20 A Yeah, the -- the original case, the four cases
21 on top -- the three on top, you mean?

22 Q No, these -- these ones up here. Let me get it
23 down just a little bit. Right here. These three.

24 A Right.

25 Q Okay. So there are three cases that are being

1 addressed in this letter?

2 A Correct.

3 Q In the area, the body of the letter where it
4 talks about -- and I know that the -- the issues here are
5 talking about specifically the second paragraph, and we get to
6 the -- I think the last sentence of that. It says in addition
7 you've a number of credible patient complaints -- or patients
8 complaining of pain during procedures and it is suggested that
9 you extend the waiting time after administration of anesthesia
10 before beginning examinations. Do you see that --

11 A Yes.

12 Q -- in there? The next paragraph specifically I
13 want to ask you about that. It says you have had three new
14 complaints from the last few months, a total of 12 complaints
15 in the last two years, and this is a poor record and requires
16 correction. The committee believes that it would be in your
17 best interest to attend a continuing medical education ethics
18 class in person rather than online with proof to the Board
19 that you have done so.

20 Do you know if Dr. Desai ever complied with that?

21 A No, I don't.

22 Q Would that have been something that would have
23 been required of him, or it was a suggestion of the Board?

24 A It would have been something that they hoped he would
25 have done. They're asking him to do this because they -- they

1 think he needs it.

2 Q Okay. And, again, in this letter, it's talking
3 in part, at least, about procedures started before anesthesia
4 is onboard.

5 A Yes, sir.

6 Q Had that been a pattern? Had there been other
7 complaints at the Board about that kind of thing from other
8 patients?

9 A There have been, yes.

10 Q So not just one or two, but a number?

11 A Yes, sir.

12 Q The other patient complaints, and I'm not
13 talking about things related to billing and so forth. Did
14 they relate to actually care of the patient during procedures
15 and things?

16 A Yes. Yes.

17 Q Yes. Okay. Again, was that what the Board was
18 trying to do to address this issue back in 2005?

19 A Yes, that's what the Board was attempting to
20 do, to get him to reflect on those patient care cases.

21 Q Now, as far as the letter is concerned, the
22 last one that we have here, which is the end of 2005, the
23 actual meeting, you said, before the Board didn't take place
24 until March of '07, about a year and a third later; is that
25 right?

1 A Right. Correct.

2 Q In that intervening period, what happened to
3 prompt the Board to bring him before the committee or before
4 the Board, rather, for an in person discussion?

5 A To my recollection there was a continuation of
6 cases, and there was one particular civil court case that we
7 had to investigate where the patient had been failed to inform
8 that ERCP could result to -- result in pancreatitis or the
9 onset of pancreatitis. And the Board thought that that was
10 something that a gastroenterologist should know.

11 THE COURT: ERCP is what?

12 THE WITNESS: It's a --

13 MR. STAUDAHER: Does it stand for --

14 THE WITNESS: It's an exam of the pancreas, a
15 topography exam of the pancreas.

16 THE COURT: And that can actually cause
17 pancreatitis?

18 THE WITNESS: Yes.

19 THE COURT: Okay.

20 BY MR. STAUDAHER:

21 Q Does it stand for endoscopic retrograde
22 cholangiopancreatography?

23 A Yes, sir.

24 Q If -- and that is the tube --

25 THE COURT: That was my guess, too.

1 MS. STANISH: Yeah.

2 BY MR. STAUDAHER:

3 Q That's the tube that goes down and actually
4 images the pancreas with -- with dye or something, is that
5 right?

6 A Yes.

7 Q Okay. And that -- is that a known complication
8 that it can --

9 A Yes.

10 Q -- cause pancreatitis?

11 A Yes, it is.

12 Q Something that a patient should be informed
13 about?

14 A Definitely.

15 Q And that was the allegation that the patient
16 had not been informed of that prior to the procedure?

17 A That's correct.

18 Q Was there any other issue related to that, I
19 mean any other things beside that one case that came up that
20 prompted him to come before the Board?

21 A The other cases that are indicated on this
22 letter.

23 Q And that -- well, that's this letter as of
24 December; correct?

25 A Right.

1 Q Of -- of '06?

2 A Yeah, well, the other things were the --

3 Q Of '05, rather.

4 A There were other cases of, if I recall
5 correctly, of incomplete -- incomplete colonoscopies.

6 Q Was that a trend with him as well that there
7 were at least allegations of incomplete colonoscopies?

8 A Correct.

9 Q So is the -- the ERCP issue with the one
10 patient, was that similar to these letters where that's the
11 reason we'll bring him in, but we're really bringing him in to
12 talk about the continuing problems?

13 A Well, not -- it's not to make -- diminish the
14 original case, the case that they're talking about, but it is
15 an opportunity and it is fair to discuss all the cases that
16 he's had. Because when he's sent a letter of notification to
17 come in to discuss he's told that that and his complaint
18 history, it's a form with the entire complaint history, as
19 well as the cases indicated will be discussed at -- at the
20 appearance meeting.

21 THE COURT: So the physician knows any complaint in
22 the past is fair game for discussion?

23 THE WITNESS: That's correct.

24 THE COURT: Okay.

25 BY MR. STAUDAHER:

1 Q And would that include cases, and I'm going to
2 give you just a few of them in specifics, Marilyn Zimmerman, a
3 case involving her?

4 A Yes.

5 Q Carol Lathrop?

6 A Yes.

7 Q And individual by the name of Dubois -- or
8 Dubois, Charles?

9 A I'm -- I'm not familiar with that last name.
10 That's not ringing a bell.

11 Q And I may have it -- I may have it wrong.
12 Dibuduo, I guess; D-I-B-U-D-U-O?

13 A Yeah.

14 Q I'm sure I've completely slaughtered that one.
15 But Pen -- P-E-N-S-A-K-O-V-I-C, Pensakovic?

16 A I don't recall that one.

17 Q What about Lisa Phelps?

18 A Yes.

19 Q And some complaints that came in through a
20 physician by the name of Kaushal?

21 A A doctor of osteopathic medicine, yes.

22 Q Yes. A doctor of what?

23 A Osteopathic medicine.

24 Q A cancer -- cancer specialist?

25 A No, a DO.

1 Q He's a DO?

2 A Uh-huh. Not an MD.

3 Q Okay. But --

4 THE COURT: But does he specialize in oncology as a
5 DO, do you know?

6 THE WITNESS: No, I don't know what his specialty
7 was. I think he was primary care.

8 BY MR. STAUDAHER:

9 Q Okay. But a Dr. Kaushal?

10 A Yes.

11 Q Who -- who had patients that he complained to
12 the Board about?

13 A Correct.

14 Q Okay. During the time of the -- the -- I know
15 we've got the letters going out, we've got the meeting before
16 the Board. Was there ever a time that the Board said, gosh,
17 sending the letter back saying anything like, hey, look,
18 you've -- you've done what you need to do, you're in full
19 compliance, we don't have any further problems with you?
20 Anything like that?

21 A No, that --that never happened.

22 Q Just the opposite? I mean, you're continually
23 dealing with issues with him?

24 A It was an increasing cycle, yes.

25 Q And when you say increasing cycle, were you

1 seeing a trend toward more and more complaints?

2 A Correct, and more and more decisive action by
3 the Board.

4 MR. STAUDAHER: Pass the witness, Your Honor.

5 THE COURT: All right. Thank you.

6 MS. STANISH: Your Honor, we're going to need time.

7 THE COURT: Okay. Let's take a -- they need to
8 confer with their client.

9 MR. SANTACROCE: Can I just ask one question?

10 THE COURT: Sure, Mr. Santacroce, go first.

11 CROSS-EXAMINATION

12 BY MR. SANTACROCE:

13 Q Does -- the State Medical Board does not
14 license, regulate, or have jurisdiction over certified
15 registered nurse anesthetist; isn't that correct?

16 A That's correct.

17 THE COURT: All right. We're going to take a quick
18 break.

19 And, sir, during the break please don't discuss your
20 testimony with anyone. All right?

21 (Court recessed at 10:49 a.m., until 11:12 a.m.)

22 THE COURT: Ms. Stanish?

23 MS. STANISH: Yes, Your Honor.

24 THE COURT: And did you have ample -- we took a
25 break, for the record, and did you have sufficient time to

1 confer with your client in the conference room there?

2 MR. WRIGHT: We had sufficient time, but to no
3 avail. The difficulties remain the same on these 37 cases.
4 His information on them is not to be relied upon.

5 THE COURT: Okay. Meaning --

6 MR. WRIGHT: In his --

7 THE COURT: -- he -- he doesn't --

8 MR. WRIGHT: -- impairment.

9 THE COURT: -- remember or he didn't receive in the
10 first place enough information?

11 MR. WRIGHT: No, he doesn't remember. You're
12 talking about -- we're dumping on him 37 different incidents
13 and asking to recall them and then recall meetings and recall
14 complaints, etcetera. And it's just all mixed up.

15 THE COURT: Okay.

16 All right. Ms. Stanish, you may proceed with your
17 cross-examination.

18 MS. STANISH: Thank you, Yes.

19 CROSS-EXAMINATION

20 BY MS. STANISH:

21 Q Mr. Cooper?

22 A Yes, ma'am.

23 Q Let -- let me start with having you identify
24 for the Court specifically what complaints led to Dr. -- led
25 to the issuance of that letter that referred to 12 complaints

1 in a two-year period. Okay? Because I might -- do you know
2 what I'm talking about?

3 A Yeah, I do know what you're talking about, but
4 it's going to take me quite awhile to try to extrapolate which
5 ones those are.

6 Q Okay.

7 MR. WRIGHT: That's what we're here for.

8 BY MS. STANISH:

9 Q That's why we're having an evidentiary hearing.
10 I want to understand what were the complaints that led to the
11 issuance or led to the holding of that committee meeting, all
12 right. So if you could, because as I understand it, just for
13 the record, your complaint numbers are not necessarily
14 indicated by dates. They -- they have -- there's various
15 systems of records that are used in this complaint history
16 over the years; is that correct?

17 A Well, that's correct. But I think if you start
18 after -- after the six-digit numbers, they're not only
19 chronological, they're also numerical.

20 Q So just to be clear, what we're looking at is
21 this --

22 THE COURT: May I have a copy?

23 MS. STANISH: That would be a good idea if you had
24 that.

25 MR. STAUDAHER: A copy for the Court.

1 THE COURT: A complaint list. You were going to
2 admit it as an exhibit, but that, I don't believe, was done.

3 MR. STAUDAHER: Yes. Actually, I think it --

4 THE COURT: It was done?

5 MS. STANISH: Well, let me -- if I --

6 THE COURT: Okay. It was. I've got it. That's,
7 for the record, Hearing Exhibit 3.

8 BY MS. STANISH:

9 Q Do you -- do you -- sir, do you happen to have
10 the complaint history that was applicable during this time
11 period?

12 A No, I do not.

13 Q Did you ever provide it to the District
14 Attorney's Office?

15 A No.

16 Q Did you -- were you the one that provided
17 records to the District Attorney, or was it a staff member?

18 A It was a staff member. You mean recently or --

19 Q Ever. I guess -- well, no, let me say this.

20 In connection with the various complaints that are listed in
21 the -- this chronology, this complaint history, did you ever
22 provide -- did you personally provide records to the DA?

23 A No, ma'am, I did not. This goes back five
24 years. And the Metro task force on the hep C case came to the
25 office of the Board of Medical Examiners and took the records

1 that they wanted.

2 Q Well, let's talk about that a moment before we
3 get into the --

4 A So that's --

5 Q -- into this. Hold on. The -- did one of your
6 investigators work with the task force?

7 A Yes.

8 Q And did that participation of your
9 investigator, did that occur when? When did that occur? Just
10 to give you a frame of reference --

11 A Probably the beginning of the summer of 2008
12 until the task force ended that requirement. I don't recall
13 when that would have been. It could have been a year later,
14 it could have been two years later.

15 Q Well, let me ask you this. How soon after the
16 official announcement, the notification by the Health District
17 where they sent out, you know, 50, 60,000 notifications, how
18 soon after those notifications were sent did your investigator
19 start working with the task force?

20 A I don't know the exact date.

21 Q Excuse me.

22 (Off-record colloquy.)

23 BY MS. STANISH:

24 Q For the record, the outbreak notifications went
25 out at the end of February 2008, all right. That's a

1 matter --

2 A Yes, I know that.

3 Q -- of record. Pardon me?

4 A Yes, I know that.

5 Q Okay. And so my question to you, Mr. Cooper,
6 is how long after that notification did your investigator
7 start working on the task force?

8 A And my answer to you, ma'am, was polite and
9 honest. I don't know the date.

10 Q Oh, I'm not -- I'm sorry. I didn't understand
11 you. That's why I why I was just asking more questions. I
12 don't mean to be disrespectful. So I apologize. You don't
13 recall when your investigator started working with the task
14 force. Is that --

15 A I do not --

16 Q -- what you're saying?

17 A -- recall, no. I do not recall the exact date.

18 Q All right.

19 A I believe it to be the summer of '08.

20 Q Okay. Do you know who the members of that task
21 force were, as far as the agencies involved?

22 A I recall there was the Homeland Security,
23 Southern Nevada Health District, Metro, and the Health
24 Division from the State Department of Human Services, and the
25 Medical Board. I don't have the list with me, of course, but

1 there were a few others that --

2 Q Understood.

3 A -- came and went and didn't know who they were.

4 Q And you said at one point Dr. Desai surrendered
5 his license; correct?

6 A At one point he did. Correct.

7 Q And was that a result of the stroke he had
8 suffered that he was medically incapacitated, if you recall?

9 A I don't recall the reason exactly why he
10 surrendered his license at the time that he did, but I do know
11 it was while under investigation. So my answer would probably
12 tend to be, no, it was because he was under investigation and
13 not because he had suffered a stroke.

14 Q Did you -- did you participate in any meeting
15 about -- relating to -- that where you heard about information
16 pertaining to his stroke?

17 A No, I don't recall attending any official
18 meetings.

19 Q And you were the executive director at the
20 time. Am I correct in recalling that?

21 A No, you're incorrect.

22 Q Okay. What -- what was your position at the
23 time, sir?

24 A I was the chief of the investigations division.

25 Q Okay. And who occupies that position now?

1 A A lady named Pamela Castagnola.

2 Q Okay. And is it Mr. Hiett -- Haitt? What's
3 his name?

4 A Mr. Hiett is an investigator I hired.

5 Q Okay. And I -- so you become --

6 A For clarification sake, at that point if there
7 was going to be a meeting about Dr. Desai surrendering his
8 license while under his investigation, if the investigation
9 was complete, it would have been held probably with the
10 investigative committee, the Board's legal counsel at the
11 time.

12 Q All right. So you --

13 A And the Board's legal counsel at the time would
14 not necessarily have involved the chief investigation because
15 the investigation was done.

16 Q All right. And I guess I should clarify. I
17 must have misunderstood your chronology of employment.
18 Educate me on that again. When did you first start working
19 for the Medical Board of Examiners?

20 A In July of 2001.

21 Q And that's when you started as an investigator;
22 is that right?

23 A Right.

24 Q And --

25 A Well, I was hired to create an investigative

1 division where one had not existed.

2 Q Okay. Do you have a law enforcement
3 background?

4 A Yes, I do.

5 Q What is it?

6 A I have a degree in police science crime scene
7 investigation. I have a degree in administrative of justice.
8 I'm a retired federal agent, counterintelligence special agent
9 European theater of operations.

10 Q Your --

11 A I was a state welfare fraud investigator and
12 federal programs investigator.

13 Q And you were a federal agent in what agency?

14 A The United States Army.

15 Q All right.

16 A Counterintelligence Corp.

17 Q Okay. And you don't -- do you have any medical
18 training?

19 A I have 12 years of on the job training with the
20 Board of Medical Examiners, but I don't have any formal
21 medical training, no.

22 Q All right. So you start off as an
23 investigator, a chief investigator to formulate the
24 investigative arm of the Medical Board of Examiner?

25 A Right, to -- to help create a better, more

1 efficient division.

2 Q Okay. They had an investigative division, but
3 you were there to improve it?

4 A Correct.

5 Q All right. And what year did you change your
6 job with the Medical Board?

7 A I became the chief of the division. They
8 offered that to me, offered me to stay a couple months -- I
9 mean, a couple -- oh, about a year later after I got there.
10 And then I became the -- and at that time the chief of the
11 investigations division. And then in October of 2009 I became
12 the executive director.

13 Q In what year? I'm sorry.

14 A October of 2009 I became the executive
15 director.

16 Q All right. Okay. So now let's go back to the
17 complaint history. What I'd like you to do is we have this
18 letter that's been introduced that is dated December 19, 2005.
19 And you reference the three complaints that triggered the
20 interest of the Board; correct?

21 A I reference it? How do I reference it?

22 Q I'm sorry. Do you have that letter in front of
23 you?

24 A No.

25 Q Okay. Let me just throw it up here. I don't

1 know what exhibit number this is, but it's --

2 MR. STAUDAHER: It's up there.

3 BY MS. STANISH:

4 Q I'm going to hand you, sir, Proposed Exhibit 2.
5 It's the December 19, 2005, letter.

6 A Correct.

7 Q Let's start -- so now let's take the criminal
8 history report. And I guess we're using the one that is dated
9 May 28, 2013.

10 MS. STANISH: Did you introduce -- has that been
11 introduced into evidence? It has?

12 THE CLERK: Exhibit No. 3.

13 MS. STANISH: Okay.

14 THE COURT: I'm sorry. The list of complaints?

15 MS. STANISH: Yes, Your Honor.

16 THE COURT: Yeah, I'm reading it. Do you need it?

17 MS. STANISH: Well, he may need it. Is there
18 another copy around?

19 THE COURT: Do you have a list of the complaints?

20 THE WITNESS: I'm sorry. I was reading.

21 THE COURT: Would you like to review the list of
22 complaints.

23 THE WITNESS: I have a list.

24 THE COURT: Okay.

25 MS. STANISH: Oh, good.

1 THE WITNESS: I was given somebody's copy, I think.

2 MR. STAUDAHER: Yes, I --

3 BY MS. STANISH:

4 Q So will you please identify -- maybe -- I don't
5 know. There's no page numbering on this. But very slowly
6 take your time. Identify for us the 12 complaints that are
7 referenced to be the foundation, apparent foundation of this
8 letter.

9 A Well, you know, I did not write this letter.
10 But let's assume that -- that this letter was written in
11 December and we would go backwards from there. I don't know
12 the author's point of reference. So I would just go ahead and
13 start, if you don't mind, in December.

14 Q Well, let me talk to you about that. You're
15 not certain what 12 complaints -- because I really don't want
16 assumptions here. I want to identify the 12 complaints that
17 triggered this letter. Is it 12 complaints -- do you know
18 what the -- are we talking from the July 5, 2005, date, or the
19 -- do you know what led to this letter?

20 A No, I -- I am not the author of the letter.

21 Q Okay. So --

22 A I'm not a board member. I didn't --

23 Q -- give us your best estimate, I guess.

24 A Right. Then I was -- as I said I was going to
25 assume with 11/05 --

1 Q Okay. Hold on.

2 A -- which is Case 8894.

3 Q Wait. Hold on. Can you tell -- I'm going to
4 put numbers. Can we put numbers on the top of the complaint
5 so we don't spend a lot of time -- count -- count the pages
6 for me. What page are you on, sir?

7 A I'm going to number mine, too. One, two, three
8 -- six, seven.

9 Q Okay. So page 7.

10 A 7 of 8.

11 Q And I'm sorry, sir, what's the --

12 A 7 of 9. I'm going to start there on Case 8894.

13 Q 8894. And --

14 A And going -- don't go down, because that next
15 one is 1106, and that's past the date of the letter that the
16 board member wrote.

17 Q Okay. So just --

18 A So you go up the page and the second one would
19 be -- 80733.

20 Q Okay. Just to stop you, then, so that the
21 Court is clear. Anything after Case No. 0508894 post dates
22 this letter; correct? Is that what you're saying?

23 A Yes, that's my assumption. I mean, I'm -- I'm
24 assuming that's what we're looking at here, and looking at the
25 case dates, I would say that's correct, yes.

1 Q Okay. Thank you. So let's just stop a moment.
2 Now, this first one that you mention, 0508895, that's Dr.
3 Kaushal's complaint; correct?

4 A Do you mean -- do you mean 94?

5 Q I mean this first one I thought you mentioned,
6 0508894, physician's complaint, patient care. Complaint
7 alleges Dipak Desai and Vishvinder Sharma performed incomplete
8 colonoscopies which resulted in patient not being diagnosed or
9 treated for the -- the cancer in a timely manner; correct? So
10 is it -- do you know that to be Dr. Kaushal's complaint?

11 A I'm assuming that it is. Without seeing his
12 name associated with the case, I'm not positive, but I'm
13 assuming that it is.

14 Q Were you involved in any capacity in addressing
15 the complaint that was filed by Dr. Kaushal?

16 A Would you clarify what you mean by addressing
17 the complaint?

18 Q Were you involved in it in any fashion?

19 A I would have been involved in it in that I
20 would have read the complaint, I would have assigned it
21 jurisdiction, I would have assigned it to an investigator.

22 Q Okay. And --

23 A I would have proved -- approved the reports
24 that came in later. I might or might not have read the
25 response from the physician. I would have approved putting it

1 on the investigative committee agenda for the investigative
2 community meeting, but necessarily without knowing the details
3 of the case just approve it as ready to go to the
4 investigative committee. I would have addressed it in that
5 way.

6 Q Okay. Do you know if -- is it the standard
7 practice of the Board when they're going to investigate a
8 complaint -- and correct me if I'm using the wrong term
9 because I know you have your own administrative lingo. But
10 we're assuming that this complaint is Dr. Kaushal's.

11 A Uh-huh.

12 Q And the -- my question to you, is it -- is it
13 the practice of the Board to request medical records from a
14 complaining physician to substantiate their complaint?

15 A Yes, ma'am, it is standard practice.

16 Q And when that's done, would you obtain the
17 entirety of the particular patient's records?

18 A I don't know what you mean by entirety.

19 Q If Dr. Kaushal is complaining about four or
20 five patient -- patients, would you require him to turn over
21 all medical records relating to those patients?

22 A Yes and no.

23 Q Okay. Explain that.

24 A If he had been a patient for 20 years, I
25 wouldn't need records from 20 years ago. That would be the

1 entirety of the records. It would be the records involved in
2 the incident or the -- or the pathology that was discovered or
3 the exams that related to the issue that the complaint
4 involved itself with.

5 Q All right.

6 A And it would be for every patient that was
7 named, and it would also include outside referrals, imaging,
8 everything about that doctor's visit, about that case the
9 doctor is working on now. So in its entirety to the issue,
10 but not in its entirety to the life of the patient.

11 Q And -- understood. And then, additionally,
12 you, as a matter of procedure and investigation, the subject
13 doctor would be required to turn over their medical record
14 pertaining to the patient; correct?

15 A Did you say the subject doctor?

16 Q Yes, the subject --

17 A Yes, ma'am --

18 Q -- of the complaints.

19 A -- that's who I'm talking about.

20 Q Oh. Well, maybe I'm not making myself clear.
21 Dr. Kaushal filed a written complaint to the Board. Okay?

22 A Right. I understand your question. If -- if
23 -- he could have done that as a neighbor. I mean, if he was a
24 doctor that treated that patient, yes, we would have asked him
25 for all of his records, too. But a physician that turns in

1 another physician doesn't necessarily have to have treated the
2 patients that he lists.

3 Q True. And in this case it's a matter of record
4 that this doctor did provide consultation and treatment to the
5 patients. Okay? So would you expect that your system of
6 records would have the patient records from the treating
7 doctor who filed the complaint?

8 A True.

9 Q And, of course, as you've mentioned, the
10 subject of the complaint would also be required to turn over
11 medical records; correct?

12 A Correct.

13 Q And then what happens to those medical records
14 once they are turned over to the Board? Who reviews them?

15 A A staff medical reviewer who is an MD and
16 employed by the Board.

17 Q Is that somebody who is the same individual at
18 the same time, or do you have to, for instance, retain a
19 gastro -- a GI specialist?

20 A No, we --

21 THE WITNESS: Your Honor, would you like me to
22 explain the entire system of how we do this? It's --

23 THE COURT: Sure.

24 THE WITNESS: -- quite involved.

25 THE COURT: I -- well --

1 THE WITNESS: One question at a time we'll be here
2 forever.

3 THE COURT: All right. Why -- why don't you just
4 give us the overview --

5 THE WITNESS: Okay.

6 THE COURT: -- of how this works.

7 THE WITNESS: A complaint comes in that involves a
8 physician or other practitioner of medicine. The location of
9 all the patient's records involving that issue are identified
10 to hospitals, urgent cares, imaging centers, ambulatory
11 surgical centers, doctor's offices. They're gathered by the
12 investigator. That's what the investigator does. With those
13 records they are given to a medical reviewer, staff medical
14 reviewer.

15 THE COURT: Who -- is that a physician?

16 THE WITNESS: Yes. The staff medical reviewer is
17 always a physician licensed to practice in Nevada in good
18 standing. We have a couple very renowned medical reviewers.

19 This medical reviewer is a medical reviewer, not a
20 peer reviewer, so he does not have to be in the same
21 specialty. He looks at the initial investigative phase of
22 records that comes in and decides in his opinion, which is not
23 the final opinion, his opinion where the investigation should
24 go forward or go for closure because nothing was found.

25 If the investigation is continued, then it's

1 expanded at the wish of the medical reviewer who sees other
2 things he needs to know who will come up with medical
3 questions specifically that need to be answered and they'll go
4 usually to the respondent. The respondent in this case would
5 have been Dr. Desai. He's responding to the allegations of
6 the Board.

7 At the point where enough evidence is gathered where
8 the medical reviewer -- because he's not in the same
9 specialty, and also because if he was in the same specialty
10 we're not going to use our own medical reviewers to review
11 cases for the Board and take forward to prosecution. There's
12 too much chance of bias because he's getting paid by the
13 Board, okay.

14 So we find a medical peer reviewer in the same
15 specialty with the exact same credentials or better that is
16 not associated with the physician and usually is involved
17 geographically in another part of the state or we go out of
18 state. That peer review form the basis of our -- of our
19 administrative prosecution. If it comes back malpractice,
20 then we cannot go forward. It's not reasonable and honest to
21 go forward with a malpractice peer review.

22 If it is a malpractice peer review, then we will
23 take it to the investigative committee, the people who write
24 these letters, and then they will decide at that point whether
25 they want to create a formal complaint as opposed to the

1 citizen's complaint, based on the peer review, not the medical
2 review. So they have several options when they have that
3 medical -- that peer review that comes in from the specialist
4 in the same field.

5 They can call for an appearance; they can write a
6 letter of concern if the evidence is just not strong enough.
7 And it would cost everybody way too much money, based on
8 experience, for those involved to go ahead, or we probably
9 couldn't -- we disagree with the peer review in that we
10 couldn't prove our case. Or we go forward and -- and initiate
11 a formal complaint.

12 Then we have a hearing, and then it goes through
13 adjudication with the full Board. So that's the difference
14 with the medical reviewer and the peer reviewer. The medical
15 reviewer is one who is on staff, the other two are contracted.

16 THE COURT: And --

17 THE WITNESS: And --

18 THE COURT: I'm sorry. Can those be either an MD or
19 a DO?

20 THE WITNESS: No, we can't have a DO peer review an
21 MD.

22 THE COURT: So they're all MDs?

23 THE WITNESS: They're all MDs. Our Board deals only
24 with medical doctors. That's why earlier I referred to the
25 licensee as medical licensees and not osteopath.

1 THE COURT: I see.

2 BY MS. STANISH:

3 Q So, Mr. Cooper.

4 A Yes.

5 Q Bringing you back to the December 2005 time
6 frame, you discuss this whole formal process.

7 A Uh-huh.

8 Q Was it the staff or contract medical doctor who
9 did a review? What -- where in this process that you just
10 described are we sitting in the 2005 time frame?

11 A Okay. I -- are you asking me -- I'm sorry. I
12 do not mean to be flippant. Are you asking me who reviewed
13 the case?

14 Q Yeah, I guess.

15 THE COURT: No, I think what she's asking --

16 Is that what you're asking? Or is she -- or are you
17 asking was -- when did a medical review or if a medical review
18 occurred of any of these complaints?

19 THE WITNESS: A medical review was completed on all
20 of these complaints.

21 BY MS. STANISH:

22 Q And that was not -- I guess I understand this
23 description you gave us to be a medical review being one of
24 the three MDs that you would either have on staff or on
25 contract?

1 A Uh-huh.

2 Q As opposed to a peer review where the -- the
3 concern is much more significant and we're going to hire a
4 specialist.

5 A Perhaps a better way to think of it is that
6 your left hand is part of the investigative process.

7 Q Okay.

8 A It has to be. The -- the -- your right hand is
9 the end of the process and the start of the prosecution.

10 THE COURT: Did you ever send any of these
11 complaints for a peer review?

12 THE WITNESS: I'm sure some did, but I can't
13 identify exactly which ones did.

14 THE COURT: Okay. So it has to first get through
15 the medical review. They to say we essentially think there is
16 something here. And then from that point it goes to a peer
17 review, which is typically a physician either up in Washoe,
18 probably, or in another state, and that would have to be a
19 gastroenterologist?

20 THE WITNESS: That's correct.

21 THE COURT: Okay.

22 THE WITNESS: But not every case goes to peer review
23 that's --

24 BY MS. STANISH:

25 Q Correct. And that's what we're trying to --

1 that's what I'm trying to hone in on. You just said you're
2 sure that something went to the peer review on Dr. Desai. Did
3 I misunderstand you? I'm not speaking your language, so I
4 probably just --

5 A I should -- something could have gone to peer
6 review. I can't identify -- I don't have in my mind every
7 case that went to peer review on Dr. Desai. We do a thousand
8 cases here.

9 Q Okay. Fair enough. Fair enough. Just do you
10 know as you sit here today whether any of these complaints
11 that predated the December 2005 letter, do you know if any of
12 those went to peer review by a GI specialist?

13 A Yes.

14 Q Can you identify that for us, please?

15 A Prior to that letter, on March 4th, 0407851 --

16 Q You're going too fast. What page are you on?

17 A Page 5 of my markings. I hope I didn't miss
18 one.

19 Q All right. Page 5. And which case is that,
20 sir?

21 A Go down to the date of 03/04, March 04.

22 Q Wait. I see -- go ahead because there's two
23 with the 03/04 designation.

24 A 7851.

25 Q 7851.

1 A Have you found that one?

2 Q I got it.

3 THE COURT: That's the abdominal pain one.

4 THE WITNESS: Okay. Go down to the last two lines.

5 Malpractice peer reviews on Dr. Mason and Dr. Desai. It was

6 set to a peer review, and the peer reviewer found malpractice.

7 BY MS. STANISH:

8 Q And that was the pancreatis --

9 A That is the one that led --

10 Q -- incident that you further -- that you
11 previously described.

12 A That's correct. I believe that's the case that
13 led to the letter, expression of concern, letter of concern in
14 the December -- no, the July 2005, letter.

15 Q Okay. So that went to peer review.

16 THE COURT: And then the next one went to peer
17 review --

18 THE WITNESS: Right.

19 THE COURT: -- but no malpractice.

20 THE WITNESS: Peer reviewer found no malpractice in
21 the next case.

22 THE COURT: And that was -- sounds like essentially
23 a failure to diagnose or --

24 BY MS. STANISH:

25 Q And that one was no malpractice. All right.

1 Do you have in your system of records the medical records that
2 relate to these two cases?

3 A Yes.

4 Q All right. Did you -- did you or did your
5 investigator turn that over to the district attorney or
6 Metropolitan police?

7 A Okay. I did not turn it over. I don't believe
8 my investigator turned it over. I believe that the
9 Metropolitan Police Department served a subpoena on the Board
10 of Medical Examiners. As I said earlier, they came to the
11 Board of Medical Examiners and copied those records. So --

12 Q For this -- for these two incidents?

13 A I can't -- I don't know for sure. I mean, they
14 took a lot of records. I don't know. I can't answer the
15 question exactly.

16 Q Okay.

17 A But I -- I don't see why not. I think they
18 probably would have.

19 Q How -- were -- did you participate in these two
20 cases in -- in an investigative capacity or executive
21 capacity?

22 A As I mentioned earlier. I would have
23 participated in the way I described when you asked me that on
24 the other case how I would have addressed that case.

25 Q Given the nature of these -- these complaints,

1 would you expect the medical records to be significant in
2 number?

3 A You know, actually there's no way to tell. You
4 can have some of the most serious cases with only five or six
5 pages. And you can have some cases that really didn't result
6 in anything where there was over testing and you can have 40,
7 50, 60 pages just on one issue.

8 Q And --

9 A So that rule wouldn't follow.

10 Q And am I right particularly in case where
11 they're saying there's a misdiagnoses of cancer you're going
12 to get not only records from the subject of the complaint,
13 you're also going to get medical records from other treating
14 physicians?

15 A We would -- we would search out and try to get
16 every medical record that pertained to that patient that had
17 anything to do with diagnosis of no cancer, precancer, or
18 cancer.

19 Q And what is your record retention policy? If I
20 need to look at the records that support some of these
21 complaints, are you going to have them still?

22 A The state of Nevada records retention policy
23 gives us 20 years for retention.

24 Q So you still have these records?

25 A Except for if it was a legal case, then it's in

1 perpetuity.

2 Q Okay. So you're telling me you still have
3 possession of all the medical records that support all the
4 complaints in these -- this criminal history?

5 A Yes, I -- I would believe that to be true.

6 Q But you don't know exactly what was turned
7 over --

8 A Like I testified --

9 Q -- to the DA; correct?

10 A -- that's the way it's supposed to be.

11 Q Correct. Got it. Thank you. All right. Now
12 that we've identified the two peer review cases, I want to go
13 back to that exercise that we started when you were
14 identifying for us the 12 cases that you assume were the
15 foundation of that December '05 letter. So you already
16 identified the two that are on page 7. And what other ones?

17 A All of page 6.

18 Q Okay. And so for -- let's just stop on page 6
19 so we have a moment to look at this. Let's start with the one
20 on the top. Did you ultimately conclude that this was a
21 forged prescription? Because I see here that -- well, do you
22 recall? Do you know from reading that?

23 A No, I don't recall. Oh, yes, I'm sorry. I do
24 recall on this one.

25 Q So -- and I'm referring, for the record, to

1 Case 0408093.

2 A Correct. I recall that one because the name is
3 Cynthia. We -- we called it the Cynthia case --

4 Q The Cynthia case.

5 A -- and that's why I remember it. I think this
6 was resolved with termination of the staff member and the
7 pharmacy board doing an investigation which discovered it was
8 a staff member that wrote the prescriptions and not Dr. Desai.

9 Q And that, however, was the case that triggered
10 the July 5, 2005, letter that is State's Exhibit 1; correct?

11 A I believe so, yes.

12 Q And then the next complaint on page 6, that is
13 a complaint that deals with Dr. Sharma and not Dr. Desai's
14 procedure; is that correct?

15 A You're talking about the next one down?

16 Q Yeah, that 05-08349.

17 A That -- would you please allow me to read it?

18 Q Sure.

19 A This case involved Dr. Sharma, yes, it did, but
20 it also involved Dr. Desai. Dr. Desai was the managing
21 director of that facility and the staff is his responsibility.

22 Q All right. And the remaining ones on that page
23 relate to Dr. Desai personally; correct?

24 A I'm sorry. I cannot hear you.

25 Q The remaining complaints on that, one, two,

1 three, four, five relate to Dr. Desai for various --

2 A Yeah, Dr. Desai failed, Dr. Desai failed, Dr.
3 Desai failed, Dr. Desai provided false -- yes.

4 Q And all those cases were -- were closed.
5 Although, explain this to me. Hold on. Oh, I see. The last
6 two on there refer to close case with LOC. Is that what we're
7 talking about --

8 A Yes, that's this.

9 Q -- here?

10 A Uh-huh.

11 Q Okay. So those are the two cases that are in
12 the reference line of this letter; is that correct?

13 A That's correct. And the one on top is the
14 other one, 07 --

15 Q The -- oh.

16 A Oh, no. No, it's not. No, it's not. 0733.
17 The one on top of page 7 is the third letter addressing that
18 LOC. It also says closed with an LOC.

19 Q All right. And so the three subject cases that
20 are referenced in the December 19th case include 0508686,
21 which is that Dr. Desai failed to do an examination or a test
22 before reporting information to the Department of Veterans
23 Affairs, and therefore the patient benefit wasn't upgraded;
24 correct?

25 A Correct.

1 Q Do you know -- I don't -- let's see. The next
2 case, and I don't want to reveal the patient's name, you may
3 not recall it. This 0508710, is that one of the cases that
4 you mentioned on direct exam when you were asked various
5 names, or is that somebody else?

6 A 08710?

7 Q The very bottom of page 6, 0508710.

8 A Yes, that's -- that is a reference from the
9 December 19th letter.

10 Q Yeah. My question is is that -- is the -- is
11 the patient that's the subject of that, is that one of the
12 patients that was identified by name in the direct exam, or is
13 that somebody else?

14 A I don't know.

15 Q And then the -- on page 7, the last case that
16 was referenced in the December 19th, '05, letter, that's a
17 complaint that states that Dr. Desai prescribed medications
18 that negatively interacted with the patient's other
19 medications and he was disrespectful; correct?

20 A Yeah, the top of page 6.

21 Q So those are the three cases. So we have --

22 A Correct.

23 Q One, two, three, four, five, six, seven, eight.

24 A Uh-huh.

25 Q On page 5 you've already identified the peer

1 review, so we're at nine, ten. And then what are the two
2 remaining cases that you believe serve the basis of this
3 letter?

4 (Pause in the proceedings.)

5 THE COURT: What was the question?

6 MS. STANISH: I asked him to identify the last --
7 the remaining complaints that make up the 12 cases that are
8 the foundation of this letter. I thought he was reviewing it.

9 THE COURT: Okay.

10 BY MS. STANISH:

11 Q Did you hear what I --

12 A I didn't hear a question.

13 Q Oh, I'm sorry.

14 THE COURT: Okay. He reviewed it and then --

15 BY MS. STANISH:

16 Q Okay. My question is --

17 A No, I heard it now. You want me to identify
18 the other 12? Well, again --

19 Q By my count on page 7 we have one, two --

20 A Well, going forward on our chronology would be
21 -- I guess we'd have to go to page 5 and take those that were
22 written -- those cases that came on after December -- or
23 allegedly in December 2003 or sometime in 2003. So there was
24 one here from '04 at the bottom of page 5. There's another
25 one from '04, the peer review and the no peer review. Then

1 there's 0104, that's within our time frame.

2 Q 01 --

3 A That's -- that's eleven.

4 Q I'm sorry. Sorry, I'm trying to take notes.

5 A Yeah, that's the date, 0104. That's one, two,
6 three, the third one up from the bottom on page 5.

7 Q And that's 0407735; correct?

8 A That's correct.

9 Q All right.

10 A And then the next one, 0903 might or might not
11 have been in our time frame. That's a Clark County -- well,
12 that was a duplicate, so that one would not have been counted.

13 Q What does that mean that's a duplicate?

14 A That was a duplicate of a case. There had
15 already been a case open. And like I said earlier, we were
16 required to open every malpractice case filed against a
17 physician in the state.

18 Q Okay. So --

19 A So it could have been opened and then closed
20 because when you opened it it came up with another citizen
21 complaint already was given to the Board on it.

22 Q Okay. So that is --

23 A So two complainants, in other words.

24 Q But it's included in the -- it's included in
25 the complaint history overall, even though it's a duplicate?

1 A Right. Because it was a complaint. It was a
2 malpractice complaint --

3 Q All right.

4 A -- but it's not part of the 37 I was talking
5 about.

6 Q Okay. Fair enough.

7 A And then I would think the next one -- I don't
8 know what the next one would be since --

9 Q Now, so you're not --

10 A So there's 11, and apparently it could be one
11 not there.

12 Q All right. And then what do you mean there's
13 not one there?

14 A Well, I can't find the one on the date that
15 fits into the date time frame --

16 Q Okay.

17 A -- of the letter --

18 Q What --

19 A -- that someone else wrote.

20 Q What is this -- explain this to me, Case No.
21 0307113. It says MDSP complaint, no malpractice, no
22 additional information. What does that mean?

23 A Well, in the old days there was a medical
24 dental screening panel. Before you could file a malpractice
25 lawsuit it had to -- you had to get, in able to decide or --

1 or you had to get a malpractice found from the medical dental
2 screening panel. Actually, the medical dental legal screening
3 panel, MDLSP.

4 And that was a major delay that the Board used to
5 experience waiting for those cases to clear before we could
6 investigate them. That's why the law was changed that we
7 could open them as soon as they're filed, any case we want to
8 investigate. And the MDSP has also been disbanded because it
9 proved not to be very effective.

10 Q But that is not, if I'm understanding you
11 correctly, and I may not, that you capture complaints to the
12 MDSP, but the Board may not necessarily investigate those.

13 A No, we had to investigate any -- if -- if our
14 own review went unable to decide -- found a preponderance of
15 evidence indicated malpractice, then we could -- we could open
16 an investigation. If it found -- if the MDSP found
17 malpractice probable, then we -- we had to investigate.

18 Q All right. Going back to this letter, State
19 Exhibit 2, the -- Mr. Staudaher highlighted the section that
20 reads, in addition you have a number of credible patient --
21 patients complaining of pain during procedures. Identify for
22 us -- you've already identified one, I believe. I want you to
23 identify the number of credible patients complaining of pain
24 during the procedure. And you did identify one here on page
25 5, that's 0407735, which is probably Ms. Zimmerman; correct?

1 A Sorry?

2 Q Do you know who that -- is that patient Ms.
3 Zimmerman?

4 A No, I don't have that information in front of
5 me, ma'am, and I certainly can't recall.

6 Q Okay. Can -- so this -- this particular one
7 does reference a complaint of a test started before
8 anesthesia. What are the other numerous -- the number of --
9 the number of credible patients complaining of pain during the
10 procedure? Identify those for us, please.

11 A Well, I get -- I get the feeling you're wanting
12 me to answer a question that the board member who wrote this
13 letter should be answering.

14 Q Well --

15 A I don't know --

16 THE COURT: So that --

17 THE WITNESS: I don't know what he thought --

18 THE COURT: Let me --

19 THE WITNESS: -- was credible --

20 THE COURT: Let me --

21 THE WITNESS: -- Your Honor.

22 THE COURT: -- ask you this. If you were going to
23 try to answer Ms. Stanish's question, would you just be
24 reviewing the same list that we all have in front of us to see
25 which one refers --

1 THE WITNESS: Yeah, and --

2 THE COURT: I'm not asking you to do it. Because
3 what I'm going to say to Ms. Stanish is if that's all the
4 witness is going to do, then we can all sit here and read it.
5 I mean, for example, 1146, a guy complains, I'm assuming -- it
6 is a man -- a male patient complains that the colonoscopy was
7 performed before the anesthetic took effect and he didn't
8 experience the anesthetic before he got to the car. So I'm
9 assuming that implicit in that complaint would be a complaint
10 about pain. Even though it doesn't spell out pain --

11 MS. STANISH: Well --

12 THE COURT: -- I'm assuming that's implicit.

13 MS. STANISH: You know, Your Honor, if I may.

14 THE COURT: And all I'm saying is if the witness is
15 going to read the same thing we can all read, perhaps we can
16 shorten this by we can read it. We don't need to ask the
17 witness to read -- if that's all the witness would be able to
18 do. That's why I asked the witness is that all you would be
19 doing to answer the question.

20 BY MS. STANISH:

21 Q Is that right?

22 A Correct, because I don't have the information
23 in front of me and I didn't author the letter. So I don't
24 really know which ones they were talking about. But it's
25 obvious to me that the ones the district attorney was alluding

1 to were the ones where it had appeared to have been shortened
2 anesthesia or shortened time. And I'm going to say that would
3 probably be one of them because I don't have the record in
4 front of me. This one down here would probably be one of
5 them. And then we could go through and pick out the other
6 probably would be one of them.

7 Q Well, let me -- let's do that real quickly
8 since --

9 THE COURT: Ms. Stanish?

10 MS. STANISH: Yes.

11 THE COURT: We need to talk about scheduling.

12 MS. STANISH: Okay.

13 THE COURT: How much longer do you anticipate?

14 MS. STANISH: I think I just needed to, you know,
15 clarify what the anesthesia complaints were.

16 THE COURT: And I'm not trying to cut you off.

17 MS. STANISH: Okay.

18 THE COURT: But as you know, we have a jury coming
19 at 12:30 and, you know, we may start a little bit late, but I
20 don't want to start terribly late with the jury. And I'm
21 assuming people want to eat lunch, which I was going to limit
22 to not an hour because we don't have an hour today. Basically
23 folks are going to have to eat downstairs or whatever, you
24 know, in like 30 minutes or less. You know, you don't get an
25 hour to walk across the street or --

1 MS. STANISH: Well, we won't be eating.

2 THE COURT: Okay. Well, that's fine, too. I mean,
3 if everyone wants to waive lunch.

4 MS. STANISH: Right.

5 THE COURT: I think there's some federal law I have
6 to let these people eat. I'm fine not eating, either, but I
7 have to give you folks the option.

8 MR. WRIGHT: I'm eating.

9 THE COURT: What?

10 MR. WRIGHT: I'm eating.

11 THE COURT: Okay. Well, sir, anyway, the jury is
12 coming at 12:30. Naively, I had thought that we could conduct
13 this hearing in, you know, three hours or so. But in any
14 event, if we can finish with the witness --

15 MS. STANISH: Right.

16 THE COURT: -- that's fine. But if it's going to be
17 another hour, then we're going to take a break.

18 MS. STANISH: All right. Court's indulgence.

19 THE COURT: That's where I was going with the
20 question. I'd like for you to finish today so you don't have
21 to come back.

22 MS. STANISH: Well, if we're just going to figure
23 out for ourselves what the anesthesia complaints are off of
24 this record, then I don't have any further questions for him.

25 THE COURT: Okay. Again, my point was if that's all

1 the witness is going to be doing, then there is no need for
2 the witness to do it. Now, if you have, you know, your own
3 recollection of complaints regarding pain, then that's fine
4 for you to testify about.

5 THE WITNESS: I don't.

6 MS. STANISH: Okay. Thank you.

7 THE COURT: All right. Any redirect?

8 MR. STAUDAHER: No, Your Honor.

9 THE COURT: All right. Sir, thank you. I believe
10 that concludes your testimony. All right. You are excused.
11 Please don't discuss your testimony with anyone else who may
12 be a witness in this matter. All right. Thank you.

13 All right. Mr. Staudaher, I know you had other
14 witnesses here for this morning, but --

15 MR. STAUDAHER: I understand.

16 THE COURT: You know, again, I don't want to keep
17 the -- you know, if we have to keep the jury waiting 15 or 20
18 minutes, that's fine. But I don't want to keep them waiting
19 for a long time, and we do have to take some kind of a break.
20 And so, to me, it's better to take the break now.

21 MR. STAUDAHER: Well, two -- yes. And two of those
22 are telephonic anyway, so they're not actually --

23 THE COURT: The CourtCall people.

24 MR. STAUDAHER: -- physically here.

25 THE COURT: So that's fine.

1 MR. STAUDAHER: We have one here, but other than
2 that --

3 THE COURT: Okay.

4 MR. STAUDAHER: -- whatever the Court wants to do.

5 THE COURT: I mean, is there any problem with that
6 person coming back --

7 MR. STAUDAHER: I don't think so.

8 THE COURT: -- another morning?

9 MR. STAUDAHER: That person is local and is here, so
10 we probably can do that.

11 THE COURT: Okay. Because my suggestion would be to
12 then take the lunch break now and try to start as close to
13 12:30 as we can once the jury is here so we can get as much
14 testimony in front of the jury in as possible today.

15 MR. STAUDAHER: I think that's fair, Your Honor.

16 THE COURT: Okay. So let's go ahead and take our
17 lunch break.

18 MR. STAUDAHER: If I could have leave to go out and
19 talk to those --

20 THE COURT: Okay.

21 MR. STAUDAHER: -- witnesses.

22 THE COURT: Mr. Wright, Mr. Santacroce, can you do
23 lunch in about 12 minutes?

24 MR. SANTACROCE: Sure.

25 MR. WRIGHT: Yep.

1 THE COURT: I'd like to get started close to 12:30.

2 All right. We'll be in recess, then, for the lunch break.

3 (Court recessed at 12:06 p.m., until jury

4 trial resumes at 12:46 p.m.)

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CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

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