A I was there. I didn't take the computers. I don't know anything about the computers.

Q Do you know if there was any examination of the computers if they were took -- taken?

A I don't know that.

Q I need to get your grand jury testimony first. Excuse me. Do you remember giving testimony for the grand jury?

A I do.

Q The question was asked of you, "Was there any indication based on your review of things and all of the analysis that you did as to any cross movement of any personnel or supplies or anything from one room to the other room during that day?" Do you remember what you answered?

A No, I don't.

Q I'm going to show you page 116.

A Okay.

Q What was your answer?

A We did struggle with that because we couldn't get the -- the rooms figured out initially until we knew about that computer glitch. And then I have noted in there in my testimony the times that Kenneth Rubino finished and Stacy Hutchinson started.

Q Uh-huh. So you were struggling with the idea of this cross movement because you knew there had to be some

cross movement or movement of infected propofol; isn't that correct?

A That's correct.

Q And you -- even under your theory, where Mr. Mathahs left his patient sedated --

MR. STAUDAHER: Objection, that's not what she's testified to, that he left the patient sedated?

MR. SANTACROCE: Well, the procedure --

THE COURT: Well, I --

MR. SANTACROCE: -- has started. The implication is she -- he was under anesthesia.

THE COURT: All right. Well, under her theory where Mr. Mathahs left the room.

BY MR. SANTACROCE:

Q His patient was anesthetized, left his room, ran over to Stacy Hutchinson who was nearing end of her procedure, carried with him an infected bottle of propofol that he had just been using on the person that was sedated, somehow injected Stacy Hutchinson with that infected bottle and then ran back to his room and infected Rodolfo Meana. Is that your theory?

A No. I don't -- I don't -- I don't know that he ran back.

Q But could have walked? What was the theory? He would have had to carry the infected bottle from Stacy

Hutchinson, which he brought over from a sedated patient that he used that infected bottle on, brought it back and reused it on Rodolfo Meana, then it brought it back to the other room, missed a patient and infected another one. Is that your theory?

A He could have infected more than one vial.

Q Okay. And he carried those back and forth to room to room even though his name doesn't appear on the anesthesia records as the CRNA?

A He was the CRNA on the patient right after Stacy Hutchinson.

Q Uh-huh. And then went back to his room? And that patient by the way did not report being infected, correct?

A That's correct.

Q I'm sorry. I'm almost done. So, I'm just reviewing. Okay?

A Uh-huh.

Q That's all I have. Thank you, ma'am.

THE COURT: Redirect.

REDIRECT EXAMINATION

BY MR. STAUDAHER:

Q Ma'am, in -- Mr. Santacroce just went over a number of things with you regarding the times and the charts and all of that and you've seen the charts, you produced the

charts, correct?

A That's correct.

Q Now, the times we've looked at the procedure times, there's an hour off on at least some of them on one of the dates, correct?

A Correct.

Q And on others they're -- they're matching up with 11 minutes each time on some, correct?

A Yes.

Q And they're 30 minutes each time, then 31 minutes each time, right?

A Yes.

Q And you said that there was no indication whatsoever that the rooms were in any way synced up to the exact times between the rooms.

A That's correct.

Q So in order to rely on the whole thing that Mr. Santacroce just went through with you, wouldn't you have to think an -- that all of those times are accurate? That you would have to rely on the accuracy of those records.

A Yes.

MR. SANTACROCE: Your Honor, I'm going to object to him impeaching his own evidence.

MR. STAUDAHER: I'm not impeaching my own evidence.

THE COURT: I don't think that's what he's --

MR. SANTACROCE: They prepared this chart, they relied on this chart, they caused us to rely on the chart.

THE COURT: All right. I -- that's overruled. I don't think that's what he's trying to do.

BY MR. STAUDAHER:

Q That chart is simply basically a regurgitation of what is contained in the records, is it not?

A That's correct.

Q I mean, you didn't do any sort of massaging of those times or anything like that.

A No.

Q In fact, I think you testified that you actually had to -- you did multiple -- multiple iterations of sorting to try and figure it out.

A That's correct.

Q And you couldn't do it almost; is that right?

A That's right. It didn't make sense.

Q So you went with what you thought was the most accurate of those times.

A Yes.

Q And I even pointed out on the two days that we're talking about, there are problems with that date.

A That's correct.

Q Now, were you aware also even for that time that you used to sort all those patients, that it was likely the

nurse or somebody else in the room who put down the start time of the procedure, the initiation of the note that the doctor came in later on?

A I didn't know who filled out the charts.

Q That's fine. You just used that information.

A I just used that information.

Q Okay. So again, you're having to rely on the accuracy of the record itself and the times in that record to even order the people appropriately.

A That's correct.

Q You said that you had knowledge, at least through the investigation, that there was pre-charting, there was fabrication of stuff that was done, you know, before people actually had their procedures done.

A That's correct.

Q And you know from just looking at the physical times on the charts that those patients couldn't have been there for the length of time that it said it on the chart itself, correct?

A That's right.

Q I mean, there's not enough hours in the day.

A That's right.

Q Now, I want to step back a little bit to -- with regard to some things that Mr. -- or excuse me, Ms. Stanish said to you. And remember that whole thing that she went

through with the issue of whether or not there was inventory in 2006 or how much inventory there was, all of that, correct?

A That's correct.

Q Now, all of the charts that we -- we displayed here, did any of those have 2006 data in them?

A No.

Q They were all 2007.

A Yes.

Q If I understood you correctly, 2006 you looked at to see if, in fact, there was inventory left over and maybe how much that was.

A That's right.

Q So that you wouldn't skew your numbers wrongly.

A That's correct.

Q Now, Ms. Stanish came up to you and said, well, gosh, there's some missing months in 2006; is that correct?

A That's correct.

Q And -- let's see, could you find that -- that one record for me? With regard to that, I mean, I assume you went back and looked -- and looked whatever available information there was at the time --

A Yes.

Q -- correct? And I'm going to show you a couple of things.

MR. STAUDAHER: May I approach, Your Honor?

THE COURT: Sure.

BY MR. STAUDAHER:

Q And this is the medical supplies analysis that's proposed State's 163. You were shown some things on it. I'm referring to Bates number 690.

MS. STANISH: I'm sorry. What Bates stamp number?

THE COURT: 690.

MR. STAUDAHER: Bates number 690.

BY MR. STAUDAHER:

Q Now, on this -- I just want to ask you a couple of things and this relates to back in 2006 --

MS. STANISH: I'm sorry. Mr. Staudaher, my Bates stamps are different then yours. Could you please give me the exhibit number or attachment number?

MR. STAUDAHER: I don't know.

THE COURT: Well, this sounds like a good time to take our evening recess and in the break this evening perhaps counsel can get together and coordinate this exhibit to --

MR. STAUDAHER: Sure.

THE COURT: -- so -- because I'm assuming you're going to have -- finish up tomorrow with your redirect and that may involve that particular exhibit. So get together and make -- and sort out the Bates numbers so that everybody is on the same page with what we're all looking at or what you folks are looking at.

Ladies and gentlemen, we will reconvene tomorrow morning at nine a.m. And during the evening recess you're reminded that you're not to discuss the case or anything relating to the case with each other or with anyone else. You're not to read, watch, listen to any reports of or commentaries on the case, person or subject matter relating to the case. Do not do any independent research by way of the Internet or any other medium. And please do not form or express an opinion on the trial. We may be staying a little bit late, so if anyone has any problems or issues with that tomorrow just let the bailiff know and then, of course, he'll inform me and then we can coordinate our witnesses and whatnot. All right. Everyone, notepads in your chairs, follow the bailiff through the rear door.

Ms. Sampson, do not discuss your testimony with anyone during the evening recess. Okay?

THE WITNESS: Okay.

(Court recessed for the evening at 4:56 p.m.)

CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

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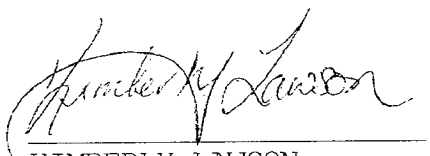

KIMBERLY LAWSON

syringe and they inject it into a patient and they go back into that vial --

Q Oh, no, that's not my hypothetical. I'm sorry. I don't explain myself well. These numbers -- this -- these -- do I got the right one up there? No, I don't. Your chart for 154, you know, we were talking about assumptions and the third assumption I was trying to elaborate on deals with your ratio. Your assumption is that they are only using one vial. As I said, size doesn't matter in your analysis. If -- I mean you don't have in here a breakdown of 20 milliliter and 50 milliliter vials, do you?

A No.

Q You could have if you wanted, correct?

A Possibly, yes.

Q But because you were using the CDC recommendation best -- for best practices, what I'm trying to understand and make sure I'm correct in this and that the jury understands, you are assuming when you say 1.9 -- 1.99 patients per vial, you are assuming that whether it's a 50 milliliter vial, whether it's a 20 milliliter vial, that is only going to be drawn from one time.

A For -- it will be drawn as many times as they need to inject one patient, one vial for one patient.

Q So you're saying -- is it your assumption that I can take a syringe and enter a 50 milliliter vial five times

to inject it in the same patient?

A Yes, and then you throw the vial away.

Q And can I -- and where do you get that understanding from?

A That would be using one vial for one patient with one syringe.

Q And same with the 20 milliliter vial. If I am doing one -- one patient, one syringe, I can go into the vial two times to empty out that?

A If you use it for one patient and don't reuse that vial on another patient.

Q Okay. Is that your interpretation of what the CDC, one vial, one syringe, one patient is?

A Yes.

Q Okay. And -- all right. This is a total number of -- of vials, right?

A Yes.

Q Doesn't matter if it's a 20 or a 50, it's just a total?

A That's correct.

Q And you divided that by the number of patients -- or I'm sorry, you divide -- you put 11,844 vials of propofol into 23,576 patients in order to come up with the 1.99 ratio, right?

A That's correct.

Q If -- if half of these vials let's say are 50 milliliter -- well, I guess we're getting into the syringe discussion now, right? Let's talk about your syringe analysis. Okay?

A Okay.

Q This is where you talked about a developed ratio. Please walk us through what you mean by that and I -- okay?

A Okay.

Q You get a statistical analysis and as I understand it, your statistical analysis is based on two days, correct?

A I didn't do a statistical analysis.

Q Okay.

A I took two days, the two days that we have --

Q Okay.

A -- of the infections and I counted how many injections there were off of those spreadsheets that I did.

Q Okay. And I -- when -- when you look at those spreadsheets and -- we're talking about that gigantic chart, right? I was a bit confused because your -- just for instance, when you testified in the grand jury, how many injections did you state -- testify occurred on September 21st, 2007? Do you need your grand jury testimony or is it --

A That would help.

Q -- in your -- is it in your report?

A I'm looking through my report, it might be.

Q Okay. There's a -- did you find the syringe analysis in your report?

A Yes, I did.

Q And what was your analysis of how many injections occurred on September 21st, 2007?

A I have on September 21st, 2007 there were 63 patients who received 64 procedures. So I counted the number of patients and I counted the number of injections. There were 185 injections given as documented by the CRNAs. I determined a ratio, so it would be 2.93 injections per patient.

Q And give me the figure that you came up with for -- for July.

A July 25th there were 65 patients who had 67 procedures and one patient file was missing so I could not count that one. Sixty-four patients received propofol injections and for that day there were 123 injections.

Q Now, those figures I think were different than what you stated on direct exam, can -- am I right?

A I was counting the number of syringes not injections.

Q Explain that to me and let's just use Mr. Rubino as an example. Okay?

A Okay.

Q Your calculation, this ratio that you -- in your analysis you're telling me you -- you counted syringes. How many syringes, based on your counting, were used for Mr. Rubino?

A Each syringe held 100 --

Q Uh-huh.

A -- milliliters so he would have used two syringes.

Q You didn't go -- you did not in your -- to get 100 -- are you saying -- if you were to count all of these, which I'm going to ask you to do during a break I'm afraid, did you initially in deriving your ratio count each one of these doses?

A Could you -- could you restate that?

Q I'm sorry. I will. Did you count each dose as an injection? And maybe I need to explain my terminology because, I mean, I read your grand jury testimony and I understood you to use the term injection.

A Yes.

Q But if we were to count up each of these, and I'm going to use the term dose, I'm going to say 50, that's a dose of propofol, 50, 50. Okay?

A Okay.

Q What I'm asking you, when you come up with 185

injections, did you merely count, one, two, three, four, five, each dose?

A Yes. I counted each one of those as an injection.

Q All right. So I'm clear, then what you just said -- so for instance, with patient number one, it would be three injections, correct?

A Yes.

Q And so that's exactly what I was getting at. Three -- three -- does that mean three syringes?

A No.

Q Okay. Because you said there were 185 injections.

THE COURT: So an injection is a dose?

THE WITNESS: Yes.

THE COURT: Okay. So like, let's just take the top one here. It's 50, 50, 50 -- or 60, looks like a 60. So you say that there are three injections or three doses. The first two are for 50 and is the third one, is that a six or a five?

THE WITNESS: I can't tell from the screen.

THE COURT: I can't tell from the screen either. Okay. And then you -- you would count this as two syringes because a syringe holds 100, so you add 50 and 50 and that's 100. And then you have this third number, which is either a 50 -- I guess it's a five, 50 and so that would be your second

syringe, correct?

THE WITNESS: That's correct.

THE COURT: And then you go down to the next one and you've got 50 plus 50 equals 100, so that's one.

THE WITNESS: One syringe.

THE COURT: Okay.

THE WITNESS: Two injections.

THE COURT: And two doses. And then the next one you say 50 plus 50 is one -- is 100 --

THE WITNESS: Syringe.

THE COURT: -- equals one syringe and then the next one, 50 plus 50 is one, plus 50 plus 50 is two, plus the 50 out there by itself and so that's three.

THE WITNESS: Three.

THE COURT: Okay.

MS. STANISH: Can we take a break so that she can --

THE COURT: Well, I want to make sure I understand.

MS. STANISH: Well, that's why I think it's appropriate to take a break --

THE COURT: Okay. We can take a break because we needed a break anyway.

MS. STANISH: Right. And then I'm going to ask the witness to actually count. It'll take a while so --

THE COURT: All right. Ladies and gentlemen, we're going to take a break, a little over 10 minutes. During the

break you are reminded that you're not to discuss the case or anything relating to the case with each other or with anyone else. You're not to read, watch, listen to any reports of or commentaries on this case, any person or subject matter relating to the case. Don't do any independent research and please don't form or express an opinion on the trial. Notepads in your chairs and if you have questions give them to the bailiff and follow him through the rear door.

(Jury recessed at 2:57 p.m.)

THE COURT: Ms. Stanish, before we take our break is there anything you needed to put on the record? No. Okay. If you're going to ask the witness to do something or count something --

MR. WRIGHT: Do it on the record.

MS. STANISH: Oh, yeah, I do. I'm sorry, Your Honor.

THE COURT: That's all right. Before we -- my staff and I are going to leave the room, so if you need to place something --

MS. STANISH: Correct.

THE COURT: -- on the record, do it before my staff and I leave the room. Then if you want the witness to do something during the break just by herself there --

MS. STANISH: Okay.

THE COURT: -- tell her so she can use the restroom or whatever she needs to do.

MS. STANISH: Very good.

THE COURT: And then she can come back in and count or add whatever.

MS. STANISH: My -- my review of the grand jury material in Ms. Sampson's report shows that she based her analysis on each dose, although the term injection is used in report. I sat there one Saturday night late counting and I thought my math came to 185 doses as opposed to -- you know, I'm going to break these down as Mr. Staudaher did in his question, to milligrams to fill up a syringe. But my -- I'm trying -- I'm trying to understand these ratios and I -- my understanding of the ratio that Ms. Sampson used was based on dose, not milligrams that a 10cc syringe can hold.

So I want to see if I'm -- my counting was correct so I'm going to ask her during the break, after a bathroom break for you, Ms. Sampson, to count. You know, let's just pick the September 21st one and count those doses to see if that 185 injection term that you're using is -- is dose. I just think it's a matter of recollection but I want the --

MR. STAUDAHER: I'll stipulate it's dose --

MS. STANISH: -- record to be clear.

MR. STAUDAHER: -- I mean a dose and injection are the same thing.

THE COURT: Right. So -- just so --

MS. STANISH: No, they're not.

THE COURT: Well, wait. Well, I --

MS. WECKERLY: It's not the same as a syringe though.

THE COURT: No, so --

MS. STANISH: Right.

THE COURT: -- just so we're on the same page Ms. -- this is how I heard your testimony. So three doses, two syringes on the first line?

THE WITNESS: That's correct.

THE COURT: Okay. And the second line is two doses, one syringe?

THE WITNESS: Yes.

THE COURT: And the third line is two doses, one syringe?

THE WITNESS: Yes.

THE COURT: And the -- so that's how you -- that's how you did it.

THE WITNESS: Yes.

THE COURT: And by dose, dose equals injection.

THE WITNESS: Yes.

THE COURT: Okay.

MR. WRIGHT: Okay. And so she already did -- you concluded there's 185 if we added every 50, 50, 60, 40, those all total 185 on that page, right?

THE WITNESS: Whatever I said they were.

MR. WRIGHT: Right?

MR. STAUDAHER: Yes, I agree with that.

MS. STANISH: Right, but you're making --

MR. WRIGHT: So she already added them all up.

MR. STAUDAHER: Exactly.

MS. STANISH: -- your ratio is based on injections, not the number of syringes.

MR. STAUDAHER: No, that was something I asked her to do --

MS. WECKERLY: One of them is.

MR. STAUDAHER: -- when she was up there. That -- her other thing that -- I didn't even ask her about the ratio of injections.

THE COURT: So just to make -- just so we're all clear. This -- you're assuming it's two syringes but it could have been one syringe, one time, twice into the -- twice into the vial. And by syringe you don't necessarily mean a new syringe, you mean a full syringe and then a partial.

THE WITNESS: A full syringe would have been 100.

THE COURT: Right.

THE WITNESS: And a partial would have been the 50. And I'm assuming they didn't use that partial syringe on someone else.

THE COURT: Okay. But it could have been one syringe, one patient. It could have been two syringes, one patient. You don't -- you would have no --

THE WITNESS: I don't know.

THE COURT: -- way to know that.

THE WITNESS: And that's -- yeah.

THE COURT: Okay.

MR. WRIGHT: All right. Got it?

MS. STANISH: Yeah.

THE COURT: All right. If anyone needs a break, go ahead and take it. I guess you don't have -- Ms. Stanish, so she doesn't have to count?

MS. STANISH: No.

THE COURT: Okay.

(Court recessed at 3:02 p.m. until 3:13 p.m.)

(Outside the presence of the jury.)

MS. WECKERLY: I have two witnesses out there and I don't think Ms. Stanish is done. Mr. Santacroce, are you still going to be an hour?

MR. SANTACROCE: Probably.

THE COURT: Yeah, I -- I was kind of hoping to go a little bit past five, although I know you need to --

MS. WECKERLY: Yeah.

THE COURT: We'll be done by 5:30. Is that enough time for you to do it?

MS. WECKERLY: That's -- yeah, that's fine.

THE COURT: Are you sure?

MS. WECKERLY: Yeah, that's fine. I just -- do you

want me to keep the witnesses?

THE COURT: It's -- whatever you think, I mean.

MR. STAUDAHER: I think that based on where we are and I know I've got some work left to do as well that --

THE COURT: I mean, at least let one go because --

MS. WECKERLY: Okay.

THE COURT: -- certainly we're not going to get to both of them.

MS. WECKERLY: Okay, I'll let one go.

MR. STAUDAHER: Okay.

THE COURT: Do you want to see where -- one of you, Mr. Wright and Ms. Stanish are because I think the jury's all gone to the restroom.

MS. WECKERLY: Margaret, do you know -- I'm just -- I have two witnesses out there. You -- or your not -- are you halfway or what do you think?

MS. STANISH: I don't know. I really don't. Sorry.

MR. STAUDAHER: It's my -- my inclination to let both of those witnesses go. I think we're going to take the balance of the day with -- with Nancy.

MS. STANISH: Who else is out there?

THE COURT: What do you -- well, what do -- how much -- I mean, who's out there? At least let one -- let one go and then, you know, if -- if it's -- you can always jump up and run out if Ms. -- you know, is still going on and we

haven't even gotten to Mr. Santacroce and it's then quarter of four.

MR. WRIGHT: This is going to go until tomorrow.

THE COURT: What's that?

MR. WRIGHT: This is going to go until tomorrow.

THE COURT: You think she's going to go until tomorrow?

MR. WRIGHT: Yeah.

MS. STANISH: It's --

MR. WRIGHT: Honestly, it's hardly --

THE COURT: Well, I don't --

MR. WRIGHT: -- trying to scramble the change between the grand jury and now.

THE COURT: Okay. Well, I don't know what all you're going to ask. I mean, I know sometimes you say all day and then you're an hour and we're all sitting here with nothing to do. I say that's somewhat facetiously --

MR. WRIGHT: I don't know. Maybe she's faster than I am.

THE COURT: -- but nothing to do in front of the --

MS. STANISH: Yeah. It's not like I had time to prepare the witness and Mr. Staudaher didn't either I guess. I don't know. I can't -- I can't -- it's hard to predict.

THE COURT: All I can tell you is the jury, you know, is complaining about the -- to the bailiff, you know, and

concerned about the time the trial's taking, asking to work longer days. That's all I can report, so. Ms. Weckerly has a conflict -- before you get into anything, Mr. Wright, Ms. Weckerly has a conflict this evening so I said we'd definitely be done by 5:30 so she can go wherever it is she needs to go --

MR. WRIGHT: My client -- I'm putting on the record, he can't go past five. I'm not going to put his health in jeopardy because the jury's inconvenienced. If they didn't want in the damn case, they shouldn't have got on the thing and they should have thought of things. He is not healthy.

THE COURT: Well, some did try to think of things and we're still making them serve.

MR. WRIGHT: I am not -- you can -- I'm not going to put his health at risk over the desire to get this over with. I've put it on the record time and time again.

THE COURT: Well, and first of all, we haven't gone past five a single day, so don't suggest --

MR. WRIGHT: No. I'm -- I'm not suggesting in the past.

THE COURT: Okay. But this has been a problem.

MR. WRIGHT: I'm just saying --

THE COURT: And number two, I really don't think an extra 15 or so minutes, 20 minutes is going to -- is going to put your client's health in jeopardy.

MR. WRIGHT: It was going at 9:30 or at 10:00, then they pushed it back to 9:00. Now it's going to be all nines. Now, so now it's nine to five.

THE COURT: It's not going to be all nines.

MR. WRIGHT: He's here at nine in the morning whether the jury is or not. He's at my office by eight a.m. He's staying after Court because he can't comprehend what's going on. And now you're telling me we're going to go later in the night. And I'm just telling you I'm going to stand up, tell you I'm sick and I can't go on because I'm --

THE COURT: Okay. Well, first of all, I'm reporting to you because if I were -- you know, look, the court reports to the lawyers when we have information. Do with it what you want. So I'm just reporting that, you know, because -- just be aware of it. If we learn something I communicate to you folks --

MR. WRIGHT: I'm sorry.

THE COURT: -- that's what I do. Okay?

MR. WRIGHT: Yes.

THE COURT: Because I don't want to be accused down the road, oh, well, the judge knew that the jury was complaining and, you know, when I say complaining, you know, they're concerned and they -- we tell them, if you're concerned, tell the bailiff. That's what they're doing. So like we tell them they're supposed to do number one.

Number two. You know, next week one of the juror with the dental issue has to go back to the dentist so we're going to have a late start probably Thursday of next week, meaning a late start, meaning you folks won't have to get here and the Court will do its own calendar. Court's planning on doing its own -- starting to do some of its own civil calendars, and so those days will be some later starts. If we're a later start at 10, then, you know, I'm going to maybe keep the jury a little bit later on those -- on those days. Ms. Weckerly?

MS. WECKERLY: Oh, I just -- I'm -- I -- I'm not trying to interrupt the Court, but I -- I did just want to say that based on the -- the pace we're going now, which is a little faster actually, I -- I told defense counsel that I thought we would be done with our case either at the end of the week of the 17th, which is like the, you know, 20 --

THE COURT: All right.

MS. WECKERLY: -- or like -- or two days in.

(Jury reconvened at 3:19 p.m.)

THE COURT: All right. Court is now back in session. And Ms. Stanish, you may resume your cross-examination of the witness.

BY MS. STANISH:

Q Please clarify for us something you said on direct exam. You said that you had a ratio of 2.4. What did

you mean by that? And if there's an exhibit I should throw up there that you think would clarify that, let me know and I'll throw it up there.

A Okay. It's on my medical supplies analysis on page 13. It's the Bates stamp number 547.

Q What -- what page because I -- I don't -- I have different Bates stamps than you.

A Page 13.

Q Okay. Explain to us what the 2.4 ratio means.

A I -- I -- let me tell you how I got to that ratio.

Q Please do.

A On July 25th I counted the number of patients.

Q Okay.

A I counted the number of injections. So there were 123 injections. I divided that by the number of patients, so I have 1.92 ratio of patients to injections.

Q Okay. And so what you're assuming is with each injection there's a new syringe, correct?

A Yes.

Q And is that based on your understanding of the CDC best practice scenario?

A In this case it's based on the fact that I knew they used the vials multiple times.

Q Let -- let me give -- let's just hone in. I'm

showing you Exhibit 156, which is the chart for September 21st. Okay?

A Okay.

Q And I want you to -- let's -- let's just talk about for -- this would be Mr. Mathahs as the CRNA.

A Okay.

Q And let's talk about patient -- if you would look at the chart there, number five.

A Okay.

Q Now, am I correct in understanding this chart to show that patient number five had two procedures, a colonoscopy and a endo?

A Well, I can't see what the procedures say but --

Q I'm sorry, that happens all the time.

A Yes.

Q Okay. So explain to us so that we -- just using this as an example, with the first procedure, which was a colonoscopy, patient number five, had how many injections?

A Five.

Q And how many syringes -- so that would be five milliliters, 50 milliliters of medicine?

A For each injection, yes.

Q How many -- now, we're going to go down the metric route. How many syringes do you think were used on the first -- during the first colonoscopy?

MR. STAUDAHER: Objection. Speculation, Your Honor. Used?

THE COURT: I'm sorry. Say that again.

MR. STAUDAHER: How many do you think were used --

MS. STANISH: We're talk --

MR. STAUDAHER: -- how many syringes do you think were used?

MR. WRIGHT: That's what we're doing.

MS. STANISH: Isn't that what this analysis is?

MR. STAUDAHER: It is not.

THE COURT: Well, okay. Maybe she then can -- when you -- well, let me -- let me ask this.

MS. STANISH: Okay, you try it.

THE COURT: When you say like, for example, turning back to let's just start to use the top line because that's the easiest.

THE WITNESS: Okay.

THE COURT: You say two syringes for that.

THE WITNESS: That's correct.

THE COURT: Does that mean that it's two syringes -- that two separate ones that were necessarily used or are you just meaning what?

THE WITNESS: One syringe holds 100 milliliters. So if they had 150, that, to me that would mean they used two syringes.

THE COURT: All right. Unless they used the same syringe more than one time.

THE WITNESS: That's correct.

THE COURT: In that case that would be one syringe regardless of how many times -- how many hundreds you get. Is that true?

THE WITNESS: Yes.

THE COURT: Okay.

BY MS. STANISH:

Q The -- so let me go to -- we've had testimony that Mr. Mathahs would use one syringe --

A Uh-huh.

Q -- and go in for the first dip, take off the needle, put on a new needle, go in a second time. Okay? Can you -- and you know that from reviewing interviews and such I assume?

A I don't remember that specifically, no.

Q Well, let's take as a matter of record that Mr. Mathahs testified at one point that he would use one syringe, dip, put on a new needle, dip again. Okay?

A Okay.

Q So let's go to patient number five. Mr. Mathahs, based on what I just gave you as an example, would have gone into -- would have -- would have done one 50, 50, 50, 50, 50. He would have taken one syringe, which is 100 --

which is 10 -- 10cc --

A Uh-huh.

Q -- or 100 milliliters, right?

A Yes.

Q And so what he would have done was for the first dose, put the syringe in the hep-lock, right?

A Yes.

Q And then squeeze out 50 -- what is that, milligrams or milliliters rather --

A Milliliters.

MR. STAUDAHER: Actually milligrams, Your Honor.

A Milligrams.

BY MS. STANISH:

Q And then wait a bit and then same syringe in there, put in the next dose. Now that syringe is empty, correct? 50, 50, it's empty.

A Correct.

Q Then he would take off the needle, put on a new needle, go into the -- let's just assume we're using a 50 milliliter vial here because I think that's what the evidence was and he would -- he -- he'd give the first 50 milliliter dose, correct?

A Yes.

Q And then 30. He'd have some left over.

A You're talking this patient line?

Q I'm just going through -- oh, I'm -- did I jump on you? I'm so sorry.

A Yes.

Q My bad, my bad. We're right here. It would have been another 50. He would have repeated the same process, correct?

A Yes.

Q And then he would have gone in again?

A Yes.

Q And then he's -- he's working on the same patient for the next procedure, same patient and he would have repeated that process, correct?

A With the same syringe?

Q According to his testimony it -- he said that he would reuse the same syringe, put on a new needle in between.

A So let me -- let me make sure I have this right. He would --

Q Okay.

A -- use one syringe for --

Q For one patient.

A Okay. For -- for one patient. So you're talking about the one patient, number five, who had --

Q Right.

A -- the two procedures?

Q Right.

A Okay. You're not talking about going from patient number five to the next one?

Q We're talking about patient number five right here --

A Yes.

Q -- 50, 50, 50, 50, 50. Second procedure the same amount of propofol, correct?

A Yes, one syringe.

Q One syringe.

A Okay.

Q And if we were to add up these milligrams, what size vials would he had to have used or we don't know? How much propofol would he have had to use?

A Five hundred milligrams.

Q Is that 50 milliliters?

A I don't know.

Q He would have had to use -- he would have had to use a 50-milliliter vial for that patient?

A I'm assuming he would, but I -- I'm honestly not -- this is not my area of expertise, milliliters and --

Q No, I'm not asking you to. I mean, you did the analysis and to be clear, your analysis is based on one syringe, one patient, one vial, correct?

A Right.

Q But the reality is, there's no dispute that the

clinic was multi -- was using the syringe for multiple people, correct?

A Correct.

Q But each CRNA had a different technique to administer the propofol, correct?

A I believe that's true.

Q From your understanding.

A From my understanding I believe that's true.

Q And what I'm trying to show is that the -- in this example, Mr. Mathahs can use one syringe, one vial, empty it out on one patient by using the same syringe, correct?

A That's correct.

Q Your -- am I correct in understanding that your analysis does not presume using a vial of propofol and prefilling five syringes, 50 milliliter?

A You're correct. I didn't presume that. I -- I went under the assumption of one vial, one syringe per patient.

Q So if it's Linda Hubbard, for instance, or even Mr. Mathahs, as I recall his testimony, said that he prefilled a bunch of syringes in the morning. Your analysis does not take that into account?

A That's correct.

Q So if we were -- if we had evidence, we have people testifying that I have a 50 milliliter vial and I

prefill five syringes and I do that three times over so I have a bundle of 15 and I've, you know, swabbed the top of the vial each time I filled the syringe, your analysis does not account for that.

A That's correct.

Q And your analysis does not account for if I have a -- a 20 milliliter vial and I'm going to put -- use one syringe to go in there two times to treat the same patient, is that accounted for in your analysis? Same syringe --

A Uh-huh.

Q -- I'm sorry, same vial --

A Uh-huh.

Q -- one syringe --

A Uh-huh.

Q -- one patient, I go in two times. Is that okay on -- is that encompassed in your analysis?

A No, because I took one syringe per injection because I counted the number of injections because I knew they were multi-using the vials.

Q That's not disputed.

A Right.

Q It comes down to whether your analysis basically is a depiction of what would have happened if the personnel used the CDC best practice versus prefilling the syringes from a vial, versus Mr. -- anybody using one vial for one patient

with one syringe, correct?

A Correct.

Q So you're ignoring what actually happened at the clinic?

A I took one vial per patient. If they had used one vial per patient and one syringe per patient, they would have had to have thrown out the used vial and not reused it. I knew they were using the vial for multiple patients, so I did this analysis to see if they had enough vials for propofol -- of propofol per patient and they did not. So then I did one syringe per -- the syringe analysis is to determine if they had enough syringes for each injection.

THE COURT: You mean for each 100 milliliters because you -- if you're only taking 50 and it's one syringe you would do two injections, correct?

THE WITNESS: If they took --

THE COURT: I mean, it looks like they didn't give them the whole 100 at a time pretty much ever according to this.

THE WITNESS: But I don't know that they didn't just fill it with 50, so I did --

THE COURT: Okay. So -- okay, so --

THE WITNESS: -- each injection was one syringe.

THE COURT: So your assumption is that if it shows 50 here, that's all they filled the syringe as opposed to filling

it 100, giving them 50 to see, okay, how is this affecting the person, oh, they're not asleep, let me give them the other 50. That was your assumption.

THE WITNESS: Yes. Each injection required a syringe.

THE COURT: Okay. So we don't know if there -- like if it's 100 in the syringe and like I said, you give them 50, see, you know, see that they're breathing, whatever. Okay, they're breathing I'm going to give them the other 50. Could have been done that way.

THE WITNESS: It could have been done that way. That's not what I based my analysis on.

BY MS. STANISH:

Q You had 130 -- you said there were 132 injections on September 21st or 185?

A Injection. I'm sorry. On July 25th there were 123 injections. On September 21st there were 185 injections.

Q Meaning 185 separate syringes were used?

A No, there were 185 injections.

Q Okay.

THE COURT: I have a question, just to totally go somewhere else. Line 16 where it says 150 milligrams, how could that be if a syringe only holds 100 milligrams?

THE WITNESS: I counted that as one injection.

THE COURT: Okay. But that -- I mean, were there

like other bigger syringes or we just don't know if the records were --

THE WITNESS: That's the way record was.

THE COURT: Okay.

BY MS. STANISH:

Q Your assumption then for patient number five would be -- based on your analysis, how many syringes would be used for the colonoscopy?

A There were five injections.

Q Are you saying --

A My analysis was based on injections.

Q When you say injections, are you saying that each injection -- does your analysis require one syringe per each injection?

A Yes.

Q Okay. So if we count up each of these what I'm going to call -- what you're calling dose injections, you're saying there are 185 injections as we go -- I mean if -- I think we stipulated, did we not, that -- off the record, that each one of these 50, 50, 50, each one is what you counted as an injection, correct?

A Correct.

Q Okay. And -- and as I'm understanding your testimony now, I think it's becoming clear to me what you did. Your -- each one of these doses or you call it, to you, a dose

is equivalent to an injection, correct?

A Yes.

Q And -- and -- and each injection requires a separate syringe, a new syringe.

A Yes.

Q Meaning that if there are 185 -- I'm going to call it doses, you're saying that there should have been 185 syringes used on September 21st in order to comport with your understanding of the CDC best practice rule?

A Yes.

Q Okay. I don't want to lose that. Now, so as I -- now -- that's why I wanted to go back to this. Going back to patient number five then, Mr. Mathahs's patient here with the colonoscopy, you would have said it required -- there's one, two, three, four, five injections for the colonoscopy, correct?

A Yes.

Q Meaning Mr. Mathahs should have used five separate syringes.

A Yes.

Q And then when he did the -- the endoscopy on patient number five, he should -- there -- we have this chart showing one, two, three, four, five 50 milligram doses, it should have been another five syringes.

A Yes.

Q Ten altogether for patient number five.

A Yes.

THE COURT: Did anyone -- or did you at least, talk to an anesthesiologist or someone to find out, well, is it normally that they'd only have 50 in a -- in a syringe or that they'd have 100 in a syringe and be giving it at 50 increment doses because it seems pretty consistent here that the first dose is always 50 or did you just look at the record and say that was just 50?

THE WITNESS: I looked at the record and whatever it said, because some of them were 100.

THE COURT: Right, but I'm just saying and there's this big one here for 150 on line 16. But we -- okay. I'm just -- I just -- it just occurred to me, but I'm going to get out of Ms. Stanish's way now. Ms. Stanish I'm -- I'm --

MS. STANISH: I have to follow you, Your Honor.

THE COURT: -- I'm out of the way.

MS. STANISH: No, thank you for your help.

BY MS. STANISH:

Q Just to follow what Judge Adair pointed out there though, the -- we had testimony, for instance, I think it was Ralph McDowell who said he would take one syringe, fill it up and if Mr. McDowell was doing this patient and maybe even Mr. Mathahs, 50, 50, I'd have the syringe in the hep-lock, I put in 50 milligrams, patient is drifting off,

looks to be asleep, I wait a little bit, syringe is still in there, I give -- I empty out that syringe.

Now a 100cc syringe is empty. So what I'm suggesting to you is that with respect to patient number five, you could have instead of five -- instead of 10 syringes, number one, you could have -- if we use the Mathahs way of one syringe, one needle, I can use one vial, a 50 milliliter let's say, and dip into it with the same syringe, changing out the needles, swabbing the top each time and -- and treat that patient, correct?

A I took this to be one syringe per injection per CDC and I don't --

Q Okay. And I just --

A -- I don't know how every CRNA did it.

Q Correct, you don't. But just to show that your -- your one syringe for each dose does not take into account the technique that Mr. Mathahs employed where I'm going to use one syringe, take off the needle between each -- each time I empty out the syringe. What I'm suggesting is Mr. -- if we use that technique, your -- your -- your assumptions don't account for Mr. Mathahs going into the vial -- using one syringe to treat this patient number five.

A No.

Q Nor does your analysis take into account Mr. -- I think it was Ralph McDowell who says I prefill my syringes

and I put the syringes -- or maybe that was Vincent Sagendorf. I might have my CRNAs mixed up. But I'm not just going to -- I'm prefilling my syringe, 100cc's, and I am going to administer 50, I'm going to wait, syringe is still in there, I'm going to do another 50, then I'm going to take it out. Maybe I grab another syringe and repeat that process. Your analysis doesn't take into account that technique of -- I think it's called trication. I'm not sure what the term was where I put the syringe in, give a portion at a time.

A No.

Q Your assumption is that the CRNA draws up only a half a syringe and administers it and then throws it away, gets a new vial or is it the same vial? Which -- I'm trying to understand your assumptions.

A If it's one patient, one vial per patient.

Q Okay.

A One injection, one syringe.

Q Okay.

MS. STANISH: Court's indulgence.

BY MS. STANISH:

Q All right. Based on your analysis, your presumption that each one of these doses represents an injection, you could take all the anesthesia records that you analyzed for calendar year 2007 and you would count each one of these as a separate injection, each one requiring a

separate syringe, correct?

A I didn't take all the anesthesia records, no. I took the anesthesia records for the two days of the infection.

Q No, but I mean the -- all the medical records for 2007 are sitting somewhere in Metro custody, are they not?

A At the time they were, yes.

Q Right.

MR. WRIGHT: How do we get the year total?

BY MS. STANISH:

Q If we wanted to know how many syringes were used in -- how many syringes were used per -- in calendar 2007 using your model, you would actually have to get those records and count each and every one of these doses, correct?

MR. STAUDAHER: Objection, that mischaracterizes her testimony. She never equated those with actual syringes in the records.

THE COURT: No. I think the question's all right. She can say no or yes or -- I mean if that -- if that's wrong she can point that out.

BY MS. STANISH:

Q Okay. We're -- we're trying to get to how many syringes were used at the clinic in 2007, right? I mean, you did this -- one -- Exhibit 152 is syringes to patients in 2007, correct?

A Yes.

Q Okay. And the -- all -- and you came up with this number of syringes based on what you could figure out to be vendor -- the responses of the vendors to your subpoena --

A Yes.

Q -- subpoenas, correct?

A That's correct.

Q Couldn't you have also calculated the number of syringes used by counting each of the doses --

MR. STAUDAHER: Objection. Speculation, Your Honor.

BY MS. STANISH:

Q -- for the year?

MR. STAUDAHER: I mean, she can't speculate as to the number of syringes used if -- it's -- it's not part of her analysis.

THE COURT: She can say that then. Do you understand Ms. Stanish's question?

THE WITNESS: No, I don't.

THE COURT: Ms. Stanish, state your question in a different way --

MS. STANISH: Yeah, I'm going to try to wrap it up. I'm sorry.

THE COURT: -- then. I think it's confusing.

BY MS. STANISH:

Q I -- you know, you based -- this has been presented to the jury as a representation of patients to

syringes. We've already discussed what the assumptions are that underlie this. What I'm saying is another technique that you could have used, just like you did for September 21st and July 25th, you could have counted the -- what you are calling injections for each day of the year rather than this.

A I --

MR. STAUDAHER: Objection, Your Honor. That's -- again, it's --

THE COURT: Yeah. I mean, if you don't agree with that you can say that you don't agree with that and explain why.

THE WITNESS: I didn't do that because I developed a ratio, which we talked about before.

MR. WRIGHT: What ratio?

BY MS. STANISH:

Q Explain that ratio to me.

A Okay. The ratio I developed was based on the two days of the infections. The Shadow clinic -- and my reasoning for that was the Shadow clinic did the most procedures and the two CRNAs who were -- there was Mathahs and Lakeman and Linda Hubbard. Mathahs and Lakeman did the most procedures at Shadow and then Linda Hubbard I took as probably representative of the others, with a different technique.

Q Okay.

A So I developed a ratio based on the number of

injections for those two days with three CRNAs. I averaged the two days of the syringes -- or the -- I averaged the two numbers of injections to determine how many injections each patient received during their procedure.

Q And what's this -- what is this average ratio between the two days?

A That's the 2.4 number we discussed earlier.

Q Okay. So -- and that -- and then you took that number and you did what with it? You multiplied that by the number of patients?

A I multiplied each patient by 2.4 for 2006 and 2007.

Q Which --

A So in 2006 there were 22,374 patients at both clinics --

Q I'm sorry. 22,000 what?

A 374.

Q Uh-huh.

A They ordered 31,100 syringes. So the most they had was 31,100 syringes. So they should -- to a -- to -- to match the ratio that I developed, they should have ordered 53,698 syringes to give every patient 2.4 injections with a new syringe.

Q And then in 2007 -- I guess what I'm trying to get at, for 2007, because the -- this is the document we have

up here that's basically showing patients and syringes, but what you're talking about is something different, is it not or is it?

A I think this chart -- if you could move it over so it's centered.

Q Oh, sure, uh-huh.

A This chart is the number of patients and the number of syringes that they ordered.

Q Okay. Do any of these charts that have been introduced into evidence reflect what you just described to us about this ratio?

A No, I was answering your question.

Q Okay, thank you. Now, so what I understand -- but you are talking about the 2.4 ratio that was discussed on direct?

A Yes.

Q All right. And so now we're getting to it. That ratio comes from -- you're adding up the number of injections, the doses --

A For those two days.

Q -- and then adding them together and coming up with 2.4. And then am I to understand what you did was take the number of -- the total number of patients and multiply it by that ratio?

A Yes.

Q And what do you come up with when you do that?

A Well, in 2006 they should have ordered 53,698 syringes to give each patient 2.4 syringes.

Q All right. Now, this is somewhat of a statistical analysis, is it not?

A I don't think so.

Q Well, if you took -- your -- how many workdays are in a year? You -- you said -- you assumed that there were 250 --

A Four.

Q -- 54?

A Uh-huh.

Q And what -- if I'm understanding your analysis, what you did was you selected the two dates that are part of this indictment and you derived this 2.4 ratio, right?

A Uh-huh.

Q And then you took the -- all the patients seen in the calendar year and multiplied it by the ratio that you got from these two days, correct?

A Yes.

Q Okay. And I guess, you know, I don't know much about statistics other than what I heard the other day when Mr. Staudaher was interviewing I think it was Dr. Schaeffer about her analysis of a survey and I understand statistical analysis to require a fair sampling, enough number of days

before you can extrapolate how many syringes that were going to be --

MR. STAUDAHER: Your Honor, I'm going to object at this time. She said she did not do a statistical analysis and this document that's up on the screen does not reflect that.

THE COURT: Well --

MS. STANISH: Well, we're not -- I'm not talking about --

MR. STAUDAHER: It's a mischaracterization.

MS. STANISH: -- the document. I'm talking about --

THE COURT: Okay. She can ask the question and if the witness doesn't feel that she can address the question then she can say that.

BY MS. STANISH:

Q What I understood you do -- to do was take two days out of 254 procedure days, two?

A Yes.

Q They were not randomly selected days, correct?

A Correct.

Q And you, for both calendar year 2006 and 2007, you multiplied the number of patients seen for the respective years by that ratio, correct?

A Correct.

Q And so those weren't randomly selected days and it was only two as opposed to 30 days that might have given

you a more fair sampling of how the syringes were -- how the doses and syringes were used. Do you understand what I'm saying? Do you get that?

A I don't agree with fair because of the number of procedures that were done at Shadow and the two CRNR -- two CRNAs who were on both of those days, plus Linda Hubbard who had a different technique I felt was pretty representative of what had happened overall at the clinic.

Q But despite those differing techniques, these charts at least that we're seeing, don't reflect that at all.

A What charts are we seeing?

Q Never mind. I'll withdraw that question. Do you have the officer report up there?

A No, I don't.

Q Okay. I'm sorry, I took that from you. I'm going to move on to another topic. I want to talk about the price of propofol. Okay?

A Okay.

Q And you -- give me a minute to -- in case you need to refresh your memory, I want to run this up to you, all right?

A Okay.

Q At the time of the -- you analyzed the invoices around the time -- that also included the time frame of the infection, correct?

A Could you say that again?

Q You analyzed -- you put into your spreadsheets and saw the invoices that related to the price of propofol, correct?

A That I got from the vendors, yes.

Q Okay. Isn't it correct that the price of a 20 milliliter vial and a 50 milliliter vial would be the same per milliliter?

A I don't know that.

Q Take a look at officer report page 58 and I'll point it out to you so you can read it to yourself. You collaborated with Detective Whitely, did you not?

A Yes, I did.

Q I saw your name on the report, I just wanted to clarify that.

A Yes, I did.

Q All right.

A Okay.

Q What is the price -- let me put this here so I can take note. Does that refresh your memory on what the investigation showed the price to be --

A Yes.

Q -- at the time of the infection?

A Yes, it does.

Q What was the price of the 20 milliliter vial?

A A 20 milliliter vial was $2.28 per vial.

Q And what was the price of the 50 milliliter vial?

A Five dollars and 70 cents per vial.

Q I guess we have to -- I've got to figure out the math here. If I do two point twenty-eight --

MR. STAUDAHER: What page are you on, Counsel, just so I know?

MS. STANISH: Page 58 of the officer report.

THE COURT: So the 20 milliliter vial cost $2.28?

THE WITNESS: Yes.

BY MS. STANISH:

Q And there's 20 milliliters -- I'm trying to come up with the price per milliliter, okay?

A Okay.

Q So if it's --

MR. WRIGHT: Just go two and a half times 2.28.

MS. STANISH: I'm a history major.

THE COURT: No, two --

MS. STANISH: I guess I was just going to divide it by --

MR. WRIGHT: Two and a half vials equals a 50. So two and -- 2.5 times 2.28 ought to be 5.70.

BY MS. STANISH:

Q You figure it out. How much is it per

milliliter? You're the financial analyst, tell me what numbers to punch in.

A Two point 28 divided by 20.

Q Which is what I was doing. What does that equal?

A .114.

Q Per -- per milliliter then?

A Yes.

Q So 11 cents per milliliter; is that right?

A Yes, to round it -- round it down.

Q Okay, thereabouts. And then if I want to do it for the 50 milliliter, 5.70 divided by 50 milliliters, it's the same amount, correct?

A Yes.

Q So at the time of the infection the two vials of propofol cost the same --

A Yes.

Q -- per milliliter?

A Yes.

Q The bite blocks, just real quick on that. You did -- your analysis only took into account the purchase orders for 2007, correct?

A I looked at 2006 also.

Q Okay, 2006. Did -- were you aware -- were you made aware that Dr. Carrera said that they had reusable bite

blocks at one time?

A No.

Q Do you know if any -- well you -- the search was done on March 2008, so you don't have any way of capturing whether there were reusable vials somewhere in the inventory?

A Do you mean reusable bite blocks?

Q I'm sorry, bite blocks.

A No. I don't know about reusable bite blocks.

Q Did -- and when you -- when you did your subpoenas of vendors, did you request supply records for 2006 and 2007 only or did you go back further?

A No, I did 2006, 2007 and 2008.

Q All right. Did you look for previous years to discern whether they purchased reusable vials?

A No. Bite blocks, no, I did not.

Q My bad. Bite blocks. And the -- and quickly just on your financial analysis, as I understand the CRNA account analysis, you only subpoenaed the checks that were made payable to Dr. Desai, Carrera, and Carrol; is that correct?

A That's correct.

Q Did your analysis include the monies paid to other doctors?

A No.

Q Did your analysis include the monies that were

transferred from the CRNA account into the gastro account to be used for other salaries and expenses?

A No.

Q But you -- there were transfers, were they not? I thought I heard you testify about transfers.

A There were transfers from the 2007 partnership account and the general account were deposited into the Wells Fargo account for Dipak Desai Chartered. And those were the -- and then those funds were withdrawn. I did not count those funds because it would have been the same money.

Q Okay. But -- so did you follow the money from -- did you follow money that was in the CRNA account that went to other accounts?

A I believe the only payments went to doctors from the CRNA account.

Q You don't see transfers into the gastro fund?

A I don't remember.

Q Okay. Do -- did your analysis of monies paid to Dr. Desai take into consideration his investment into the corporation, into the business?

A No. I just looked at the money that was taken out.

Q All right. You -- you didn't see if he loaned money to the business and received money back from it?

A No.

Q You were aware they were expanding the -- the practice and opening up a new clinic --

A Are you talking about the clinic --

Q -- in 2008?

A -- in -- on Rainbow?

Q I am, yes.

A I was aware of that.

Q All right. You didn't review any tax records so that we could figure out how much money Dr. Desai received was money back -- returned to him for loans or capital investment?

A No.

Q Okay.

MS. STANISH: I have nothing further.

THE COURT: All right. Mr. Santacroce, are you ready?

MR. SANTACROCE: Thank you very much. How do I get these 4:00 cross-examinations every day?

THE COURT: You had the option of going before lunch when we were all hungry.

MR. SANTACROCE: Yes, you did. You gave me that option. I'm just -- I don't know which would have been better.

THE COURT: Is everyone okay without a break? Does anyone need a break? Everyone good? All right, Mr.

Santacroce, you may proceed.

MR. SANTACROCE: Thank you.

CROSS-EXAMINATION

BY MR. SANTACROCE:

Q Good afternoon, Ms. Sampson.

A Good afternoon.

Q I represent Ronald Lakeman. I have the unenviable task of going through your charts and figuring out the times. But before we get to that we're going to start with some easy stuff, okay?

A Thank you.

Q I'll take a breath. Going back to the beginning when you were assigned to this case, tell me how that procedure happened.

A I think I was informed by Detective Whitely that I was assigned to this case.

Q Okay. And you had been a -- an analyst with Metropolitan Police Department for how many years?

A I started in '94, I believe.

Q So what, 14 years?

A Yes, approximately.

Q And you had done a number of cases, correct?

A Yes.

Q And those cases are including a lot of examining bank documents?

A Yes.

Q Primarily?

A I do all sorts of things on cases, bank documents is one part of them.

Q Tell me some other things you do.

A I prepare analytical charts showing associations between people and businesses and locations. I organize documents from -- on cases and I use Excel to organize the documents. I go on search warrants. I draft up reports based on my analysis.

Q Okay. You testify in court?

A After 30 -- almost 30 years, this is the first time I've testified in a trial. I've testified in grand jury, but I've never testified at a trial.

Q Really?

A Really.

Q That surprises me. When you got this assignment or when you get any assignment, are you given some direction as to what to look for, what -- what they think the theory is, anything like that or you just looking for a needle in a haystack?

A Well, it depends on the case.

Q Well, let's talk about this case.

A I knew we were getting the case. I was not at the initial briefing. Well, I didn't know we were getting the

case. I knew there was an initial briefing and then --

Q And that's the one you weren't present at?

A That's the one I wasn't present.

Q But you sort of got -- because you weren't there you got assigned this case the next day.

A Is that how it worked?

Q That's how it works. Okay. So --

A So I knew that it was coming.

Q Okay. But what I want to know is, you know, what direction are you given? I mean, you've got how many -- you know how many documents we went through, we did it together at the warehouses, right?

A Right.

Q Millions of pages of documents.

A Yes.

Q And what I want to know is what direction you got, what are you looking for? Is there a theory of the case?

A At the time I got the document --

MR. STAUDAHER: I'm going to object to that, Your Honor, about her determination of theory of the case. She's an investigator.

THE COURT: Well, overruled. I think the question is, you know, did they tell her what to do or what kind of guidance do you get or, you know, they hand you a bunch of documents and say figure it out. Is that essentially your

question?

MR. SANTACROCE: Right, exactly.

THE COURT: What, you know, what are you told? Are you told this is our goal? Are you told we want you to look for this or what exactly -- direction, I think are you given?

THE WITNESS: I don't believe I got any direction and a lot of that is because of my experience. I was a commissioned officer for nine years in Arizona. I worked Medicaid fraud cases, so I had some medical fraud background. My first step was to inventory all of the documents in the boxes so that we could go back and locate them. As we developed more information, we would go back to the boxes and pull out the documents that might be helpful that we could use. Some things were helpful and some things weren't.

BY MR. SANTACROCE:

Q Were you told that there was a hep C outbreak and we're going to look for some criminal activity here?

A I knew it was a hep C outbreak. I don't believe anyone said look for criminal activity, but I worked at the police department and that's what we do.

Q That's what you do.

A Yes.

Q By definition, right?

A Right.

Q Did they tell you, look, we're looking

specifically at Dr. Desai, Dr. Carrol, Dr. Carrera, CRNA Mathahs, CRNA Lakeman? Did they tell you who you're looking -- who they're looking at?

A No, but I had the dates of the infection.

Q Okay. And by the dates of the infection what did you determine?

A Well, the first thing I did was schedule the patient charts from the days of the infection.

Q Okay.

A And then we knew who was --

Q But, I mean, did you identify individuals that were of interest by the infection dates?

A I don't remember if there was specifically discussions about that, about specific individuals.

Q Okay. Well you testified that you did a financial analysis and you looked at doctors that were performing procedures on that date, correct -- on those dates?

A That's correct.

Q Okay. And you got financial information about those doctors that were performing procedures on those dates, correct?

A Yes.

Q But you didn't get all the doctors, did you?

A No.

Q Why did you leave out some of the doctors on

those infection dates? You left out Mukherjee, you left out Nayyar, you left out Sharma.

A Because I think the -- the doctors were the only ones that weren't involved in our infected patients.

Q You sure about that?

A No, I'm not sure about that.

Q Okay.

A But I think that's what -- why I targeted those three.

Q Okay. But -- so if there were other ones that were involved -- I mean the theory was that there was some kind of infection transmission on those days. You hadn't developed yet who had got the infection, correct? You hadn't placed them in individual rooms, you hadn't chronologized the times that they were there, correct?

A No. When we did the search warrant we knew who the infected patients were.

Q Okay.

A So we did that -- I knew that -- I had that information at the beginning.

Q Okay. But you didn't know what rooms they were in.

A No.

Q And you didn't know what times they had their procedures in sequential order.

A Not until I did my schedule.

Q Okay. But you did have the doctors that were involved in those two days and there were more than the ones that you investigated financially and I want to know why you selected those ones to investigate financially and not the others.

A I did the financial analysis in July of 2009, so that was a year after we had gotten -- more than a year after we had gotten the case. And I wanted to determine how much money Desai -- Doctors Desai, Carrol and Carrera received the year of the hepatitis C infections. I wanted to determine who benefited financially from the operations of the Gastroenterology Center of Nevada, Desert Shadow Endoscopy Center and the Endoscopy Center of Southern Nevada. So I took those three doctors.

Q How long -- oh, I'm sorry.

A And these -- these three doctors performed the procedures at the Shadow clinic on the two days patients were infected with hepatitis C.

Q How long did your investigation take?

A We did the search warrant I believe in March.

Q Of 2008?

A Of 2008 and we turned in our reports in October or November of 2009.

THE COURT: Are you talking about your work on this

or are you talking about Metro's work on this? Or is it the same?

THE WITNESS: It's the same. I was -- I was on it from the beginning --

THE COURT: Okay.

THE WITNESS: -- and I worked on it until we turned in our report.

BY MR. SANTACROCE:

Q Again the dates? They don't have to be exact. Was it a year, two years, how --

A We got the -- we did the search warrant in March of 2008.

Q Okay.

A Okay. I can't say that I was involved much before 2000, before the search warrant. I just don't remember how much --

Q Okay.

A -- I did.

Q But how long?

A And then --

Q March to --

A -- we turned -- then we turned in our report in either October or November of 2009.

Q So let's say a year and a half, give or take?

A Give or take.

Q So along the way you're developing and uncovering evidence, right?

A Yes.

Q And who are you reporting to? Who do you say, look what I found?

A Detective Whitely.

Q Okay. Is there any involvement by the District Attorney's Office?

A Yes.

Q So are you conferring with the District Attorney's Office as well as Detective Whitely and yourself in presenting the evidence that you've uncovered over periods of time?

A Yes.

Q And are they telling you at that point, good, get some more information on Desai or get some more information on Mathahs or get some information on Lakeman? Are they telling you anything like that?

A No.

Q Okay. Are they telling you get information on propofol use?

A When you say are they telling you, who are you talking about?

Q The DA's office, Detective Whitely or anybody else that you -- that was on your team.

A Detective Whitely and I worked very closely together on this.

Q Uh-huh.

A So we would -- I would tell him if I found something. I had access to all the interview reports, but basically I worked pretty much on my own.

Q Well who told you to subpoena, if anybody did, subpoena the provider records, the vendor records for propofol?

A I did those on my own.

Q Okay. Were you aware that there was a theory floating out there that the infection was transmitted through the multiple use of propofol?

A Yes.

Q Where did you hear that from?

A The health department.

Q And that was prior to serving the search warrant, wasn't it?

A I didn't hear that from the health department prior to the search warrant.

Q Okay. Well, you said the search warrant was in March?

A March.

Q So if the health department issued a preliminary report in January, whether you heard about it or not, there

was a report with a theory floating out there that propofol had caused this infection outbreak. Are you aware of that?

A You know, now that you mention that, I believe there were newspaper articles and I would have read it in the newspaper.

Q Okay. Would that have had some effect on how you proceeded with your investigation?

A Yes, that's why I looked at propofol.

Q That's why you looked at propofol?

A Yes.

Q As opposed to other sources of transmission.

A We did look at other sources of transmission.

Q Well, you subpoenaed the vendor records for the 10cc syringes, correct?

A Yes.

Q Did you subpoena the vendor records for the 3cc syringes that were used to administer saline in the pre-op room?

A No.

Q Did you subpoena vendor records for the saline bottles that were used at the clinic?

A No.

Q So it's fair to say your focus was on the propofol.

A Yes.

Q As opposed to other means of transmission.

A For vendor records, yes.

Q Okay. You talked about -- going back to your financial analysis, that you uncovered a CRNA account, correct?

A I found it in the search warrant documents, yes.

Q And that CRNA account, did you subpoena records from banks regarding that specific account?

A Yes.

Q Can you tell me what the source of the funds for that CRNA account were?

A I can't tell you that. I don't -- I don't remember. I don't know that I even looked at that.

Q So you don't know if the funds going into the CRNA account were from insurance companies or not?

A No.

Q All you looked at was what money went out of the account?

A Yes.

Q Wouldn't it have been important in your investigation to know how the money came in before it went out?

A I didn't think it was important, no.

Q What if Dr. Desai wrote a check and put money into that CRNA account out of his personal funds --

A He may have.

Q -- you would have not known that, would you?

A No, I would not have known that.

Q All you knew was that money going out of the CRNA account was going to doctors, correct?

A That's correct.

Q Not one penny of that CRNA account went to the CRNAs; isn't that correct? That you could find.

A That's correct.

Q I'm just curious. When you executed the search warrant, did you confiscate or impound any kind of medical equipment?

A Yes.

Q What did you impound?

A We took samples of the items that they used.

Q Like what?

A Syringes, bite blocks --

Q Any propofol?

A There was no propofol there.

Q So in none of the clinics?

A No.

Q How about biopsy forceps?

A I don't remember if we took those or if there were any there.

Q Did you ever come across a tackle box?

A I don't remember.

Q But it would be in the records, right?

A It would be in the records.

Q Return search warrant?

A Uh-huh.

Q Well, we've come to that time, I regret to say, that we're going to look at these charts again and probably see if we can do it another way. Would you like to join me down here?

A I would love to join you down there.

Q I wish I had refreshments. Okay. You prepared -- let me get this thing -- you prepared two charts just like that, correct?

A That's correct.

Q One for the 21st of September '07, one for July 25th of '07, correct?

A That's correct.

Q And you said that you extracted this information from patient records, fair enough?

A Yes.

Q Okay. And you have a bunch of different categories on top. I'm assuming those all came from the patient records, correct?

A Yes.

Q And let me ask you this. Did you read any of

the grand jury testimony before you prepared this document?

A No, I did this right away.

Q Okay. So in other words, in the procedure start times, if the CRNAs -- if the CRNAs had testified that that was the time that they received the patient, in other words actually physically got the patient, you wouldn't have known that?

A No. Those -- those numbers were taken off the file.

Q Okay. Now the first thing we need to discuss is the inference that the State proposed in their direct-examination when they talked about the first patient of the day in Mr. Lakeman's room and -- Mr. Mathahs room and the first patient of the day in Mr. Lakeman's room. Do you remember it says procedure time 7:00, 7:00 --

A Yes.

Q -- right? Lakeman, Mathahs, Dr. Carrol, Dr. Carrol. And the question was asked well, how could Dr. Carrol be in the same room at the same time doing the same procedure, right?

A Yes.

Q Seemed like a problem. Do you have an answer for that?

A No, I don't have -- I don't know.

Q Well, I'm going to give you one. Okay? Let's

look at the patient charts. What number is the first patient up there?

A The patient file number?

Q Yeah.

A 87947.

Q 87947?

A Yes.

Q Actually, look at the screen. I'll put this up on the overhead. So we make sure we're talking about the same one. You want me to move that?

A Yeah. I don't want to knock it down.

Q Is that any better?

A That's better.

Q So we're talking about the same patient, correct?

A 87947.

Q And that's the first one for Mathahs's room?

A Yes.

Q Now, we're looking at the procedure start time and this is Bates stamp 2682 and this is compiled by a nurse who's in the room. Do you see that? What time does the procedure start time say?

A Procedure start time says 7:12.

Q And the procedure end time?

A I can't see, it's cut off. It says 7:23.

Q So the -- this patient in Mathahs's room, beginning of the day, he receives the patient at 7:00 just like Mr. Lakeman received his patient at 7:00, but we only had one doctor on duty, Clifford Carrol is in that room. But Mathahs's procedure doesn't start until 7:12, correct? Who's the patient on number one for Lakeman, what's the patient number?

A 80095.

Q Look at the overhead. Is that the right one?

A Yes.

Q You notice the anesthesia record says he received the patient at 7:00?

A No, I can't see it.

Q See it now?

A Yes.

Q By the end of the trial I'll be able to use this thing. See that?

A Yes.

Q Received the patient at seven, corresponds to your chart. Nurse's record, procedure start time, 7:02, correct? Look at the overhead --

A Yes.

Q -- patient chart.

A Yes.

Q Procedure ended in Lakeman's room at what time?

A 7:12.

Q Do you remember what time the procedure started in Mr. Mathahs's room?

A 7:12.

Q Ah, Dr. Carrol wasn't in both rooms at the same time, was he? He had done Lakeman's patient first, 7:02 to 7:12, went next door a few feet, started Mathahs's patient at 7:12, correct?

A According to those records, yes.

Q And according to the times you have.

A Well, I took them off the records.

Q 7:12, 7:23, 7:02, 7:12.

A Right.

Q They concur, don't they?

A They do.

Q Amazing. Okay. Well, we solved one mystery. We've got a couple more to do. Okay?

A Okay.

Q The next mystery we're going to solve is source patient Kenneth Rubino.

A Yes.

Q The question is, how does a source infection go from Kenneth Rubino, who's in a different room with a different CRNA, to Stacy Hutchinson who's done in a different room by Lakeman. Do you have an answer for that?

A Do you want my theory?

Q I don't care. If you want to give us a theory to tell us what it's based on.

A The patient after Stacy Hutchinson?

Q Uh-huh.

A Keith Mathahs went from this room to this room. I believe he finished up Stacy Hutchinson.

Q You believe that?

A I do, that's my theory.

Q Okay. Well, let's check out your theory. Stacy Hutchinson patient file. Okay?

A Okay.

Q According to the nurse's records, what time does Stacy Hutchinson's procedure start?

A At 9:55.

Q And what time does it end?

A At 10:04.

Q Okay. Now let's look at -- what's the number of the patient in yellow under Mathahs's?

A 87981.

Q What time did Stacy Hutchinson's procedure end?

A At 10:04.

Q What time does the guy in yellow start?

A 10:05.

Q And what time does it end?

A 10:16.

Q Stacy Hutchinson is already in the recovery room when this second patient after Rubino is being -- whose procedure's being worked on. Do you still hold on to your theory?

A Yes.

Q Okay. So tell me how the virus gets from this second patient after Rubino, the source patient, to Stacy Hutchinson when she's already in the recovery room.

A Because her procedure wasn't finished until 10:06, not 10:04 --

Q Okay.

A -- according to the computerized records.

Q And when was this guy finished? Or when did this guy start?

A 10:04.

Q So two minutes?

A Two minutes.

Q So you're telling me that Mathahs started a procedure, two minutes later ran over and did Hutchinson?

A He might have.

Q He might have?

A He might have.

Q Do you have documentation to show that?

A No, I don't but that was my theory.

Q Okay. You can have a seat. Are you familiar with the -- go ahead, have a seat. You worked for Metro for a long, long time or at least police enforcement, correct?

A Yes.

Q You never testified in a criminal trial but you are familiar with the burden of proof in a criminal trial, are you not?

A Yes.

Q That burden is beyond a reasonable doubt.

A Yes.

Q So when you say he might have --

MR. STAUDAHER: Your Honor, objection. If we get into that, that's an instruction by the Court later on in the trial.

THE COURT: Right. Let's --

MR. SANTACROCE: Well, if she's familiar with it.

THE COURT: Well, let's see what your question is.

BY MR. SANTACROCE:

Q When you say Mr. Mathahs might have run over after he started his procedure, although that's contrary to all the evidence in this case --

MR. STAUDAHER: Objection, mischaracterizes the evidence in the case.

MR. SANTACROCE: The evidence in the case is that -- as I perceived it and heard it, was that when an anesthetist

started a procedure he would stay in that room until that procedure was concluded. One witness, who was a nurse who worked in the facility for three days, said she saw a CRNA leave for 30 seconds.

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

THE COURT: All right. Well -- we're --

MR. STAUDAHER: -- a CRNA who testified --

THE COURT: Excuse me. I think we're getting into argument. So Mr. Santacroce, you need to ask your question. At the conclusion of the case you can argue to the jury what the evidence was.

BY MR. SANTACROCE:

Q Mr. Rubino's the source patient?

A Yes.

Q The next guy in yellow, there's a two minute differential, at least according to your interpretation of the times on the records, and I'll give you that benefit of the doubt.

A That's not my interpretation, that's from the records.

Q Well, I just showed you the other nurse's records. Shall I show you that again?

A The nurse's records are on my chart.

Q Okay. And what did they say?

A Well, I don't know that those are accurate

numbers.

Q Oh. But you know the other ones are accurate?

A From the computer I believe that those are better representation then the handwritten numbers.

Q Okay. How do you -- how do you determine that?

A Because we were told the charts were pre-charted.

Q So is -- the nurses told you that?

A I don't remember specifically who told us.

Q Possibly Detective Whitely or the DA's Office?

A No.

Q Well, you tell me which numbers on these charts are the defense supposed to rely on in presenting this case? Tell me which numbers I should rely on because I'll use those.

A The report start and end time.

Q And point to that for me.

A That's the last column.

Q So I should be using these times all the way through?

A That's what I sorted this on, yes.

Q And that's what the prosecution should be using?

A I don't know what the prosecution should be using, but this is the numbers I used when I sorted this.

Q And these are the numbers you believe are accurate?

A Those are the numbers I believe are accurate.

Q Okay. And the only difference is two minutes. So when Stacy Hutchinson's procedure ended at 10:06 according to this time and the other guy's procedure started at 10:04, that's the only difference, correct?

A Uh-huh, yes.

Q Two minutes?

A Yes.

Q Okay. And even though the record shows that Lakeman was the CRNA for Stacy Hutchinson, you believe that Mathahs somehow came across rooms and was in that room and did Stacy Hutchinson?

A I believe he was in that room during Stacy Hutchinson's procedure, yes.

Q So you believe he was in two places at one time?

A No. He could only be in one place at one time.

Q Okay. Well, how could he be in room -- his room doing what Lakota Quannah, or whoever this guy is, and be in Stacy Hutchinson's room at the same time?

MR. STAUDAHER: Objection, speculation, Your Honor.

THE COURT: Well, it's overruled. I mean, she can explain the basis of her theory. So if you can -- you can answer the question.

A The rooms were not very far apart. He could have crossed from one room to the other room.

BY MR. SANTACROCE:

Q Could have?

A He could have, yes.

Q Did you find his name on any of Stacy Hutchinson's records?

A No, I don't believe I did.

Q I'm curious about one other thing, maybe you can clear this up for me. On July 25th under Michael Washington.

A Yes.

Q See him? See the box next to his name you have an X in there?

A Yes.

Q And I believe you testified all the X's were people who were known to have hep C when they came in the clinic.

A I believe that. When Mr. Staudaher pointed it out, I wasn't sure if I had put that in. If I could see Michael Washington's file?

Q Sure. Michael Washington. Thank you. Showing you State's Exhibit Number 2. Take a look at that.

A His file -- his file shows that he did not have hepatitis off of the -- the anesthesia record. It's the back of the anesthesia record and that's where I took this information from. So I made a mistake on that X, it should have not been there.

Q You made a mistake on that?

A I did.

Q Did you make any other mistakes in preparing the chart?

A Probably not.

MR. STAUDAHER: And Your Honor, I will represent that these were -- the State made modifications to her chart. So if she wants to go back and look at her original ones I can bring those in.

THE COURT: All right. If you see something on the chart and you don't recall putting it there, then let us know that and Mr. Staudaher will give you the original chart so you can verify for yourself whether that's something you put on the chart or whether that was something the DA's office later put on the chart. Okay?

THE WITNESS: Okay.

BY MR. SANTACROCE:

Q You talked about a computer glitch. Can you tell me what you meant by that?

A On the -- on the September 21st date, one of the computers in the room had the wrong date for either the beginning time or the ending time and the other room the computers were -- did not have that glitch. So that's how I was able to identify --

Q So on September 21st one of the computers in one

of the procedure rooms had a glitch?

A Yes, on the date.

Q On the date?

A Yes.

Q Anything to do with the times?

A Not that I know of.

Q And what was the glitch exactly?

A If you could put up a report here I can show you.

Q What kind of report would you like?

A The report from the procedure file.

Q Any procedure file?

A Any procedure file from that date.

Q Okay. Sure. I'm going to hand it to you and you can point to it and I'll put it up, Rodolfo Meana.

A Okay. This is the date.

Q Well, I have to show the jury so just --

A Well, this is -- this is the date here. This is from 9:21 there and 9:21 there.

Q Uh-huh.

A So he was in the other room that didn't have the glitch. So it would be the other set of documents.

Q So it would be someone from Mr. Lakeman's room?

A I -- I don't remember.

Q Well, if I represent to you that Meana was in

Mathahs's room, you're saying that Mathahs's room didn't have a computer glitch.

A Not for the date. The other -- the other room that Mr. Meana was not in is the room that had the computer glitch.

Q Let's look at Stacy Hutchinson again.

A Here's 9:21, here's 8:21.

Q Okay. Let's show the jury that. So what was the glitch again for the jury's benefit?

A The sign date is 8 --

Q Can you mark that?

A I did, is 8:21.

Q Okay.

A The [indiscernible] is 9:21.

Q Okay. And how were you to determine that was a computer glitch?

A Dr. Carrol gave the information to the board of -- to the Board of Medical Examiners.

Q And that's where you got it from?

A Yes.

Q Did you actually in your search warrant impound the computer?

A I don't know. I didn't write the search warrant.

Q You were there.

A Yes.

Q I'm showing you State's 152. Same kind of thing that you used both supplies and numbers at Shadow and Burnham as well?

A Yes, I totaled them.

Q Why did you do that? Why did you use both -- both locations?

A Because we had information from some of the people we interviewed that they would take supplies from clinic and take it to the other clinic if they were running low. So I gave the -- the benefit of the doubt that all of the supplies were available to both clinics.

Q Okay. But this is what you had specific -- or specified for each individual clinic is this depicted here?

A As the record showed that they were shipped to each clinic.

Q Actually shipped to those clinics?

A Yes.

Q Okay. So this is in 2007. Both locations for the entire year?

A Yes.

Q Okay. So let's go back up to your graphical representation of the syringes. Let's start off with Shadow. What do we look at there?

A 14,957 patients and 17,100 syringes.

Q And at Burnham?

A 8,619 patients and they had 18,900 syringes.

Q I don't see that this has your ratio on it but, I mean, it's not enough for two syringes for each patient, correct, based on that?

A No. I have the ratio in my report.

Q And did you make a -- do a report in this particular case?

A Yes, I did.

MR. STAUDAHER: May I approach, Your Honor?

THE COURT: Sure.

BY MR. STAUDAHER:

Q Showing you what has been marked State's --

THE COURT: I have a question. I'm sorry. Does this include both -- all kinds of syringes because we've heard that there's two kinds with the needle attached and one you can remove the needle. Is this both kinds of syringes or just one kind?

THE WITNESS: This is the 10cc syringes.

THE COURT: Okay. Thanks.

BY MR. STAUDAHER:

Q And that was your understanding that those were the syringes that were used for the anesthetic portion of the practice, correct?

A That's correct.

THE COURT: And I apologize if you had already said that, but I don't --

MR. STAUDAHER: I don't think she did.

THE COURT: -- I didn't hear that.

THE WITNESS: Yeah, I haven't.

BY MR. STAUDAHER:

Q 163. I just want you to just generally flip through it and tell us if you recognize it.

A Yes, I do recognize this.

Q And what is it?

A This is my report when I did my analysis.

MS. STANISH: Your Honor, may we approach?

THE COURT: Sure.

(Off-record bench conference.)

BY MR. STAUDAHER:

Q So is this the copy of your report?

A Yes.

Q And you -- does this contain summaries of the information we're talking about now as well as the basis of other things that you looked at as well?

A Yes.

Q Okay. I'm going to leave this up with you.

A Thank you.

Q So --

THE COURT: In case if you need to refer to it.

BY MR. STAUDAHER:

Q -- if you need to refresh your memory about anything.

A Thank you.

Q Because you may have to refer to it at some point. Okay?

A Okay.

Q Now, with regard to the syringes and so forth, I think you said just a moment ago that this was based on the 10cc syringes. Why did you focus on those syringes?

A Because the witnesses that we interviewed told us that was the syringes they used for the anesthesia.

Q Okay. And again, the propofol, you looked at all of the inventory?

A I did.

Q For both clinics?

A I did.

Q Now, I want to ask you -- I want to focus you -- I know we got some -- this the entire year in this particular situation. I want to go back to those -- those two charts that we had. Have you had a chance to at some point in your analysis or -- or at any point, to go back to look at how many -- if we -- if we -- and let me give you the premise here, that a 10cc syringe, it contained 200 milligrams or 10cc, 100 milligrams rather of propofol, 10cc, fair?

A Yes.

Q And assuming that one is used and not the syringe itself is never reused, so it would be full of the propofol medication and then it would be used for a patient, that particular syringe.

A Yes.

Q You indicated that in the record -- and I'm showing 156, the top portion of that under the column medicine for the record, that this -- you actually went back and counted up off of the anesthesia records, all of the injections and what the amounts were of those injections for each patient, correct?

A That's correct.

Q And when we see, for example, this particular line, which is -- corresponds to patient 19 where I see 50, 50, 50, 30, 50, 40, 50, are those individual injections based on the record of the anesthesia?

A That's what I believe, yes.

Q And where I'm going at with this is 100 milligrams potentially could be one syringe full --

A That's correct.

Q -- right? Were you able to go back and figure out how many workdays there were in the year and -- and the like?

A I did. Sorry, it's -- it's on one of these

schedules.

Q Do -- did you ever average the number -- I mean, figure out the average number of syringes per day that were used?

A I have that here.

Q And what are you going to be referring to?

A Pardon me?

Q What are you referring to?

A I counted those up and I'm looking at my notes.

THE COURT: And these are just what, handwritten notes that you had?

THE WITNESS: Yes.

THE COURT: And then -- okay.

THE WITNESS: Okay.

THE COURT: And so you're taking that for the record?

MR. WRIGHT: Maybe it's on your syringe patient comparison chart. I -- I saw 253 days on it.

THE WITNESS: Right. That's what I was looking for.

MR. WRIGHT: Okay.

THE COURT: Okay.

MR. STAUDAHER: Okay. Well, thank you, Counsel.

BY MR. STAUDAHER:

Q So would that refresh your memory as to the number of workdays that there were?

A 253.

Q Okay. Did you take that and ever take the total number of patients or total number of syringes and figure out how many were -- were used per day?

A Well, I know how many were used on these two days --

Q Right, and I'm not talking about --

A -- that they could have used.

Q -- that right now. I'm saying if we did the calculation, take the number of patient -- let's assume one syringe per patient. How many syringes would there have been per day?

A It's in here.

Q Okay.

MR. STAUDAHER: Do you know the Bates number on that?

MR. WRIGHT: Pardon?

MS. STANISH: I don't even know what you're asking.

THE COURT: So I'm assuming on the days you -- you took away all the weekends and holidays and things like that --

THE WITNESS: Right.

THE COURT: -- to get to the number of days that patients would have been seen?

THE WITNESS: I did. It's Bates number 613.

BY MR. STAUDAHER:

Q Okay.

A Okay. And I have there were -- the number of days worked in 2007 at Shadow were 254.

Q 254?

A Uh-huh.

MS. STANISH: May I have that Bates stamp again, please?

THE WITNESS: It's 613, the grand jury number.

MS. STANISH: That's grand jury transcript you're looking at?

THE WITNESS: It's the grand jury Bates number.

MS. STANISH: Oh, all right.

BY MR. STAUDAHER:

Q Did you ever -- let's -- let's talk about patients. Did you ever then use that number to determine how many -- the average number of patients per day was at the clinic?

A I have the average number of procedures each day for 2007 at both clinics was 96.

MS. STANISH: I'm -- I'm sorry. Can you clarify that? Is that patients or procedures? What are we talking about?

THE WITNESS: Procedures.

MS. STANISH: Procedures.

BY MR. STAUDAHER:

Q So would that include upper endoscopies and

lower endoscopies?

A Yes.

Q Okay. And could those be done on more than one patient?

A Yes.

Q Okay. Do you have a number for the total number of patients per day?

A I don't.

THE COURT: So in other words, sometimes people might come in and they may get their upper endoscopy and a colonoscopy essentially at the same time?

THE WITNESS: That's correct.

THE COURT: Okay. So that would count two procedures for one patient.

THE WITNESS: One patient.

THE COURT: So the 96 isn't necessarily 96 patients, it's less than that because some people had two procedures at the same time essentially.

THE WITNESS: That's right.

THE COURT: Okay.

MS. STANISH: And, Your Honor, could we clarify whether this is between both clinics or what are we talking about? It's just not clear.

THE COURT: All right. Ma'am, which -- which clinic is that? Is it both clinics?

THE WITNESS: That would be for both clinics.

BY MR. STAUDAHER:

Q So you took the -- all of the patients that were at both clinics?

A Yes.

Q And all of the procedures at both clinics?

A I added up the procedures. I don't have it for the number of patients.

Q Okay. But if we just took the total number of patients at one clinic and divided it by the number of days, you'd have patients per day; is that correct?

A That's correct.

Q Okay. So as far as your -- I mean, clearly there were more patients and more procedures at Shadow then there were at Burnham.

A Yes.

Q So does that 96 number that you gave, that -- is that -- that's actually a lower number than you would expect to have at Burnham -- at the Shadow Lane clinic for the procedures -- average procedure per day.

A I'm sorry. Could you -- could say that again?

Q More procedures done at Shadow than at Burnham.

A Yes.

Q The average number includes all of the Burnham patients as well.

A Yes.

Q So you're looking at total number of patients -- or total number of procedures done at the two clinics, each day, during that time period?

A Yes.

Q Okay. So in any way, do you have the records of how many patients, the average number of patients per -- or procedures per day were done at Shadow Lane?

A The average number of procedures at Shadow Lane? I don't have that. I did it on the total.

Q All right. I'll move on. With regard to the number of patients per day at the -- at the clinics --

A Yes.

Q -- let's talk about the two days.

A Okay.

Q Okay? So the day in question is the 21st of September of 2007 and the 25th of July of 2007.

A Yes.

Q In those instances, did you count up the number of patients and the number of injections based on what I just told you about, the 10cc of -- or 100 milligrams being one syringe used to figure out how much -- if they were -- if they were never reusing syringes, what the minimum number of syringes per day would be used on each of those days?

A Yes. Based on these charts that we have on the

screen, I had for 9/21 there were 133 syringes for both rooms. And on 7/25 there were 115 syringes. That's how many syringes they would have had to use for the 100 milligrams that was noted on these records.

Q We know that there -- I'm not -- I'll do the math, but we can do it later. But it's 67 patients average per day for the year of 2007 at the Shadow Lane clinic if you do that calculation.

A Okay.

Q Does that sound about right based on your review?

MR. WRIGHT: What is it?

THE COURT: Well, there was 63 for one day and 65 for the other, so that would -- that would -- that's pretty close.

BY MR. STAUDAHER:

Q That would indicate at least for those -- those patients, those 63 or 67 -- or 60 --

A Five.

Q -- 5 patients that you would have had to have had I think you said 150 and 133 syringes on each one of those days, correct?

A At least, yes.

Q And you've gone back and looked at the total number of syringes that were ordered and used at the clinic --

A Yes.

Q -- and the total number of patients that were at the clinic and -- at the Shadow Lane clinic during the entire year of 2007.

A Yes.

Q And you indicated that there --

MS. STANISH: Excuse me, Your Honor. I'd like to interject an objection to Mr. Staudaher's question of ordering and using. That's a mischaracterization of this witness's testimony that her analysis was based on syringes ordered.

MR. STAUDAHER: No problem.

THE COURT: Okay.

BY MR. STAUDAHER:

Q The question I asked about using was if we use the situation that I presented, meaning one syringe for 10 full cc of medication, that the minimum number they would have needed if they had done that on those particular days, was 130 and I think -- 133 and 150 respectively; is that correct?

A 115.

Q Fifteen. I'm sorry. I wrote that down wrong, 115. And which is which?

A 9/21 is the 133 and 7/25 is the 115.

Q Okay. Now, you know the total number of patients and the total number of syringes ordered for the entire year, correct?

A Yes.

Q Was there enough to even have two syringes per patient?

A I don't have those calculations. I did not do those but --

Q Hold on. Did you -- I'm talking about the syringes now and the total number of patients.

A Yes.

Q Total number of syringes, total number of patients, what was the ratio?

A The total number of patients and the syringes, I have it for the two days. So on the two days, according to my analysis, when the infection was spread, the ratio of patient to injections was one patient had 2.4 injections and that's based on counting the number of injections off of these charts. It wasn't based on the milliliters or the milligrams of propofol.

Q You were just looking at each one of those injections; is that correct?

A Yes.

Q Now, the subsequent thing that we talked about is based on that hypothetical I gave you; is that correct?

A Yes, the hypothetical, which is the number of syringes they would have needed.

Q When you looked at the chart and I'm going to refer you back to the syringe chart here, and this is Exhibit

152, and you look at this number of syringes ordered for the entire year of 2007 and this number of patients for the entire year of 2007 at the Shadow Lane clinic, does it look like there was enough to have two syringes -- even two syringes for each patient?

A No. They would have needed about 28,000 and they have 17,000 roughly.

Q And on some of those instances of this particular chart -- and I go to again to number 19, we're talking about one, two, three, four -- probably four syringes just for that patient --

A That's correct.

Q -- if they would have done it the way I described?

A That's correct.

MR. STAUDAHER: I have nothing further.

THE COURT: All right. Maybe we should take our lunch break then? Ladies and gentlemen, we're going to go ahead and take our lunch break. We'll be in recess for the lunch break until 1:30. During the recess you're reminded that you're not to discuss the case or anything relating to the case with each other or with anyone else. You're not to read, watch, listen to any reports of or commentaries on this case, any person or subject matter relating to the case. Don't do any independent research by way of the Internet or

any other medium. And please don't form or express an opinion on the trial. Notepads in your chairs and follow the bailiff through the rear door. And during the break, please don't discuss your testimony with anybody.

(Jury recessed at 12:25 p.m.)

THE COURT: Mr. Santacroce, how much cross do you have?

MR. SANTACROCE: I -- I'm looking at -- I'm having a clerk pull some exhibits for me.

THE COURT: Okay.

MR. SANTACROCE: I need to look at first.

THE COURT: That's fine.

MR. SANTACROCE: So probably an hour.

THE COURT: And then, Ms. Stanish?

MS. STANISH: Your Honor --

THE COURT: I don't care how long -- I mean, I do, but I'm more just asking for our information.

MS. STANISH: I think I am going to take an hour or more. I have to digest what I just heard because it's somewhat different than what my understanding was in preparation, so I'll have a better idea after lunch.

THE COURT: Okay. All right, we'll go to lunch then.

(Court recessed at 12:27 p.m. until 1:38 p.m.)

(Outside the presence of the jury.)

THE COURT: All right. Kenny, bring -- Mr.

Staudaher, do you want to get the witness, please?

MR. STAUDAHER: Sure.

THE COURT: Kenny, they all back? All right. Bring them in.

(Jury reconvened at 1:40 p.m.)

THE COURT: All right. Court is now back in session. And, Ms. Stanish, you may begin your cross-examination.

MS. STANISH: Thank you, Judge.

CROSS-EXAMINATION

BY MS. STANISH:

Q I'm a history major and I have to be honest, I didn't understand your testimony and I don't understand it in comparison to your grand jury testimony, so I want to spend some time reviewing your analysis of the data. All right?

A Okay.

Q And in doing that, Ms. Sampson, it's important for me and the jury to understand what kind of assumptions you are basing your analysis on. Now, do you understand what I'm saying?

A Okay.

Q Okay. I'm going to start with the chart that you have for the syringes. And before we look at your chart, I want to make sure we all understand the foundation, the basis for this chart and what it depicts. All right? So let's talk about your analysis of the vendor files. As I

understand it, you participated in the search, correct?

A That's correct.

Q And you -- and you and perhaps other officers collected vendor files, correct?

A Correct.

Q And from these vendor files you identified who the vendors were, you sent out subpoenas to them, right?

A To some of them, yes.

Q To some. Were there some that you did not send subpoenas to?

A I was looking at the propofol, the syringes and the bite blocks. So if a vendor didn't sell them one of those items I did not subpoena that vendor.

Q How did you determine if the vendor sold them one of those three items?

A When I went through all of the files that we took, I put the information in the spreadsheet and I put on that spreadsheet what items the vendor sold them. And I narrowed it down to the ones who sold propofol, syringes and bite blocks. If I could not identify what they sold from their -- from their invoices, then I researched that company on the Internet --

Q Okay.

A -- to see if they sold those particular items.

Q And I'm -- do you recall, I saw that you had

listed as a vendor a company named Keller. Let me -- let me take a look at something real quick and I -- just to draw your attention to your -- your Exhibit 5 to your report. That's your vendor list, correct?

A Yes.

Q You identified Ballard Medical Products and in parenthesis you put Kimberly-Clark Global Sales, correct?

A Yes.

Q Now, is it your testimony -- did that company sell syringes?

A Well, they're one company, they went by both names.

Q Okay. Fair enough. And I'm correct in stating, am I not, that -- well, let me back up. I understand you to say you would double check these companies on the Internet to see what type of items they sold?

A If -- if I didn't know from the invoices what they sold then --

Q Okay.

A -- I would double check them.

Q And then I -- I see that with Ballard Medical Products, Kimberly-Clark Global Sales, one company, that you did not list in the description that that company sold syringes or that you saw syringes on their invoices.

A They sold bite blocks, mouth guards.

Q Did they -- did your Internet search of that company show that they also sold 10cc syringes, if you recall?

A I don't recall.

Q Did you subpoena that company?

A I did.

Q Okay. And if we -- is -- and they responded?

A I'm pretty sure they did.

Q And if I were to look somewhere back there I would find their response?

A I'm -- I imagine you would, but I'm not sure of that.

Q Okay. As I understand your patient syringes, you have the total number of 36,000 syringes, correct?

A That's correct.

Q And am I correct in understanding that 36,000 syringes represents only the number of 10cc syringes that were ordered in the year 2007?

A That's correct.

Q It does not reflect any pre-existing inventory.

A That's correct.

Q And was it your assumption that at the end of the calendar year of 2006 that the clinic had no syringes in inventory?

A I based my analysis on using one syringe, one vial per patient.

Q Okay. And let me -- let's address that and then I'm going to come back to the inventory. One vial, one syringe, one patient, is that what you're saying?

A Yes.

Q And so that is basically the CDC best practice recommendation; is that correct?

A That's correct.

Q And so, just so I'm clear, this chart that we're seeing that's marked State Exhibit 152, is that based on that assumption?

A My beginning inventory assumption was based on one syringe, one vial, one patient and there were not enough syringes and vials ordered in 2006 to have allowed for an existing inventory.

Q Do you recall -- so just so I'm clear, you -- you are using a presumption that we know didn't happen in this clinic. We've had ample evidence about CRNAs multi-dosing from the 20cc vials as well as the 50cc vials, correct? I mean, you're aware of that because you read all the witness statements, correct?

A Yes.

Q And just to clarify that, in preparing these documents you conferred with Detective Whitely, correct?

A Correct.

Q And did you also confer with Mr. Staudaher?

A I don't believe I did to prepare this analysis.

Q And -- well, you went with -- he was in the grand jury and questioned you on your analysis, correct?

A That's correct.

Q And did he have you make modifications to your analysis at all?

A I don't remember if he did.

Q All right. And so going back to your analysis now, just so we are all clear on the assumptions that underline this bar graph, you're assuming that there was no -- no syringes on December 31st, 2006, correct?

A Correct.

Q Based on the assumption that if the clinic was following the CDC best practice guidelines, there would be nothing left.

A Can I look at my analysis?

Q Sure, absolutely.

A Thank you.

Q Are you ready?

A I'm ready.

Q Okay. Does that refresh your memory?

A Yes. The way I based my analysis was I developed a ratio for 2007 based on the two days of the injections -- of the -- of the infections and I applied that ratio to 2006, the number of syringes. So they had 22,374

patients in 2006.

Q The number on the chart -- oh, in 2006?

A 2006.

Q Okay. I'm sorry. Would you please repeat that for us?

A 22,374 patients.

Q And what else?

A And they ordered 31,100 syringes.

Q 31,000 --

A One hundred.

Q -- syringes?

A Right.

Q And how many vials of propofol did they order?

A They ordered 6,600 vials of propofol.

Q Now, are you telling me that you used -- tell me what you did with this information on 2006.

A 2006, the ratio of patients to vials was 3.39 patients to one vial of propofol.

Q Now, hold on right there. When you say -- just for demonstrative purposes, when you say that you have this ratio of -- you're saying -- run that ratio by me again.

A 3.39 patients to one vial of propofol.

Q 3.1 --

A 3.39 patients.

Q -- 3.39 patients to one --

A One vial.

Q -- vial. And you get that by using this number of 6,600 vials ordered, right?

A Yes.

Q Now, do you find that -- aren't you missing some inventory of propofol for this date?

A In 2006?

Q Yeah.

A I don't think so.

Q Well, let -- let me draw your attention then -- well, let me ask you this. Did you confer with a federal agent who was also trying to analyze this same information by the name of Christina Ramirez?

A Christina Ramirez was involved in the investigation, yes.

Q And you -- you -- you collaborated in trying to do these -- this analysis?

A No. I did -- I did mine and I don't -- I never saw an analysis that she did.

Q Okay. Did you -- you shared with her your -- your tallying of the syringes and the patients, et cetera, did you not?

A I don't remember specifically, but I probably did.

MS. STANISH: May I approach, Your Honor?

THE COURT: You may.

BY MS. STANISH:

Q This is just going to be -- I'm going to leave this up here to refresh your memory and counsel this is discovery that begins on page 93146. I'll just set that up there. There's lots of tabs and such on it but --

A Okay.

Q -- let's just get through this the best we can. You reviewed the propofol logs that are contained right here in this -- this big binder that's marked Exhibit 44A.

A I did.

Q Okay. And this contains the propofol logs for what year?

A I don't remember offhand.

Q Is that where the propofol logs begin or is there another earlier date?

A 2004, 2004.

Q '07.

A 2004 to 2007.

Q Let's go to the search. I know we're going to jump around, but I -- I need to piece together the foundation of your analysis. Okay?

A Okay.

Q The search team seized the propofol logs, correct?

A Yes.

Q They seized the propofol logs for the calendar year 2006, correct?

A I think so --

Q Okay.

A -- but they're not in this book.

Q Okay. Do you know where they are?

A Not off the top of my head, no.

Q Did you provide copies of the propofol logs to Ms. Ramirez?

A I don't remember.

Q Okay. Let me ask you to turn to that report up there to refresh your memory. And I'm going to direct your attention to Bates stamp 93147 and I'll just join you up there to point out what I want you to review to yourself. This page.

A Okay.

Q All right. And those are my highlights so will you just take your time to read that?

A Okay. Okay.

Q Isn't it the case that the, you know, in 2000 -- the year of 2006 when you analyzed the orders, you came up with this figure of 6,600 vials based on the number of vials ordered.

A Yes.

Q The propofol log for that year, however, showed that there were 10,739 vials that were used, correct?

A According to this report there is.

Q Do you have any reason to doubt that?

A No, I don't.

Q You did a -- you did an Excel spreadsheet as I understand.

A Yes.

MS. STANISH: I'll tell you, Your Honor, I need a bigger podium.

BY MS. STANISH:

Q I want to -- I don't know if you have this. Let's see. Find in your report, Ms. Sampson, your spreadsheet on the number of propofol vials that were ordered in the calendar year 2006 and I'll see if I can find it before you. We'll have a race and you might win it. I found it. It appears to be in your tab number 18. Okay?

A Okay.

Q Describe -- you did a spreadsheet and it -- you -- you inputted -- is this based on invoices?

A This would be based on the subpoenaed records I received from the vendor.

Q Okay. And so those records, what exactly are they? Are they invoices?

A You know, it's -- I don't remember what I -- if

it was electronic or if it was invoices. I -- I don't remember.

Q Are they shipping documents or do -- you don't remember?

A I'm sorry. I haven't seen them for years. I don't remember.

Q Okay. Whatever these documents are that make up the basis of this analysis that the State is presenting, something from the vendor, I want you to look and see that between the dates of February 1st, 2006 and May 17th, 2006, there is nothing in your spreadsheet being ordered in the way of propofol, there is a -- a gap, correct?

A That's correct.

Q Doesn't that suggest to you that your analysis, your vendor records, somehow missed something?

A I remember that there was a large amount of propofol that was ordered at one time.

Q That was in 2007, correct? There were 1,000 vials in 2007 and there's a gap of about two months in calendar year 2007. But go ahead and take a -- take -- eyeball your spreadsheet for 2006 and see if you see a large amount of propofol being ordered on any given day.

A There were quite a few orders of 400 vials.

Q Prior to February 1st, 2006 you -- you are showing that there's 400 vials of 20 milliliters, 160 50

milliliters, 400 of 20 milliliters, 400 of another 20 milliliters, 400 of another 20 milliliters and 160 and then things just go dark for a period of February, March, April, May, four months.

A That's correct.

Q Does that make sense to you? Some -- something's missing, wouldn't you agree?

A I don't know.

Q Okay. Well, if we take -- as you don't doubt Ms. Ramirez's analysis of the propofol log for 2006, that there were over 10,000 vials checked out and used.

A No, I don't doubt her work.

Q So -- but your -- your analysis that -- as I understand it, is part of the foundation of what you discussed on direct, correct?

A That's correct.

Q Shows this amount of propofol, 6,600. There's over a 4,000 vial difference between the propofol log and the -- and your analysis, correct?

A Correct.

Q And then go -- I -- I see that there's another gap. If you look on your 2006 Excel spreadsheet of propofol ordered from May 23rd to August 10th, 2006, there's another gap of nothing being ordered, correct?

A Correct.

Q So I got May, June, July, August, three months approximately where no propofol is shown in your analysis as being ordered, correct?

A That's correct.

Q So I have eight months where there's -- you were not able to locate -- or vendor files of propofol being ordered for an eight-month period?

A That's correct based on the vendor files that I had.

Q And I -- please, ma'am, I'm not criticizing you. I mean, you're going by the vendor files you have. Is it possible that the vendors didn't send you all the information that you needed to do an accurate analysis?

A It's possible.

Q Is it possible, you know, you -- in March of 2008 Metro went out and searched seven facilities, correct?

A I believe it was seven.

Q And it's possible that some vendor files were missed?

A It's possible.

Q And I understand you to say that you subpoenaed the custodian of record because you were concerned that you might have missed something?

A That's correct.

Q And you didn't find that the custodian's record

was any better than what you -- you were able to locate.

A That's correct.

Q But Metro had control of the -- all the documents, did it not?

A Yes.

Q Or at least what it decided to -- to collect I suppose.

A Yes.

Q Did you -- if you know, seize computers?

A We did.

Q Do you know how many computers you seized?

A No. I'm not -- I don't remember that.

Q Over 50?

A I -- I couldn't tell you.

Q Do you know who controlled supplies, ordering supplies, whose responsibility was that?

A I think it was Jeff Krueger.

Q Did you seize his computer?

A I don't know.

Q The supply records, my -- you know, just reading through your materials, am I correct in understanding that the supply records were seized from a storage room in Shadow Lane?

A They were seized from the offices upstairs.

Q Would that be the office of Tonya Rushing?

A I wasn't upstairs going through the offices. I

-- I was up there briefly, but I -- I didn't identify the offices, I didn't search them, I'm not sure.

Q Were you -- you inventoried everything that was seized?

A I did a rough inventory at the search warrant and then I inventoried all of the records.

Q All right. These supply files were not found in Dr. Desai's office, correct?

A I -- I'm not sure.

MS. STANISH: May I approach, Your Honor?

THE COURT: Uh-huh.

MS. STANISH: I'm showing officer's report to refresh memory.

MR. STAUDAHER: Which -- which Bates number?

MS. STANISH: One.

MR. STAUDAHER: One. What other page are you referring to?

MS. STANISH: Oh, I'm going to start with page 24.

MR. STAUDAHER: Okay.

MS. STANISH: And then there's another page a few -- a few down then.

BY MS. STANISH:

Q All right. Let's start this -- I've highlighted it but if you need to read other things feel --

A Okay.

Q -- free to do so. And maybe it starts here to be more accurate.

A Okay. Okay.

Q And then moving to page 26.

A Okay.

Q Does that refresh your memory on where the supply files were seized?

A Yes.

Q Tell us what that was.

A The storage room that was located on the first floor contained vendor files and then the report also stated that some supply and vendor files were found in Tonya Rushing's office.

Q And the -- and that's at Shadow Lane, correct?

A That's correct.

Q All right. And the -- and you also looked at some canceled checks? Or what is it -- you looked at some bank records, as I understood your direct testimony to be.

A I did.

Q And you looked at checks in order to identify vendors?

A That's correct.

Q Now, when we're talking about these checks that you eyeballed, did they come -- did you get those from the bank subpoena or did they come from a different source?

A Those are from -- taken in the search warrant.

Q Okay. And so am I to understand that the materials you looked at were the return checks that the clinic would have received from the bank with, you know, those tiny, tiny canceled checks attached to it or what do you call it, a scan of the check? Is that what you're talking about?

A Yes.

Q And did you do a spreadsheet of all the checks that were made payable to the manufacturers that you were able to identify by reviewing those documents?

A I did.

Q And is that in your report somewhere?

A It --

Q If you could just give me the exhibit number so I know what you're talking about.

A It's Exhibit 5.

Q The -- oh, I may -- maybe I didn't make myself clear. Did you -- did you create an Excel spreadsheet that identified the checks that were written to the vendors?

A No.

Q Did you have the checks available to you from your seizure or whatever source; did you have the checks from the calendar year 2006?

A I did.

Q And just -- if you can recall, did you -- did

you use these -- these copies of the bank checks to match against the vendor files that you received?

A I did and I included them on the same spreadsheet.

Q I mean -- so you could actually take a check that you located at the seizure site and match it up with the invoice?

A No, I did not do that.

Q Oh, and that's what I meant, ma'am, is whether or not you -- you know, I thought I understood that you -- did you just kind of eyeball the checks to see if there were different vendor names than what you had discerned from the vendor files?

A Yes.

Q But you didn't do a check-by-check analysis to match it against the vendor files?

A No, I did not.

Q And the reason I'm -- I'm going into this in some detail is I'm trying to understand if there's a way that we can account for the missing eight months of propofol ordering in the year of 2006. And so my question is if you have -- if you did a check-by-check analysis of calendar year 2006, would it have been possible that it would have disclosed payments to the propofol vendors that are not included on your spreadsheet for 2006?

A I went through the checks. If it was made out to a vendor I included the vendor on my spreadsheet.

Q Yeah, and I know I'm not making myself clear. I apologize. What I'm trying to say is, I understand that you did your best to identify the vendors and it was a challenging job given the fact that seven facilities were seized and I got to imagine a lot of documents seized. What I'm trying -- what I understand you to say though is that you did not do a check-by-check analysis to identify payments to vendors as opposed to identifying vendors --

A That's true.

Q -- do you see what I'm saying?

A Yes, I understand.

Q I mean, I just -- don't you find it odd that there are eight months where no propofol is appearing on your spreadsheet of being ordered?

A I gathered the records from the vendors. If that's what they gave me then -- then I didn't know where else to get information because I identified all the vendors, I got their records, I double checked it with the checks that were paid to the vendors. I double -- I triple checked it with a subpoena to the custodian of records and I didn't come up with any other vendors other than what's on this list.

Q Can you account for us why the propofol log shows over 4,000 more vials than what we're seeing in your

2006 analysis?

A No, I can't.

Q How can this ratio then of 3.39 patients per vial be at all accurate if we are missing over 4,000 vials?

A Based on the information I had from the vendors, it's correct. I don't know where the vendor would have been that would have provided those other 4,000 vials.

Q Something's missing, correct?

A I -- it must be because I had all of the records and I went through them all and I identified all the vendors.

Q Perhaps a vendor didn't give you everything, correct?

A That's a possibility.

Q I mean we can only speculate, right?

A Right.

Q But it needs to be clear to this jury what the basis of these numbers are that are on your -- on Government Exhibit 152, as well as the propofol chart. So let me go back to your analysis. I understand it's just based on what you could get from the vendors, but I -- go ahead, please, and -- well, one more point. You're assuming there was no end of year inventory in 2006. That on December 31st there wouldn't been -- wouldn't have been a lick of propofol, any syringes, nothing in the clinic?

A I'm assuming that based on one file, one syringe

per patient.

Q All right. And it's a hypothetical is basically what you're telling me.

A What's a hypothetical?

Q What you just said. That your -- this analysis is based on the CDC best practice recommendation, which we know the CRNAs didn't follow because they understood, gosh, I can prefill syringes and still be aseptic and various other technique for administering anesthesia, correct? My question is, your analysis is what, an analysis of a hypothetical? I don't get it.

A No. My analysis is based on the records that were provided to me. I applied the assumption from CDC that they should have used one vial of propofol and one syringe per patient. If they used one vial of propofol and prefilled the syringes, then they should have had at least as many syringes as they injected.

Q Okay. So you're using that as an assumption, but when we're talking about these numbers you are using instead of a hypothetical, you're using vendor records versus your count of patients, correct?

A That's correct.

Q And this represents what exactly?

A That represents the number of vials that I received from the vendors that were sold to the clinic with a

ratio applied towards the patients that I counted out of their -- their records, their register logs.

Q Okay. So now, continue please explaining the rest of your analysis because you -- as I understood it, you were talking about a ratio that you devised to apply to these charts, correct?

A Correct.

Q And what kind of ratio? What did you call that ratio? A what kind of ratio? Is there a term for it?

A I don't know that there's anything other than ratio.

Q Okay. What's the next step in your analysis? Do you -- I think we understand how you came up with 2006 and this ratio. Now, please explain how it -- the rest of your analysis so that we can understand this Government Exhibit 152, please.

A I'm not sure I understand your question. Could you go over that again?

Q Okay. I'll try. We're talking about your analysis of the syringes. And as I understood your testimony, it was based on -- and I found it in my notes, a developed ratio --

A Okay.

Q -- and you had explained to us you were -- you started to explain to us before I started picking on you, this

developed ratio that you were -- were trying to explain to us. So you started with explaining the calendar year 2006. Do we now move to 2007 to try to get to the rest of the analysis?

A Okay.

Q All right. Go ahead.

A In 2007 I analyzed the bite blocks that --

Q I just want to focus on syringes.

A -- syringes, okay.

Q Yeah, we're one at a time.

A All right. On the two days in 2007 I had a ratio of patient to injections was one patient received 2.4 injections.

Q Oh, wait. Hold on a moment. I'm sorry. I -- I think am probably jumping around because you are -- your analysis at least before the grand jury also dealt with propofol, right?

A Yes.

Q And we -- what we just discussed here at length was the propofol for 2006. So why don't we stick with propofol and -- and then we'll come back to your developed ratio and you can explain to us how it all fits together. Okay?

A Okay.

Q So what do you got for propofol in 2007?

A In 2007 I did two different analysis on the

propofol. One was on the propofol logs for the two days and the other was on the propofol vials for the year. So which would you like to discuss?

Q Well, let's do the propofol -- this -- this one that's in 154, Government Exhibit -- State Exhibit 154. Now -- that's pretty small, isn't it? We start with six -- 6,764 propofol vials that were -- are these shipped to -- from the vendor files, you can actually tell if these vials are shipped to Shadow or Burnham, is that it?

A Yes.

Q That's actually the shipping address as opposed to the location where Jeff Krueger may have ordered it?

A Yes.

Q Okay. And then we have another 5,080 vials ordered at Burnham for a total of 11,844 vials, correct?

A That's correct.

Q All right. And this -- and again, I want to talk about assumptions because I want this jury to understand what assumptions underlie your analysis. Your assumption is, and please correct me if I'm wrong, number one, your assumption is that you were able to -- that the vendors provided you with every lick of paperwork to document for you the quantities of propofol, correct?

A Correct.

Q Your other assumption is that there was no year

end inventory in 2006.

A That's correct.

Q That assumption, as I understand it now, is based on a hypothetical that there would have been no propofol left at the end of 2006 if the clinic followed the CDC guidelines, correct?

A Correct.

Q But in reality, would you agree with me that on January 2nd when the clinic reopened on the holidays there had to have indeed been a supply of propofol, a supply of syringes, et cetera?

A There may have been.

Q May have been?

A I don't -- I didn't -- I don't have any evidence that there was.

Q Did you -- do the propofol logs for January of 2007 show there to be any propofol anywhere in the clinic?

A I can look.

Q Okay.

A These records start in June of '07.

Q Okay.

A Okay.

Q Did you seize other propofol logs that are not in there?

A I'm not sure.

Q All right.

A Those are for the 200 milligrams.

Q Well, how about this. Let me just double check something. And I -- I -- I'm going through this exercise not to bore the jury stiff, but to try to -- instead of talking about hypotheticals, I want to talk about reality. Okay?

A Okay.

Q And so I'm trying to discern what is the reality, how many propofol vials are there at the end of the year? I mean, if you go back to your spreadsheet, your Exhibit 18, maybe that will help a bit.

A I did find a propofol log for starting in January.

Q Okay, great.

A For 200 milligrams.

Q Let me join you up there. I want to see this.

A It starts January 18th.

Q Oh, okay. So it's off a bit.

A Right. This is June of '07, this is January of '07.

Q Okay. And so if we look here -- is there one before? That's '07. I was saying '0 -- oh, where are you seeing '06? That's '07.

A '07, that's what I said.

Q Okay. I'm talking '06.

A Oh, you're talking '06.

Q Oh, but, yeah, I did say that too.

A Yeah, but you want to get a --

Q I got you running all over. I'm sorry.

A But you wanted the beginning inventory for '07.

Q Correct, correct.

A And the first day is January 8th.

Q That looks like an eight? So we are -- so we are potentially missing the -- are there 500's? These are divided by -- the propofol log is divided between -- there's a separate sheet for 20 milliliter vials and then a separate log -- log sheets for 50 milliliters, correct?

A Right.

Q Can you get me to the 50-milliliter portion?

A Okay, this is the 20.

Q Correct. I'm going to mark it for you.

A Okay. There's the 50, it starts in March. There's July, there's September, November. I don't -- I don't see it.

Q You're not finding it?

A I'm not.

Q Okay. What you couldn't find is on January 18th they had in stock numerous 20 milliliter vials, correct?

A Well, he -- Linda Hubbard signed this out, she took 12 vials.

Q Uh-huh.

A So they had at least 12 on the 8th.

Q Correct.

MR. WRIGHT: Ms. Stanish, maybe if you show her the procedure log for the first day of January instead of showing her all those --

MS. STANISH: Well, I know. Well, gee, that would have made it a lot simpler.

MR. WRIGHT: I mean this propofol didn't fall out of the sky.

THE COURT: Well, I mean, Mr. Wright, if you want to tell Ms. Stanish something you just call her over to your --

MS. STANISH: Hey, I'm glad -- I'm glad for his help to move it along.

MR. WRIGHT: I'm trying to help. On the first day of the procedures propofol was used.

THE COURT: All right. If she wants to show the log she can -- Ms. Stanish, I'm sure gets it.

BY MS. STANISH:

Q It's correct, is it not that there were procedures done in January, beginning after the holiday?

MR. WRIGHT: I mean, we got that book you looked at and counted them all up, right?

THE COURT: Mr. Wright --

THE WITNESS: I do.

MS. STANISH: I got it, she has it.

THE COURT: -- let Ms. Stanish.

MR. WRIGHT: I'm just trying to get it going.

BY MS. STANISH:

Q Take a look at your Exhibit 7. This is your totaling of patients, correct?

A Yes.

Q And during -- on -- do you have that in front of you?

A I do.

Q How many patients were treated at Shadow Lane on -- on January 2nd of 2007?

A Thirty. Oh, wait, there's more than that. It -- on -- I broke it down the way the dates go, so they overlap. So the -- the second has 30 and the 2nd and the 3rd have another 30.

Q Fair enough if we just go to your first page. In the month of January Shadow Lane saw 1,099 patients, correct?

A Correct.

Q Burnham had another 675 and then there were additional patients seen at -- who were VA patients, correct?

A Correct.

Q Fair statement that these people who are having procedures had propofol?

A That's fair.

Q Fair statement that on January 2nd, 2007 there was propofol inventory left over to be used to celebrate the New Year with a colonoscopy?

A Yes.

Q When -- and you may need to refer to an officer's report because I'm going to ask you something very specific. When did the clinic first start ordering 50 milliliter vials of propofol? I can help you out if you refer to the officer report, page 58.

A I don't have the officer report.

Q Oh, I thought I left it up there.

A No, it disappeared.

Q Well, you have -- take a look at Ms. Ramirez's summary, page 93153. Do you see that?

A Okay.

Q And you don't see any before that, right?

A Right, there's one there.

Q All right, right there.

A Uh-huh.

Q Is it correct that the first order of propofol 50 milliliter is dated October 13th, 2005?

A In Ms. Ramirez's thing there is, yes.

Q Okay. Then let's look at the officer's report to make sure you're comfortable with that. Take a look at

page 58. Oh, do you have it in yours?

A Well, I'm looking here.

Q I can't even see that.

A '06, they were ordering it in '06.

Q Right. Page 58 and it's those numbers not the Bates stamp.

A Oh, okay. In October they started ordering 50 milliliter vials.

Q October of 2005, correct?

A 2005, yes.

Q Okay. Do you recall that Ms. -- did you read the CRNA interviews?

A I'm not sure. I don't remember. I read a lot of depositions.

Q Oh, okay, depositions. Are you -- it's a -- it's a matter of record that Ms. Hubbard was hired in August of 2005. Okay?

A Okay.

Q If she was hired in August of 2005, nobody showed her how to use a 50 milliliter vial because they were not ordered until October 2005; is that correct?

A Well, they might have showed her after.

Q Well, we -- that's a matter of testimony that you and I don't need to discuss, the jury already has it.

A Okay.

Q But you don't need to speculate --

A Okay.

Q -- but thank you for trying. All right. Now, let's go back to -- okay, so to finish up with the propofol. The assumptions are there's no end of year inventory.

A Correct.

Q The reality is there was.

A Probably.

Q There was?

A There was.

MR. STAUDAHER: Objection, Your Honor. She doesn't know. She said that she -- I mean, she can't testify to that.

THE COURT: Well --

BY MS. STANISH:

Q You -- do we need to go over the procedure logs again?

THE COURT: According to the procedure logs, if they were doing procedures with propofol on January 2nd, there would have had to have been propofol left over from the prior year.

A That's correct.

BY MS. STANISH:

Q And according to common sense, you would expect a business to have inventory, would you not?

A Common sense would dictate that, yes.

Q Now, the -- let's go to -- well, I guess we should finish this up. You came up with a ratio based on this assumption of no inventory and based on the assumption that vendors gave you every lick of paper, you came up with a ratio of 1.99 patients per vial, correct?

A Correct.

Q And in -- and now I want to talk about another assumption. In your assumption, not to be crude, but size does not matter, correct?

A That's correct.

Q Size doesn't matter. It doesn't matter that the various -- various CRNAs, various doctors have testified here that prefilling a syringe, multiple syringes, from a 20 milliliter vial, from a 50 milliliter vial, those can be prefilled, correct?

A Correct.

Q And -- but your -- your analysis with the propofol is assuming that -- that the 50 -- 50 milliliter vial is they're going to take a 10cc syringe, draw out 10cc and pitch the other -- what's in there, 40 milliliters, correct?

A No.

Q No?

A No.

Q Okay. Explain it to me.

A If they go into that syringe or that vial with a

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

APPELLANT'S APPENDIX VOLUME 26

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Board so that -- so the record --

THE COURT: From the complaints?

MR. STAUDAHER: Correct.

THE COURT: These are people who made complaints?

MR. STAUDAHER: And so I don't know --

THE COURT: And that's how you got their names?

MR. STAUDAHER: Right. To the extent of them being complete, that's what we received at -- from the Medical Board. I don't know if they retained anything additionally or not, but there are additional records of other patients that were part of the packet that we originally sent them but they're not compiled with these individuals. These are separated out for the ones who actually testified today. I have no problem with the rest of -- the Court seeing the rest of the complaints or whatever information is there from the Medical Board.

THE COURT: Okay. I think -- well, just to be clear, the State did not then request from the witnesses themselves any additional records, correct?

MR. STAUDAHER: That's correct, Your Honor.

THE COURT: Okay.

MS. STANISH: And I -- I have many challenges in trying to defend against this 404(b) evidence, Your Honor. And let me begin with the evidence from last week that was presented. Number one, the -- with respect to the doctor that

testified, Dr. Kashan [phonetic], I believe his name was. He -- well, maybe if Your Honor wants to give me an indication --

THE COURT: Yeah, I mean, here's the thing on --

MS. STANISH: -- because I can go on a long time.

THE COURT: -- the doctor. At the -- you know, his testimony was somewhat confusing, but to me it sounded like well, he just didn't like, you know, he just had a feeling about this, he, you know, didn't like what -- you know, he didn't want to come right out and say well, you know, to a reasonable degree of medical certainty, they were derelict in diagnosing these things. He did suggest that on the one developed tumor after I said, well, you would have had to have seen something. That was kind of the most -- the only thing that was concrete. On the whole thing with the barium, I still don't know after hearing all of that, well, was that not medically necessary? Were they doing the barium because they were doing the colonoscopy so quickly?

I mean, I know that's what the State's inference is, that they then had to go in and do the barium. But then the doctor said well, no, sometimes you might. So I don't think that that was too -- too clear. You know, I -- I thought the best was the -- the one failure to diagnose that he mentioned where the patient came and had the larger tumor. Right, that was a different physician. That was Dr. Carrol. I mean, that was the problem with that. I -- State, I mean --

MS. STANISH: And if I may, Your Honor, the State did not put in any of the Medical Board evidence that -- as far as the medical records that provided the clinic's response to the Medical Board, nor, did it give Your Honor the medical evaluator, the -- the reviewer at the Medical Board, that doctor's summary of his review of the various complaints that were presented to you. So you got not even half the story and I don't think I even have the rest of the story because, despite what Mr. Cooper stated that the Medical Board of Examiners retains all these medical records that are subpoenaed or requested. I have very little, certainly not enough to defend against what is in essence multiple, multiple medical malpractice allegations.

And with -- and if Your Honor wants to discuss the second part of the presentation of last week, that being let's bring in to evidence these two letters from the Medical Board of Examiners that are based on these several complaints, you know, what I'm going to say. Right?

THE COURT: Well, here's the point to me of the letters. The point of the letters is that he got the letters and it's alerting him that there are problems in your clinic. And they're myriad types of problems, patient care problems, insurance complaints, other things. And so to me, the point of the letters is you've been put on notice twice that there are issues going on in your clinic and you've been asked to

rectify those issues and even go and get, you know, some training about it. And so to me the issue with that is well, you know, now you've been told. There are all these complaints going on, it's his clinic, you know, what did he do about it? There was no change apparently in the quality of patient care.

So to me that's one of the points of the letters, that he actually got the letters, he's put on notice. I mean the whole idea of -- of their case against Dr. Desai is sort of this reckless endangerment, you know, criminal negligence, not ordinary negligence. And so, you know, there's an issue of did he know what's going on. Did he know that -- that this, you know, is considered substandard or that people are complaining or he's getting more complaints than other similarly situated physicians.

So to me that would be the point of the letters, this sort of notice idea. Regardless of, you know, the merits of the -- some of the individual complaints, but that he's been told, you know, you need to rectify this.

He's been told that by the Medical Board and yet we go on and have this hepatitis outbreak. So to me that's kind of what I thought was more compelling about that rather than him just, you know, summarizing all of these complaints, which obviously are hearsay. And a lot of the complaints are, you know, are from insurers and, you know, and other things. And

really to other physicians, like the Dr. -- is that how you say his name, Kashan or --

MS. STANISH: Kashan.

THE COURT: Yes. The, you know --

MS. STANISH: The oncologist?

THE COURT: Right.

MS. STANISH: My problem --

THE COURT: Like I said, that seems to me a pretty clear case of a failure to diagnose based on what the doctor said and the tumor and the size of the tumor. And if he -- the patient had had a colonoscopy before that, they at the very least would have had a polyp or something. So, but that's a different physician.

MS. STANISH: Correct. And my problem, Your Honor, is these letters were triggered by a number of complaints that I should have the right to challenge if we're -- these complaints as you pointed out, Your Honor, are based on hearsay evidence, they are based on mere allegations. This is no different -- this is a confrontation issue. I have the right, just like Dr. Kashan comes before this case -- comes before this Court after writing a complaint to the board and I'm able to confront him just based on what little evidence I got. I mean, my file on his complaint was tiny, tiny. I don't have the evidence to defend against these complaints that are filed by the board that triggered these

notifications.

And please, Your Honor, recall that we're in an administrative body here with different burdens of proof and I am basically put in a position of having a letter go before the jury that I'm not able to explore, confront the people who have complained that these letters are based upon. And then, let's just -- turning to the standard 404(b) analysis, I mean, what -- what is the issue here? The contamination of propofol by improper injection procedures. This evidence is not probative of that issue to the extent that it is, it -- the prejudice certainly outweighs it, not to mention the fact that I have confrontation issues in trying to defend against this -- these letters and the complaints that significantly underlie the triggering of those letters.

Dr. Kashan, as Your Honor pointed out, is the one who, eh, really didn't say anything about the standard of care. He's an oncologist. I don't have an oncologist as an expert lined up to help me, but his complaint is one of the complaints that pushed this matter to the investigative committee. And what I'm telling you, Your Honor, if I -- for me to defend against these 404(b) efforts on the part of the State, I don't have the appropriate medical records, I don't have the appropriate experts to deal with them.

THE COURT: Does the State want to respond on the issue?

MS. STANISH: And that's just from last week. I have to talk about --

MR. WRIGHT: Can we take a brief recess?

THE COURT: Oh, sure.

MR. WRIGHT: I've got to go to the restroom.

THE COURT: That's fine, we can take a recess. Since everyone -- if anyone needs a recess, let's do that now.

(Court recessed at 10:30 a.m. until 10:36 a.m.)

(Outside the presence of the jury.)

THE COURT: Okay. Mr. Staudaher, did you -- or Ms. Stanish, were you done?

MS. STANISH: Well, there was a -- a point I wanted to raise, Your Honor, that in connection with the -- this letter of correction, if you will. As you recall, it cites numerous cases. It was in response to certain cases, including Dr. Kashan's. I just wanted to point out to the Court that despite what Mr. Cooper said, that their office collects records. And as you might recall, it's part of their process if there's a complaint that comes in, they request medical records, not just from the clinic, but from other treating physicians to verify the complaint or dispute it or disregard it. And the -- I have none of those records. I need those records since these -- it is those very complaints that trigger these -- these actions.

I thought Your Honor mentioned, maybe I didn't

understand, that as far as billing, my understanding is that these letters have nothing to do with billing. So what we're talking about is the probative value of these letters from complaints that happened in the past, how probative are they of the issue of the hepatitis C contamination.

THE COURT: Do you have any response?

MR. STAUDAHER: Well, the letters are what they are. If they -- if they're -- if the Court was going to allow them in and there was certainly something that needed to be redacted, we could certainly do that if that was the issue. The -- the point of the letters is, as the Court has pointed out, is that there was a pattern in this particular practitioner's sort of history of the exact things that we presented in the case, which is, as the Court pointed out, the fact that the patients were not being provided the care that they should in the manner that they should. The board sends him a letter in 2005, they send him another letter in 2005, in March of 2007 he has to actually come before the board based on this.

So he's got the letters, he's got the complaints because he obviously gets notified of them because each one of the ones we've shown and the others that counsel has in their possession also show communications back and forth between the board. There's been this complaint about you're rushing patients through or you're starting procedures before

anesthetic -- anesthetic is given and all of those kinds of things and his responses to those. And the medical records that -- to what extent they have are given to him so that he can look at to make a response. So all of those things happened. It's a pattern that goes on over time and it necessitates or at least causes these letters to be given to him.

The board says that they believe that they're credible complaints and that he needs to do certain corrective actions. They even try to get him to say go ahead and have this class, show us proof of it. Cooper says there's no proof or nothing was ever given, they don't have any sort of -- other than pulling his license, they can't fine him for not doing their recommendations. But then after the complaints continue on, they bring him -- they actually haul him before the board to talk about these things. And even after that the complaints go on. And it's the same -- although there are clearly billing issues and some -- some of the complaints don't relate to direct patient care, that's not what we're focused on. We're focused on the ones that do relate to patient care.

And in this particular instance, under 48045, what we're talking about is to bring in his -- not just his motivation because these don't directly go to his motivation, it's more the financial side is what we've -- we've alleged in

this case. But the fact that he's -- he's been put on notice, there's no mistake, there's no accident. His intent is to do things the way he's always done them without interruption or change despite being told by people who are regulating him, so to speak, the board, that he needs to change his practice.

There's no question he goes into this with his eyes wide open and that even his own staff are telling him that they're concerned that something is going to happen, that patients are at risk and it falls on deaf ears with them. It falls on deaf ears with the board. That's why we want to bring this information in is to show that, in fact, he was aware. There wasn't any issue of him not being aware and he continued the practice, which resulted in patient harm. We think it's reasonable for that. It falls under the -- under the subsection -- or under the categories that that type of evidence is actually allowed.

If the Court wishes to limit the scope of that, we don't have any issue with that. If the Court wishes us to redact certain portions if they're not supported by the evidence, that's fine. But we don't think that it should be excluded to -- at least a degree we should be able to get it in, especially the letters and the fact that he came before the board after the letters for the same exact conduct.

MR. WRIGHT: Can I respond briefly?

THE COURT: Sure.

MR. WRIGHT: I want to be sure on this because I -- I listened carefully to what this is being offered for under 404(b) and he says it's not for motive, it's for the financial thing. And it's to show his intent to do as he always has done. Now, this -- this -- I just have to look at what -- what are we offering this for? This is why I asked the CDC witnesses did the speed of the procedures in any way cause hep C transmission at all. No. Did starting a procedure before someone's put under anesthesia? No. And so this is being brought in to show he's still doing what he's been doing and -- and what does -- do -- do those alleged unsafe practices of him, those are probative of showing what?

Now they're already here in evidence because we're going to try him on based on the environment there, but -- but now we're talking about bringing in other bad acts that are supposedly going to show one of those 404(b) things and I'm -- I'm -- any 404(b) case argument I've ever had, we always start with what are the elements of defense and this is going to show what. And then we find the probative value and balance it. I'm still struggling to find it.

I get the notice thing. Okay. You -- you can be put on notice even if it's -- isn't true what you're put on notice for. I mean that isn't really a 404(b) thing.

THE COURT: No, I mean --

MR. WRIGHT: It's almost like a -- a policeman gave

me notice, slow down and then I sped anyway.

THE COURT: Or maybe -- I mean this may be a -- another -- it's not really a better analogy but, you know, the policeman put me on notice that Bob was a residential burglar. Okay? And then when Bob gave me this, you know, new DVD player and I took it in to Super Pawn, then that might be probative that I should have thought, gee, Bob's a residential burglar, I wonder if this is some stolen property here that I'm taking in to the Super Pawn. And, you know, that may be a poor analogy, but I think the -- it's not a 404(b), it's like a notice idea --

MR. WRIGHT: I get the notice but --

THE COURT: -- saying -- saying, you know, he knew that there were problems in the clinic --

MR. WRIGHT: Okay. But problems in the clinic isn't --

THE COURT: -- it had been brought to his attention and he did nothing to rectify the problems. And I mean, again, the State's presentation, their theory, is -- is that this was symptomatic of the opening --

MR. WRIGHT: What's that -- where's that alleged, it's symptomatic?

THE COURT: Well, I don't think they alleged it, but that's how they're presenting this case. That --

MR. WRIGHT: I understand.

THE COURT: -- that it was symptomatic of the, you know, lack of regard for patient safety, the, you know, frugality, the --

MR. WRIGHT: Maximization of profits in the practice. Okay. I -- I -- I get that. That's what they said in their pleadings to begin with. All this crap, this 404(b) is offered to show he's money motivated and patient safety is secondary. We have a ton of evidence already in on that, okay, that he was profit motivated. So now, what is this really being brought in for when it's already -- there's evidence that this was a profit motivated practice and he was cost conscious and did anything to maximize profits.

Now, we're going to bring in that he's chastised by the board for starting procedures too soon and for doing them too fast to show that he must be motivated in doing that to make more money because we need to get before the jury he's making more money when it's already there.

Balance the value of this theoretically legitimate use of that evidence against the -- against the prejudice flowing from that, especially when the -- the notice -- what happens when the notice you are given -- when the cop yells at me stop speeding and I -- that puts me on notice, but I was wrongly accused of it.

That's a -- in other words, he said -- he told -- you slow down, but I wasn't the one speeding, it was the other

car. Well, there's no question I was put on notice. But what happens when I'm put on notice for something I didn't do? That's why we have the right to defend the notice and we can't defend the notice without defending the complaints.

We dispute what -- the basis of the allegation in calling him in. And so if they want to introduce the notice -- and they're not even talking about using it for your limited notice, regardless of the truth of the -- or the --

THE COURT: Right.

MR. WRIGHT: -- the basis for it because they're saying no, we want it in for the pattern of --

THE COURT: You're on notice, you're getting all the --

MR. WRIGHT: -- pattern of unsafe practice to prove that those were unsafe practices. So how do I defend against those unsafe practices without defending the complaints that are the basis of the notice?

THE COURT: Well, putting it that way, I mean, they've got four witnesses who can come in and you can challenge the four witness. You know, that the basis wasn't -- wasn't safety, that there was nothing unsafe. I mean --

MR. WRIGHT: I think every one of those --

THE COURT: You don't want to just isolate it as a notice issue that he was informed, that there's a problem in this clinic and you're getting a lot of complaints about it

and, you know, rectify it, do something, you know. Go -- go take this class, do something and yet the behavior continued.

MR. WRIGHT: Okay, but --

THE COURT: That to me -- to me that would be what is probative about the letters and the complaints. Because again, other than bringing in the individual witnesses, the complaints clearly are hearsay. You know, you can't really -- I mean that -- you know, the merit of each individual complaint. You know, it's more that you got these complaints and the Medical board is saying, take action, take action. And, you know, no action apparently was taken. I mean that to me is what's -- what the point of it is or what I would take as the point of it.

MR. WRIGHT: You're -- but you're reading more into the -- the nature of the complaints. If -- if we were on trial here for too speedy of procedure or we were on trial for you started before the patient was asleep, I -- I could get it. But this is like the cop yells slow down and then I get caught for not stopping at a crosswalk and you want to bring it in. I mean, because these complaints had nothing to do with the ultimate conduct in the offense charged here.

THE COURT: Of course not, because no one would be making that complaint because they don't know what's going on. I mean, they don't see the reuse of the syringe, so that can't -- I mean, almost by definition, that can't be something other

than a co-worker complaining or a physician that had come in and decided not to work there anymore. That's not something that would be a complaint. I mean --

MR. WRIGHT: Okay.

THE COURT: -- you know, I mean, I think the State's --

MR. WRIGHT: You're on notice, slow down --

THE COURT: Look, I think the State's theory is that A, the quality of patient care; B, the primary focus on profit maximization; and C, the speed in which things were done created an atmosphere where mistakes could likely be made.

MR. WRIGHT: Okay. But we're not on trial for mistakes being made. This isn't a negligence case. We're on trial for supposedly --

THE COURT: It's a gross -- it's an extreme negligence case.

MR. WRIGHT: -- you keep telling me what the theory is, and it changes week by week, the theory of the case, because it hasn't been pled properly, but --

THE COURT: Well, the Nevada Supreme Court said we could go forward on it so --

MR. WRIGHT: Oh, big surprise.

THE COURT: Well, that --

MS. STANISH: Well, now it's being varied, Your Honor. It's, you know --

MR. WRIGHT: Right. It is a variance. I mean, we keep flip flopping, but now how does the atmosphere of profit maximization put someone -- but I am going to -- I know the risk of the propofol reuse and of the syringe reuse, and knowing the likely consequences, I am going to say hell with it and go forward knowing the risks involved. All flows from I'm a capitalistic businessman and I work hard and go fast. I just don't see the connect you all do.

THE COURT: Mr. Staudaher, it's your motion.

MR. STAUDAHER: Clearly, that's the focus on the State that he's financially motivated to do this. That he does so in the face of being told by his staff, by the medical board, by anything, he just doesn't care. He's going to make that money so he can get in and get out with as much as he can, and his motivation, financial motivation, overrides everything. It is the fact of why he essentially goes forward because he doesn't think that he can be touched. As is the case with the letters that go and then him coming before the board. He keeps on doing it even after that.

Now, any reasonable person would have stepped back and maybe adjusted their -- or at least tacitly adjusted their behavior; he did not. His intent and his motivation are married in this case. His intent is that he's on notice, as the Court's pointed out, that he should not do these practices, he should not engage in these practices.

And then after that, what does he do? He continues to do it. And what's the motivation? The motivation is the financial part of it. And the whole purpose of the way his practice is run, set up and the people that work underneath him or within the practice, the way they do things and cut corners is aimed at fostering both of those issues.

That is why this is important to come in as I think legitimate 40 -- 48045 evidence coming in of other bad acts to support that. He is clearly going to be arguing the opposite way. In just the questioning that's come out in the case thus far, we're not talking about distancing -- that he's trying to distance himself from the actions of a certain individual or not. He's -- you know, this is just kind of like, well, we thought these people were professional and they did their jobs and we were going in there and I didn't know and we've had doctors come in here that were actually in the procedures rooms and said they -- they focused on their little part of the case and that was -- that was it.

Who's the one person in the entire practice who has his fingers in every aspect of the practice and knows everything that's going on and nothing happens or changes or moves unless he says so? And that's that man sitting right over there; it's Desai. He's the one that fostered and put that atmosphere into practice and in place and he doesn't care who tells him otherwise, and that's why this is important to

bring in, to show that hell be damned, he's going to go forward and do what he wants to do regardless. We think it's a legitimate and it's legitimate for that information to come in to help support that in this case.

MR. WRIGHT: I just think this is preposterous. I don't know how else to say it. It's his intent, he's on notice, so what does he do. He keeps doing it anyway, keeps his fingers in the practice to show. What is this? This -- how is this -- go to the indictment, go to the elements, go to what we are truly disputing here instead of the crap they keep pulling out, and show me the probative value of him being -- going too fast on his colonoscopy procedures and starting the procedure before the patient is asleep.

Now that -- that is offensive conduct. That is prejudicial, and it's coming in for some purpose I have a hard time to grasp other than truly to show it's being brought in to show he's a bad doctor and bad character. I mean, which is what is -- it isn't even supposed to come in for.

THE COURT: Well --

MR. WRIGHT: But I -- I struggle to find out when I keep hearing it's -- it's the atmosphere and it's his intent to keep doing what he does and that's just hell be damned, I'm untouchable and I'll go ahead. Give me a break. If that's not just putting in bad character evidence, I don't know what is.

THE COURT: Well, I understand the State's idea. The State's idea is this, that it's, you know, he's so -- you know, the State's theory is that Dr. Desai is so -- it's a global idea. He's so concerned with profit maximization. It includes everything. It includes the use of supplies. We haven't had direct evidence of -- or maybe we -- we've had a lot of direct evidence about the propofol and the concern about the waste of the propofol. I don't recollect exactly about the use of the syringes, what we've heard about that, which -- because that's the issue. I mean, I agree with you, Mr. Wright, that's the issue.

Did he know that they were reusing those syringes because that's how the infection is transmitted. If you simply reuse the propofol and you do it in an aseptic manner, there's no problem notwithstanding the marking. That is apparently a widespread practice and really, other than the manufacturer thinking stupidly, naively, that they would be somehow protecting themselves by marking those bottles as single use vials, it's the same as the saline and other multi-use drugs as long as it's used aseptically. So I agree with you there.

You know, the fact that he was concerned about propofol in and of itself really isn't evidence of anything because that could have been done notwithstanding directions from the manufacturer. That could have been done aseptically

just like the saline solution or the Lidocaine or anything else that's used on various patients. So I get that.

The point of what the State is doing, their theory is that he's concerned with profit maximization to the point of rushing patients through because he doesn't want -- the point of the anesthesia and not being under anesthesia, he didn't want to wait for it, he doesn't want to wait that minute for somebody to be fully sedated. Or he doesn't want to take those two minutes to say to the patient and the nurse anesthetist, well, why, you know, what's going on here? Why isn't this drug taking effect? Do we have another drug, you know, that we can utilize to sedate this patient?

And that's the point of that, that it's part of the speed, you know, an extra five minutes isn't going to be taken. That's the point of that with the quick colonoscopies because, you know, every minute counts. That, you know, maybe even squeeze in one more patient that particular day.

That's the point of all of that, that -- that, you know -- and as -- you know, if you're going to -- if you're going to be doing colonoscopies on people who aren't sedated, then it's not a far -- you know, who are conscious, that can file complaints. It's not a far -- a far step to then think well, what else would this person, you know, do as part of the maximization of profits. That's -- that's what they're trying to show, right?

MR. STAUDAHER: It's --

MR. WRIGHT: That evidence is all in.

THE COURT: That's the point in that.

MR. WRIGHT: I mean, this is cumulative. How much of this have we heard?

THE COURT: Well, like I said --

MR. WRIGHT: And now we're going to bring in 404(b), more other prejudicial stuff -- I mean this is -- this is -- it's not like this is something, some additional ingredient they're missing in their case. I've got it's fastest. The records show it's the fastest. The speed is all there. Him being a penny-pincher is in ad nauseam. His speed in and out is all in ad nauseam. And -- and so what -- what is the extra where we're balancing incremental value versus the prejudice?

THE COURT: Well, to me -- I'm not saying I'm letting it in, but to me the relevance of the complaints is the notice issue. You've been put on notice that this is an issue and -- you know, in order to prove recklessness and, you know, criminal negligence, you're automatically going to go through ordinary negligence, what you would prove for ordinary negligence. It's above that.

So, I mean, by definition, criminal negligence includes ordinary -- I mean, it's like a subset. You know, if you did a -- what is that, a Venn diagram or something. You know, and so to say well, that's just negligence. Well --

well, yes but -- but they're going with criminal negligence and so -- again to, you know, I think the value of that would be the notice issue. You've been told, you know, this is a problem, we're watching you. And -- and if nothing was done, you know, then that sort of defeats the claim. Well, I thought this was all -- all fine because I didn't think that patient safety was being compromised.

Now obviously, patient safety in the transmission of hepatitis isn't compromised by the speed of the colonoscopy, but what is? The likelihood of a perforation is compromised. Patient comfort and, you know, whether or not cancers are diagnosed or polyps are removed, which as we know can lead to a cancer. So maybe somebody didn't have cancer -- I mean, again, you know, I think that the -- the physician that testified, it was too unrelated to Dr. Desai. I don't think he said anything to a reasonable degree of medical probability, which is -- or certainty, which is what you would need at a civil case. So I agree there. I really couldn't digest that in a way.

I think the testimony about the tumor, but that was Dr. Carrol. And so I think that that is too prejudicial as against Dr. Desai because, you know, yes, it's part of the culture but now we have another physician failing to diagnose. So that, you know, I -- I have concerns with. Do you want to move on to the other three people?

MR. WRIGHT: Okay, but just that the notice was all -- if he had been put on notice about syringe reuse or propofol, if he had been put on notice of what this case is -- is truly about, I could see it. But I still have the problem with the unfounded notice. He's put on notice that is I want to contest the notice, I dispute it. And so that's what I want to fight about it. It's my position it's unfounded notice.

THE COURT: Well, except -- out of one, you know, one minute you're saying, oh my God, it's ad nauseam, my word not yours, we've heard nothing but the speed and the this, and the that. We've had so much evidence of that and then you're saying oh, but the notice is unfounded that these things were an issue.

MS. STANISH: They're different arguments, Your Honor.

MR. WRIGHT: Correct.

THE COURT: Well, like --

MS. STANISH: I mean, one deals with the cumulative nature so that Your Honor can look at the -- the prejudicial -- you know, laying the prejudice versus the probative value. The other one deals more with the right of confrontation --

MR. WRIGHT: Correct.

MS. STANISH: -- and I -- you know, honestly, Your Honor, and I think Dr. Kashan is -- is an -- you know, is

representative of the challenge that we have in trying to defend against this unfounded notice. Because I'll tell you right now, I don't have an expert in oncology. I don't have an expert that I can qualify to deal with the gastrology issues that are being presented. Yes, it sounds when a GI, someone untrained in medical medicine says something about, oh, this person moved, I need additional experts to even defend against something that is not related to the indictment as far as the misuse of -- unsafe injection practices. With respect, Your Honor, to what we heard today, very similar situations. You know, we have the -- we have --

THE COURT: I'm sorry. Are they all here Kenny?

MS. STANISH: -- that's okay.

THE COURT: No, we're still waiting. Here's what I'm going to do. We're going to hear the argument. As soon as all the jurors are here we'll just get started. If we need to pick up the argument later, we'll do that.

MS. STANISH: Okay. So you want me to stop or sit?

THE COURT: No, no. I asked Kenny who's standing in the back are they all here.

MR. WRIGHT: No, they're not here yet.

MS. STANISH: Oh, okay. Understood.

THE COURT: And he says no. Who are we missing?

MS. STANISH: With respect to Ms. Phelps, Your Honor, the records will show that she had conscious sedation back in

the year of 2000. Remote in time, unrelated to propofol. I don't have any medical records. I can't defend even against this. You know, just because someone feels pain during a colonoscopy does not mean that they have committed -- my client has committed malpractice. People have different colons. My -- I won't -- my brother's going to hate that I'm saying this, he had a colonoscopy, and he's a doctor, without anesthesia. And he does colonoscopies, you know, with a smaller scope and people's colons are different. Some people can have it done very smoothly without problems, others, despite the amount of medication you give, are more difficult and it can be painful even though they're under anesthesia.

Now, I got -- I have an anesthesiologist but I don't have a gastro expert to address this issue because I didn't know when I read the indictment that I would be defending my client against medical malpractice for gastro issues. So I would need a continuance in order to prepare to defend against the notice and all these 404(b) witnesses who have testified today.

THE COURT: Ms. Stanish, the jurors are all here. If anyone needs a quick restroom break before we start, let's do it right now so that we don't have to interrupt once the jurors come in.

(Court recessed at 11:06 a.m. until 11:10 a.m.)

(Outside the presence of the jury.)

THE COURT: Who's next up?

MS. WECKERLY: We're in the middle of Nancy.

THE COURT: Oh, that's right. You can put the witness back on the stand if you -- that will save a minute or two. Bring them in.

MS. STANISH: Judge, I understand that Mr. Staudaher's going to have about an hour more on direct.

THE COURT: Okay.

MS. STANISH: I'm going to need a little break in between because this is a document intensive witness for me and I'd like a little time to organize so I'm not fumbling up there.

THE COURT: All right. Mr. Santacroce, are you going to have any cross for this witness?

MR. SANTACROCE: Yes.

THE COURT: So maybe you can start, depending on what time it is. I mean, if it takes an hour then we'll just take lunch.

MS. STANISH: Yeah, it might hit lunch. You're right. Okay.

THE COURT: But if it's, you know, 30 minutes then, no.

MS. STANISH: Great. Fair enough.

(Jury reconvened at 11:13 a.m.)

THE COURT: All right. Court is now back in session

and ma'am, you are still under oath.

Mr. Staudaher, you may resume your direct examination.

MR. STAUDAHER: Thank you, Your Honor.

DIRECT EXAMINATION (Continued)

BY MR. STAUDAHER:

Q Now, when we left off yesterday we were going through those two charts. I'm talking about these here, which were State's Exhibit 156, which is the chart with all the names and all the information on it, correct?

A That's correct.

Q And if I understood you correctly when we left off also you had said that that information came from the actual patient -- predominately came from the patient files themselves.

A That's right.

Q And went into those two charts.

A That's right.

Q Just so we're -- we're on the same page --

MR. STAUDAHER: May I approach for one moment, Your Honor?

THE COURT: You may.

BY MR. STAUDAHER:

Q I'm showing you what has been designated as page 18 on the first chart and I'd like you to just, if you would,

flip through this -- this record and see if that is the kind of information that you used to put the charts together?

MS. STANISH: Mr. Staudaher, what are we looking at up there?

MR. STAUDAHER: The patient file for patient 18.

MS. STANISH: Thank you.

MR. STAUDAHER: It's 18C I think.

THE WITNESS: This looks like the files.

BY MR. STAUDAHER:

Q Okay. So is this similar to what you see on -- on most of them?

A Yes.

Q I know that they have different paper, but it's along the same kinds of documents behind the numbers on that chart?

A Yes.

Q Were used out of these files?

A That's correct.

MR. STAUDAHER: And again, for counsel, I'm sorry, it was Exhibit 95. It's patient 18.

MS. STANISH: Thank you.

BY MR. STAUDAHER:

Q One of the things I wanted to go over with you, just so we're -- before I ask you the other questions in a moment. When we look -- let me zoom out here to get a general

perspective. And I'm looking at -- at Bates number PF3301. Do you recognize this type of a document?

A Yes. I haven't seen them for a while, but it does look familiar.

Q Is this an anesthesia record that we're looking at?

A Can I see more of it?

Q Yes, certainly. And this is redactable. Well, let me pull -- actually, let me get a different one. Let me get one that has -- it doesn't have some of the redacted information. This is Exhibit Number 5.

MS. STANISH: What patient is that, please?

MR. STAUDAHER: This is Stacy Hutchinson.

BY MR. STAUDAHER:

Q And I'm going to zoom out one more time. Do you see that? Do you see at the bottom it says anesthesia record?

A Yes.

Q Okay. Does that look familiar to you?

A Yes.

Q Now, there's certain information on this chart, numbers and the like, milligrams and the like. Did you take the information on -- off of this chart or -- or one very similar like this for each one of the patients to populate your -- your exhibit that was the larger chart?

A Yes, I did.

Q Okay. So this is the front page and then that's the back page of the exhibit as well, the enhanced record. Do you see that?

A Yes.

Q Now, in addition to that, you had mentioned I think a procedure or a computer record of the procedure. Showing you Bates number 6248 at the time -- at this moment. First page of what appears to be a procedure record and the second page. Do you see that?

A Yes.

Q And there are times listed there on the second page and actually names of people listed on the first page.

A Yes.

Q Let me set aside that record. Have you seen one of -- one of these type records before?

A Yes.

Q And do you see where it says pre-procedure assessment time and it's got a time listed here?

A Yes.

Q And then if we go to the next one and also at the very top has a time listed as -- it just has -- the very first line of this -- of the actual document. If we go to the next one there is things and -- records entitled Endoscopy Procedure Nursing Record, Bates number 2822. Also has a procedure start time here, procedure end time here.

A Yes.

Q Go to 2823, which is the next document. Do you see up here it says post procedure assessment time and it's got a time listed, DC hep-lock time, discharge time, patient at bedside.

A Yes.

Q Or physician at bedside rather.

A Yes.

Q And then the record that we were talking about -- one of them that we were talking about yesterday, there's a sheet, which has two pieces if I understand them correctly of -- of sort of computer generated material that's actually stapled to this document and then photocopied; is that right?

A That's correct.

Q And if I understood you correctly, the one with the tracing, meaning the -- the heart type tracing was the one that you -- you determined was the monitored --

A That's correct.

Q -- monitored copy? And this one where it's upside down in this picture, but is the tape -- is the recovery room tape [indiscernible] is that right?

A That's correct.

Q And so the numbers that are on your chart, did they come from these areas that I've just shown you?

A Yes.

Q And again, if you need to look at this to refresh your memory or a similar document like it, just let -- let me know I can show it to you. Now, on the -- well actually, let me go back to that because I do want to ask you before I go to chart about one of the documents, which was the anesthesia record. Now on the anesthesia record, and again, this is Bates number 2819, did you see lots of these types of records when you were doing this work?

A Every green file I went through had one.

Q Had one. Okay. Now down here where it says propofol --

A Yes.

Q -- and it's got sort of an amount listed, I noticed that in the chart that we had, I'm just going to put that on -- just superimpose that for a moment, which is 156, and I won't zoom in on it right now because I want to just ask you the questions. But in this column here where it says propofol and it's got certain numbers that you said were milligram amounts per injection, correct?

A Yes.

Q Does that correspond when we're looking here on this record to an area where it's got -- in this case it's just a single injection it appears or at least 100 and then it has a line throughout the entire procedure. Do you see that?

A Yes, but it would be the propofol line.

Q Right. Oh, I'm sorry. Wrong one. I'm down here at this -- I -- my mistake. So this one is the 150. So that would be -- is that corresponding to what we would see on this other chart record, the State's 156, which would have propofol and then a 100 and a 50?

A Yes.

Q Indicating two separate injections.

A Yes.

Q And then at the end the total amount.

A Yes.

Q Along those lines you can see the vital signs are listed for the entirety of the time of this record, correct?

A Yes.

Q And then over in the right-hand corner, right-hand lower corner, the date and then the actual start and stop time of the procedures.

A Yes.

Q Does that information also appear on this larger record in State's 156 and -- and the companion one is State's 157?

A Yes.

Q So to the extent that this information is listed here and the numbers are listed here, did you try to accurately transpose what's on this particular record and I'm

-- and when I say this, I'm just in general saying all the records you looked at for all of these patient files on -- on those two days, into the spreadsheet which comprises State's 156 and 157?

A Yes. That's what I took the -- my information from.

Q Were you in any way in producing this document saying that the times listed, the milligram amounts, the actual start and stop times down here in the corner, that those are, in fact, accurate in the record itself?

A I -- I didn't know that. I just took the numbers that were on the record.

Q Okay. And that's how we get our charts?

A Yes.

Q Now, in looking at the -- is that the same thing for the other times and the -- and the nurses who were involved and -- and where they -- if they were, you know, the procedure nurse or the doctor involved, you took that off of these records?

A Yes.

Q Are you saying that that is an accurate depiction of who actually was in the room at the time or you were relying on just the record to show that that is the case?

A I'm just relying on the record.

Q I'm going to open this up again, so I'm just

going to set this off to the side here. Now going back to the charts for a moment, and I'm going to start off with 156. Just for context, we're -- we're on the September 21st, 2007 date and I'm going to be focusing for the moment on this part here, which is from the anesthesia record like we just saw a moment ago. When we're looking at that record here, I see that these patients are in a particular order, first of all, on this -- on this record. How did you order the patients on -- on this chart?

A On this particular day we had a date that was incorrect in the report so I knew which room they were in from that number.

Q So you would segregate each person by which room they were in?

A Yes --

Q When you were -- go ahead.

A -- if you could show me the top of the spreadsheet it -- it says how I sorted it. So if you go over to the right. It was sorted by the report procedure start date.

Q Okay. So the one that we're talking about is the column all the way over here; is that correct?

A The start procedure report date, yes.

Q Okay. So you -- you sorted by the start date or the start time?

A Start time.

Q So we would have to believe that that start time would be accurate for your ordering to be accurate; is that fair?

A That's correct.

Q Now, in the process of doing this ordering, did you try it a number of different ways?

A I did. Before I knew about the -- the computer glitch on the report, the computer generated report, I -- I sorted it by just about every column that I had and they were all different. It -- it -- we -- we couldn't get the same sort for every time. So once I was able to break it down by room, that -- that made it a little easier. So I sorted it by room and I sorted it by the procedure report start time.

Q So if I'm to understand you correctly, the actual order of the patients on the [indiscernible] segregate between room one, let's just call this one on the top chart, room one, and say the one on the bottom, which is room two because of the date, correct?

A Right.

Q But you were relying on the accuracy of the initial computer sort of record in the room on that one that had the pictures on it; is that right? For the sorting of this particular chart.

A This particular chart was sorted by that report

time, yes.

Q Okay. And just so we're clear on this, I want to make sure, I'm going to use State's Exhibit 5, Bates numbers 2648 and 2649. Okay. So going back out for a moment and this is the record we're talking about, correct?

A Correct.

Q The first page and second page of that record.

A Correct.

Q So the part here on this where it -- this is an actual one that looks like it's Dr. Desai, correct?

A Right.

Q And it says signed date and it's got a date and a time and then it's got note initiated on and a date and a time --

A That's correct.

Q -- do you see that? Which number were you using to sort by?

A I think it's on the first page.

Q Let me -- let me just show you that. I'll just show it to you, State's 156, and tell me if you can specifically what number you used to sort that chart.

A Well, it was sorted -- it was sorted by the report procedure start time. So if on the first page of this report --

Q Yes.

A -- I think there's a time.

Q Oh, on this one?

A Yes.

Q Oh, I'm sorry. So --

A Is there --

Q Well, let me show it to you and then you can just tell me so that I can go right to it.

A No. It was on this side. It was on the second page, it's on here.

Q So it's right there?

A Right.

Q Okay. So there's two actual times there. One says the note initiated time and the other one says the signed time. Do you see that?

A Right.

Q Do you know which one you used to sort it?

A Well, I would have it where the note initiated time was the first one.

Q Okay.

A And then it was signed off is when the computer was -- was stopped.

Q Okay. In even using that -- I'm sorry.

MR. WRIGHT: Point out the two times.

THE WITNESS: The times?

MR. WRIGHT: I mean, move that around.

BY MR. STAUDAHER:

Q I will. So we've got here where it says report has been signed and then it says signed date up here --

MR. WRIGHT: Oh, okay.

BY MR. STAUDAHER:

Q -- a different date. Do you see those two here and here? So it says --

MR. WRIGHT: So which one's the start?

BY MR. STAUDAHER:

Q -- so does it say -- where it says note initiated on that, is that the actual start time?

A Yes.

Q Is that the one you used?

A Yes.

Q Okay. For this chart. You have a whole bunch of other charts.

A Right.

Q So the end time would be when the doctor walked out of the room supposedly and signed off.

A Yes.

Q Is that fair?

A That's fair.

Q Okay. And that's what we would see translated over to the chart.

A Yes, that's correct.

Q In this particular record, just so we can do this, this is Stacy Hutchinson and the record here shows that the note was initiated on -- at 9:52:58 and was signed off at 10:06:33. Do you see that?

A Yes.

Q And if we go to -- and I'll try not to make everybody sick again, but Stacy Hutchinson is right here. I'm going to slide all the way across and we can see that it says 9:52 and 10:08; is that right?

A I think it's 10:06.

Q Now -- oh, you're correct. I'm sorry. I was not able to read that well. But anyway, 10 -- 10:06. That corresponds to the same information as is in this record, which is Bates number 2649, which is the 9:52 and 10:06.

A That's correct.

Q So in order for the actual specific order of patients, one after the other, to be accurate, this record itself would have to be accurate; is that fair?

A That's correct.

Q So if there was some glitches or issues with even the computer times under these, would that potentially affect the sorting of the patients?

A It would because that's what I based the sort on.

Q Now in general, when you look at this record,

and I'm referring to 156 again, what -- and I'm going to go across at the very top. Let's see, go across to the very top again. If we look at the different categories of -- of record that you actually used in this particular document, the first one, if I understand you correctly, is the anesthesia record?

A Yes.

Q And if you look at the times listed on the anesthesia record, at least they appear to follow in a sequential fashion; is that right?

A Yes.

Q If we move across to the nurse log times, for the most part do those also appear to fall in a sequential fashion?

A There's one that's out of -- the one that starts at 8:18 comes after the one that starts at 8:25.

Q Right. And that's what I was going to get to next. For the most part they generally follow; is that correct?

A For the most part.

Q But there appeared to be on some of the records for each one of these columns overlaps; is that right?

A Yes.

Q So where it appears as though a -- if I understand correctly, that would mean that a procedure for one person is actually ongoing when it appears as though a

procedure for another person is going on at the same time.

A It appears from these times that -- that would be it.

Q Is that one of the reasons why you chose the report time because of this overlap issue?

A Yes. That was the only one that -- that I -- that I thought might be accurate because it was computer generated.

Q So we go over to the next column, which in this case appears to be the discharge time one as well. Do you see that?

A Yes.

Q Does that appear to be generally accurate? I mean if we look at the times?

A Yes.

Q I want you to look here on some of these. I want to go to 7:30 to 8:00 and then it's got the other patients. There's a -- does there appear to be a lot of overlap on these?

A Yes, there are.

Q And, in fact, every one of the times listed is the exact same time.

A That's correct.

Q We'll move across to the tape read, which if I understand you correctly is the -- I'm going to call it the

recovery room strip, that little one that we're talking about. Again, looking at that tape read, does it generally in this case seem to follow with the exception of some overlap on some of these patients?

A Yes.

Q And if we move across to the monitor read time, this is the one that came out of the room with the tracing that was generated by the computer thing in the room, correct?

A Yes.

Q Do these also appear to be kind of generally just in the same chronological order?

A Yes.

Q But again, if we look at the [indiscernible] here we can see that there appears to be some overlap as well.

A Yes.

Q And if we look at this column here, with the exception of that outlier, they all appear to be exactly 11 minutes long.

A Yes.

Q Did you ever have an explanation or could you determine as to how that was even possible with relation to the other records you were looking at?

A No. I couldn't determine anything from the records.

Q When we move over here to the report time, you

have listed the times. And again, do these generally follow the same pattern that we were talking about?

A Yes, they do.

Q And again, the times here are listed and they actually vary over here, correct?

A That's correct.

Q Not the 11 minute over here or the [indiscernible] over to the anesthesia record, the 33, 32 minute plus times over here; is that right?

A That's correct.

Q Now, for a moment though, I want you to look at State's Exhibit 157. Did you sort this the same way using the procedure -- it says report procedure start time.

A I did but I didn't have the rooms on that one because it was -- the glitch was gone. It wasn't -- didn't show up in that computer generated report so I sorted that one by CRNA and report start time.

Q So you sorted in a couple of different ways?

A That one, yeah. I mean that was the final sort, was by CRNA and then by the start time.

Q Okay. So the -- so the order of the patients within that group that you designated as likely to be the room.

A Uh-huh.

Q Is by the report time.

A Yes.

Q And then you separated the two rooms by who was the CRNA; is that fair?

A Yes.

Q And was that based on information you had that the -- the CRNA predominately stayed in one room the entire day?

A I'm not sure I had that information at the time, but it made more sense because it was more consistent that one CRNA would stay in one room and the other one would be in the other room.

Q So this wouldn't necessarily be able to reflect then, in this record, whether or not a CRNA went to lunch and was covered by the other CRNA?

A No, not like the other one.

Q Or a break where one CRNA may have come over and relieved another one for a period of time?

A That's correct.

Q Now, the procedure start time on this record, which is State's 157, and I want to put up the other one and -- to show it also, if I can try to do that at the same time. I want you to focus on -- in 156 to the -- to the differences in the actual difference time, which are in minutes. Do you see that?

A Yes.

Q And flip to -- and I don't see anything here that appears to be above -- there's one that said -- a 30 minute one here, the rest of them are in the 10, 12, 15, 23 minutes or eight-minute range, somewhere in there; is that right?

A Yes.

Q Okay. We go to this record, which is also sorted in the same manner. Do you see that the time difference here appears to be an hour and 14 or 39 minutes or 11 or 25 and the like?

A Yes.

Q When you looked at those records, obviously there's a big difference between these times here but they still appear to be in descending chronologic order for the most part; is that right?

A That's correct.

Q If you look at that many -- if this was accurate and it goes on for the entire day, both rooms, correct?

A Correct.

Q There are 65 patients total on that day; is that right?

A I -- I don't know. I can't see it. Yes.

Q At least an hour apiece on each one of those.

A At least.

Q This was one day too?

A That's correct.

Q The times on the anesthesia record were predominantly all above 30 minutes?

A They -- they ranged around 30 to 33.

Q Sixty-five patients in a -- in a day there at 30 plus minutes a pop.

A That's a long day.

Q Now, beside looking at those records and going through them, when you were going through the patient files themselves like the one we have here, if we look specifically at one area, which is on Exhibit 156, and it is the second room that you designated and this is where we have -- I actually got it wrong. That's the top room and if we slide down here to the second room we've got Stacy Hutchinson as the first patient that's marked in green.

A Yes.

Q And if you're -- if I look at your legend that says -- it's entitled victims. That would be a genetically matched patient?

A Yes, that's correct.

Q The ones who were above, you see there's two up here that are in yellow in the other room. Do you see that?

A Yes, I do.

Q One is -- has the designator of 55C and one has the designator 57C. We had those patients come in so I want

to ask if you will tell us who those patients are.

A One is Lakota Quannah and the other is Nguyen Huynh.

Q I have trouble with that name too. So do you remember which is which?

A I believe Lakota Quannah is the first one.

Q So Lakota Quannah here and Ms. -- Mr. -- I'm just going to call him Mr. Nguyen down here.

A Okay.

Q Okay. So even though we have number designations, we know from your review -- because when you originally did this chart you had the names, correct?

A That's correct.

Q But these are, in fact, those individuals?

A Yes.

Q Now, when we look at the times for -- let's start off with the ones for -- and -- and again, I'm sorry to slide back and forth but I want to make sure we have the name. So Kenneth Rubino being as you designated this the source patient and then Lakota Quannah and then the first infected or genetically matched patient, which was [indiscernible].

A That's correct.

Q Do you see that? We go across to -- and I -- and we already -- I don't want to necessarily look at this anesthesia time because you've already indicated that doesn't

comport with reality, meaning the -- the number of minutes that would be attributed to the anesthesia time for a number of hours that [indiscernible].

A No.

Q So if we go across to the time that you have listed as being what you believe was the most accurate and we look at that as being the -- the start and stop times of the procedures, you're taking that off of the record itself, correct?

A Yes, the report.

Q We've got at least from here, from 9:50 until 10:36 is the window; is that right?

A Yes.

Q And from 9:50 to 10:00, 10:04 to 10 -- 10 -- is it 18 or 16? Sixteen it looks like. 10:22 to 10:36, that window.

A Yes.

Q Now, I want to go down this column for a moment to this patient right here, which I will indicate to you is patient 18. Do you see that that shows a start time of 10:13 and an end time at 10:24?

A Yes.

Q That is within the window, is it not, of this grouping of patients --

A Yes.

Q -- here?

A It is.

Q If we slide back across, is it one -- here it is, okay. We see that the designated CRNA is Keith Mathahs for all three of the first group.

A Yes.

Q Do you see that? And if we get down that same column, down here, we have Keith Mathahs also in that room within the window of time that he would have been in the other room.

A That's correct.

Q Is this something that you saw in the records as you went through them at -- beside this one instance that I pointed out, where it appeared as though one person was in a -- in two rooms at the same time?

A I remember that -- that this particular incident where Keith Mathahs showed up between the two infections really struck me because it was so out of place. So it didn't go with the pattern of having him just in the one room, so I do remember that one specifically.

Q And as you can see if you go down a little bit further on this, that it appears as though he had -- he's there over what appears to be the noon hour time as well.

A Yes.

Q And have you had information that indicated that

they did switch rooms between -- or at lunch to cover each other?

A Later I did, but when I first did this chart I didn't know that.

Q Right. And I'm talking about collectively because you -- you've made various iterations of this chart or these charts as you went, correct?

A That's correct.

Q So at some point, did you learn that in your investigation?

A Yes.

Q Now, that is not obviously a time that would indicate a lunch break.

A No.

Q Looking at these records for these -- these patients, this group of patients right here, and I'm not going to slide it over, but it's Stacy Hutchinson, patient 18, and Patty Aspinwall. Did you see any irregularities in the records of who on the computer generated one, this -- this one I'm talking about, the report time one, as to who was in the room versus who actually did the anesthesia record on those days?

A I don't remember. If I could look at the records.

Q Sure, you can look at them. I've got both of

them, so let me show you this one. Stacy Hutchinson, that's -- can you look at the computer-generated record there and tell me who it says the CRNA was in the room on that one?

A It -- for Stacy Hutchinson it says Ronald Lakeman.

Q And then, do you know -- you remember the signatures or what the signatures look like for those individuals?

A Yes, this is Ronald Lakeman's because of the big L.

MR. SANTACROCE: I can't hear, Your Honor.

MR. STAUDAHER: Ronald Lakeman's because of the big L.

MR. SANTACROCE: On which -- which one?

MR. STAUDAHER: This is on Stacy Hutchinson's record, 2819 Bates number.

BY MR. STAUDAHER:

Q So at least on that record it appears as though Mr. Lakeman was at the beginning of the procedure and he actually did this --

THE COURT RECORDER: I'm sorry, Mr. Staudaher, I didn't -- I didn't get this last part.

BY MR. STAUDAHER:

Q I'm sorry. So at least as far as that record Stacy Hutchinson is concerned, he's on the procedure -- or the

-- the report record, the computer generated one, as well as the anesthesia record.

A Yes, that's correct.

Q Now as far as 18 is concerned.

MR. STAUDAHER: May I approach, Your Honor?

THE COURT: Sure.

BY MR. STAUDAHER:

Q And for the record, this is Exhibit 95 and it's Bates number 3309, PF-3309. Do you see this record here?

A Yes, I do.

Q Do you see who is listed on the anesthesia record there?

A And that's Keith Mathahs.

Q Okay. And if we go to -- let's see if it's in the beginning here or at the end. If we go to the actual computer record for that, is that -- is his -- I mean, who's listed there as far as being present during the beginning of the procedure?

A Ronald Lakeman is shown as the CRNA.

Q So at some point -- and I'm going to display this now. This is Bates number 3259 for the record. So it's got Dipak Desai, Linda McGreevy and Ronald Lakeman as the CRNA for anesthesia, correct?

A That's correct.

Q If we go to Bates number 3309, however, go down

to the signature for who actually signed and wrote up this anesthesia record, that is Keith Mathahs.

A That's correct.

Q So we've got what appears to be the records of two CRNAs in the same room at the same time.

A Would appear that way.

Q And on your sorting, if we take this order as being as accurate as it can be and we go back up to the first room and we look at source patient, infected patient, infected patient, within that window we have at least with Mr. Mathahs actually appearing on the record for this patient right here, this patient over there and the actual computer record showing that it's Ronald Lakeman.

A That's correct.

Q After this happens, does it appear from the record, and I'll go back up. I'm sorry to do this. I go back up. Did Keith Mathahs return to his room as opposed to -- what I'm talking about as far as the records themselves are concerned? Does it appear as --

A Yes.

Q -- though he appears on the record up here?

A Well, it doesn't show that he ever left until about --

Q Until down here, correct?

A -- down there, yes.

Q And this appears again as a time near the lunch hour; is that correct?

A That's correct.

Q So it doesn't look like from the record, and we can look at them sequentially, as though he ever is able to leave that room.

A That's right.

Q But we have him, physically his signature, on -- in documentation of an anesthetic procedure in the other room at the -- at -- well, at -- at a time when he doesn't appear to have left even the room he's in.

A That's right.

Q And we go down to the very bottom again. Do we see that about the time he gets in to this room, that the infections start here?

A Yes.

MR. SANTACROCE: That misstates the testimony and the evidence, Your Honor. The infection started before that.

MR. STAUDAHER: I said about the time he gets to the room.

THE COURT: You mean the first infection in that room?

MR. STAUDAHER: Correct, yes. First infection in that room. And we're talking about --

THE COURT: That's the first patient infected in that

room.

MR. STAUDAHER: First patient infected in that room, yes. Let me clarify that.

BY MR. STAUDAHER:

Q The first patient infected in that room coincides with at least the time period that Mr. Mathahs came over to that room.

A Yes, because his -- that procedure would have started at 10:13 according to this -- this record that I used.

Q Now, as far as that's concerned, did you have any -- any indication that there was a syncing or an identity of timing between the two rooms? Meaning that the computer equipment and the procedure logs and the tape reads were all in synch between the two rooms?

A I don't think I ever noticed that. I didn't -- I didn't look for that.

Q In fact, if we just -- I'm sorry to do this because -- but I have to. If we go over to the very first one of the day here and if we look at the anesthesia record, which would be showing when they supposedly started, which is different than what the other records show, correct? If we go all the way over to there within report initiated time, 6:59 here, and we've got the actual anesthesia time record showing it to be about 7:00 in the morning. Do you see that?

A Yes, they were close.

Q Okay. Then let's go down to the next room and let's see -- it seems like right at 7:00, according to this anesthesia record, another procedure starting here, correct?

A In the other room, yes.

Q And if you go all the way across in that same procedure room, it looks like things start at 6:56 over here.

A That's correct.

Q Now, what I want to do is show you who the doctor was in that particular room. You see it's Clifford Carrol.

A Yes.

Q Room one. And -- well, there we go. Sorry about this. And it appears to be Clifford Carrol in room two.

A Yes.

Q So Clifford Carrol appears to be in the same two procedure rooms doing procedures simultaneously, according to the records anyway.

A That's correct.

Q Now, one last thing. When we look at -- and again, the green are the genetically matched infected patients, correct?

A That's right.

Q Prior to this area where we see Keith Mathahs appear just below this green person who is Stacy Hutchinson, and I'll slide it up just so we have -- and make sure we can

show that, there do not appear to be any infections going on in this room, the second room, correct?

A No, there were none.

Q After he -- Keith Mathahs, comes over to this room and then returns to his room, you see Keith -- at least Ronald Lakeman's name appears on the record thereafter.

A That's right.

Q Okay. And the infections continue on in that room.

A That's correct.

MR. SANTACROCE: I'm going to object to the characterization, infections continued on in that room. There's one, two, three, four, five, six people between them.

THE COURT: All right.

BY MR. STAUDAHER:

Q There appear to be multiple infections after that point in this room.

A That's correct.

Q Even though the record indicates Keith Mathahs has returned to his other room and never left it in the first place.

A That's right.

Q Now, I want to move to another area. You said that you did a medical supplies analysis in this case.

A Yes.

Q I think if I -- when you were here yesterday, and just to make sure we're on the same page, you said you primarily looked at syringes, bite blocks, propofol. Anything else that you really focused on primarily?

A No, that was it.

Q Did you -- and I -- and we've got the records and we know you've gone through every person and all the vendor files and all that thing. Did you come up with a compilation and put that into a spreadsheet, which then produced a sort of a visual bar graph kind of thing as to what those numbers represented?

A Yes, I did.

Q And I'm going to go through a couple of those with you. First of all, I want to show these to you and ask you if they -- if you recognize. They've already been admitted but I just want to show them to you. These are State's 152, 153, 154, and 155.

A Okay.

Q Do those look familiar to you?

A Yes.

Q Okay. Can I have them back? I'm going to start off with --

MS. STANISH: Excuse me, Mr. Staudaher. I have several charts. Can I coordinate with you to make sure I know what you're doing up there?

MR. STAUDAHER: Sure.

MS. STANISH: I'm sorry, Your Honor. I have these in various formats and different versions, so I'm just trying to match them up.

THE COURT: That's fine.

MS. STANISH: Here you are. Thank you. Sorry for the delay.

BY MR. STAUDAHER:

Q So I'm going to start off with 153. Actually, let's start off with 155. I'm sorry. Now, if I need to move it around to -- through this, let me know. Okay?

A Okay.

Q We actually have larger blow-up versions of it as well that we can display later on if we need to, but what are we looking at here?

A This is a chart that I prepared based on the Excel spreadsheet and the software makes the chart when you put the numbers in.

Q Okay. And as far as this is concerned, it's entitled Upper Endoscopies Performed compared Bite Locks ordered, both at all clinic locations for 2007. Do you see that?

A Yes, I do.

Q The blue line in your legend indicates what, or the blue bar?

A The blue bar is the upper endoscopies.

Q Is that patients, patient numbers?

A Those are the procedures.

Q Okay. So procedures, upper endoscopies. So we're not mixing colonoscopies with upper endoscopies in this chart?

A That's correct.

Q And, again, does all the information that we're -- I'm about to display in these bar graphs, come from the compiled information, which is contained in the various documents that are over here as Court's exhibits?

A Yes.

Q As far as the record is concerned, there's a portion at the very top of this screen. What is that? It's some numbers.

A That was -- those were the totals that I -- that I came up with after counting the procedures from the -- the logbooks and the number of bite blocks that were ordered based on the records that I subpoenaed from the vendor.

Q For that year period?

A For that location.

Q Well, yes. You had three different locations listed here, correct?

A Right.

Q So the first one says Shadow. Is it fair to

assume that that's the Shadow Lane 700 location?

A That's correct.

Q And Burnham, is that the Burnham clinic?

A That's correct.

Q And Rainbow, I show that there are no patients there. It doesn't look -- look as though there were.

A No. Rainbow was a brand new clinic and I don't believe they had any procedures.

Q Okay. It shows some inventory though, does it not?

A It did.

Q Okay. And let's go up to your -- your numbers at the very top up here. What -- what are we looking? And I'll -- I'll zoom in just a tiny bit here. And you again can write on that screen with your fingernail if you need to, but --

A Okay.

Q -- tell us what we're looking at.

A The upper endoscopies at the Shadow clinic for 2007, when I counted them up, there were 5,040 endoscopy procedures.

Q So right there?

A Right there, right.

Q Okay. And then -- okay, go ahead and clear that so we can see it. I'll point to it.

A Okay.

Q So you're describing this number here, 5,040 procedures?

A That's correct.

Q And then the number below that it says bite blocks is what?

A Is the number of bite blocks that were ordered for that location.

Q It says 2,250; is that correct?

A That's correct.

Q We go over to Burnham, we see that they have how many procedures?

A They had 2,481 procedures.

Q And how many bite blocks?

A Nine hundred bite blocks that were ordered.

Q And at Rainbow?

A They had 100 bite blocks that were ordered.

Q So the total combined all the clinics, we're talking about number of patients --

A There were --

Q -- or number of procedures rather.

A There were 7,521 procedures and 3,250 bite blocks.

Q So at least a two to one ratio?

A I have the ratio right off the screen.

Q Oh, let's see.

A Yes.

Q So the ratio of -- and this is patients per bite block?

A That's correct. 2.3 patients for every bite block.

Q Now, the portion that's down here, the bar graphs, is that just a graphical representation of the -- of those numbers?

A It is.

Q Now, moving to -- let's talk about propofol next. And this would be Exhibit 154.

A Okay.

Q And that bar graph again is entitled Shadow, Burnham and Total; is that correct?

A That's correct.

Q Are we to assume that whenever we see Shadow that that's the Shadow Lane location?

A Yes.

Q And Burnham is the Burnham Clinic location?

A That's correct.

Q And then the total is -- does that combine these two?

A It combines them both, yes.

Q Now, I want to go back up to your numbers, which

make up this bar graph. Okay. Tell us what we're looking at here.

A This was the number of patients at the Shadow Clinic is the 14,957 for 2007.

Q Okay.

A And at the Burnham Clinic they had 8,619.

Q So a total of 23,576 patients?

A That's correct.

Q So if we go from -- across and I think hat we're talking -- your next column says vials of propofol?

A Those were the number of vials of propofol that were ordered.

Q So 14,957 patients?

A Yes.

Q And 6,764 vials of propofol?

A That's correct.

Q Does that include both the 20cc and 50cc varieties?

A Yes, it does.

Q So all bottles of propofol?

A Yes.

Q So the ratio?

A The ratio is 1.99 to one. 1.99 patients to one vial of propofol.

Q Does that include both locations combined, that

ratio?

A Both locations combined, yes.

Q But if we look at those numbers, clearly there's more than two -- more than a two to one ration at the -- at least the Shadow Lane Clinic, correct?

A That's correct.

Q Now at Burnham, it indicates that they had 5,619 patients? Excuse me, 8,000 --

THE COURT: It says 8,000.

A 8,619.

BY MR. STAUDAHER:

Q -- 8,619 patients; is that right?

A Yes, that's right.

Q And what is the number of vials of propofol that were ordered at that location?

A 5,080 vials.

Q So to get to your ratio you combined the -- the supply at both clinics, even though there were far more numbers at -- of patients at Shadow?

A I did.

Q Okay. That's in 2007?

A That's correct, 2007.

Q Now, did you also do this analysis for both incident days, July 25th of 2007 and September 21st of 2007?

A I did.

Q I'm showing you State's 153. Is that a graphical representation of those two dates, the 7/25 date and the 9/21 date?

A It is.

Q Again, blue is patient numbers and red is -- is graphical representation of propofol --

A That's correct.

Q -- vials?

A The vials.

Q We go up to -- get that off the screen. If we go up to this particular group of numbers, what are we looking at here?

A On 7/25 of 2007, there were 65 patients and there were 20 vials of propofol checked out.

Q And on 9/21?

A On 9/21 there were 63 patients and 24 vials of propofol checked out.

Q And you did ratios on those as well?

A Yes. On the first day, 7/25, the ratio of -- the ratio of patients to vials was 3.25 and on the second day the ratio of patients to vials was 2.625.

Q Now, you mentioned syringes as well, correct?

A Yes.

Q Did you do a comparison like the other ones of syringes that were ordered and used at the facility?