

1 takes several months, is that unusual?

2 A No.

3 Q Why?

4 A I don't know what the question is. Why would it
5 be unusual?

6 Q I don't know, but I'm just telling you that Mr.
7 Staudaher was up here and doing this. Look, this was on
8 September 2006 --

9 MR. STAUDAHER: Objection to the characterization of
10 questioning by counsel, Your Honor.

11 THE COURT: All right.

12 BY MS. STANISH:

13 Q What I'm trying to understand is, is Mr.
14 Staudaher was going through line by line this -- establishing
15 this timeline. Is that timeline that he established and put
16 on display, is that timeline unusual for your business -- your
17 -- doing business with medical facilities?

18 A Every -- every work, every -- any type of work
19 that we do for different organizations is very different. And
20 this was very different because this is the first time we are
21 putting together a peer review process for a large medical
22 group or gastroenterology center. And so we wanted to make
23 sure that it's done right and between the schedules of the
24 people at the gastroenterology center and ourselves, that's
25 how the timeline was. And there was no -- no frame of time

1 placed that within which they needed a final report. So we
2 had leverage of trying to spend as much time as we needed to
3 come up with a good document for them.

4 Q Doctors are busy people.

5 A Doctors and people who work with them are also
6 very busy. Tonya Rushing was the one who was coordinating all
7 of this, so not just our schedule. It had to meet with her
8 schedule and she was managing a large business.

9 Q Now, that extra \$12,500 check that was sent to
10 you in November after you had finished the report, did you --
11 was that a bribe to you or was it a mistake?

12 A We think that it was a mistake because that was
13 not a part of our contract and it was paid after the fact.
14 And we discovered it -- when we discovered it we brought it to
15 the attention of our attorney and it was reimbursed.

16 Q Now your report, your final report with
17 recommendations was September -- yeah, you got it there? What
18 is it?

19 A September 2007.

20 Q September 11 -- September 11, 2007, correct?

21 A Correct.

22 Q And I understand that the medical community is
23 relatively small in Las Vegas and you have known Dr. Desai as
24 a colleague for numerous years, correct?

25 A Correct.

1 Q Were you aware that he had decided to open up a
2 new facility on Rainbow? Did that ever come to your
3 attention?

4 A Not that I recall.

5 Q Okay. Were you aware that shortly after your
6 report was finalized, that on or about September 29th, '07,
7 Dr. Desai suffered his first stroke?

8 A No.

9 Q The remark on that check that was sent to you
10 that you testified you believed to be a mistake, it had the
11 word quality typed in it, like on the memo line. Fair
12 statement that an internal peer review process is indeed part
13 of quality -- quality assurance?

14 A I wouldn't put too much of emphasis on that.
15 Our name is Quality Care Consultants, so it could have been
16 that it was meant that that's what it's for.

17 Q Or as I understood your testimony, just to be
18 clear, I understood you to say that peer review is a component
19 of quality assurance.

20 A It is, but we were not writing that check. We
21 didn't write that word quality there.

22 Q Oh, I understand. I probably didn't make myself
23 clear. Thank you. All right.

24 MS. STANISH: All right, that's all I have.

25 THE COURT: All right, thank you.

1 MS. STANISH: You might want to take the stairs.

2 THE COURT: All right. Mr. Santacroce, do you have
3 any questions for this witness?

4 MR. SANTACROCE: No, Your Honor.

5 THE COURT: Mr. Staudaher, do you have any redirect?

6 MR. STAUDAHER: No redirect, Your Honor.

7 THE COURT: Any juror questions for the witness? No
8 juror questions? All right, sir. Thank you for your
9 testimony. Please don't discuss your testimony with any other
10 witnesses and good luck getting out of the building.

11 I'll see counsel at the bench.

12 (Off-record bench conference.)

13 MR. STAUDAHER: I'll get the witness, Your Honor.

14 THE COURT: All right. The State's next witness is
15 who?

16 MR. STAUDAHER: Rod Chaffee.

17 THE COURT: All right. And you're going to go
18 retrieve him, Mr. Staudaher?

19 MR. STAUDAHER: Yes, I am.

20 THE COURT: All right, thank you. Sir, just right up
21 here, please, next to me. And just up those couple of stairs
22 and face this lady right there and she will administer the
23 oath to you.

24 ROD CHAFFEE, STATE'S WITNESS, SWORN

25 CLERK: Please be seated. And please state and spell

1 your first and last name for the record.

2 THE WITNESS: First name is Rod, R-o-d. Last name is
3 Chaffee, C-h-a-f-f-e-e.

4 THE COURT: All right. Thank you. Mr. Staudaher,
5 you may proceed.

6 DIRECT EXAMINATION

7 BY MR. STAUDAHER:

8 Q Mr. Chaffee, I want to take you back in time a
9 little bit and -- to specifically 2003 to 2007. Before I get
10 to that, what do you -- were you -- what is your profession?
11 What do you do for a living?

12 A I'm a registered nurse.

13 Q And you had -- how long have you been a
14 registered nurse?

15 A Since 1991.

16 Q Now when you say registered nurse, that's not a
17 CRNA?

18 A Correct.

19 Q Okay, so a registered nurse. During the period
20 of -- between 2003 and 2007, did you work here in Las Vegas at
21 a particular clinic?

22 A I have.

23 Q And where did you work?

24 A I worked at the Endoscopy Center of Southern
25 Nevada.

1 Q Do you remember your rough start, stop days,
2 that kind of thing?

3 A I was hired somewhere around October of 2003 and
4 I was terminated somewhere around May of 2007.

5 Q Okay. You said terminated. Were you let go or
6 did you voluntarily leave?

7 A I was let go.

8 Q What were the circumstances?

9 A I was joking around with another nurse. I had a
10 portable phone charger that had a -- that had a plug in and I
11 pulled the plug out and I acted like it was a grenade. And I
12 said, oh, it's, you know, you better run, it's going to blow
13 and they said that I was making terroristic threats, so they
14 let me go.

15 Q Okay. Now that was in May of 2007?

16 A Correct.

17 Q After you left there in May of 2007, did you
18 ever return to the clinic?

19 A Never.

20 Q I mean, not even to pick up a check or anything?

21 A No.

22 Q Okay. So did you socialize with anybody who may
23 have allowed you access in any way to the clinic after of May
24 of 2007?

25 A No.

1 Q Is that -- that's a no?

2 A That's a no, correct.

3 Q So I want to move forward a little bit. In the
4 clinic, as a nurse, what were you -- the kinds of jobs that
5 you did there?

6 A I did everything from the admissions nurse who
7 took the physicals and did the initial assessment and started
8 the IV to the discharge nurse. I was in a -- I was a
9 procedure room nurse, I was a discharge nurse and an
10 admissions nurse.

11 Q During the time that you were there, that window
12 of time, did your job role change as you went on? Did you
13 start off in someplace and end up in another?

14 A I did, yes, correct.

15 Q Can you describe that for us? Tell us how you
16 got there.

17 A Initially -- initially, I was the -- I was a
18 desk nurse who -- the day after the procedure we would call
19 the -- we would call the patient to find out -- to find out
20 how they were doing and to make sure they had no complications
21 and so that's where I started. I started calling the
22 patients, make sure they were okay after the procedure. And
23 then from there I -- I became a procedure room nurse.

24 Q Did you stay in that role until you left?

25 A I did. I stayed in that role for a number of

1 years. And then from that -- from that position, I became the
2 admissions nurse who took initial assessments and started the
3 IV and got the patient ready for the procedure.

4 Q Now during the time of your employment there,
5 before you left in -- in May, did you -- do you -- did you
6 suffer a tragedy? Did your wife die?

7 A Correct.

8 Q Was that a particularly difficult time for you?

9 A It was a very traumatic time, yes.

10 Q What was the time period that that happened?
11 When -- when did it occur?

12 A My -- my -- my wife died on July 1st of 2006.

13 Q Did that affect you in -- in your work after
14 that in any way?

15 A It did. She was -- she was a victim of a
16 homicide and it was very traumatic for me and it completely
17 affected my work, my thought processes. You know, I was not
18 the same person after that.

19 Q Okay. As far as that's concerned, did that have
20 anything to do with this issue of why you were terminated
21 later on?

22 A I believe so, yes.

23 Q Were you -- was there some emotional thing going
24 on with you at that time?

25 A I -- I was having panic attacks. I -- I was --

1 without notice I would -- I would leave work, I would just
2 walk out the building, get in my -- in my Jeep and drive home.
3 I would have crying fits during the procedures where I was
4 sobbing uncontrollably. You know, I was -- you know -- you
5 know, talking about her incessantly. I was just -- couldn't
6 get it off of my mind. So, yeah, I was a basket case.

7 Q Now I want to move back to your actual work, the
8 work you did. Now you said that you worked in the discharge
9 area and then I think you said the procedure rooms?

10 A Correct.

11 Q Did you -- I know that you worked in the
12 procedure rooms thereafter, but did you rotate at any other
13 place even while working in the procedure rooms?

14 A On occasion I would work in the recovery area as
15 well.

16 Q But your primary role was in the procedure room?

17 A Was a procedure room nurse, correct.

18 Q So in the procedure rooms as a nurse, what would
19 you do?

20 A I would -- I would gather all my equipment if
21 there -- if it was a case that we knew there was going to be
22 like a biopsy or a polypectomy or things like that, I would
23 gather all the necessary equipment. I would get all my lab
24 work together. I would get all my, you know, all my initial
25 charting started. I would make sure that we had, you know, a

1 start time. You know, just I would -- I would gather all my
2 -- I would get myself together to get all my -- my paperwork
3 started.

4 Q So you said charting. You were responsible for
5 some sort of charting in the room?

6 A I was, correct.

7 Q Can you describe that for us? What kind of
8 charting was it?

9 A It was a -- a pre-printed form that essentially
10 had spots for times, checkmarks and some narrative and, you
11 know, and then also any lab work, you know. If we had a -- if
12 we had labs I would fill out the -- the top portion of the lab
13 paper to -- with the names, you know, the birth date and all
14 the -- all the information for the patient for us to send it
15 to the lab.

16 Q Now, it's our understanding based on the
17 testimony that there's some sort of computer in the procedure
18 room that information --

19 MR. SANTACROCE: Your Honor, I'm going to object to
20 leading.

21 THE COURT: Yeah, that's sustained. I mean, just ask
22 him is there a computer in the procedure room?

23 BY MR. STAUDAHER:

24 Q Okay. Is there a computer in the procedure
25 room?

1 A There is, yes.

2 Q What is the purpose of the procedure room
3 computer?

4 A The procedure room computer is what -- it was --
5 it was attached to the scope and it's what -- as a -- as a
6 physician was taking pictures, it would capture the pictures
7 and also would have the heading of the patient's name, their
8 birth date, the day of the procedure, the -- the test that was
9 being done. And so it was synced with the scope so -- as it
10 -- as again, as a physician was taking pictures it would
11 capture those pictures and -- and apply it to the -- to the
12 patient's name.

13 Q As the nurse in the room, did you have any role
14 in putting any information into that computer?

15 A On -- on occasion I would -- I would put in the
16 patient's name and the physician and the test that was being
17 done.

18 Q Whose job, if -- if one had a job, was it to
19 actually put the information into the computer?

20 A The physician's.

21 Q The physician's. So did they initiate the notes
22 as well as finish them?

23 A All the -- all the narrative -- all the
24 narrative portion of the note that was from the computer was
25 generated by the physician.

1 Q What about the information about the name, date
2 of birth, age, all those things that -- that are in the note?

3 A That -- that -- sometimes that was done by the
4 nurse or the physician.

5 Q And when you say nurse, is there somebody else
6 beside yourself in the room as a nurse?

7 A There was either myself or sometimes Jeff
8 Krueger, who was the charge nurse, would float in and take
9 care of that portion of the -- of the computer generated note.

10 Q And now not the narrative, that's not what I'm
11 talking about, but that population of stuff about the name and
12 so forth.

13 A Right.

14 Q Do I understand you that you would at times put
15 that information in?

16 A I would.

17 Q Now during the time that that would happen,
18 would that -- in proximity to the -- when the doctor came in,
19 how close would that be in time?

20 A Generally very close. You know, quite often the
21 doctor would be in the room.

22 Q The turnover in the patients, can you describe
23 that for us?

24 A You mean from the time that the -- from the
25 start to finish?

1 Q Well, I mean the rapidity or lack thereof of how
2 fast things happened.

3 A It really depended on the physician, but it --
4 it happened fairly quickly. I mean, it was, you know, there
5 was very little time between -- from the time the case was
6 done to the time the case -- the next case came in, there was
7 only several minutes in between each case to get things
8 organized and reorganized and cleaned and ready for the next
9 patient.

10 Q So let's talk about that. From the time a
11 patient rolls out of a room before the next one rolls in, what
12 happens in the room, if anything?

13 A The -- any -- any dirty equipment would be taken
14 into the -- into the dirty room. Anything that was grossly
15 contaminated would be -- would be either reprocessed or thrown
16 away. The nurse would, you know, myself, I would have to get
17 my -- my new -- my next note going and if necessary, you know,
18 do the -- do the computer. Sometimes I would -- if it was
19 like an endoscopy or -- or an upper endoscopy, I would go get
20 the scope and bring the scope in and hang it up for the -- for
21 the physician to -- to have there. So --

22 Q So you would actually go into the -- where would
23 -- where would that scope be?

24 A It was -- it was -- there was two rooms side by
25 side and in between those rooms was a -- is what we called the

1 dirty room or the reprocessing room.

2 Q Now during the procedures themselves, which
3 doctors did you work with?

4 A I worked with Dr. Desai, Dr. Carrera, Dr. Faris,
5 Dr. Carrera, Dr. Sood, Dr. Mukherjee, Dr. Wahid.

6 Q Was there a difference in the -- in the various
7 doctors in to how quickly they would do the procedures?

8 A Yes.

9 Q Can you describe that for us?

10 A Dr. Desai was definitely the fastest. It was
11 hard to keep up with him. Dr. Carrera was historically the
12 slowest. He was the one that really took his time, you know,
13 did the procedures based on -- on standards.

14 Q We're not going to get into any -- any standards
15 or anything like that. Okay?

16 A Okay.

17 Q But he would do procedures longer, I would
18 assume?

19 A It would -- yes. It would take him quite a few
20 minutes longer.

21 Q Okay. The other doctors, where did they fall in
22 the spectrum?

23 A Somewhere in between those two, but generally,
24 they were all -- they were -- they were all much slower than
25 Dr. Desai was.

1 Q Did you have anything to do with getting
2 propofol -- you know what propofol is?

3 A I do know what propofol --

4 Q To obtaining that in some way and providing it
5 to the CRNAs during any of the cases?

6 A On rare occasions I might be asked to get some
7 propofol for one of the -- for one of the anesthetists. We
8 kept it in a -- in a locked closet and we had to sign it out.
9 And so I would grab a couple of bottles and -- and give it to
10 the anesthetist, if necessary.

11 Q Did you have any concerns -- you mentioned that
12 it was hard to keep up with Dr. Desai when he was in the
13 rooms. Did that ever give you concern about quality or
14 patient care?

15 A It did.

16 Q Can you describe that for us?

17 A You know, it was -- it was an environment that
18 was -- it was clearly -- clearly too fast. I mean, it was
19 clearly a pace in which we were often afraid that things would
20 get missed, that -- that -- that accidents could happen, you
21 know, perforations or things of that nature.

22 Q That was your view?

23 A That was my view, yeah.

24 Q Did you ever express that to anyone?

25 A We kind of talked amongst ourselves sometimes,

1 but for the most part it was just kind of common knowledge.
2 So we didn't really discuss it because it wasn't something
3 that we wanted to discuss.

4 Q Did you ever confront Dr. Desai about that
5 issue?

6 A No.

7 Q Now -- and we'll get back to that in a moment,
8 but I want to go back to propofol for a minute. Did there
9 come a time at any point during your -- your stay, that the
10 sizes of the vials changed at all?

11 A Yes.

12 Q Can you tell us about that?

13 A I forget what year it was, I want to say it was
14 2005, but there -- we usually used 20cc vials and then -- then
15 from the 20cc vials we went up to the 50 milliliter vials.

16 Q Okay. And did you stay with those until you
17 left?

18 A We stayed with those until I left, correct.

19 Q Did you ever see those being used on more than
20 one patient?

21 A I did.

22 Q Can you tell us about that?

23 A Well, it -- it's common -- it's common nursing
24 practice to -- to access multiple, you know, single use or
25 multi-use vials multiple times as long as you're using proper

1 sterile technique. You know, use a clean syringe, a clean
2 needle and you can access a bottle more than once. I was
3 seeing those bottles accessed more than once, but I never
4 really put it all together that they were being reused with
5 different -- with the same syringe and same needle until
6 this --

7 MR. SANTACROCE: I'm going to object just to
8 foundation.

9 THE COURT: Yeah, that's sustained. Basically, don't
10 tell us anything you may have read in the newspaper or
11 heard --

12 THE WITNESS: Okay.

13 THE COURT: -- you know, on the -- on the TV --

14 THE WITNESS: All right.

15 THE COURT: -- or the Internet or, you know,
16 scuttlebutt or whatever like that. You have to confine or
17 that you're speculating about --

18 THE WITNESS: Okay.

19 THE COURT: -- when you say you put two and two
20 together, it sounds like you're speculating to me. You need
21 to confine your testimony just to what you actually observed,
22 not what somebody, you know, not speculation or anything like
23 that. Okay?

24 THE WITNESS: Okay.

25 THE COURT: So, again, confine your testimony just to

1 what you saw, don't, you know, extrapolate from there. Okay?

2 THE WITNESS: Understood.

3 THE COURT: Mr. Staudaher, ask your question again.

4 BY MR. STAUDAHER:

5 Q Sure. And just so we're clear, did you actually
6 see propofol bottles being used from patient to patient?

7 A No.

8 Q Did you ever see the reuse of syringes with a
9 single vial of propofol? And I'm talking about, just so we're
10 clear, like an anesthetist with an open bottle of propofol --

11 MR. SANTACROCE: I'm going to object to this leading
12 nature of these questions.

13 MR. STAUDAHER: It's just to define --

14 THE COURT: Well, let him answer and then you can pin
15 him down as to -- or ask him well, what's he describing or,
16 you know, whatever --

17 BY MR. STAUDAHER:

18 Q Go ahead and describe it for me.

19 A I saw -- I saw bottles of propofol being
20 accessed more than once. I -- I was not aware that -- if it
21 was -- I was not aware if it was -- I don't know how to answer
22 that. I --

23 THE COURT: So you don't know what they were using?

24 THE WITNESS: I was not aware of what they were
25 using. I did --

1 THE COURT: Is that what you're saying?

2 THE WITNESS: -- see bottles being accessed more than
3 once.

4 BY MR. STAUDAHER:

5 Q You did -- you saw that?

6 A I did see that.

7 Q Okay. Did the -- did the CRNAs ever take breaks
8 during the day?

9 A They did.

10 Q And what kind of breaks are we talking about?

11 A A lunch break.

12 Q Any other breaks that you know of?

13 A No.

14 Q During the lunch break, did you ever see
15 propofol being carried from one room to another?

16 A By the -- by the same anesthetist, yes.

17 Q Okay. And let's talk about that. Tell us about
18 it.

19 A What would happen is when -- when one of the
20 anesthetists went on -- on lunch break, the anesthetist that
21 was still working was responsible for both rooms. And so they
22 would -- they would -- the pace would slow down and -- and --
23 and there'd be one -- one -- one case being done in a room one
24 at a time. So if -- if it was a case being done in room A,
25 room B would be empty until the nurse anesthetist went to room

1 B. During that time, if -- if the nurse anesthetist had a
2 bottle of propofol in room A and they were -- and then -- they
3 were then moving to room B to start the case in room B, they
4 would bring that bottle of propofol with them, yes.

5 Q Okay. Are we talking about a brand new bottle
6 or open bottle or one that they had been using?

7 A It -- all of the above.

8 Q Okay. So you saw all that?

9 A Yes.

10 Q Was that a regular occurrence?

11 A Yes.

12 Q Now, can you describe if you ever -- if there
13 was ever a specific -- did -- well, let me ask it a different
14 way. Which anesthesia CRNAs did you see do that practice?

15 A All of them, primarily Ronald Lakeman.

16 Q Did you see Keith Mathahs do it as well?

17 A I did see Keith Mathahs do it as well.

18 Q Now, as far -- were you aware of there being any
19 reuse of things in the clinic, snares or bite blocks, anything
20 like that?

21 A We did frequently reuse equipment, yes.

22 Q Was there a time when actually reuse of certain
23 items actually stopped?

24 A Yes.

25 Q What items were those?

1 A The -- the -- the brushes that we used to scrub
2 out the scopes and forceps.

3 Q So those were stopped, they stopped reusing
4 those?

5 A They did.

6 Q When was that?

7 A Sometime in -- sometime in early '06, I believe.

8 Q Moving to the records that you said you kept,
9 was there ever a time when you were asked to fill out records
10 that you didn't actually do anything to the patient for?

11 A Yes.

12 Q Can you tell us about that?

13 A To keep -- to keep things moving along, any --
14 any -- anything that we could fill out that was kind of
15 generic, you know, patient awake, alert, and oriented at time
16 of discharge, we would fill that -- we would fill that
17 information out ahead of time so we wouldn't have to do it at
18 time of discharge.

19 Q Was there ever anybody had asked you to do
20 something you didn't feel comfortable with as far as filling
21 out the paperwork?

22 A Yes.

23 Q Can you tell us about that?

24 A When I first started working there I -- I kind
25 of questioned some of these practices and Jeff Krueger, who

1 was a charge nurse at the time, basically said this is how
2 it's done, kind of leered over me, intimidated me and said if
3 you don't like it you can leave.

4 Q Okay. What kind of records are we talking
5 about?

6 A All the -- all the records. The -- the
7 preoperative note, the perioperative note, which is a note
8 that's done during the procedure and the -- the recovery note.

9 Q So when those different records would -- I mean,
10 are these things that you were documenting on the patient as
11 having had something done?

12 A Yes.

13 Q That you didn't actually see or do?

14 A Generally, it was -- it was mostly times.

15 Q What about the anesthesia record?

16 A The anesthesia record, you know, well, there was
17 times -- there was time of the anesthesia record that we had
18 to make sure that our times matched the anesthetist's times.

19 Q What was the issue there?

20 A The issue there was --

21 MR. WRIGHT: Objection to what the issue is. We can
22 ask --

23 THE COURT: That's sustained. I mean, I --

24 BY MR. STAUDAHER:

25 Q Okay. So you -- I'll try to ask it a different

1 way. So talking about the anesthesia record and you said that
2 times had to match that.

3 MR. WRIGHT: Foundation.

4 THE COURT: Well, maybe he's laying the --

5 MR. WRIGHT: Hearsay.

6 THE COURT: I know. He's -- I'm hoping laying the
7 foundation.

8 MR. STAUDAHER: I'm trying to.

9 THE COURT: Go on, Mr. Staudaher.

10 BY MR. STAUDAHER:

11 Q So in those instances, I mean, did that happen
12 more than once?

13 MR. WRIGHT: Foundation as --

14 THE COURT: Well, okay. That's sustained -- it's
15 sustained.

16 MR. WRIGHT: -- to the instances.

17 THE COURT: You said that you had to -- how did you
18 learn that you were supposed to match up the times to the
19 anesthesia record?

20 THE WITNESS: By the charge nurse, Jeff Krueger.

21 MR. WRIGHT: He's bringing out hearsay again, Judge,
22 and he knows it.

23 THE COURT: Mr. Staudaher --

24 MR. WRIGHT: Objection and I move to strike his
25 testimony.

1 THE COURT: Well, I don't think it's -- it's not
2 being offered for that purpose, so go on, Mr. Staudaher. Lay
3 the foundation, you know, when did this happen? What
4 precipitated it, et cetera.

5 BY MR. STAUDAHER:

6 Q Okay. During the time you're there, when is it
7 -- when is it occurring? When did that go on?

8 MR. WRIGHT: What go on, a conversation?

9 MR. STAUDAHER: The -- him being asked -- I'm trying
10 to ask the question, Your Honor.

11 THE COURT: Right.

12 BY MR. STAUDAHER:

13 Q Let's talk about the charting issue regarding
14 anesthesia records. Are you with me?

15 A I am.

16 Q You said you were directed to do that at some
17 point.

18 A Correct.

19 Q When did that happen at the time you were
20 working there?

21 A As best to my recollection, from the very --
22 from the very beginning of my employment there we were -- we
23 were instructed to --

24 MR. WRIGHT: Objection, foundation.

25 THE COURT: Okay --

1 BY MR. STAUDAHER:

2 Q Who was -- who was -- is it --

3 THE COURT: Yeah, only talk about yourself unless,
4 you know, you and somebody else are standing there and you're
5 -- the same things -- you know, happening to both of you, then
6 say, you know --

7 THE WITNESS: Okay. I was instructed --

8 THE COURT: -- Jim, Jim and I did this or whatever.

9 THE WITNESS: Okay.

10 THE COURT: Okay. So otherwise, don't say we if
11 you're talking about yourself.

12 A Okay. I was instructed to --

13 MR. WRIGHT: Objection, hearsay.

14 THE COURT: Overruled.

15 A -- I was instructed to ensure that -- that
16 the ---

17 MR. WRIGHT: Hearsay, objection.

18 THE COURT: I'll see counsel up here.

19 (Off-record bench conference.)

20 THE COURT: All right. Mr. Staudaher, proceed with
21 laying a foundation as to the timing of charting.

22 BY MR. STAUDAHER:

23 Q The timing, just so we're clear, you -- your
24 work period -- when you were working there was from when
25 again?

1 A It was from October of 2003 -- excuse me, until
2 May 2007.

3 Q Regarding the issue of -- did anybody instruct
4 you ever on how to fill out charts?

5 A Yes.

6 Q Okay. Specifically anesthesia records and
7 things like that, did you ever get instruction on how to fill
8 those out or did you fill them out, first of all?

9 A I did not fill out anesthesia records, no.

10 Q Were you ever asked to do so?

11 A No.

12 Q Now as far as the actual instruction on the
13 records that you did fill out, when did you get that
14 instruction?

15 A In 2003.

16 Q Okay. Did that instruction ever vary down the
17 road up until the time you left?

18 A No.

19 Q Where did this instruction take place?

20 A It took place in the procedure room as well as
21 in the recovery area.

22 Q And who was present in these instances giving
23 you the instructions?

24 A Jeff Krueger.

25 Q Both times?

1 A Yes.

2 Q Was Dr. Desai ever present during either of
3 these?

4 A No.

5 Q Okay. So based on that, did you actually do
6 that?

7 A I did.

8 Q Was that the practice that you employed when the
9 clinic during --

10 THE COURT: Do what?

11 MR. WRIGHT: Well, wait --

12 THE COURT: We missed -- we missed a --

13 MR. STAUDAHER: I'm sorry.

14 THE COURT: I'm sorry. We missed a step. He -- you
15 said you got instruction regarding charting so that --

16 BY MR. STAUDAHER:

17 Q Regarding charting. What kind of instruction
18 did you have to -- as far as charting?

19 A I got -- I got -- I received instruction on --
20 on how to -- to how to chart the times appropriately. What --
21 what -- what was instructed to me was that for us to capture
22 all of our anesthesia time --

23 MR. WRIGHT: Objection.

24 THE COURT: Basis?

25 MR. WRIGHT: He just stated he didn't fill out

1 anesthesia charts or do anything with them.

2 THE COURT: Are you talking -- are you talking about
3 the nurses charting, not the anesthesia charting, correct?

4 THE WITNESS: Well, I'm -- I'm talking about how it
5 was explained to me on how we did -- how -- the way we -- the
6 way we wrote our numbers down, the way we did our times.

7 THE COURT: Okay. So just testify as to what was
8 told to you regarding what -- what you're supposed to do.
9 Okay?

10 THE WITNESS: Well, I --

11 THE COURT: In terms of --

12 THE WITNESS: -- I am, though, because --

13 THE COURT: Well, I think that's what we're asking
14 for and what were you told to do --

15 BY MR. STAUDAHER:

16 Q I'm not asking about the anesthesia record, but
17 if that is related --

18 THE COURT: -- and how you were supposed to do it.
19 So you can tell us that.

20 BY MR. STAUDAHER:

21 Q Go ahead.

22 A Well --

23 Q What were you told?

24 A I was -- I was told that for us to be able to
25 adequately -- adequately capture all of the times so

1 anesthesia could bill correctly, this is how we did it.

2 Q Did you follow through and do it that way?

3 A And I followed -- and I followed those steps
4 that -- that were instructed to me, yes.

5 Q Had you ever worked anyplace where you had to do
6 that before?

7 A I did not. I never worked in a -- in a area
8 like that before, no.

9 Q Have you ever done anything like that since?

10 A No.

11 Q Did you question -- when that was -- you were
12 questioned that or did you?

13 A I did question that, yes.

14 Q Okay. Did it make you feel --

15 MR. WRIGHT: Can I have an instruction that that last
16 exchange was not for the truth of the matter because it was
17 hearsay? Those instructions --

18 THE COURT: Well, that --

19 MR. WRIGHT: I understand the Court's ruling, but it
20 was a hearsay exception --

21 THE COURT: But, I mean -- look, no. Basically the
22 jury can evaluate whether the incident happened or didn't
23 happen and the weight to give -- to give the -- the evidence
24 just like any other evidence.

25 MR. WRIGHT: Your Honor --

1 THE COURT: Mr. Wright, approach the bench along with
2 everyone else.

3 (Off-record bench conference.)

4 THE COURT: All right. Mr. Staudaher, you may
5 continue.

6 BY MR. STAUDAHER:

7 Q When you -- when you got that instruction, how
8 did that make you feel?

9 A I was --

10 MR. WRIGHT: Is that relevant, Your Honor?

11 THE COURT: Yeah, that's sustained.

12 MR. STAUDAHER: Effect on the listener, Your Honor,
13 at this point.

14 THE COURT: Well, that's sustained.

15 BY MR. STAUDAHER:

16 Q So you -- first of all, you do it; is that
17 right?

18 A I'm sorry?

19 Q You go ahead and do that?

20 A I did do that, yes.

21 Q You said that you questioned that at the time?

22 A I did question it.

23 Q And who did you question?

24 A I questioned my superior, my charge nurse.

25 THE COURT: Which was Mr. Krueger?

1 THE WITNESS: Which was Jeff Krueger, correct.

2 BY MR. STAUDAHER:

3 Q Anybody else at the time?

4 A No.

5 Q Was this ever a topic of discussion with other
6 CRNAs or other people during the time you worked there?

7 MR. WRIGHT: He's not a CRNA, Your Honor.

8 MR. SANTACROCE: I'm going to object, it also calls
9 for hearsay.

10 MR. STAUDAHER: I'm not asking what they said, I'm
11 just asking --

12 THE COURT: I mean, he can say if he discussed it but
13 he can't tell us what was said in the conversations.

14 MR. STAUDAHER: -- if he said and discussed it --

15 THE COURT: The objection as to other CRNAs is
16 sustained because he's not a CRNA. So the question would be
17 with CRNAs or other nurses if that's where you're going.

18 BY MR. STAUDAHER:

19 Q Yes, we'll start off with the nurses. Did you
20 discuss this with other nurses at times?

21 A I -- I had, yes.

22 Q Okay. And did you discuss it with CRNAs?

23 A Yes.

24 Q Now move forward a little bit. You're doing
25 that practice. Did you vary in that practice during the time

1 that you worked there?

2 A Not that I can recall, no.

3 Q Now during the time that you're in the rooms,
4 are you familiar with the -- some tapes that get produced as a
5 part of the anesthesia record or something like that?

6 A Yes.

7 Q And I'm talking about like a machine tape kind
8 of thing.

9 A Yes, I am.

10 Q Okay. What would you do with -- would you have
11 any role in dealing with those tapes when they came out?

12 A I would.

13 Q What would you do with them?

14 A Our -- our start times for the procedure -- the
15 start time that we wrote on our -- on our note came from that
16 tape and so we would collect that tape and then we would
17 staple that tape to our note.

18 Q Okay. Did there ever come a time that you got
19 behind or whatever and just kept extra tapes around?

20 A No. Generally if we needed extra tapes we just
21 pulled one off the machine.

22 Q And reprinted it?

23 A No. We would just pull a blank one and we would
24 -- we would fill out necessary information.

25 Q By hand?

1 A By hand.

2 Q Did you ever keep a drawer full of tapes to just
3 use as you needed them?

4 A Not that I can recall, no.

5 Q Now, in the procedure room you said you worked
6 with the various doctors; is that right?

7 A Correct.

8 Q Specifically, Dr. Desai. We talked about the
9 speed of the procedures issue, but was there anything about
10 the way he did things that ever gave you concern?

11 A Yes.

12 Q Tell us about that.

13 A There was times where he would initiate a
14 procedure prior to the resident -- or the patient being, you
15 know, under the effects of the propofol. They'd still be
16 awake. He would end procedures abruptly. He would allow if
17 -- if the patient was still awake at the end of the -- at the
18 end of the procedure if the -- if the patient was starting to
19 wake up and the anesthetist wanted to give more propofol, Dr.
20 Desai would deny them the ability to do that saying that
21 they're not going to remember anyway. So he would --

22 Q So he actually said they're not going to
23 remember anyway?

24 A Correct.

25 Q Was that a -- and how often would that happen?

1 A Daily.

2 Q And -- and let's break that down. Let's talk
3 about the part -- the first part of what you said, which was
4 the starting procedures before patients are -- are asleep.
5 How often would that happen?

6 A I would witness that probably once or twice a
7 day.

8 Q With Dr. Desai?

9 A With Dr. Desai.

10 Q Any other doctors?

11 A Never.

12 Q During those instances, was -- I mean, how did
13 you know that the patient was still -- still awake?

14 A They would be talking.

15 Q And he would just go ahead and move forward?

16 A He would.

17 Q Did he ever stop and pause and wait until the
18 person just was put to sleep?

19 A On very rare occasions, yes. If it was -- yes,
20 on rare occasions he would wait, but for the most part he
21 would just initiate the tube and begin the procedure.

22 Q When you said that he ended -- ended procedures
23 abruptly at times, what are you talking about?

24 A At the end of the -- at the end of the procedure
25 you're -- you're required to suction up the air that's in the

1 colon. You suction that air out of the colon so you reduce
2 the risk of perforations and -- and patient discomfort. And
3 quite frequently, he would just pull the tube out without
4 deflating the -- the patient.

5 Q So what would happen with the patients as a
6 result of that?

7 A They would wake up with cramps and discomfort.

8 Q And did that happen very often?

9 A Multiple times a day.

10 Q Now, with regard to the instructing the CRNAs
11 not to give any more anesthesia, how often would that happen?

12 A Anytime somebody was waking up.

13 Q But in a typical week if -- if it happened in a
14 week, how often would that occur?

15 A Several times a day.

16 Q Now I want to ask you some other questions about
17 -- are you familiar with an insurance company called
18 PacifiCare?

19 A I am.

20 Q Are you aware of any policy that was in place in
21 the clinic regarding PacifiCare patients?

22 A I am.

23 Q Can you tell us about that?

24 A PacifiCare, as far as -- as far as from what I
25 saw, they -- they had to -- they were required to have at

1 least 30 plus minutes of anesthesia time. And so, because of
2 the way -- because of the way we did the times --

3 MR. WRIGHT: Objection, foundation.

4 THE COURT: Well, go on.

5 BY MR. STAUDAHER:

6 Q Go on.

7 A There was -- there was multiple times where if
8 -- if one -- if one nurse anesthetist had one or had two
9 PacifiCare patients back to back, they couldn't do the third
10 one because they couldn't make the times match.

11 MR. SANTACROCE: I'm going to object --

12 THE COURT: How did you -- wait. I mean, where did
13 you get this -- Mr. Staudaher asked you well there was a
14 policy. How did you learn of this policy?

15 THE WITNESS: Just by having worked there and being
16 part of the process.

17 THE COURT: Okay. Did anyone tell you or give you
18 instructions that this was supposed to --

19 THE WITNESS: Yes. We -- we had a --

20 THE COURT: Go on. That's what they mean by
21 foundation. So go on and -- and lay a little more of a
22 foundation.

23 MR. SANTACROCE: My objection goes to him testifying
24 as to what the CRNAs were to do. He's -- we've already
25 discussed this before about CRNAs.

1 THE COURT: Well, as it relates to things he observed
2 that's not standard of care or medical practice, he can
3 testify to that. You can't opine as to the medical practice
4 or anything within what they were -- what a CRNA's role is
5 because that's not your role as a RN. Okay? So I want to
6 make that clear. But if something, a policy was told to you
7 by someone in management or something like that. So Mr.
8 Staudaher, you need to lay a better foundation.

9 BY MR. STAUDAHER:

10 Q So this policy, was it written?

11 A No.

12 Q Okay. Was it -- you said it was generally known
13 though and was this something that just this -- I mean, who
14 knew it in the practice?

15 MR. WRIGHT: Foundation.

16 THE COURT: Well, wait. He can't say who knew it, I
17 mean, because that would -- might be speculation.

18 MR. STAUDAHER: Well, that's true.

19 THE COURT: Why don't -- I mean, how did you, I
20 guess, how did you learn about this issue or policy, is the
21 term Mr. Staudaher used, with respect to PacifiCare?

22 THE WITNESS: There -- there was a -- at our -- at
23 our nurses station there was a desk and on that desk was a
24 list of -- of the patients that we would be seeing that day.
25 And next to their names would be what -- what provider they

1 had. So if it was PacifiCare, Medicare, Tricare, whoever
2 those -- whoever the provider was. And so there would be
3 common discussion at the -- at the nurses station about --

4 MR. SANTACROCE: Objection to hearsay about the
5 common discussions.

6 THE COURT: Yeah, that's probably sustained.

7 BY MR. STAUDAHER:

8 Q So you became aware of this policy in that
9 setting?

10 A In that setting around that -- around that list
11 of patients.

12 Q Would PacifiCare patients be scheduled back to
13 back?

14 A Yes.

15 Q What would happen when that occurred?

16 A There would a -- a backlog of -- they couldn't
17 make the times match.

18 MR. SANTACROCE: Objection, speculation, no
19 foundation.

20 THE COURT: Yeah.

21 MR. SANTACROCE: Who couldn't do it?

22 THE COURT: Okay. That's sustained. Mr. Staudaher,
23 you need to sort of back up --

24 BY MR. STAUDAHER:

25 Q Okay. Was Mr. Mathahs -- excuse me, Mr.

1 Lakeman ever involved in arranging the patients, PacifiCare
2 patients?

3 A Yes.

4 Q Talk to me about that.

5 MR. SANTACROCE: I'm going to ask for a foundation.

6 THE COURT: All right, that's sustained.

7 BY MR. STAUDAHER:

8 Q Okay. When did Mr. Lakeman involve himself in
9 that process?

10 A At the nurses station.

11 Q And roughly chronologically at a time you worked
12 there?

13 A I'm not sure what the question is.

14 Q Well, when did this first become an issue, this
15 PacifiCare thing?

16 A I would say about a year before I left.

17 Q And you left in 2007?

18 A '07, yeah, so somewhere around 2006 it started.

19 Q Okay. And -- and we're talking about Mr.
20 Lakeman's involvement here. When in that time period did Mr.
21 Lakeman involve himself in that process?

22 MR. SANTACROCE: I'm going to object to the term
23 involved. What does that mean? It's vague and ambiguous.

24 MR. STAUDAHER: Well, he said that he's -- he's
25 involved in the process.

1 MR. SANTACROCE: Did he schedule them? Did he write
2 it down on paper? What did he do?

3 MR. STAUDAHER: Well, I haven't been able --

4 THE COURT: Well --

5 MR. STAUDAHER: I will ask him those questions, but
6 I'm trying to lay the foundation --

7 THE COURT: -- we'll get -- we'll get to -- well --

8 MR. STAUDAHER: -- as to when we're --

9 THE COURT: All right. We'll get to that.

10 BY MR. STAUDAHER:

11 Q Roughly when did that happen?

12 A I don't -- I -- honestly, I don't recall.

13 Q Okay. Where would it happen?

14 A It would happen at the nurses station.

15 Q The place that you said that --

16 A Where we kept the list of the --

17 Q -- the logbook at? And what would Mr. Lakeman
18 do?

19 A He would -- he would say I've already done two,
20 you know, I've already two PacifiCare, I can't do another one.

21 Q Okay. And what would happen as a result of
22 that?

23 A One of the other CRNAs would have to pick up
24 that third PacifiCare.

25 Q Did that have to do with the actual proximity of

1 the PacifiCare patients together?

2 A Yes.

3 Q So it wasn't just that he didn't like to do
4 PacifiCare patients?

5 A No.

6 THE COURT: Well -- yeah, that's sustained.

7 MR. SANTACROCE: I'm going to object, Your Honor.

8 THE COURT: Jury will disregard. Can't speculate as
9 to Mr. Lakeman's motivation or point of view or feelings.

10 BY MR. STAUDAHER:

11 Q Did Mr. Lakeman ever talk to you about any
12 problems he had with anesthesia times?

13 A Yes.

14 Q Talk to us about that.

15 MR. SANTACROCE: Again, foundation.

16 THE COURT: Yeah, that's -- that's sustained.

17 BY MR. STAUDAHER:

18 Q Roughly, when did Mr. Lakeman talk to you or
19 describe that issue?

20 A Sometime in early '07, I guess.

21 Q And -- and where was that --

22 A No. Actually, it would have been -- it would
23 have been late -- it would -- it would have been late '06, a
24 couple months after my wife's death.

25 Q Okay. And was there any other -- where was it?

1 Where did this happen?

2 A We would occasionally go out to dinner together
3 and, you know, he kept my mind off of my wife's death and we
4 would talk about work.

5 THE COURT: Just the two of you would go?

6 THE WITNESS: Yes.

7 BY MR. STAUDAHER:

8 Q Okay. So let's talk about that. Where -- where
9 -- do you remember the restaurants you went to, that kind of
10 thing?

11 A No. It was in -- in the casinos.

12 Q Okay. So end of 2006 you said?

13 A Yes.

14 Q So it's just you and he. Tell us what the
15 discussion's about.

16 A Just generally how -- how frustrating it was to
17 have to work under those -- in that environment and basically
18 if the shit ever hit the fan he wasn't going to -- he wasn't
19 going to cover for him.

20 Q Cover for who?

21 A For Dr. Desai.

22 Q So he says this to you and what -- what is the
23 subject matter that you're talking about?

24 A Just the general environment, you know, the
25 pace, the times, the, you know, the equipment, all of that.

1 Q Let's specifically talk about the times. Did
2 you discuss at that conversation or another one, if you know,
3 anything about anesthesia time?

4 A Not specifically, but just how -- how difficult
5 it was to try to -- to keep all those times straight. You
6 know, it was, you know, do -- documenting a 31-minute
7 procedure during a six-minute case was a -- was a very
8 difficult thing for them to do.

9 MR. SANTACROCE: Objection as to speculation.

10 MR. STAUDAHER: That's conversations --

11 MR. SANTACROCE: Of the others.

12 THE COURT: Was that what was said to you?

13 THE WITNESS: Yes.

14 BY MR. STAUDAHER:

15 Q Okay. So this is -- and just so we're clear on
16 this because we have the objection. Mr. Lakeman is saying
17 this to you?

18 A Yes.

19 Q Now was that a single instance that he talked to
20 you or did he talk to you about that on other occasions?

21 A No. It was just a couple of -- a couple of
22 occasions. It wasn't a frequent thing.

23 Q Now, as far as Mr. Lakeman is concerned and
24 PacifiCare, was there ever any discussion at that time
25 regarding PacifiCare and billing times and the like?

1 A You mean during our -- during our dinner
2 conversations?

3 Q Let's talk about that first, during the dinner
4 conversations.

5 A No.

6 Q Okay. At any other time did you discuss
7 PacifiCare and anesthesia times with Mr. Lakeman?

8 A I mean, there was general discussions, but I
9 can't be specific on any kind of specific time, no.

10 Q Okay.

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

12 THE COURT: Sure.

13 BY MR. STAUDAHER:

14 Q I'm going to show you -- do you remember talking
15 -- first of all, do you remember talking to the police at some
16 point?

17 A Yes, I do.

18 Q Do you remember talking to the FBI at some
19 point?

20 A I do.

21 Q Do you remember actually having at least your
22 police conversation recorded and a transcript made of that?

23 A I do.

24 Q Do you remember a summary of your -- of your --
25 of your conversation with the FBI being taken down?

1 A I do.

2 Q Did you look at that at some point?

3 A I have, but right now I'm kind of blanking on

4 some of it.

5 Q Is the information contained in there accurate?

6 A Yes.

7 Q Okay.

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

9 THE COURT: You may.

10 BY MR. STAUDAHER:

11 Q And I'm showing page seven of the -- Federal

12 302. I'm going to have you read this section here. You can

13 read as much of it before and --

14 A Okay.

15 Q -- after as you need to on that issue and tell

16 me if that has refreshed your memory.

17 THE COURT: Just read it quietly to yourself.

18 A Okay.

19 BY MR. STAUDAHER:

20 Q Does that refresh your memory on that issue?

21 A It does.

22 Q Okay. Tell us about that.

23 A Can you repeat the question?

24 Q I'm talking about any discussions with Mr.

25 Lakeman about PacifiCare and the anesthesia times.

1 A There was discussion about the fact that
2 PacifiCare would not pay for anesthesia less than 30 minutes.

3 Q Okay. Did specifically he say to you that
4 that's what he was going to tell people if they were asked?

5 A Yes.

6 Q And do you want to look at this again?

7 A Yeah, I do. I do.

8 Q Okay.

9 A Yeah. So there -- so there was the issue of the
10 -- of the billing. PacifiCare would not pay for anything less
11 than 30 minutes of -- of anesthesia time and that -- that if
12 -- if it ever came up that we were, in fact, doing 30 minutes
13 of anesthesia time, that we were going to stick with that I
14 guess -- or he was going to stick with that.

15 Q Do you remember me asking you a moment ago about
16 whether or not you ever observed anyone reusing needles and
17 syringes? Remember that?

18 A I do.

19 Q Specifically related to Mr. Lakeman, did you
20 ever see him reuse needles or syringes on a patient?

21 A I have.

22 Q You actually observed him doing that?

23 A I have.

24 Q Now, once you're -- I mean, you're in the clinic
25 and you're working in those procedure rooms, you mentioned

1 some things about Dr. Desai that gave you concern. Were you
2 ever concerned about patient, the actual patients safety
3 though? Now, you said that you were concerned about
4 perforations and things like that, but just the speed of the
5 procedures. Any concern about safety?

6 A Not so much safety as more comfort.

7 Q More comfort. Okay.

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

9 THE COURT: Uh-huh.

10 BY MR. STAUDAHER:

11 Q I want to ask you a question about Dr. Desai
12 and Dr. Carrera, speed of procedures, both of them. Were they
13 different?

14 A Drastically different.

15 Q Was there any issue if Dr. Desai and Dr.
16 Carrera were working together at the clinic?

17 A Yes, there was.

18 Q Can you tell us about that?

19 MR. WRIGHT: Objection, foundation as to issue --

20 THE COURT: Yeah, well --

21 MR. WRIGHT: -- category.

22 THE COURT: -- sustained. I mean, how -- how would
23 he be aware of this for one?

24 BY MR. STAUDAHER:

25 Q Well, were you -- were you present when Dr.

1 Desai and Dr. Carrera were --

2 THE COURT: Why don't you ask --

3 MR. WRIGHT: Can we approach the bench, Your Honor?

4 THE COURT: Yeah, please.

5 (Off-record bench conference.)

6 THE COURT: Oh, yes, we need a break. Ladies and
7 gentlemen, just a quick break. And, of course, during the
8 quick break you're reminded not to discuss the case or
9 anything relating to the case. You're reminded not to read,
10 watch or listen to any reports of or commentaries on any
11 person, subject matter or anything relating to the case and
12 not to form or express an opinion on the trial. Notepads in
13 your chairs, follow the bailiff through the double doors or
14 the rear door.

15 (Jury recessed at 4:42 p.m.)

16 Mr. Chaffee, you may have a break as well. However,
17 during the break do not discuss your testimony with anybody
18 else. Okay?

19 THE WITNESS: Can I just stay right here?

20 THE COURT: You know, actually, no, because we're
21 going to take -- my staff and I need a break.

22 THE WITNESS: Okay.

23 THE COURT: Then we have to clear out the court when
24 we do that.

25 I wasn't lying. I actually do need a minute or two.

1 So if anyone else needs to use the restroom, do that now.
2 Then we'll go on the record with the objections that have been
3 made at the bench.

4 (Court recessed at 4:43 p.m. until 4:48 p.m.)

5 (Outside the presence of the jury.)

6 THE COURT: Do we need Ms. Weckerly?

7 MR. STAUDAHER: No, Your Honor.

8 THE COURT: All right. Basically, we're back on the
9 record out of the presence of the jury. Mr. Wright had
10 approached the bench right before the break with an objection
11 regarding Mr. Staudaher's failure to lay foundations.

12 MR. WRIGHT: And attempts to elicit hearsay testimony
13 by asking questions about issues, policies, when he knows he
14 is attempting to elicit inadmissible evidence.

15 THE COURT: Okay. Well, I don't --

16 MR. WRIGHT: He doesn't want to lay the foundation
17 because when he does it's not admissible. So instead he just
18 says was there ever an issue between Carrera and Desai. Well,
19 that -- what is it we are trying to get into evidence?

20 THE COURT: Tell us, Mr. Staudaher, what is it you're
21 trying to get into evidence?

22 MR. STAUDAHER: With regard to that issue?

23 THE COURT: Right.

24 MR. STAUDAHER: Specifically, that there -- whenever
25 those two worked together there was a problem and it was

1 observed by this witness, so there's no issue of him -- it's
2 hearsay. When Desai would do procedures he would do them so
3 much faster than Carrera and they're working in two different
4 rooms and it would create a problem. And when it created a
5 problem, Desai would get incredibly upset about the fact that
6 it was slowing down the process. All of that is reasonable
7 and he observed it.

8 THE COURT: That's fine.

9 MR. STAUDAHER: So there's no hearsay in that.

10 THE COURT: Okay, that's fine. Then the way to ask
11 the question is something like -- instead of saying was there
12 an issue and what was the issue and that's it, I -- I mean,
13 Mr. Wright and I -- we don't know, was this something they
14 talked about at the water cooler and that's the issue? Is
15 this something some other person told him? I -- I mean, you
16 know, so then how -- well, how are you aware of this issue?
17 Well, I saw them fighting or I saw Desai screaming or I saw
18 this.

19 MR. STAUDAHER: I got an objection when I said issue.
20 Was -- is there an issue? That's when the objection came.
21 Not -- not -- I didn't even get to those questions.

22 MR. WRIGHT: I never seen this --

23 THE COURT: Well -- or -- I mean, was there a point
24 in time that you -- I mean, I don't know what it is he
25 observed. A confrontation? Did he observe --

1 MR. WRIGHT: What did he see?

2 MR. STAUDAHER: He saw the interaction I just
3 described, that Desai would get upset --

4 MR. WRIGHT: What interaction? What did he say?
5 What did Carrera say? What did Desai say?

6 MR. STAUDAHER: It wasn't what they said, it was
7 Desai getting upset about the fact that Carrera was slowing
8 him down.

9 THE COURT: Upset. Okay. Well then how is he even
10 going to know Desai --

11 MR. WRIGHT: Where is that in the statements?

12 THE COURT: -- is upset?

13 MR. STAUDAHER: Because of the way Desai would act
14 that he would -- he would want -- he would want to get the
15 procedures done. He would want to move them through. Carrera
16 was slowing him down.

17 THE COURT: Well, what did he say? I'm sick of that
18 Carrera, he's slowing me down. Or what did he do? I mean
19 obviously, Mr. Staudaher, in a pretrial conference or
20 somewhere, if it's not in his statements --

21 MR. WRIGHT: It's not.

22 THE COURT: -- you became aware that this witness was
23 going to say something about an issue between Carrera --

24 MR. STAUDAHER: That's correct.

25 THE COURT: -- being too slow.

1 MR. STAUDAHER: Correct.

2 THE COURT: Okay. I'm assuming this happened in a
3 pre-trial conference?

4 MR. STAUDAHER: Yes.

5 THE COURT: Okay. Tell us what you became aware of,
6 what he exactly saw because you can't just conjecture Desai
7 was upset.

8 MR. STAUDAHER: He said --

9 THE COURT: I mean, he has to say, Desai was
10 screaming, Desai was crying, Desai's face turned, you know, a
11 mottled shade of red, or something to indicate anger other
12 than him just conjecturing that Desai is angry.

13 MR. STAUDAHER: I believe the word he used was Desai
14 would get in a lather over the fact that he was --

15 MR. WRIGHT: This is a new statement I've never heard
16 before.

17 MR. STAUDAHER: I mean, guess what, that's -- that --
18 what happened -- a statement like that, there is no statement
19 out there that Desai said something or other, it's how he's
20 acting directly in front of him because of the fact that he's
21 slowed down, he can't go forward.

22 THE COURT: All right. So the way --

23 MR. STAUDAHER: And it's not a written or recorded
24 statement.

25 THE COURT: Right, that's fine. But, you know, to

1 the lay the foundation, were you ever there when Carrera and
2 Desai were working at the same time? Or when -- when -- what
3 -- you know, when was this? Whose room were you in? What did
4 you observe? Okay. So then we know he's talking about
5 observations as opposed to hearsay. Because when you say, was
6 there an issue and what was the issue? Again, I don't know.
7 Is that -- is that the nurses at the nurses station gossiping?
8 I have no idea. I mean, how are we, Mr. Staudaher, supposed
9 to know where that knowledge is coming from?

10 MR. STAUDAHER: Well, the question that elicited the
11 -- the objection was, was there ever an issue between Dr.
12 Carrera and Dr. Desai, not necessarily what was said, what was
13 -- that was just his -- to get him what --

14 THE COURT: Right, and then you said --

15 MR. STAUDAHER: -- to what I'm talking about.

16 THE COURT: -- then you jumped to what was the issue,
17 which is when Mr. Wright approached the bench. Because --
18 okay, there's an issue. What was the issue? Well, how does
19 he know what the issue is?

20 MR. STAUDAHER: I talked about -- before that, about
21 -- about speed of procedures, that that --

22 THE COURT: Well, that doesn't get to how he knew
23 there was an issue. I mean he could know because -- so you
24 need to lay a foundation. That's what that means.

25 MR. STAUDAHER: Fair enough. I'll --

1 THE COURT: How does he know? What is his basis of
2 knowledge? That's what that means. So ask the question, you
3 know, what did you see? Then we know, okay, he's --

4 MR. STAUDAHER: Okay.

5 THE COURT: -- talking about his observation. What
6 did you hear?

7 MR. WRIGHT: No. I don't want to know what he heard.
8 I want his admissible basis --

9 THE COURT: If it's on Dr. Desai, then we do want to
10 know that. You may not want to know that but --

11 MR. WRIGHT: Okay, but I don't know that.

12 THE COURT: -- the rest of us want to know.

13 MR. WRIGHT: If it's Desai then it's a statement I
14 haven't received yet, again.

15 MR. STAUDAHER: There's no written or recorded
16 statement that he would get, period. So it's not covered
17 under --

18 MR. WRIGHT: How does he know -- how does this
19 witness know what Dr. Desai's in a lather about?

20 MR. STAUDAHER: Because it's --

21 MR. WRIGHT: Because Desai said what?

22 MR. STAUDAHER: I don't know what he said,
23 specifically the words, just that he got incredibly upset, he
24 got into a lather because of the speed of procedures was
25 slowed down, that he couldn't do his procedures fast enough.

1 THE COURT: How was that manifested, Mr. Staudaher?

2 MR. STAUDAHER: In the words I just said, that he got
3 into a lather, he got upset, that he expresses that --

4 THE COURT: Well, I know, but what I'm saying --

5 MR. STAUDAHER: -- I guess.

6 THE COURT: -- is how was that manifested to the
7 witness because the witness can't speculate about what Dr.
8 Desai was thinking or feeling.

9 MR. STAUDAHER: Clearly, Dr. Desai must have said
10 something --

11 THE COURT: That's why I said he's -- it's manifested
12 in a lather because --

13 MR. WRIGHT: Statement --

14 THE COURT: -- Desai is screaming and spitting,
15 because he's throwing things, because his face becomes red and
16 mottled with rage. I mean, those are ways you can manifest
17 anger. I don't know what this witness saw. For example, I'm
18 manifesting anger right now by the tone of my voice. That's
19 something you can perceive and report on.

20 Now, I've gone into a slightly sarcastic tone. That
21 is also a manifestation of anger, something you can perceive
22 and report on. So I want to know -- that's how you have to
23 ask the question. What is he observing that indicates a
24 lather? Because really, I don't think Desai was foaming at
25 the mouth. That's to me what a lather means of anger. So

1 A I don't remember.

2 Q Could you please review your spreadsheet for
3 that, particularly 2007?

4 A There are some 5cc syringes on here.

5 Q Could you describe those for us, quantities,
6 dates?

7 THE COURT: What are you looking at there?

8 THE WITNESS: I'm looking at my Excel spreadsheet,
9 the --

10 BY MS. STANISH:

11 Q And, excuse me, just for the record, is that --
12 it might be in evidence already as a State exhibit.

13 MR. STAUDAHER: I believe it is. It's one of those
14 two.

15 MS. STANISH: It's now been marked as Exhibit 176,
16 Your Honor.

17 THE WITNESS: The page I'm looking at is the Bates
18 stamp number 5373.

19 BY MS. STANISH:

20 Q And can you point to where those are for us?
21 Oh, they're right at the bottom.

22 A They're at the bottom, yes.

23 Q Those were delivered to Shadow Lane?

24 A Yes.

25 Q And what dates and quantities?

1 A January 2nd of '07, April 12th of '07, May 21st
2 of '07, July 31st of '07 and November 19th of '07.

3 Q Were you aware that CRNA Hubbard had requested
4 smaller cc syringes?

5 A No.

6 Q Is it possible that 5cc syringes were used in
7 some instances?

8 MR. STAUDAHER: Objection, speculation.

9 MS. STANISH: Well, I'll rephrase it.

10 THE COURT: Okay.

11 BY MS. STANISH:

12 Q Did your analysis take into account the
13 possibility that some CRNAs in certain instances would have
14 used the 5cc syringes?

15 A No, I just used the 10cc.

16 MS. STANISH: Court's indulgence.

17 THE COURT: That's fine.

18 MS. STANISH: Thank you. No further questions.

19 Thank you.

20 THE COURT: All right. Mr. Staudaher, any redirect
21 based only what -- on what's been asked in recross?

22 MR. STAUDAHER: Yes.

23 FURTHER REDIRECT EXAMINATION

24 BY MR. STAUDAHER:

25 Q The only questions I'm -- I'm going to ask you

1 about are just related to these four charts.

2 A Okay.

3 Q I'll start off with the -- State's 153. How did
4 you make that chart? What information did you use to produce
5 this actual document?

6 A I took the number of patients on each day of the
7 infection, I took the number of vials of propofol that were
8 checked out according to the propofol logs and I -- and I did
9 a ratio.

10 Q Okay.

11 A The chart --

12 Q Go ahead.

13 A -- is the number of patients in blue for July
14 25th compared to the number of vials of propofol that were
15 checked out and the same thing for the September 21st date.

16 Q Are -- is this just a -- basically numbers in a
17 graphical form or did you do any spin on this at all?

18 A No, there's no spin on that, on the graph.

19 Q Just this -- this -- the basic numbers?

20 A Yes.

21 Q And I'm pointing here to this one, this
22 category. What is this category?

23 A Those are the patients.

24 Q And to the next category?

25 A Are the vials of propofol that were checked out.

1 Q And is that what we're seeing down here in a
2 graphical representation?

3 A Yes.

4 Q That information from the patients and the
5 propofol, where did that come from?

6 A The patients came from the numbers from the
7 patient procedure files that I put on the chart and the number
8 of vials of propofol came from the propofol logs showing who
9 checked out the log -- the vials and how many were returned.

10 Q Did you transpose those numbers directly into
11 your spreadsheet to make this document?

12 A Yes.

13 Q Showing you 155. This one is entitled upper
14 endoscopies performed compared to bite blocks ordered at all
15 clinic locations.

16 A Yes.

17 Q How did you make this?

18 A I counted the number of upper endoscopies from
19 the registers, those -- those big books.

20 Q The ones that we have in evidence over here?

21 A Yes.

22 Q Okay.

23 A I counted them for 2007 at Shadow and Burnham, I
24 entered the figures onto a spreadsheet, I counted -- I had the
25 bite block orders from the vendors, I totaled those, I entered

1 those on the spreadsheet. I also had ones from Rainbow, that
2 were delivered to Rainbow. I totaled those, so I have the
3 number of upper endoscopies performed in blue at Shadow
4 compared to the number of bite blocks, which is next to it in
5 red. The same thing for Burnham and the same thing for
6 Rainbow. And the last column is the total of all the upper
7 endoscopies and all the bite blocks that were ordered.

8 THE COURT: So this is just ordered. It doesn't
9 account for preexisting inventory or anything like that?

10 THE WITNESS: No, this is for 2007.

11 THE COURT: Okay.

12 BY MR. STAUDAHER:

13 Q Okay. And also, does this chart account for any
14 -- does or doesn't, does it account for any movement of supply
15 from one clinic to the other?

16 A The total amount would show how many were
17 available for both -- for all three clinics.

18 Q Why did you include the total on your graphical
19 representation?

20 A Because we had information that they shared --
21 that they transported supplies between clinics as needed.

22 Q Okay. Again, same question. Is there any spin
23 on your analysis in this chart or is it straight numbers?

24 A Straight numbers.

25 Q Same series of questions for each one of these

1 documents. This is 152 and it's entitled 2007 comparison of
2 patients to syringes for both locations, Shadow and Burnham,
3 correct?

4 A Correct.

5 Q How did you make this document?

6 A I counted the number of patients at both
7 locations. The ones for Shadow are in that column with the
8 blue above Shadow, the same thing with Burnham. And the -- I
9 counted -- I had totaled the number of syringes that were
10 ordered, I put those next to them. The red shows the number
11 of syringes that were ordered for Shadow. The same for
12 Burnham and I totaled them both to show the total number of
13 syringes that were ordered and the total number of patients.

14 Q Why did you put the total on this particular
15 document?

16 A Because of the information that they could have
17 shared supplies between all the locations.

18 Q Now, on this one here, it's related to the
19 syringes. Does this take into account the possibility,
20 probability, likelihood, reality, that there was preexisting
21 inventory to some degree at these clinics at the beginning of
22 2007?

23 A No.

24 Q With that caveat, are -- how -- are the numbers
25 here for the number of patients and you said the materials

1 ordered if I understand you correctly?

2 A That's correct.

3 Q Are those -- is this also a straight numbers
4 chart or did you spin or analyze or use a ratio, anything like
5 that?

6 A No, they're just straight numbers.

7 Q Straight numbers off of the records that are
8 over here?

9 A Yes.

10 Q Last one, which is State's 154, same questions.
11 How did you make this chart?

12 A I counted the number of patients at Shadow and
13 Burnham. Those numbers were entered on my spreadsheet. The
14 vials of propofol were the vials that were ordered for each
15 location. Those are next to the number of patients at each
16 location. And then I have the total of the patients at both
17 locations and the total number of vials of propofol that were
18 ordered.

19 Q Again, why did you put the totals on this
20 particular diagram or this particular chart?

21 A Because they -- we had information that they
22 transferred supplies between the two clinics.

23 Q Beyond that, this chart itself, does it take
24 into account the possibility or if there was any preexisting
25 supply at the beginning of 2007?

1 A No.

2 Q Is this, again, your analysis? Is there any
3 analysis here or are we talking about straight numbers from
4 the records?

5 A These are straight numbers.

6 MR. STAUDAHER: I have nothing further, Your Honor.

7 THE COURT: Any recross?

8 MS. STANISH: No, Your Honor.

9 MR. SANTACROCE: No.

10 THE COURT: Any juror questions for this witness?
11 Kenny? Counsel, approach.

12 (Off-record bench conference.)

13 THE COURT: -- question. Do the numbers of vials of
14 propofol checked out on July 25th and September 21st include
15 any vials that may have been checked back in at the end of the
16 day?

17 THE WITNESS: On July 25th they checked out 20 vials
18 and returned five, so the number was 20 and that's the number
19 I used.

20 THE COURT: I'm sorry. Can you say that again?

21 THE WITNESS: They checked out 20 vials and returned
22 five.

23 THE COURT: So meaning 15 vials would have been
24 opened and used?

25 THE WITNESS: Well, I'm sorry. According to the log,

1 Ronald Lakeman checked out five vials and returned none and
2 then he checked out 20 vials and returned five, so the total
3 was 20.

4 THE COURT: So the total was 20 vials opened and used
5 on that day?

6 THE WITNESS: Yes.

7 THE COURT: Okay.

8 THE WITNESS: And the same for September 21st. The
9 totals -- the number of vials signed out was 24.

10 MS. STANISH: And just for clarification, there was
11 some 20 and 50 vials checked out on one day, does your -- does
12 that calculation include that, just to clarify?

13 THE WITNESS: The -- on September 21st they signed
14 out four 20 vials and returned four vials. So the calculation
15 would not include the ones that were returned. On the 25th,
16 Ronald Lakeman signed out twelve 20 milliliter vials and
17 returned 10 and so there's -- I did a revised analysis for
18 that day. So CRNA signed out fifty 50 milliliter vials and
19 returned none. He signed out twenty 50 milliliter vials and
20 returned five and he signed out twelve 20 milliliter vials and
21 returned 10. So the total number of vials signed out was 22.

22 THE COURT: You mean signed out, opened and used?

23 THE WITNESS: Yes.

24 THE COURT: Okay. So -- so 22 vials signed out,
25 opened and apparently used?

1 THE WITNESS: Yes.

2 THE COURT: Okay. Any other juror questions for the
3 witness? Any additional follow-up based on that last juror
4 question?

5 MR. STAUDAHER: No, Your Honor.

6 MS. STANISH: No, Your Honor.

7 THE COURT: All right. Nothing from the defense?
8 Ma'am, I see no further questions for you. Thank you for your
9 testimony. Please do not discuss your testimony with anyone
10 else who may be a witness in the case.

11 THE WITNESS: Okay.

12 THE COURT: All right. Thank you, ma'am, and you are
13 excused.

14 All right, ladies and gentlemen, it being 12:26,
15 we're going to go ahead and take our lunch break. We'll be in
16 recess for the lunch break until 1:40.

17 During the recess for lunch you are reminded that
18 you're not to discuss the case or anything relating to the
19 case with each other or with anyone else. You're not to read,
20 watch, listen to any reports of or commentaries on this case,
21 person or subject matter relating to the case. Do not do any
22 independent research, don't form or express an opinion on
23 anything.

24 And I would just remind everyone that, you know,
25 you're not to discuss anything relating to any of the

1 testimony or anything that's transpired in the courtroom with
2 anyone else, including one another. Notepads in your chairs
3 and follow the bailiff through the rear door. And, ma'am, you
4 are excused.

5 (Jury recessed at 12:24 p.m.)

6 THE COURT: Is the door shut? We'll finish arguing
7 about these things later.

8 MS. STANISH: You need a break, right?

9 MR. WRIGHT: Yes.

10 THE COURT: I would -- I do need to place on the
11 record that the reason I gave that more detailed instruction
12 about talking about the evidence is because the gal in seat
13 number 14, juror number 14, the blonde gal, said to the
14 bailiff at the last break, well, the problem is -- or
15 something, something to the effect of they keep confusing
16 milligrams with milliliters. My bailiff told her we, you
17 know, that -- we can't discuss this, you're not to discuss
18 this and that was all that was said. I think it was just said
19 like walking down the hallway, so he reminded her. That's why
20 I gave the more detailed instruction and to the best of my
21 knowledge that's all --

22 MS. STANISH: Was that today or yesterday?

23 THE COURT: -- that was stated. No, that happened
24 today I believe and the bailiff handled it -- I'm talking
25 about juror number 14. Bailiff told her we can't talk about

1 this and that ended the conversation.

2 MS. WECKERLY: And just -- just for the record, I
3 think counsel for Desai is aware of it, but I don't know if
4 Mr. Santacroce is, we had a miscommunication about the
5 scheduling of Ann Lobionda. She's not coming today. Her
6 lawyer -- we had a miscommunication with him. But we do have
7 a witness who is going to be here. We have the two doctors
8 still, Khan and Anwar, and then we're going to call Rod
9 Chaffee and Nemec. But I wasn't sure Mr. Santacroce was aware
10 of that.

11 MR. WRIGHT: I didn't get the Chaffee and Nemec.

12 MS. WECKERLY: Well, we might total Nemec.

13 MR. WRIGHT: Oh, okay.

14 THE COURT: Yeah. I'm thinking that's kind of
15 optimistic but --

16 MS. WECKERLY: But I don't want to be short
17 witnesses, so.

18 THE COURT: Well, we can go later tonight because
19 here's my thinking --

20 MR. WRIGHT: How -- how later?

21 THE COURT: Well, not -- I mean, until I can't take
22 it anymore, which is typically going to be around six.

23 MS. STANISH: Well, we should finish right now.

24 THE COURT: Here's my thinking, Mr. Wright. We'll go
25 a little later if we, you know, if Nemec's on, I'm not going

1 to make him come back or whatever. My thinking is since it's
2 the weekend, you don't necessarily have to prepare for
3 Monday --

4 MR. WRIGHT: I have a 6:00 meeting.

5 THE COURT: Oh, okay. Well --

6 MR. WRIGHT: That I previously set.

7 THE COURT: No, that's fine.

8 MR. WRIGHT: Six o'clock --

9 THE COURT: I didn't know.

10 MS. WECKERLY: If I could just have direction on
11 that. I -- we have Chaffee here and the other two doctors. I
12 would rather not bring in Dr. Nemec if we're really not going
13 to get to him.

14 THE COURT: Okay. Mr. Wright, you say you have a
15 6:00 meeting that can't be moved?

16 MR. WRIGHT: Correct. I set it --

17 THE COURT: All right. Where is your meeting and how
18 long --

19 MR. WRIGHT: -- 15 minutes away.

20 THE COURT: So if we break at 5:45, does that give
21 you ample time?

22 MR. WRIGHT: Yes.

23 THE COURT: Okay.

24 (Court recessed at 12:27 p.m. until 1:47 p.m.)

25 (Outside the presence of the jury.)

1 THE COURT: All right. Do we need to wait for Ms.
2 Stanish? Where'd she go?
3 MR. WRIGHT: No. We just -- what are we going to do?
4 THE COURT: I thought we were going to do a hearing.
5 Okay. My understanding is from running into all of you in the
6 hallway is the next juror is trapped in the elevator?
7 MS. WECKERLY: Witnesses.
8 MR. STAUDAHER: Witnesses, too.
9 THE COURT: The next witness, I'm sorry, is --
10 MR. WRIGHT: Plural.
11 THE COURT: So the two doctors are in the elevator?
12 MR. STAUDAHER: At least that was the last word we
13 had from the marshal.
14 THE COURT: My marshal?
15 MR. STAUDAHER: Your marshal.
16 THE COURT: Okay. Hopefully, there's no jurors
17 trapped in the elevator with them.
18 MS. WECKERLY: Right. We don't know that.
19 THE COURT: I -- my marshal -- yeah, he wasn't --
20 he's apparently tending to other jurors so I wasn't able to
21 ask him if all of the jurors are back, so I don't know. But
22 we'll, of course, make sure at some point that the witnesses
23 and the jurors were not trapped together.
24 MR. SANTACROCE: In a related issue, Detective
25 Whitely just disclosed to us, no big deal, but at one of the

1 restaurants the big juror, I don't know which one, in --

2 THE COURT: Juror number two, the man?

3 MR. SANTACROCE: -- came up to the detective and said
4 can I ask you a question. And Detective Whitely said, no, I
5 can't talk to you and that was it and left. But just for the
6 record.

7 THE COURT: All right.

8 MR. SANTACROCE: Do we have time to address my bail
9 issue?

10 MR. STAUDAHER: Actually, we have one issue to --

11 THE COURT: If there is -- okay --

12 MR. STAUDAHER: I'm sorry.

13 THE COURT: Kenny, are all of the jurors back?

14 THE MARSHAL: All the jurors are back. Just an
15 update. All five elevators are running except for number six,
16 which is what our witnesses are in. Fire department's en
17 route to open the elevator.

18 THE COURT: Well, at least they're not trapped with
19 the jurors because that would make for a bonding experience,
20 which we probably don't want the witnesses and the jurors to
21 have. So --

22 MR. STAUDAHER: There is one issue we --

23 THE COURT: -- we should be at least glad of that.
24 Yes?

25 MR. STAUDAHER: Those are the next two witnesses.

1 The one that follows that witness is Rod Chaffee.

2 THE COURT: Right.

3 MR. STAUDAHER: We changed the one up today and there
4 is -- there is one issue with Rod Chaffee. We just want to
5 make sure that the Court's aware, counsel, we know what any
6 kind of restrictions are going to be as far as what -- what
7 can be gotten into with him. He has -- his wife died under --
8 I mean -- wasn't -- he wasn't involved in the death of his
9 wife.

10 THE COURT: She was murdered as I understand from
11 previous testimony and this was very emotional for him and he
12 had crying jags at the -- at the center.

13 MR. STAUDAHER: Can we approach the bench on this,
14 Your Honor?

15 THE COURT: That's what's come out through the
16 testimony. That's how I know that. All right.

17 MR. STAUDAHER: Can we approach?

18 THE COURT: All right.

19 (Off-record bench conference.)

20 (Court recessed at 2:02 p.m. until 2:06 p.m.)

21 (Outside the presence of the jury.)

22 THE COURT: Okay. On the record again.

23 MR. WRIGHT: Yeah. I wasn't done doubt on my motions
24 with Rod but we're going to start and go back to him?

25 MS. WECKERLY: Yeah. We're going to pull that -- try

1 to find that file.

2 THE COURT: Yeah, we're going to get to the bottom
3 of --

4 MR. WRIGHT: We'll go back to it.

5 THE COURT: -- of it. There's no point in us talking
6 about it when we have incomplete information. So let's wait
7 to get some complete information and then we'll discuss it on
8 the record. So Mr. Santacroce?

9 MR. SANTACROCE: I had a motion to limit his
10 testimony because he --

11 THE COURT: Mr. Chaffee's?

12 MR. SANTACROCE: Yes.

13 THE COURT: Can we do this? Can we start with the
14 two -- do the two doctors? We'll be -- well, just because, I
15 mean, you know, here's the thing. I'm glad you find that
16 amusing, Mr. Santacroce.

17 MR. SANTACROCE: I'm just -- all my motions get --
18 piling up.

19 THE COURT: I know, but here's the thing. You know,
20 the jury got back at 1:40. It is now, because of the two
21 physicians being stuck in the elevator, it is 2:10 and that is
22 the greatest juror complaint. And we have had a very patient
23 jury who has been working here and sitting through this every
24 day. Jeanie printed out the trial time. We're having seven
25 hours of actual trial time.

1 MR. SANTACROCE: It's a lot.

2 THE COURT: It's a lot. And so if I can keep the
3 jurors from having to sit any extra time in the hallway and
4 we're going to table some of these motions until later, then
5 that's what I'm going to do.

6 MR. SANTACROCE: That's fine, Your Honor.

7 THE COURT: Because again, you know, let's just be
8 mindful that this is a, you know, hard for them. And like I
9 said, through no fault of anybody, they've had to wait 40
10 minutes now for -- for these doctors who were stuck, so bring
11 them in. And I'll just tell you from talking to jurors,
12 that's like the biggest juror complaint is to be kept waiting.
13 And so that's why I'm really mindful of them and, you know,
14 they appreciate it if -- if they're not kept waiting.

15 MS. STANISH: Give them a Wii game.

16 THE COURT: What's that?

17 MS. STANISH: Give them a Wii game.

18 THE COURT: I -- that was one of my weight loss
19 things and I was going to buy a Wii game.

20 MS. STANISH: Yeah, I have one of those too.

21 THE COURT: And I was going to play it all the time
22 and I've used mine twice.

23 MS. STANISH: I have mine under a table somewhere
24 too.

25 THE COURT: I could certainly donate my Wii game to

1 the --

2 MS. STANISH: I hurt my shoulder with it.

3 MR. STAUDAHER: Your Honor, we're -- we're just
4 talking about -- at this moment and I know the jury's not come
5 back in yet, but we're thinking of --

6 THE COURT: We're not going to get to Dr. Nemec
7 today?

8 MS. WECKERLY: I'm going to call him off if that's
9 okay.

10 MR. STAUDAHER: Okay.

11 MS. WECKERLY: Because I -- I just don't see it with
12 the -- all these motions that are pending.

13 THE COURT: Well, we can do the motions, you know.

14 MS. WECKERLY: No, no. I meant -- I meant the
15 witness, not the motions.

16 MS. STANISH: Who's up first? Don't know?

17 MR. STAUDAHER: You know actually, we'll probably do
18 Anwar first.

19 (Jury reconvened at 2:11 p.m.)

20 THE COURT: All right. Court is now back in session.
21 The record should reflect the State, the defendants, their
22 counsel, the officers of the Court and the ladies and
23 gentlemen of the jury. And ladies and gentlemen, let me
24 apologize for our tardy start. People were stuck in the
25 elevator. Luckily, none of you got stuck in the elevator. So

1 now all of the necessary participants are here and the State
2 may call its next witness.

3 MR. STAUDAHER: State calls Dr. Javaid Anwar to the
4 stand.

5 JAVAID ANWAR, STATE'S WITNESS, SWORN

6 CLERK: Thank you. Please be seated. Please state
7 and spell your first and last name for the record.

8 THE WITNESS: Javaid Anwar, J-a-v-a-i-d, A-n-w-a-r.

9 THE COURT: All right. Thank you. Mr. Staudaher.

10 DIRECT EXAMINATION

11 BY MR. STAUDAHER:

12 Q And Doctor, your voice is quite soft so if you
13 could get as close to the mic as you can that would help.
14 Okay? What do you do for a living, sir?

15 A I'm a physician.

16 Q And what type of physician?

17 A I'm an internist.

18 Q How long have you done that work?

19 A 1975.

20 Q Can you give us a little bit of your background
21 and training that got you to where you are today?

22 A I graduated from medical school in 1969. I
23 trained in New York for four and a half years and did my
24 residency training. Came to Las Vegas in 1975 and I've been
25 here since. I had a private practice and then joined a group

1 in Internal Medicine Associates. And we have a company,
2 Quality Care Consultants with my partner, just the two
3 partners, and that has been in existence since 1992. And our
4 work is consulting work for Quality Care Consultants and I'm
5 still a practicing physician.

6 THE COURT: Sir, the jurors can't hear you. You have
7 a very soft voice so you need to -- just -- you can pull that
8 microphone just towards the end of the table and now I need
9 you to tell us everything you just said --

10 THE WITNESS: Is it on?

11 THE COURT: --- over again.

12 THE WITNESS: Can you hear?

13 MS. WECKERLY: Yes.

14 THE COURT: Okay.

15 THE WITNESS: Did you hear anything I said?

16 MR. WRIGHT: No.

17 THE COURT: Okay. So Mr. Staudaher let's start over
18 with your last question.

19 BY MR. STAUDAHER:

20 Q Your background and training, can you tell us
21 how you got to the point you are today?

22 A I completed my medical school -- can you hear --
23 in 1969 and came -- and then I trained in New York for four
24 and a half years. After finishing my training, post graduate
25 training in New York, I came to Las Vegas and have been here

1 ever since. Initially, I was a solo physician but I joined a
2 group, Internal Medicine Associates in 1994, and I'm still
3 with them. And I still practice internal medicine. I also
4 have a specialty in which I'm a partner with another
5 physician. We are two equal partners, and that's called
6 Quality Care Consultants and we do consulting work through
7 Quality Care Consultants.

8 Q Have you ever been on the State Medical Board or
9 associated with it?

10 A Yes.

11 Q And how long did that occur and what position
12 did you have on the Board?

13 A I served on the Board for eight years. That's
14 the maximum that one can serve.

15 Q And what was your position on the Board?

16 A I was one of the members on the Board and I also
17 was a President of the Board for a period of time, which is an
18 elected position.

19 Q And what was the period of time you were
20 President of the Board?

21 A Probably a couple of years.

22 Q Within that eight-year period?

23 A Within that eight-years period.

24 Q Was that at the beginning or end of the period,
25 middle?

1 A Middle.

2 Q Now, I'm going to ask you some questions about
3 this company you mentioned, Quality Care Consultants you said?

4 A Yes.

5 Q Describe for us what that is.

6 A Quality Care Consultants is a company that
7 provides services for -- for insurance companies, from
8 self-funded programs, to physicians, to hospitals. So it has
9 a variety of services that it provides. Its -- its main
10 emphasis is health care policy, strategy, case management.

11 Q So when you say it provides, it's -- it's you
12 and one other physician?

13 A We are partners, yes.

14 Q Okay. Do you have any employees or anybody that
15 works for you that compiles information, does research,
16 anything like that?

17 A No.

18 Q So it's just you two?

19 A Right.

20 Q So the variety of services that you provide,
21 this is something, if I understand, that's in addition to your
22 current practice of medicine?

23 A That's correct.

24 Q What kind -- as far as -- and I know you said
25 these are its entities that you work with but what I want to

1 focus you on practices, doctors offices and the like. What
2 kinds of things do you do for -- for those settings?

3 A Could you ask the question again, please?

4 Q What kinds of services -- can you describe the
5 services that you actually provide for those types of
6 entities, doctors offices, clinics, things like that?

7 A We provided oversight of peer review process at
8 medical centers. We also provide to hospital services, case
9 management oversight and we do that for several hospitals in
10 -- in town.

11 Q Do you know an individual by the name of Dipak
12 Desai?

13 A Yes.

14 Q How long have you known him?

15 A I've known him for many years.

16 Q When did you first meet him?

17 A Probably when he was new in town. I've been in
18 town since 1975.

19 Q So a long time ago?

20 A Yes.

21 Q Do you see him in court today?

22 A Yes.

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

25 A Seems like he's wearing a suit, a yellow tie,

1 blue shirt with a white collar.

2 MR. STAUDAHER: Will the record reflect the identity,
3 Your Honor?

4 THE COURT: It will.

5 BY MR. STAUDAHER:

6 Q With regard to your interaction with Dr. Desai,
7 from -- I mean, has it changed over time and was it -- what
8 was it to begin with, first of all?

9 A No.

10 Q It's been the same over time?

11 A Yes.

12 Q Okay. And are you friends, colleagues, a
13 combination?

14 A Colleagues.

15 Q Friends?

16 A Colleagues.

17 Q Okay.

18 THE COURT: Do you socialize at all?

19 THE WITNESS: Nothing outside of being a colleague.

20 BY MR. STAUDAHER:

21 Q Now, did your company, Quality Care Consultants,
22 ever provide any kind of services to Dr. Desai and/or his
23 clinic?

24 A To his company, yes.

25 Q And which company was that?

1 A Gastroenterology Centers.

2 Q Tell us about that. First of all, how did you
3 even get involved in -- in his center?

4 A We were really never involved in his center.

5 Q Okay. How did you even -- I mean, who
6 approached you, first of all, related to this?

7 A He -- he approached Quality Care Consultants.

8 Q Dr. Desai?

9 A Yes.

10 Q So he approaches you as an individual or as a --
11 as a group at a place of business?

12 A As a company, yes.

13 Q So where is your place of business?

14 A It's at -- in Las Vegas.

15 Q Where in Las Vegas?

16 A 3006 South Maryland Parkway.

17 Q Is that where Dr. Desai walked into your office
18 one day or how did that go?

19 A He called my partner that he was interested in
20 looking at our services, getting our services since we do that
21 all the time in the hospitals, and so we set up an appointment
22 and we met with him.

23 Q What specifically did he want you to do for him?

24 A He said that he -- his group was growing, it was
25 a pretty large group, and they were in a growth phase and they

1 did not really have a formal internal peer review process and
2 so they wanted our help to help them set up something like
3 that.

4 Q So what is a peer review process?

5 A A peer review process is something that all
6 large organizations, hospitals, have in which there is a
7 structured process in which peers can -- and review -- peers
8 get reviewed for any adverse outcomes. It's a whole process.

9 Q So beside just this -- I mean, does that involve
10 people externally that would look at, what? I mean, what
11 would you be looking at?

12 A In a peer review process?

13 Q Yes.

14 A Once the process is established, if there's an
15 adverse outcome that's -- it goes through that process.
16 It's --

17 Q When you say adverse outcome, are you talking
18 about something happened to a patient, for example?

19 A Right, or if there's a complaint or if there is
20 something that happens to a patient, it has to go through a
21 certain -- certain process and that's what a peer review
22 process is.

23 Q So when you -- he approaches you to help set
24 that up; is that right?

25 A Correct.

1 Q Do you charge for your services?

2 A Yes, we do.

3 Q Do you do some sort of initial charge or initial

4 consultation fee to have somebody -- for you to go in and

5 actually look at a practice?

6 A Would we do something like that? Yes.

7 Q Did you in his case?

8 A Yes, we did.

9 Q Okay. So tell me -- he comes in and he -- and

10 that's all he wants, is you to set up a peer review process?

11 A Correct.

12 Q Did he want anything to do with quality

13 assurance in his practice? Mention any of that at all?

14 A Peer review process is a part of quality

15 assurance.

16 Q Okay. Maybe I'm -- I'm -- I'm misunderstanding.

17 So when you say peer review, are you talking about other

18 doctors that would be looking at his sort of facility? Peer,

19 I assume mean other doctors. Is that --

20 A Peers means your peers.

21 Q Okay.

22 A Like in gastroenterology, peers would be other

23 -- other people in the group. For an internal peer review

24 process, it will be their physicians, a way for their

25 physicians to sort of review themselves to look at -- to do

1 their own analysis and review if there are issues or concerns
2 or problems.

3 Q So in your -- in your sort of work with -- with
4 Dr. Desai or at least what you envisioned doing for him, what
5 exactly -- was it just this peer review thing?

6 A What do you mean by just peer review thing?

7 Q Well, maybe a poor choice of words on my part.
8 I understand -- and please, I'm trying not to get confused
9 here with regard to that, but you said an internal peer review
10 process that was made up of other like physicians, like
11 gastroenterologists for his practice, his being Dr. Desai,
12 that they would then have some way to look at adverse
13 outcomes, things like that, with patients or complaints or the
14 like?

15 A His own practice would have the ability how to
16 review their own internal issues, complaints, problems.

17 Q Okay. So you --

18 THE COURT: So it's those doctors kind of reviewing
19 themselves?

20 THE WITNESS: Right. Correct.

21 BY MR. STAUDAHER:

22 Q So beside the doctors reviewing themselves, was
23 there any other part of this that you were -- like were you
24 going to review procedures? Were you going to review
25 policies, medical facilities, anything like that as part of

1 what you envisioned doing for Dr. Desai?

2 A To set up the process you have to know sort of
3 the lay of the land as to what policies do they have in place,
4 what facilities they work out of, how is the patient flow. To
5 be able to set up something for them you have to know what do
6 they have right now.

7 Q So what did you do? I -- you agreed to do this
8 obviously?

9 A Yes, we did.

10 Q Was there anybody else there beside Dr. Desai
11 with you and was this your partner?

12 A That's correct.

13 Q And who is your partner?

14 A Dr. Kahn.

15 Q So both of you are present at the meeting with
16 Dr. Desai?

17 A That's correct.

18 Q Was there more than one meeting before you
19 actually went and did anything for him?

20 A No.

21 Q So after that meeting, tell us what you do.

22 A He said give me a proposal, which we sent. And
23 then we received a partial payment check and we sent him a
24 letter thanking him for inviting our services. And that's
25 when we started the process of looking at what they have

1 before giving a final report.

2 Q Okay. So tell us when -- so you actually went
3 to the clinic?

4 A That's correct.

5 Q Tell us what you did when you went there.

6 A We were told that their manager, who really
7 manages the whole business, would be able to provide us with
8 any information that we need. And so we met with -- with that
9 person, we had more than one meetings with her.

10 Q And who was that?

11 A That was Rushing, Tonya Rushing.

12 Q So you said you had more than one meeting?

13 A Right.

14 Q Do you recall roughly how many meetings you had
15 with her?

16 A Two.

17 Q As far as the actual in work, I mean where
18 you're in the clinic, what are you doing there to review or to
19 get prepared to write your report?

20 A We are not doing anything there to -- to write a
21 report. We are gathering information on which we'll base our
22 report.

23 Q Fair enough. What things did you do in that
24 process?

25 A So we met with her on those two occasions and

1 she asked to -- what is the process and she is the one who
2 manages the whole business from her. It's solely based on the
3 information that we receive from her and the facility and the
4 documents that we reviewed they had their -- their manual
5 administrative -- manual, which is pretty big document that we
6 reviewed. And we had I think a couple of hours at one
7 location and then maybe a couple of hours or more at another
8 location, meeting with her to see as to how -- how the
9 facilities function.

10 Q Now, you said that there was this engagement
11 letter that you wrote, you got a partial payment for; is that
12 correct?

13 A That is correct.

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

15 THE COURT: Sure.

16 BY MR. STAUDAHER:

17 Q I'm showing you what has been marked as State's
18 proposed Exhibit 177. And I'm going to leave this up here for
19 you, but take a look at that. You can flip through the entire
20 thing and take your time and tell me if it's familiar to you
21 at all.

22 A Yes. This seems familiar, yeah.

23 Q Okay. So these are -- and I'm going to leave
24 those up there --

25 A Okay.

1 Q -- for just a moment. So are these -- are these
2 records of your -- sort of the engagement letter and some
3 payments and so forth --

4 A Right, right. They are the payments and the
5 engagement letter. This first one is the one that we had made
6 an offer and this is the one after we received the first
7 payment.

8 Q So are those records you've seen before?

9 A Yes.

10 Q They were something you would have generated or
11 had in your possession at some point?

12 A That's correct.

13 MR. STAUDAHER: I'd move for admission of State's
14 proposed 177, Your Honor.

15 THE COURT: Any objection?

16 MS. STANISH: No, Your Honor.

17 THE COURT: No.

18 MR. SANTACROCE: No.

19 THE COURT: Okay. 177 is admitted.

20 (State's Exhibit 177 admitted.)

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

22 THE COURT: You may.

23 MR. STAUDAHER: And I'm going to leave the copy up
24 there. I've got another copy of that --

25 THE COURT: That's fine.

1 MR. STAUDAHER: -- that's highlighted. That one is
2 not obviously.

3 THE COURT: Okay.

4 MR. STAUDAHER: But this is --

5 THE COURT: So to be clear, those are your
6 highlights?

7 MR. STAUDAHER: Those are my highlights, yes.

8 BY MR. STAUDAHER:

9 Q I just want to ask you a couple of questions
10 about those as we go through some of this. First of all, the
11 date of this letter, sir? What is the date?

12 A September 25, 2006.

13 Q This initial letter, and it looks like there's a
14 fee amount, can you tell us what that is for your services?

15 A It's 25,000.

16 Q Dollars?

17 A Dollars.

18 Q This portion here where it says you're offering
19 your services to review and assess the current medical
20 facilities, programs, policies and procedures at various
21 locations. Do you see that?

22 A Correct.

23 Q And that you will make recommendations for the
24 initiation of policies and procedures, delivery of quality
25 care in accordance with national standards.

1 A That's correct.

2 Q And again, it looks like you're -- on this last
3 paragraph, that you're talking about doing ongoing monitoring
4 services on a monthly basis. That's what you were --

5 A That's what it says.

6 Q Now the next -- and that's a -- the Bates number
7 on this one is entitled QCC1 and then the next page is QCC2.
8 And in this one, the date is what, sir?

9 A January 22nd, 2007.

10 Q And this portion here where it says, "Thank you
11 for your 50 percent advanced payment," is this something you
12 sent before you actually went to the facility?

13 A That is correct.

14 Q The next page is Bates number QCC3. Does that
15 appear to be a check related to any one of those letters?

16 A Yes, this seems like the first check.

17 Q Okay. So the date of this check is December
18 20th of 2006?

19 A That is correct.

20 Q Now at some point after you go to the facility,
21 do you in any way produce any kind of report? I mean, did you
22 go through and do the things that you described in your letter
23 here?

24 A We produced a report at the end of our review of
25 what they had.

1 Q Okay. And when was that report produced?

2 A I think you should have a copy of that. That, I
3 believe, was in September of 2007 --

4 Q I -- I could provide you one --

5 A -- September of 2007.

6 Q Would that help if I provided you with a copy to
7 look at as we go through?

8 A Oh, yes, please.

9 Q And, sir --

10 MR. STAUDAHER: At this point I'm not necessarily
11 moving to admit this at the time, so it's not been marked.
12 I'm just leaving this up here for him so that he has a chance
13 to look at it. Copies have been provided to counsel as well.

14 THE COURT: Okay.

15 BY MR. STAUDAHER:

16 Q So if you need to refresh your memory at any
17 time by looking at that report, just let us know and -- and
18 you can do so. The first thing I wanted to know is the date
19 of your report that you actually provided.

20 A September 11th, 2007.

21 Q Now the date of this initial letter was
22 September 25th of 2006; is that correct?

23 A That's correct.

24 Q And the date of the next letter was January 22nd
25 of 2007?

1 A That's correct.

2 Q So what happened between those letters and this
3 report?

4 A So between -- between this letter that you just
5 showed, we contacted as to who do we get to meet to provide us
6 with the information that we would need to make the report and
7 we were directed towards Tonya Rushing. And so we called her
8 and she has a busy schedule and between her schedule and our
9 schedule, I think we met with her in March was the first
10 meeting.

11 And then we met with her again in March, so twice in
12 March, and then once in April were the contacts that we had.
13 And walk-through of the -- of the endoscopy clinics, as well
14 as our meetings with Tonya Rushing. And then I believe in
15 July is when we had our last -- last item that we needed,
16 which was the review of records for completeness to -- to see
17 if -- to make it a part of the report. And so after that,
18 thereabouts, I think about six weeks after we had finished all
19 that and the production of our report that we see here.

20 Q Okay. Now, you actually signed this letter in
21 your report on that -- for this September 11th, 2007 date,
22 correct?

23 A That's correct.

24 Q Am I to understand you that you met with Tonya
25 Rushing? Did -- did you -- as part of your review, can you

1 tell us if you met with any of the staff or employees, if you
2 observed procedures, you know, exactly what you did in the --
3 in the practice to evaluate them?

4 A Yeah. And it's -- it's pretty much outlined in
5 our report that you haven't admitted yet, you know, that you
6 have produced for me to look at.

7 THE COURT: Well --

8 MR. STAUDAHER: Well, I'm going to go ahead and mark
9 it then.

10 THE COURT: -- you have to -- the way we do it is you
11 still have to go through and answer --

12 THE WITNESS: Sure, I'd --

13 THE COURT: -- answer the questions.

14 THE WITNESS: -- be happy to do that.

15 MR. STAUDAHER: And I'm going to go ahead and get
16 them marked anyway in case we need to do something with it.
17 It can at least be a Court's exhibit.

18 THE COURT: That's fine.

19 BY MR. STAUDAHER:

20 Q Again, I'll give that back to you to look at any
21 time. I know it's outlined in the report, but I'm asking you.
22 Could you just tell me what you did as far as those kinds of
23 things in the practice? What did you look at?

24 A All right. And so we -- as I said that our
25 first meeting was with Tonya Rushing in her office at Shadow

1 Lane. And we had I think about a couple of hours meeting,
2 both myself and Dr. Kahn met with her. And we made some notes
3 about her describing to us as to how the offices functioned
4 and worked. And then we had a second meeting with her and we
5 asked her to see as to if the facilities had their
6 accreditations and all that and she produced all those
7 documents for us as -- those certificates of accreditation.
8 And -- and we reviewed -- we got the policy and procedures
9 manual, which we could not review at that time because it was
10 pretty thick, about I think three or four inches thick. And
11 so she allowed us to take that with us to study and -- and
12 review and look, and then we had a walk-through.

13 And we also met with a nurse, supervisor in that
14 facility that Tonya Rushing introduced us to and she walked us
15 through the endoscopy center at Shadow Lane. And on a
16 different date, which I believe would be in April, that we had
17 a -- we walked through the other facility, the endoscopy
18 center, on -- on -- next to Desert Springs Hospital, which is
19 on Harmon I believe.

20 Q So beside those things you mentioned, you
21 mentioned talking to one nurse on one occasion; is that right?

22 A One nurse in the endoscopy center on the Shadow
23 Lane and there was a nurse supervisor at the Burnham facility
24 also.

25 Q How long were those meetings with the -- those

1 two persons?

2 A They were the ones who walked us through those
3 facilities and as we -- as to -- how the layout of the
4 facility is and where do the patients enter, where do the
5 patients sit, how are they sort of taken through the system.
6 And so as we were walking through the facilities, we talked to
7 any employees that were there and asked them as to what they
8 do and how do they do whatever they do and how are the
9 patients sort of moved through the system, basically the lay
10 of the land.

11 Q So those couple of meetings lasted how long
12 where you talked to other people? Was this a day, was it a
13 week, I mean how -- I mean hours?

14 A It was after hours, it was after hours.

15 Q It was after hours?

16 A It was after hours. It was never during the
17 time because we were not there to see how they are taking care
18 of patients. We were there to see the lay of the land as to
19 the facilities and how they moved the patients through the --
20 through the facilities as they are taking care of them.

21 Q How many -- how many clinical staff did you
22 actually talk to, to the best of your knowledge?

23 A It's difficult to say, it's been a few years.
24 But we didn't make a note of how many people we -- we actually
25 met with, but on our walk-through we met with several people

1 in each facility.

2 Q Those are two separate times after hours,
3 correct?

4 A That's correct.

5 Q Is that fair to say that patients are not in the
6 facility at that point?

7 A That's correct.

8 Q As far as the staff, was there -- were there
9 very many staff after hours still in the clinic?

10 A There still were very many staff, yeah.

11 Q Okay. At the end of your -- these two times,
12 were there any other times that you went and actually observed
13 procedures, anything like that?

14 A We never observed any procedures.

15 Q Did you ever observe even how the patients moved
16 through the facility?

17 A We did not observe the patient -- our report and
18 information is based on the information that was provided to
19 us. It was not based on our observations of patients or
20 procedures.

21 Q And did Dr. Kahn, was he with you the whole
22 time?

23 A He was.

24 Q I'm going to bring this back to you.

25 A Thank you.

1 Q Would you go to that first page -- not the very
2 first page, but the first page of the letter? And I just want
3 to ask you about some of the things that you wrote in your
4 letter. Do you see that? Go ahead and read that so it can --
5 you can familiarize yourself with it.

6 A Okay.

7 Q When it says extensive meetings with both
8 clinical staff and administrative personnel, are you talking
9 about these two incidents with -- that you walked through the
10 facility?

11 A When we had the meeting with the rest of the
12 staff?

13 Q Yes.

14 A There were two walk-throughs, yes.

15 Q Is that what you're terming extensive meetings
16 with those people?

17 A Extensive meetings would be starting from Tonya
18 Rushing and -- and the walk-through of the facilities.

19 Q And did I misunderstand you, you met with Tonya
20 Rushing twice?

21 A Twice.

22 Q Okay. And you walked through the facility or
23 two different facilities?

24 A Two different facilities.

25 Q After hours?

1 A After hours.

2 Q And these people were involved in -- in what?

3 The people that you talked to, the clinical staff, handling of
4 patient care, that kind of thing?

5 A Receiving the patients in the reception room and
6 then who take the patient in, people who were in the back
7 office. So at all different levels we met different people.

8 Q When you mention in your letter about throughput
9 through the facility, you actually qualify that, do you not?
10 And I'm talking about the top of the fourth paragraph, first
11 sentence. Can you describe for us what you meant by that?

12 A Throughput, what I -- what we mean here is
13 movement of a patient from the point of entry to the point of
14 exit.

15 Q But you never saw any patients in the facility.

16 A No, it's based on what we were told.

17 Q By whom?

18 A By the people that we interacted with.

19 Q And you indicated that it was efficient and that
20 the staff was -- morale was high. Was that based on these
21 people that you had talked to?

22 A That was based on -- on the people we talked to,
23 correct.

24 Q And based on that you also talk about reviewing
25 physician medical records. Can you describe that for us, what

1 you did with regards to those?

2 A We reviewed the medical records for
3 completeness.

4 Q When you say completeness, what are you talking
5 about? That they had all the parts or what was written on
6 them or -- or how they looked? I mean, what was your --

7 A For completeness of information.

8 Q So meaning what?

9 A Meaning that is there a name of the patient, is
10 there a way to identify those patients, is there a body that
11 follows the patient as to the information that should be
12 there, is all that information there, is there any information
13 that's missing that they should be putting in, that sort of
14 thing.

15 Q Now, as far as your -- and on this document,
16 there's two parts. There's a part at the beginning, which is
17 typed letters and it looks like your report and then there's
18 some handwritten items on the back. Do you see that? It
19 looks like some notes or something like that.

20 A Yes.

21 Q Is -- do you recognize the handwriting there?

22 A Yes.

23 Q And whose handwriting is that?

24 A A lot of it is Dr. Kahn's and some of it is
25 mine.

1 Q But you recognize it as something that you all
2 -- both produced?

3 A That is correct, yes.

4 Q Were those the notes that you kept to produce
5 your report?

6 A Yes.

7 Q Now, after you produced this report, I mean, had
8 you -- beside doing the -- going to the clinic or the clinics
9 on those couple of occasions you mentioned, did you -- and
10 taking I guess the procedure book, the policies and procedure
11 book off-site and going through that, you went through that as
12 well?

13 A That is correct.

14 Q The actual chart review of the doctors' records
15 that you say you looked at, was that on-site or did you take
16 those off-site?

17 A No, on-site.

18 Q And you said extensive or rather along with a
19 broad sample of each physician's medical records. Are we
20 talking about every physician that worked in the clinic?

21 A We think so because we -- that's we requested,
22 to pull the charts on every physician sample chart, so that we
23 can review them, see if there's a pattern of any deficiencies
24 in documentations that we could make recommendations on.

25 Q Now, after this report is done, were you doing

1 this -- did you do any further work for them?

2 A Like what?

3 Q I'm asking you. Did you do anything further
4 then just do this report and submit it to them?

5 A After the report was completed?

6 Q Yes.

7 A No.

8 Q So up to this point, if I understand you
9 correctly, your \$25,000 was to produce this -- this item?

10 A That's correct, to produce this final document.

11 Q So you produced that and then what was -- what's
12 the purpose of that, do you know, other than to give them
13 feedback?

14 A The purpose of this is to set up a peer review
15 program for them, which it entails pretty well and the issues
16 that we brought up, what we observed and the recommendations
17 that we made. And then we were going to sit down with them to
18 go over -- over this report, see if they have any questions,
19 and as to how have we come up with these recommendations,
20 which never took place.

21 Q So you never had a follow-up meeting with them
22 at all?

23 A No.

24 Q Did you engage with them in any way to do -- or
25 did they engage you rather in any way to do any follow-up

1 care, any quality assurance, any -- anything else as far as
2 that was concerned?

3 A No.

4 Q Now, I want to show you a couple of things
5 because I want to make sure I understand where these come
6 from. Now you said this -- the fee for doing this work was
7 \$25,000?

8 A That's correct.

9 Q I want to go to Exhibit -- whatever the Exhibit
10 number is, 178, I want to go to the checks. That initial
11 check that I think you said was a partial payment dated 12/20
12 of 2006 for \$12,500?

13 A That's correct.

14 Q And then the next check which was dated May 3rd
15 of 2007 also \$12,500?

16 A That's correct.

17 Q That date of your report is September 11th of
18 2007, is it not?

19 A Date of the report is --

20 Q That's when your letter is. I don't know if
21 that coincides with the report.

22 A Yes, September 11th, 2007.

23 Q So can you tell me what this check is for on
24 November 7th -- or November 29th of 2007 for the same \$12,500
25 amount?

1 A I don't know what that is, It wasn't -- it was
2 not a check for our services and so we -- when we found out
3 that there was an additional payment it was returned.

4 Q So you didn't engage them on a regular -- and
5 this -- this actually says right here, quality, does it not?
6 In the -- like the memo line?

7 A It does.

8 Q And this is to your company, Quality Care
9 Consultants?

10 A That's correct.

11 Q Did Dr. Desai ever ask you if he could use your
12 company as -- I mean to -- to do quality assurance at all?

13 A No.

14 Q Did he ever ask you if he could use your company
15 and your report to show that he had some quality assurance
16 program in place?

17 A No.

18 Q And you don't know why this other check was sent
19 to you?

20 A When we found out it was -- it was an extra
21 check, which wasn't a part of our service, so we returned it.

22 Q When did you -- when did you do that? When did
23 you get this?

24 A When did we find out?

25 Q When did you get this check?

1 A I don't know. It got deposited into the account
2 and we found out about it when we were reviewing for taxes in
3 2008. When we were reviewing for taxes, that's when we found
4 out that there's an extra payment here. And so we brought it
5 to the attention of our attorney at that time. And because
6 the place was already closed down, then he said that we don't
7 know who this check would have to go to. But then
8 subsequently, it was -- we found a way to return it.

9 Q As -- as far as that's concerned, I just want to
10 be clear, you never -- never provided any quality assurance
11 work at all.

12 A That's correct.

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

14 THE COURT: All right. Cross. Who would like to
15 start?

16 MS. STANISH: Your Honor, we need to have a brief --

17 THE COURT: Recess?

18 MS. STANISH: Yes, please.

19 THE COURT: All right, that's fine. Ladies and
20 gentlemen, we'll go ahead and take a recess until 3:10.
21 During the recess you're reminded that you're not to discuss
22 the case or anything relating to the case with each other or
23 with anyone else. You're not to read, watch, listen to any
24 reports of or commentaries on this case, any person or subject
25 matter relating to the case. Don't do any independent

1 research and please don't form or express an opinion on the
2 trial. Put the notepads in your chairs and follow the bailiff
3 through the rear door.

4 (Jury recessed at 2:52 p.m.)

5 THE COURT: And sir, during the break, please don't
6 discuss your testimony.

7 THE WITNESS: I can go out?

8 THE COURT: Yeah, you're free to --

9 THE WITNESS: Okay.

10 THE COURT: -- to go out -- out into the hall. Oh,
11 Mr. Staudaher, apparently, according to the clerk, you
12 misspoke. The last exhibit you were talking about, you said
13 170 -- oh, it's 177, it's not 178, right?

14 MR. STAUDAHER: Is that on the record? The
15 correction?

16 CLERK: You said Exhibit 78 and --

17 MR. STAUDAHER: Oh, okay. I can clarify it -- I can
18 just --

19 THE COURT: Okay, yeah, just so you know.

20 MR. STAUDAHER: Before they do cross I'll just walk
21 up there and clarify that.

22 (Court recessed at 2:53 p.m. until 3:04 p.m.)

23 (Outside the presence of the jury.)

24 THE COURT: You had time to confer with your client
25 before you begin your cross; is that correct?

1 MS. STANISH: Yes, Your Honor. Thank you.

2 THE COURT: All right. Will somebody make sure the
3 bailiff brings them in. Do we have something first?

4 MR. STAUDAHER: Just one thing, we've gotten some
5 information.

6 THE COURT: Okay.

7 MR. STAUDAHER: So I want to make sure that the Court
8 has that because the next witness -- I think what we're going
9 to do is just call this one doctor.

10 THE COURT: Yeah, I was going to suggest that. I
11 don't know that --

12 MR. STAUDAHER: Right.

13 THE COURT: -- what he's saying is real controversial
14 or anything.

15 MR. STAUDAHER: I just didn't know if he would
16 remember the various things so --

17 THE COURT: So that's good, we can get rid of one.

18 MS. STANISH: Oh, so -- oh, good. So we're going
19 right in to Chaffee?

20 MR. STAUDAHER: Go right in to Chaffee after this.

21 THE COURT: Okay, all right.

22 MS. STANISH: Okay.

23 THE COURT: Then we'll deal with his issue.

24 MR. STAUDAHER: We provided to counsel today -- or
25 since Mr. Whitely went out, the issue with regard to the meth

1 lab or -- or that, that was disposed of back in 2006
2 apparently. The file date on this was 2005. The disposed
3 date of this particular action is 2006.

4 THE COURT: You showed that to defense counsel?

5 MR. STAUDAHER: Yeah, they have copies. And then the
6 other one, which was the malicious injury to vehicle one, was
7 filed in '06 apparently and it was disposed as of --

8 MR. WHITELEY: Which one are we talking about?

9 MR. STAUDAHER: This one here.

10 MR. WHITELEY: Tampering was dismissed on 10/24/2006.

11 MR. STAUDAHER: So both of those --

12 THE COURT: Preceded any contact with --

13 MR. WRIGHT: Oh, I didn't even -- this is a third
14 one? I didn't even know about this one.

15 THE COURT: Okay. Well it was over --

16 MR. STAUDAHER: It's a dismissed case.

17 THE COURT: It was over before he was contacted by
18 law enforcement, correct?

19 MR. STAUDAHER: So the only thing for this --

20 THE COURT: Or contacted relating to this. He's
21 obviously had other -- yes.

22 MR. STAUDAHER: According to the records, the only
23 thing that apparently was -- was still -- or is it still --

24 MS. WECKERLY: Well, no, that's -- I mean, that one
25 is --

1 MR. STAUDAHER: During this window?
2 MS. WECKERLY: I think so. I mean it looks like --
3 MR. WHITELY: The arrest date's 4/10 --
4 MS. WECKERLY: -- the arrest date is technically --
5 MR. STAUDAHER: There's an arrest date of 4/16/2010
6 on this and then do we have --
7 MS. WECKERLY: It's -- it's denied, but it's still
8 denied in the --
9 THE COURT: In the window.
10 MR. STAUDAHER: Yeah. This is the only one --
11 THE COURT: Okay, all right --
12 MR. STAUDAHER: -- that could be the --
13 THE COURT: -- and then that was -- he was arrested
14 for what?
15 MR. STAUDAHER: Possession of drug without a
16 prescription, possession of drug paraphernalia.
17 MS. WECKERLY: No, he's not the paraphernalia or is
18 he just the --
19 MR. STAUDAHER: Oh, he's not?
20 MS. WECKERLY: -- prescription?
21 MR. STAUDAHER: You tell me. I'm sorry. I'm getting
22 up and saying this and I didn't even look at it that
23 carefully.
24 THE COURT: That's a felony? That was a question,
25 that's a felony?

1 MS. WECKERLY: Yeah, he's arrested --

2 THE COURT: So in other words, that was hanging over
3 his head in some way during the time he was interviewed by
4 police; is that correct? Because if it's over before he's --

5 MR. WRIGHT: Yes.

6 THE COURT: -- even contacted --

7 MS. WECKERLY: Yes, yes.

8 THE COURT: -- by -- it was?

9 MS. WECKERLY: Yeah. I mean it technically in the
10 time frame. He's arrested for possession without a
11 prescription.

12 THE COURT: And then it was denied for prosecution?

13 MS. WECKERLY: We don't have -- I mean the --

14 MR. WRIGHT: It's still open, isn't it?

15 MS. WECKERLY: No, it's denied.

16 THE COURT: It's denied.

17 MR. WHITELEY: Denied as of 11/3/2010.

18 THE COURT: We don't know why. It could have been
19 they never bothered to test the -- if they never --

20 MR. WHITELEY: The problem is --

21 MS. WECKERLY: It's a prescription drug.

22 MR. WRIGHT: We know why.

23 THE COURT: Or he got a prescription or his blood
24 pressure pills so really --

25 MR. WRIGHT: Or it was quid pro quo.

1 THE COURT: I didn't say you couldn't ask him about
2 it. You can ask him about that one --

3 MR. WRIGHT: Okay.

4 THE COURT: -- and that's it. The other two are off
5 limits because it preceded any contact with the police.

6 MR. WHITELEY: The prescription drugs were Taraxacin
7 [phonetic] and Zolpidem.

8 THE COURT: I don't know what -- do you know what
9 those are?

10 MR. WRIGHT: I can --

11 MR. WHITELEY: No.

12 MR. WRIGHT: -- question him about his drug use
13 though. That goes to his perception and memory and his
14 delusions, correct?

15 THE COURT: Well, you can ask him what, I mean --

16 MR. WRIGHT: What's his drugs of choice?

17 THE COURT: No. I mean -- well --

18 MR. WRIGHT: And I'm also going to ask him just so
19 the --

20 THE COURT: You have a good faith basis. You can't
21 just be, you know --

22 MR. WRIGHT: Oh, I've got a good faith basis. Look
23 at all this stuff.

24 THE COURT: Well, the meth I get, lab I guess, which
25 is --

1 MR. WRIGHT: Well, you know what, I am going to
2 question him about that.

3 THE COURT: I said you can question him about the one
4 that was hanging over his head. You can ask him about, you
5 know, what his usage was when he's working there, when he's
6 interviewed, whatever. Other than that, you know, what he did
7 years before or what his roommate did, isn't -- isn't
8 relevant.

9 MR. WRIGHT: Wasn't a roommate. He was disciplined
10 at the clinic and it was written up. The first incident --

11 THE COURT: Well, anything that happened --

12 MR. WRIGHT: -- he scared the employees. Let me
13 explain what it is. Rod told fellow employees he brought a
14 vagrant into his home that he shared with his wife and child
15 to try to rehabilitate the vagrant. Contrary to Rod's goal of
16 rehabilitation, the vagrant used Rod's computer to submit
17 online orders for components to build a meth lab. Police
18 arrested Rod and the vagrant and Rod told employees he was let
19 go once the vagrant explained that the meth lab was his idea.
20 But the Gastro Center employees were alarmed by the stories,
21 so Tonya met with Rod to discuss appropriate and inappropriate
22 conversations in the workplace.

23 THE COURT: Okay.

24 MR. WRIGHT: So --

25 MR. STAUDAHER: What's relevant about the underlying

1 issues as to why he was talked about? That whole thing is not
2 -- it predates the --

3 MR. WRIGHT: Well, I'm going to impeach -- now I'm
4 going to read this discovery --

5 MR. STAUDAHNER: -- events in this case.

6 MR. WRIGHT: -- and find out if it was a vagrant. I
7 mean, if the guy's a liar I've got the right to bring it out.

8 THE COURT: Yeah, if he's a liar, you've got a right
9 to ask him about that. I mean, honestly, my take on what Mr.
10 Wright read, if that's true, I mean I don't think it cast --
11 it casts him in sort of a foolish light, but not as like a bad
12 person if he's trying to -- I mean, if he's a Christian and,
13 you know, is trying to do good deeds, I don't know.

14 MR. WRIGHT: Well, I -- that's why I've got to read
15 the discovery and see if we --

16 THE COURT: All right. Well, can we --

17 MR. WRIGHT: -- he took in a vagrant.

18 THE COURT: -- get back going with the doctor or do
19 we need more time or?

20 MR. SANTACROCE: Is it time to render? Can I make my
21 motion to render --

22 THE COURT: No. Here's what the plan is on your
23 motions, Mr. Santacroce. I'm going to make a list of all the
24 motions you want to make and then we're -- do any of them have
25 to be made today?

1 MR. SANTACROCE: Well, one has to do with Chaffee.

2 THE COURT: Well, that one we have to hear now then.

3 MR. SANTACROCE: Okay, that's -- that's fine. The
4 rest we can table.

5 THE COURT: Well, I -- what my plan was, was to have
6 the jury come in at 9:30 or 9:45 and us get here at nine on
7 Monday morning and that will give you 45 minutes or however
8 long you need to make all the motions you --

9 MR. SANTACROCE: I don't need that much time, Your
10 Honor.

11 THE COURT: Well, Mr. Wright still has some things
12 that he's going to need to address. We can do all that. My
13 concern isn't doing it, my concern is doing it when we have
14 jurors have waiting. That's my concern. So, you know, and
15 normally if there wasn't the issue with the fatigue and
16 whatnot -- not my fatigue for the record, but Dr. Desai's, we
17 -- we lawyers, we'd all be staying here, you know, until 6:30
18 or whatever going over the legal things once the jury's
19 excused. But, you know, I've been trying to let everybody go
20 at five so that you can meet with Dr. Desai and prepare for
21 the next day. So, you know, Mr. Santacroce, make your Mr.
22 Chaffee motion.

23 MR. SANTACROCE: Yeah. I want to limit his testimony
24 to what he actually saw and observed. He had -- he's very
25 opinionated and he talks a lot about what he thinks the CRNAs

1 should do or what their procedures should be. He's an RN,
2 he's not a CRNA.

3 THE COURT: You're correct, he can't opine on that.
4 He can certainly opine on aseptic technique --

5 MR. SANTACROCE: Fine.

6 THE COURT: -- that would be the only thing because
7 that's sort of universal in health care so.

8 MR. SANTACROCE: But he makes comments like a
9 72-year-old 100-pound grandmother should have a 100
10 milligrams --

11 THE COURT: No, he doesn't know --

12 MR. SANTACROCE: -- of propofol and --

13 THE COURT: -- he can't opine on that. If he starts
14 -- look, if he starts, you know, testifying in that way,
15 objection beyond the scope of his knowledge and I'll sustain
16 it. I agree.

17 MR. SANTACROCE: Okay.

18 MR. STAUDAHNER: I don't intend to ask anything like
19 that.

20 THE COURT: Yeah. What else?

21 MR. SANTACROCE: That's it.

22 THE COURT: Oh, okay. Kenny, bring them in. All
23 right. Let's make a list, Mr. Santacroce, of all your
24 motions.

25 MR. WRIGHT: Wait. We're not doing Chaffee yet,

1 right?
2 THE COURT: No. We're doing the doctor, but we may
3 not --
4 MR. WRIGHT: Okay.
5 THE COURT: -- take another break.
6 MR. WRIGHT: Okay, because I got a motion in limine.
7 THE COURT: All right. Well --
8 MR. WRIGHT: Now I'm reading this, it was a Federal
9 search warrant and the vagrant denied anything about it and
10 said it was Rod's meth lab.
11 THE COURT: Well obviously, someone believed Rod over
12 the vagrant because the case was dismissed.
13 MR. WRIGHT: I don't know.
14 MS. STANISH: Did they check with the Feds to see if
15 the case was referred to the Feds?
16 THE COURT: Either that or it was --
17 MS. WECKERLY: It was Dell.
18 MS. STANISH: Pardon me?
19 THE COURT: It was Dell.
20 MS. WECKERLY: Isn't that when Dell --
21 MR. WRIGHT: No, it was -- this was a Federal search
22 warrant.
23 MS. STANISH: If the Feds are involved, I want to
24 know if there was a referral.
25 THE COURT: Maybe if Detective -- Detective, can you

1 help us out? Can you make a call over to the FBI or the US
2 Attorney's Office, find out exactly what's going on with Mr.
3 Chaffee? If he A, has any Federal convictions; B, has
4 anything hanging over his head right now Federally; and C, had
5 anything hanging over his head at the time. Anybody else want
6 Detective Whitely to check anything else?

7 MS. STANISH: The air in my tires.

8 THE COURT: Okay. He's going to check with the FBI
9 and he'll come back and tell us.

10 MS. STANISH: The air in my tires.

11 MR. STAUDAHER: Just so we're clear on this, this --
12 this actually says that McGrath, the other guy, said that they
13 were cooking meth. He admitted to it. He didn't say it was
14 somebody else doing it.

15 THE COURT: Well, look, Mr. Wright was concerned that
16 it went Federal. The detective will check and see if there's
17 any other Federal stuff out there that we're not aware of and
18 if that would have been hanging over his head at the time he
19 was interviewed by the detective -- was the FBI there when you
20 interviewed him?

21 MR. WHITELEY: The first one that we did?

22 THE COURT: Chaffee, yeah.

23 MR. WHITELEY: I'd have to look. I don't remember.

24 THE COURT: It doesn't matter. Just check, if you
25 don't mind, please, and let us -- then we'll maybe take a

1 break for an update.

2 MS. STANISH: DEA.

3 MR. WHITELEY: Does it say DEA?

4 MS. STANISH: Go call Pam Martin.

5 MR. SANTACROCE: On my motions.

6 THE COURT: Yeah, I was going to make a whole list
7 here.

8 MR. SANTACROCE: I have two.

9 THE COURT: One is the bail motion?

10 MR. SANTACROCE: Correct. And the other one is I'm
11 still waiting on this issue with juror [indiscernible]. I
12 haven't seen the transcript that --

13 THE COURT: It's right up here, but we're having
14 other juror issues as well. Ms. Mayo has two suspicious
15 looking moles -- moles and she's worried that they're cancer,
16 but she doesn't have any insurance because she can't start her
17 job because the trial is going and somebody else quit at her
18 job. This I just found out at the last break. She pulled
19 Kenny aside to report on the suspicious looking moles. We
20 also have two people with upcoming -- you know, I'm keeping
21 track of it all up here, Mr. Santacroce. I'm not forgetting
22 anything.

23 MR. SANTACROCE: Thank you, Your Honor. I might
24 forget it, that's why I'm just raising it.

25 THE COURT: Have I -- have I ever forgotten anything?

1 MR. SANTACROCE: You haven't so far.

2 THE COURT: So there you are. Okay. So the pressing
3 one is the bail motion. And then with respect, we still have
4 to resolve the issue of the graph as exhibits or demonstrative
5 or modified exhibits or whatever from Ms. Sampson.

6 MR. SANTACROCE: And we have to --

7 THE COURT: We also have to resolve the issue of
8 whether or not her testimony is going to be stricken or
9 whether or not there's going to be an instruction to the jury
10 telling them to disregard parts of her testimony. So we have
11 to handle that on Monday morning as well.

12 MR. SANTACROCE: And we have the bad acts and if the
13 Court does allow those bad acts, I'm going to ask for a
14 cautionary instruction to the jury that they don't go to Mr.
15 Lakeman.

16 THE COURT: Right.

17 MR. SANTACROCE: That's all I have, Your Honor.

18 THE COURT: Thank you.

19 (Jury reconvened at 3:16 p.m.)

20 THE COURT: And Mr. Staudaher, will you retrieve the
21 witness for us, please?

22 MR. STAUDAHER: Oh, yes.

23 THE COURT: Thank you. All right, Court is now back
24 in session and I sent Mr. Staudaher out in the hallway to
25 retrieve the witness. Doctor, come on up here, please. Sir,

1 back up to the witness stand and then just have a seat. All
2 right.

3 MR. STAUDAHER: Your Honor, it came to my attention
4 that I may have misspoken. Number of that exhibit is Exhibit
5 177.

6 THE COURT: All right. And did that conclude your
7 direct examination?

8 MR. STAUDAHER: Yes, Your Honor.

9 THE COURT: All right. Ms. Stanish, are you ready?

10 MS. STANISH: Yes, ma'am.

11 THE COURT: All right.

12 CROSS-EXAMINATION

13 BY MS. STANISH:

14 Q Good afternoon, Doctor Anwar.

15 A Hi.

16 Q I assume you do not do quality assurance on
17 courthouse elevators? Or maybe you should. I want to clarify
18 for the jury, sir, what your service is and what it is not.

19 A Okay.

20 Q All right. And as I understand your testimony
21 on direct, you were hired for purposes of creating a peer
22 review process that would focus on doctors, correct?

23 A Internal peer review process.

24 Q And the -- and I'll come back to that in a
25 moment, thank you. And the peer review process, an internal

1 peer review process is a component of quality assurance,
2 correct?

3 A That's correct.

4 Q Is peer review process something that is
5 mandatory or it's just something that's a goal to achieve?

6 A Mandatory for whom?

7 Q Just -- just to clarify what internal peer
8 review is. Is it something that is mandatory by law?

9 A No.

10 Q And why do clinics or hospitals, why do your
11 customers, if you were -- will, your client, why do they seek
12 to have an internal peer review process?

13 A It enhances quality.

14 Q And quality in respect to what exactly?

15 A Again, as always, patient care.

16 Q The -- you are not a expert in gastrology, are
17 you?

18 A No.

19 Q You are not an expert in anesthesiology?

20 A No.

21 Q And your review, if I'm understanding your
22 testimony correctly, was to analyze what's sort of -- well
23 what -- well what -- what sort of systems were already in
24 place and where you could find improvement in connection with
25 a peer review process?

1 A That's correct.

2 Q Explain for us, just educate us about the
3 process. If your goal was to focus on this one component of
4 quality assurance, explain for -- for us why you had to review
5 the policy and procedure manuals, meet with Tonya Rushing, and
6 tour the facility?

7 A To know as to what do they have in place and
8 also to know what the lay of the land is as to where the
9 patients are not treated and they're treated in a certain
10 place. And if there are any information that we can get from
11 that to provide them with as best of help as possibly we
12 could.

13 Q Now when you reviewed the charts, as I
14 understand your review of charts, you reviewed the charts that
15 don't relate to the gastro procedures, you reviewed charts
16 that dealt with the consultation by doctors. Am I correct in
17 understanding that?

18 A We just had them pull random charts on -- on all
19 the doctors and so that we could make some general
20 recommendations as to what -- if there is something that
21 should be included that's not there that we could -- we could
22 focus on that or bring it to their attention.

23 Q And your review of charts did not include the
24 anesthesiology charts?

25 A No.

1 Q And why is that?

2 A Because that's not a part of the medical record
3 that was kept by the CRNAs.

4 Q CRNAs or the M.D.s?

5 A CRNAs.

6 Q And I'm -- I'm somewhat confused. You -- you
7 pulled the charts of the doctors?

8 A This is the full chart, patient chart.

9 Q Oh, you mean the charts that the -- that has --
10 that the doctors review responsible for filling out?

11 A No, this is a medical record of a patient --

12 Q Right.

13 A -- that different physicians are taking care of.
14 So if there -- there's a physician who has 100 patients, we
15 asked them to just pull a sampling of the charts on each one
16 of the physicians so they would have randomly picked some
17 charts for us to review. This is the medical record of a
18 patient.

19 Q And maybe I should approach it this way. You
20 were aware, were you not, that the structure of this clinic
21 was it had a -- an endo side and a gastro side and I get them
22 mixed up, but suffice it to say, one was to actually conduct
23 the procedures, the colonoscopies and such, while the other
24 side was to have the doctors consult and visit with patients.
25 Were -- were you aware of that kind of structure in place, if

1 you recall?

2 A Yes.

3 Q And your review dealt with what side of the
4 house?

5 A With the patient chart.

6 THE COURT: I -- I think -- I'm sorry to interrupt,
7 but --

8 MS. STANISH: That's all right.

9 THE COURT: -- did it deal with the procedure side,
10 meaning the colonoscopies and the endoscopies, or did it deal
11 with the consultation side where patients just go in and see a
12 doctor for an office visit and, you know, say oh, my stomach
13 hurts or whatever?

14 THE WITNESS: Thank you. So both -- information from
15 both the places would flow into the chart or any outside
16 consultation if it's pertaining to that patient that the
17 physician is taking care of, that would flow into that chart.
18 So it would be a medical record, part of the medical record,
19 whether a procedure has been done or a consultation has been
20 done or if a follow-up visit has been done.

21 BY MS. STANISH:

22 Q All right. The -- you were made aware of the --
23 your -- you toured both the Burnham and the Shadow Lane
24 facility?

25 A Yes.

1 Q And -- and do you recall who took you on that
2 tour?

3 A They were the nurse supervisors.

4 Q Do you recall the name Katie Maley?

5 A Yes.

6 Q Was Jeff Krueger involved in that, if you
7 recall?

8 A No. Katie was and -- in the Shadow Lane
9 facility and the person in the other facility I don't recall
10 the name and we didn't write it down.

11 Q All right. And as I -- as I -- you clarified
12 for us that you don't do quality assurance with respect to the
13 procedure itself, but did you look at other licensure or
14 accreditation documents of the clinic?

15 A Yes, we were provided that.

16 Q And did you -- and that was by Tonya Rushing; is
17 that correct?

18 A That's correct.

19 Q And the way you conducted this review, dealing
20 with Tonya Rushing, dealing with the charge nurses, was there
21 anything out of the ordinary about that?

22 A As far as?

23 Q Well, you're trying to create a -- internal peer
24 review process for the doctors, correct?

25 A That's correct.

1 Q And is it -- is it important that -- why didn't
2 you meet with doctors?

3 A We were told that Tonya Rushing manages the
4 whole place and so she would be able to provide us with any
5 information that we need. And after meeting with Tonya
6 Rushing we really didn't have a need to meet with the doctors.

7 Q So you didn't -- you didn't want to meet with
8 the doctors?

9 A We didn't have a need to meet with the doctors.

10 Q It -- am I right to assume that if you are
11 creating a peer review process that is going to review
12 doctors, that that's something that has to be done to avoid
13 bias? That the doctors themselves wouldn't be involved in the
14 construction of that peer review process, it had to come from
15 you, the outside agency? Does that make sense? It's a long
16 question.

17 A It doesn't have to be that way. If you have the
18 ability to create a process of your own, you can do that. But
19 if you have people who -- who are experienced in that sort of
20 thing, it's a helpful skill to get, to pay for.

21 Q And when -- would you describe Ms. Rushing as
22 being a competent manager?

23 A We really did not know the details of her
24 competency as far as a manager is concerned. The management
25 team could probably better speak to that.

1 Q Okay. Do you have your -- a copy of your report
2 up there, sir?

3 A Yes.

4 Q If I could draw your attention to -- oh, these
5 pages aren't numbered so I'm going to walk up there and visit
6 you.

7 MR. STAUDAHER: Right in the lower right-hand corner.

8 MS. STANISH: Oh, yeah, there it is. Page eight
9 upside down.

10 BY MS. STANISH:

11 Q I'm just looking at this page, which is --
12 here's the report, so it's right here. And just read that to
13 yourself.

14 A Yes.

15 Q Based on your contact with Ms. Rushing and
16 having refreshed your memory there, what was your impression
17 of her?

18 A Just exactly as it stated here. I think it
19 states pretty clearly what our impression was and that was
20 only based on our two meetings with her and in -- in her
21 ability to give us the information that we used as a basis for
22 making our report that was included as a part of making our
23 report. Because our report is finally based on just the
24 information that was provided to us in our walk-through of the
25 two facilities and our questions that we asked of the

1 personnel.

2 Q And you found her to be very organized, correct?

3 A Correct.

4 Q And you found her to be versed with requirements
5 of regulatory agencies, correct?

6 A Correct.

7 Q You found her to be a hands-on manager in a very
8 diverse and challenging business, correct?

9 A Correct.

10 Q And based on meetings with various staff
11 members, you -- in the two centers, she's held in high esteem,
12 correct?

13 A That's -- that was our impression.

14 Q You -- you mentioned that you were handed a
15 thick policy and procedure manual that you had to take
16 elsewhere to review because it was so thick?

17 A Yes.

18 Q Could you generally describe and perhaps even
19 educate us a bit about policies and -- the policy and
20 procedures, what kind of policies and procedures were
21 addressed in that manual?

22 A It was a business policy and procedures manual
23 basically and it was pretty thick, so it's difficult to
24 describe that or me to recall from memory as to what all was
25 in there. But we did address that briefly in our report that

1 there was a recommendation that we were going to make
2 regarding that, that we did not see that it was updated on a
3 regular basis or visited on a regular basis.

4 Q What I was trying to understand, if you can
5 recall, is what -- when you say -- when you say it was a
6 business policy and procedure manual, what does that mean to
7 those of us who know nothing about medical practices?

8 A It really, it was a generic manual that would
9 serve for that sort of a business. And they had the policies
10 that the business would follow and the procedures as to how to
11 follow those policies. And that would be true for any
12 business. Any business requires a policy and procedures
13 manual --

14 Q And --

15 A -- and the medical business is no different.

16 Q Okay. And so when you're saying a business
17 policy procedure manual, are you talking about like employee
18 issues?

19 A What are the policies of your business? How do
20 you conduct your business? That would be basically what the
21 policy of the -- of the company is.

22 Q Would a -- generally speaking now, would a
23 policy and procedure manual set out a definition of how to
24 carry out the standard of care in conducting a procedure?

25 A No. It would carry out as to how the business

1 is conducted rather than the practice of medicine is
2 conducted.

3 Q And -- but aside from the policy, business
4 policy and procedure manual, based on your experience in
5 evaluating these various facilities, is -- do policy manuals
6 generally mandate particular standards of care on how
7 professional staff should perform procedures?

8 A That would be for that particular procedure as
9 to what is expected of the staff. And that is also a part of
10 the responsibilities and duties of the staff involved with
11 whatever those procedures are.

12 Q Okay.

13 MS. STANISH: I just want to approach him with the
14 deposition. I only have one.

15 BY MS. STANISH:

16 Q I'm going to -- this is a deposition you had
17 given --

18 A Sure.

19 Q -- and I'm just going to ask you to read this to
20 yourself. If you want to read elsewhere around there, feel
21 free to do so to give it some content. Okay?

22 A Thank you.

23 Q So my question to you, sir, was, generally
24 speaking, do -- are standards of care in medical practice or
25 medical practices such as how to do a procedure in accordance

1 with the standard of care, is that something that is contained
2 in policy and procedure manuals?

3 A No.

4 Q And why is that?

5 A Why is it not contained in the policy and
6 procedures manual?

7 Q Correct.

8 A It's impossible to do that because that is not
9 the goal of a policy and procedures manual. Policy and
10 procedure manuals are meant to -- how the policy of the
11 business of -- of that particular organization is and how the
12 plan of execution of that policies of that business is, not
13 the minutia of all the details of the functions that are
14 performed. Those are the -- those depend on the expertise of
15 people who are involved in the performance of those
16 procedures.

17 Q Okay. And I think lastly, I just want to touch
18 on, Doctor Anwar, this chronology that Mr. Staudaher
19 displayed that as I understand it, Dr. Desai originally
20 contacted you in -- in September of 2006. And then Mr.
21 Staudaher showed you the various dates of the checks and the
22 final report that was approximately a year later. Is that
23 unusual to have a -- to conduct your -- how do I word this, is
24 that unusual that your -- you are engaged, you're solicited to
25 help an organization improve their quality assurance, but it

1 Q So the very first one.

2 A The first patient would require two syringes.

3 Q Okay. Because there is what, how many doses?

4 A There's 150 --

5 Q Okay. So --

6 A -- total.

7 Q -- you need two?

8 A Two.

9 Q The second one?

10 A One.

11 Q The third?

12 A One, one.

13 Q How many for this one?

14 A Three.

15 Q How many for the next one?

16 A Three.

17 Q How many for the next one?

18 A Two.

19 Q Now, that's assuming no syringe reuse, correct?

20 I mean that the person isn't reusing a syringe with a patient?

21 A That's correct.

22 Q I'm just saying if they didn't, that's what you

23 would need?

24 A Yes.

25 THE COURT: That doesn't -- oh, sorry. I don't want

1 Mr. Santacroce to object to me, so.

2 MR. SANTACROCE: I won't this time if it benefits us.

3 THE COURT: I'm just trying to understand. That
4 doesn't account though when you -- you're doing a syringe
5 analysis, you're not accounting for if it's a single bottle
6 for the patient, correct?

7 THE WITNESS: I applied one vial, one syringe per
8 patient.

9 THE COURT: Okay.

10 THE WITNESS: Assuming that they would throw
11 everything out and start again with one vial and one syringe
12 for the next patient.

13 THE COURT: Not counting the possibility of -- of a
14 full syringe at the 100 milligram level or milliliter, I'm
15 sorry.

16 THE WITNESS: Well, they could use one syringe and
17 refill it from one vial, but they couldn't refill it from
18 another vial.

19 THE COURT: All right. I'm going to object to myself
20 and I'm going to let Mr. Staudaher take over here.

21 BY MR. STAUDAHER:

22 Q Go ahead and have a seat, ma'am.

23 THE COURT: Save Mr. Santacroce the trouble.

24 MR. SANTACROCE: Thank you.

25 BY MR. STAUDAHER:

1 Q And like I said, I'm -- I'm -- I'm basically
2 done. But just so we're clear, did any of that stuff,
3 injections, the thing that I asked you to do with assuming 100
4 per, you know, per syringe, that kind of thing, did any of
5 that have to do with the analysis that you've testified to
6 here today? I'm talking about the hard numbers in the records
7 that you -- you've looked up and transposed into charts.

8 A These charts?

9 Q Yes.

10 A No, they did not pertain to these charts.

11 Q Okay. And what about these charts, did they
12 pertain to those at all?

13 A No.

14 Q So none of the documentary evidence that you
15 used to produce those, had anything to do with that injection
16 issue?

17 A No.

18 MR. STAUDAHER: I pass the witness.

19 THE COURT: All right. Who would like to -- Mr. --

20 MR. WRIGHT: No. I'm not -- I'm going to run to the
21 bathroom. Can I have two minutes?

22 THE COURT: Sure. I'm waiting to take a break. One
23 of the jurors needed something at 11, so that's why we're
24 waiting so long. Is everybody okay? We were going to go
25 until five of 11, but they're all leaving me.

1 MR. SANTACROCE: I need at least five minutes.

2 THE COURT: Okay. Ladies and gentlemen, we'll --

3 MR. SANTACROCE: I need to process this.

4 THE COURT: -- just -- I have a mutiny on my hands.

5 We'll just go ahead and take our break now and we'll take long
6 enough to accommodate the juror who needed to do something at
7 11.

8 So ladies and gentlemen, we'll just take a quick --
9 well, a recess at this point and you're reminded that during
10 the recess you're not to discuss the case or anything relating
11 to the case with each other or with anyone else. You're not
12 to read, watch or listen to any reports of or commentaries on
13 this case, person or subject matter relating to the case.
14 Please don't do any independent research on the Internet or
15 any other medium. Please don't form or express an opinion on
16 the trial. Notepads in your chairs and follow the bailiff
17 through the rear door.

18 (Jury recessed at 10:42 a.m.)

19 THE COURT: And, ma'am, obviously don't discuss your
20 testimony during the break.

21 THE WITNESS: Thank you.

22 (Court recessed at 10:43 a.m. until 11:05 a.m.)

23 (Outside the presence of the jury.)

24 THE COURT: All right. We're back on the record out
25 of the presence of the jury. And, Mr. Wright, at one of the

1 conferences at the bench had indicated that he would like to
2 make a record regarding his objection as to Mr. Staudaher's
3 persistent leading; is that correct, Mr. Wright? Is that
4 essentially what you said at the bench?

5 MR. WRIGHT: Yes.

6 THE COURT: All right, go ahead. We're on the
7 record.

8 MR. WRIGHT: Right. The objections are made to his
9 leading and his leading with the last witness on redirect
10 examination reached the pinnacle of leading. I think at one
11 period I clocked 21 minutes he did all of the testifying and
12 she said yes like 30 or 40 times and all of it restating the
13 direct examination. But since we've all heard it on direct,
14 now he -- now he just says it all to the witness so she can
15 say yes and it's improper direct examination.

16 I don't think -- I mean direct examination is simple,
17 you don't get to lead. Did you make a chart? Yes. How did
18 you do it? You don't get to tell them and suggest to them and
19 read it all and say it and then say is that correct? Right.
20 And that's what he does with this witness and does
21 consistently and we keep objecting to it.

22 MS. STANISH: And if I can add to that, Your Honor,
23 that is drawing the wrath of the jury. As you may have
24 observed, there's jurors who groan audibly when we object and
25 it's putting us in a bad position because Mr. Staudaher's not

1 adhering to fundamental rules of direct exam.

2 THE COURT: Mr. Staudaher, anything you want to say?

3 MR. STAUDAHER: Well, I mean, when I was going
4 through that I -- I have -- I mean, I clearly was -- was doing
5 some leading in that sense. I -- I acknowledge that. But it
6 was basically related to a document that was in, following
7 down and asking her, you know, okay, we go through this --
8 this date, this date, this date. I did not think that it was
9 a situation where I was -- I was putting a whole bunch of
10 stuff in front of her. It was to facilitate going through
11 that record.

12 Now, counsel did not object to that as I was doing
13 it, so I thought that it was okay from their perspective. So
14 to that extent I think that it was not improper because it was
15 not meant to be improperly leading to go through the document
16 and walk through and get her to essentially what I'm pointing
17 my finger at the document, you know, what does this say or --
18 or whatever. Now, if that's an issue and they don't -- they
19 object to that, I can ask her, what does this say or I can do
20 those things, that's not a problem. It was to facilitate
21 going through a physical record that was in evidence --

22 THE COURT: Okay.

23 MR. STAUDAHER: -- that I wanted to ask her about.

24 THE COURT: I myself noticed the leading worse
25 yesterday afternoon. In fact, I made a joke in my head, which

1 I controlled myself enough not to say in front of the jury but
2 the joke -- it wasn't really a joke, it's not very funny, but
3 was okay, Mr. Staudaher, we're going to interrupt your
4 testimony to take our evening recess because you were leading
5 badly yesterday afternoon. Today I think most of what I was
6 observing was just going through a document that's already in
7 evidence. So while it -- there has been leading, I don't
8 really see a huge amount of harm from reading off something
9 that's already in evidence.

10 I mean it's already in and you're just reading it.
11 So even though you shouldn't be leading, I don't -- what I'm
12 saying is I don't see a lot of prejudice from that because the
13 document's already in and you're just reading from something
14 that's already in.

15 So going forward, you know, be mindful of leading.
16 However, when we're talking about a document, okay, you know,
17 I think some of it is -- is sort of necessary so that we're
18 not here for another -- endless hours that we don't need to --
19 to be here. Having said that, I think a lot of the testimony
20 now that we've sorted out doses versus syringes and this and
21 that, I think some of the testimony's kind of unnecessary
22 because of an assumption that was a faulty assumption.
23 Meaning that there wasn't 100 in those, you know, in each
24 syringe and -- and -- but hopefully, that's been sorted out
25 now --

1 MR. STAUDAHER: Yes. And Your Honor, and just as I
2 will say --

3 THE COURT: -- and so just -- all I would say again
4 to reiterate, I understand the defense doesn't want to keep
5 objecting because then that alienates the jury and I
6 understand why they don't want to do it. I don't see a lot of
7 prejudice from what's transpired or really any prejudice from
8 what's transpired so far, with the leading because again, it
9 was going over things that she'd already testified to, it's
10 going over numbers in a chart that's already been admitted.
11 So I don't see any prejudice to the defense by what you did.

12 However, having said all of that, going forward, you
13 know, try to, you know, ask open ended questions, did you
14 prepare this chart? What information did you -- you know,
15 that kind of thing. I'm assuming this is our last chart type
16 witness, you know. What information did you use? How did you
17 compile that? Did you get any direction? Who gave you
18 direction? What -- what direction, you know, like that as
19 opposed to things that maybe you can say, well, it doesn't
20 necessarily suggest an answer, could be yes or no, but we all
21 know, you know, it really does suggest the yes answer.

22 So just, you know, be mindful of that going forward.
23 I don't really see, as I've said now three or four times, any
24 harm from what's transpired so far. I would just say in the
25 interest of time, you know, I think yes, you definitely needed

1 to clarify her testimony because I -- I think it's confusing.
2 Court was somewhat confused about it.

3 MR. WRIGHT: That's my next motion.

4 THE COURT: But, you know, you don't need to hammer
5 every single -- you know, let's not make redirect a carbon
6 copy of direct. That's all I'm saying. Mr. Santacroce,
7 you're standing, what would you like to say?

8 MR. SANTACROCE: I just want to put on the record
9 that Mr. Staudaher said that the defense didn't object to the
10 leading. I did object a couple of times, three times.

11 THE COURT: And I sustained it and said, don't lead.
12 All right. Mr. Wright, make your next motion.

13 MR. WRIGHT: Yes. I'm going to move to strike her
14 testimony and certain exhibits and I'm -- I'm guessing --
15 well, first, let me start with her testimony. And I'm -- and
16 she's an expert, I guess, I mean is her testimony in here.
17 She's a summary witness expert covered by the expert rule and
18 summary witness exhibits rule. And her testimony regarding
19 the propofol, syringe and bite block analysis is flawed and
20 it's more confusing than beneficial to the jury. Now and when
21 it reaches that, it's not admissible --

22 THE COURT: It is flawed because, you know, I don't
23 know why this didn't happen, but seems to me that in
24 preparation of the witness, the State should have said, well,
25 how did you get these numbers. And if I understand it

1 correctly, and I may be confused, the -- the syringe number is
2 based on the erroneous assumption that each 50 dose required a
3 separate syringe as opposed to --

4 MR. STAUDAHER: No.

5 MS. WECKERLY: No.

6 THE COURT: -- a filled -- okay. It's not that
7 number?

8 MR. STAUDAHER: No. And that's one of the reasons
9 why I did go over it multiple times with her. I said, did
10 you --

11 THE COURT: She said two totally different things. I
12 tried to clarify --

13 MR. STAUDAHER: No, not on the issue of that chart
14 related to the syringes. It's just hard numbers.

15 THE COURT: Okay. Then give her the chart and say,
16 where did you -- what number -- where -- let's count this.
17 What is this number and where did you get these numbers? Now,
18 that's the first issue. If she says no, it's -- it's based on
19 100 -- 100 milliliter dose and so you can only by definition
20 have 100 milliliters and if you put in another 50 you have to
21 go to a second syringe, whether that's a prefilled syringe or
22 you take an empty syringe and put it back in, it can only be
23 one or the other. If that's her analysis, then I would say
24 that that's correct.

25 But if her analysis is I see two doses of 50, that's

1 two syringes, that's wrong. Because I think what's happening
2 is they put the hep-lock in, they inject it partway, 50, and
3 then they I guess wait to see if the -- you have a reaction or
4 how that affects you and then they dose the second 50, that's
5 one syringe. That's totally proper according to the CDC and
6 every single person who's come in here. One syringe,
7 prefilled, 100 milliliters and into the -- into the hep-lock
8 two times. There's nothing wrong with that, you throw the
9 syringe away. The CDC would say that's fine, every single
10 expert would say that's fine. So if -- if she's using that
11 number, that is fine. If she's saying every time you do 50
12 you need a new syringe, that's just wrong.

13 MR. STAUDAHER: Your Honor, there's -- that is not
14 even a -- that is none of that --

15 THE COURT: Okay.

16 MR. STAUDAHER: -- none of that applies.

17 THE COURT: Then why are we all talking about this
18 for hours ad nauseam here?

19 MR. STAUDAHER: Because on her -- on her charts she
20 just documented the actual milligrams amount.

21 THE COURT: Which is fine. He's not seeking to
22 suppress the chart, is that --

23 MR. STAUDAHER: So the issue --

24 THE COURT: -- right, Mr. Wright? You're not seeking
25 to suppress this big chart?

1 MR. WRIGHT: No.

2 THE COURT: That's just based on --

3 MR. STAUDAHER: -- the smaller chart, but the smaller
4 chart, Your Honor, is simply the number of patients in the
5 clinic and the number of syringes ordered, that's all it is.
6 There's no analysis of doses or whatever in that chart.

7 THE COURT: That's fine.

8 MR. STAUDAHER: And that's what I asked her about --

9 THE COURT: That's fine.

10 MR. STAUDAHER: -- multiple times to make sure that
11 that was clear. Now obviously --

12 THE COURT: Okay. That's -- that's fine --

13 MR. STAUDAHER: -- it's still confusing.

14 THE COURT: -- because if she says oh, well, you
15 know, this should be this or that, which I heard a little bit
16 of on her direct and then Ms. Stanish came back in and showed
17 well, by definition, you know, she's counting a zero inventory
18 at 2007, but we know that there had to be some inventory
19 because January 2nd the clinic's open for business and they're
20 performing procedures and they're anesthetizing people, so
21 they had to have two things. They had to have propofol and
22 they had to have syringes of some sort. And so that's I think
23 now clear. So her conclusion can't be based -- if it's -- if
24 you're going to do it as a conclusion. If it's just the
25 chart, you know, this is the number --

1 MR. WRIGHT: It's used in the chart --
2 THE COURT: -- of patients -- this is the number of
3 patients seen, this is the number ordered in that year --
4 MR. STAUDAHER: That's what the chart says.
5 MR. WRIGHT: That ignores the -- that presumes zero
6 inventory.
7 MR. STAUDAHER: That's why I went through the whole
8 line of what was ordered the month before and the month that
9 it -- they actually started in --
10 MR. WRIGHT: That does not create zero inventory.
11 MR. STAUDAHER: I'll acknowledge that there was not
12 zero inventory.
13 THE COURT: We know there wasn't zero inventory --
14 MR. WRIGHT: Okay. Then these charts are wrong.
15 THE COURT: -- because otherwise we would have had
16 200 people coming in and saying that they got colonoscopies --
17 MR. WRIGHT: Right.
18 THE COURT: -- without -- and they weren't
19 anesthetized.
20 MR. WRIGHT: These charts are based upon zero
21 inventory.
22 MR. STAUDAHER: The charts --
23 MR. WRIGHT: The charts misrepresent --
24 MR. STAUDAHER: -- the charts only -- the only
25 information in those charts is that this is how many patients

1 were in the year 2007 and how many syringes were ordered that
2 year. That's all the chart says.

3 MR. WRIGHT: It's -- it is a --

4 MR. STAUDAHER: That's all it says.

5 MR. WRIGHT: -- it's a misleading chart because they
6 are going to use the chart to equate it with usage. This is
7 -- this isn't relevant and it is misleading and it's an
8 improper summary chart. This is presumably 1,000, Federal
9 Rule 1006 summary chart. It has to be absolutely accurate as
10 to what it is going to be used for, not the little label up
11 there ordered. They are going to contend that this was the
12 amount used. That's the whole purpose in doing this, and it
13 is flawed analysis. It's the same with the propofol. They
14 don't account for the inventory.

15 They don't account in these charts -- Krueger told
16 them, witness Krueger, and other witnesses that these -- these
17 supplies went back and forth from Burnham to Shadow Lane.
18 Whenever they were out of propofol, whenever they were out of
19 syringes, run them back and forth. So theoretically, the
20 total for both could be okay but the Shadow bar charts on each
21 of these, Shadow, Burnham, Shadow, Burnham, everything except
22 the 7/25 and 9/21 chart, these annual charts misrepresent the
23 evidence.

24 THE COURT: Okay.

25 MR. STAUDAHER: They don't misrepresent the evidence

1 at all. They are strict numbers off of the records at the
2 clinic that --

3 THE COURT: Well, no it's a -- I mean, it's a --

4 MR. STAUDAHER: -- are reproduced in --

5 THE COURT: -- it's an illustrative chart. It's done
6 to -- it's designed --

7 MR. WRIGHT: So it's not admitted to go to the jury
8 if it's illustrative --

9 MR. STAUDAHER: Absolutely it is.

10 THE COURT: -- it's designed to illustrate the
11 evidence as it's relevant to one another. That's how I see
12 it. Patients versus propofol, patients versus syringes --

13 MR. WRIGHT: Ordered?

14 THE COURT: I'm sorry?

15 MR. WRIGHT: Ordered?

16 THE COURT: Right. I mean, that's -- so let me see
17 -- okay. So you're objecting to the --

18 MR. WRIGHT: Well, to start with --

19 MR. STAUDAHER: And those were stipulated exhibits
20 that --

21 MR. WRIGHT: -- 152.

22 MR. STAUDAHER: -- we did pretrial, Your Honor.

23 MR. WRIGHT: I don't care, they're flawed.

24 THE COURT: Nobody understood what, I'm guessing.

25 Okay, so this is 157. 152 is the 2000 -- yeah --

1 MR. WRIGHT: Well, the -- I just want to point out
2 what I'm talking about here.

3 THE COURT: Right. I see --

4 MR. WRIGHT: The Burnham -- Shadow and Burnham
5 ordered -- ordered for location has nothing to do with usage
6 at locations. They -- they sent supplies back and forth,
7 correct?

8 MS. WECKERLY: You can argue that.

9 MR. STAUDAHER: You can argue all of that.

10 MR. WRIGHT: Okay. Well, it's a misleading chart.

11 MR. STAUDAHER: It's not. It says orders on the
12 chart.

13 MR. WRIGHT: That's what -- keep -- that's what stays
14 out under 1006.

15 THE COURT: So, to --

16 MR. WRIGHT: Now I'm being -- now I'm hearing that it
17 isn't 1006, but this is a demonstrative purpose, this chart?

18 MR. STAUDAHER: No, it is not a demonstrative
19 purpose.

20 MR. WRIGHT: Okay. He -- see, he wants it for the
21 truth of the matter under 1006 and it's misleading. It does
22 not --

23 MR. STAUDAHER: It's not misleading. It says ordered
24 and that's what they are.

25 THE COURT: It doesn't say order.

1 MR. STAUDAHER: Well, he didn't -- didn't I just say
2 that?

3 THE COURT: It says, if you look at the small print
4 on the top, it says order. If you look at this it just says
5 syringes. It doesn't say used or order. So if you're going
6 to admit this, you're going to modify the chart to say
7 ordered.

8 MR. STAUDAHER: Certainly, we can do that.

9 THE COURT: Because to me the way this has, is it
10 says syringes. Syringes what? Used, ordered, whatever. It
11 says ordered in this little type up here, which to me then --
12 they're not going to read that, they're going to look at this
13 big -- this big thing. So one way to do it is 2007 comparison
14 of patients to syringes ordered in 2007, not accounting for
15 existing inventory.

16 MR. STAUDAHER: That's fine.

17 THE COURT: That to me is accurate.

18 MR. STAUDAHER: That's fine.

19 MS. WECKERLY: That's fine.

20 THE COURT: Does that -- that's accurate.

21 MR. WRIGHT: Hey, that is -- that is misleading --
22 why should it be introduced as an exhibit when it doesn't --
23 it is misleading.

24 THE COURT: Okay. All I'm saying is if it is going
25 to be introduced, it will be modified to correctly reflect

1 what the testimony was.

2 MR. WRIGHT: And that isn't what they represented in
3 the opening statement of the case. They used these same
4 charts and compared use to -- use was the word in the opening.
5 And now you're telling me, oh, no, we knew it was ordered, we
6 weren't saying it was used.

7 THE COURT: All right. Let's go with the next chart
8 you're objecting to.

9 MR. WRIGHT: 155, same problem. Inventory and it --
10 there is the -- identifying the Burnham versus Shadow. They
11 ignore in the charts their own evidence, Judge --

12 THE COURT: Okay.

13 MR. WRIGHT: -- that the -- that the -- they -- the
14 witnesses here in the courtroom here have testified to it,
15 Mathahs testified on his -- before he'd go by, he'd go by and
16 pick up supplies and run them from Shadow to Burnham.

17 THE COURT: Yeah, but they got the total.

18 MR. STAUDAHER: This would deplete --

19 THE COURT: So if you look at the total it doesn't
20 matter if they were switching back and forth because -- the
21 only valid number if you account for switching is the total.

22 MR. WRIGHT: That's my -- that's -- that's what I --

23 THE COURT: Which is the valid number then if you
24 account -- if you account for switching, driving back and
25 forth. But to me, I don't see the big deal about this one

1 because the -- I'm assuming no one's contesting that the bite
2 blocks were reused. That's been the consistent and you
3 contest irrelevant testimony that's been for -- we've heard
4 for days and days they reused the bite blocks. So I don't
5 know that that is even contested.

6 MR. WRIGHT: Okay. But that doesn't mean you get to
7 put in a misleading chart.

8 THE COURT: Okay. Well --

9 MR. WRIGHT: Also, propofol reuse isn't contested.

10 THE COURT: It's not contested.

11 MR. WRIGHT: Right. And so we've spent days trying
12 to show how much they bought, how much they used, to prove up
13 what's admitted is what blows my mind. It has never been
14 disputed, but we want to use charts and everything else. Use
15 charts, use accurate charts that if -- I mean 1006 chart is
16 either a summary of evidence not admitted or a summary of
17 evidence admitted. Then you argue about the admissibility of
18 a chart itself as evidence. These misrepresent it because --

19 THE COURT: Well, this one at least is better because
20 the heading says bite blocks ordered in 2007 and then you
21 could say not accounting for existing inventory. But ordered
22 obviously means ordered.

23 MR. STAUDAHER: We'll -- we'll modify the title
24 however the Court wishes.

25 MR. WRIGHT: But also you have to take off -- I mean

1 all that -- all that's accurate is the total.

2 MR. STAUDAHER: No --

3 THE COURT: No, because they do --

4 MR. STAUDAHER: -- that is not accurate.

5 THE COURT: -- account for the total. I mean to me
6 the relevant --

7 MR. STAUDAHER: There's a summary -- a summary --

8 THE COURT: -- number is the total. But even if you
9 look --

10 MR. WRIGHT: No --

11 THE COURT: -- at the total, it's obviously what
12 everyone's agreeing to. There's the reuse of bite blocks, but
13 that's pretty much agreed to --

14 MR. WRIGHT: Right.

15 THE COURT: -- so who cares?

16 MR. WRIGHT: Okay. No, I'm saying the other two that
17 the -- distinguishing between Burnham and Shadow.

18 THE COURT: Well, they can -- I mean, as long as it's
19 accurate, they can distinguish. What they can't do is
20 misargue the evidence, which is the evidence is supplies were
21 transferred. The total shows, accounts for that and even with
22 supplies being transferred and so forth, you still have more
23 endoscopies and fewer bite blocks, which is consistent with
24 what everybody -- which is pretty much agreed to, they reused
25 the bite blocks.

1 MR. WRIGHT: I'm not making myself clear on 1006 --
2 THE COURT: No, I do --
3 MR. WRIGHT: -- summaries. I'm not allowed to put in
4 a summary to cherry-pick my view of the evidence and introduce
5 it as an exhibit. If he wants to do a demonstrative chart and
6 throw it up there, fine, but this isn't what these are. And
7 to keep saying well, everyone acknowledges this already, so
8 therefore --
9 THE COURT: Yeah.
10 MR. WRIGHT: -- they can put in a chart --
11 THE COURT: I think -- well, wait --
12 MR. WRIGHT: -- which shows --
13 THE COURT: I don't know though that this isn't an
14 accurate summation.
15 MR. STAUDAHER: It is an accurate summation of the
16 record.
17 THE COURT: As long as it's an accurate summation,
18 they can do it through the witness. Now, I mean, you know,
19 Mr. Wright makes a good point. Maybe it's more appropriately
20 demonstrative evidence --
21 MR. STAUDAHER: No, it's not.
22 THE COURT: -- in your argument as opposed to -- but
23 if -- I mean it is an accurate summary.
24 MR. STAUDAHER: Those are accurate summaries of the
25 evidence that's in evidence, in evidence.

1 MR. WRIGHT: Those aren't in evidence.

2 MR. STAUDAHER: It is. The actual records of the
3 supply that was ordered -- I agree with the Court that the
4 Court thinks we need to add the word ordered onto the title so
5 it's completely clear that that's what we're talking about --

6 MR. WRIGHT: No. If they were an accurate chart, I
7 want it --

8 MR. STAUDAHER: -- then that is fine. But that isn't
9 -- that would make that an accurate chart.

10 MR. WRIGHT: No. It would be accurate if it has --
11 I'll prepare the footnotes for it that say this doesn't
12 account for the evidence which shows -- I'll -- I'll do the
13 footnotes so we can have an accurate --

14 MR. STAUDAHER: Right now the only evidence -- the
15 only evidence of transfer of anything is from -- is propofol
16 leaving the Shadow Lane Clinic going to Burnham and that would
17 deplete the --

18 MR. WRIGHT: I'll bring it out through her.

19 MR. STAUDAHER: -- supply at -- at Shadow --

20 THE COURT: Okay, then --

21 MR. STAUDAHER: -- which would make it even worse
22 for --

23 MR. WRIGHT: What did Krueger tell you all?

24 THE COURT: All right. Well, let's go to the next --

25 MR. WRIGHT: Represent to the Court what Mr. Krueger

1 told you.

2 MR. STAUDAHER: Krueger said that supplies on
3 occasion did go back and forth.

4 MR. WRIGHT: Okay. We can't play hide the ball here.
5 This mess -- that represents -- I'll do the footnotes. You
6 can't use a 1006 chart to summarize evidence in in a
7 misleading fashion. The evidence in doesn't just mean the
8 books and records, it means the evidence in the case. I can
9 do a 1006 summary from testimony. But if I do it, I have to
10 account for it all. I can't just put my view on a chart.

11 THE COURT: Well, as long as this is -- as I
12 understand it, a comparison of patients to syringes ordered in
13 2007, not accounting for existing inventory, then that would
14 be accurate.

15 MR. WRIGHT: And not accounting for --

16 MR. STAUDAHER: That's fine.

17 MR. WRIGHT: -- back and forth?

18 THE COURT: No, it does account because you look at
19 the total.

20 MR. WRIGHT: Okay. Well the total I don't have a
21 problem with.

22 MR. STAUDAHER: Well, that accounts for the back and
23 forth --

24 THE COURT: Well, that accounts for the --

25 MR. STAUDAHER: -- that's why it's even on the

1 charts.

2 THE COURT: It doesn't matter because either way,
3 there is more -- there's --

4 MR. WRIGHT: I understand that, but they want this in
5 for Shadow.

6 THE COURT: Well, I don't see what -- what the
7 difference is because --

8 MR. WRIGHT: Okay. That -- right. Well, let's just
9 take it out. Why would you want that in?

10 MR. STAUDAHER: No, we're not taking it out.

11 THE COURT: Well --

12 MR. WRIGHT: See. Why do they want it in?

13 THE COURT: I would just say this, okay, there's more
14 syringes ordered than patients.

15 MR. STAUDAHER: That's correct --

16 MS. WECKERLY: Right.

17 MR. STAUDAHER: -- that's all we're saying.

18 THE COURT: But not enough more to account for the
19 fact that most people are getting more than 100 milliliters.

20 MS. STANISH: Ooh, ooh, if -- this is where I need to
21 interject. Recall on direct exam, Ms. Sampson talked about
22 her developed ratio of 2.4. That's exactly where that comes
23 in, Your Honor, where we take this 2.4 developed ratio,
24 multiply it by the number of patients in order to manifest
25 what it would look like if they complied with the --

1 THE COURT: Yeah, that -- that may be flawed --

2 MS. STANISH: -- CDC.

3 MR. STAUDAHER: That's injections.

4 THE COURT: -- but this just -- if this really just
5 is number of patients seen off the medical records and then
6 the inventory -- I'm sorry, the -- the stuff ordered, not
7 accounting for inventory, then that's --

8 MS. STANISH: Judge --

9 THE COURT: -- just a summary. It doesn't -- I mean
10 her calculation may be wrong.

11 MS. STANISH: -- but --

12 THE COURT: I'm not sure how she did it because she
13 said two different things.

14 MS. STANISH: Judge, my -- you know, this is somewhat
15 related to the charts but more related to her being presented
16 as a financial analysis -- a financial analyst who uses this
17 extrapolation based on a whopping two selected non-random days
18 to apply to calendar year that contains 254 workdays in order
19 to come up with her developed ratio. That came out in direct
20 and it's going to be misused in closing. And it -- you know,
21 to me her testimony, separate and apart from the charts, is --
22 it is statistically flawed, it is misleading to the jury. And
23 how do we pull apart this -- you know, I'm no good at math but
24 it's more this is not statistically sounding, misleads the
25 jury.

1 THE COURT: It's not statistically sound --
2 MR. STAUDAHER: There is no statistics, there's none.
3 MS. STANISH: Yes, there is.
4 MR. STAUDAHER: There's none. We -- I never asked
5 about a developed ratio --
6 MS. STANISH: Yes. You -- you asked about a ratio --
7 MR. STAUDAHER: -- that she had related to this, that
8 came out in cross.
9 MS. STANISH: No, it was direct.
10 MR. STAUDAHER: That was the issue that came out.
11 THE COURT: Okay. First of all --
12 MR. STAUDAHER: The only thing the charts show --
13 THE COURT: -- I would say --
14 MR. STAUDAHER: -- is numbers and patients --
15 THE COURT: Okay. You can --
16 MR. STAUDAHER: -- that's it.
17 THE COURT: I'm done. Is he off the phone? Is he --
18 THE MARSHAL: Yeah, we're ready to go.
19 THE COURT: Okay, we're going to go back. Here's the
20 deal, and to summarize, we'll -- they won't be -- we'll
21 discuss admission of these charts later. You know, to the
22 extent that it's just numbers versus numbers, if the numbers
23 are accurately reflected, I don't think they are by the
24 heading at that, then I'm fine with the summary charts. But
25 it has to be accurately reflected because I think that, you

1 know, little fine print is misleading and I'm not going to let
2 you introduce a misleading chart.

3 MR. WRIGHT: Of the evidence, meaning --

4 THE COURT: Number one, if it's just number, you
5 know, this is this and this is that, I will say she cannot use
6 two days to provide a statistical computation because two days
7 is not sufficient.

8 MS. STANISH: She already did.

9 MR. STAUDAHER: She never did do a statistical
10 computation.

11 THE COURT: Okay. Well, that's -- and stop leading.
12 Okay? So that's I think a summary of what we've covered right
13 now and we're going to go forward and go get her and Kenny
14 bring them back in. So Mr. Staudaher, were you done with
15 your questioning?

16 MR. STAUDAHER: Well, does the Court want me to ask
17 those -- because I -- I intend these to be actually
18 admitted --

19 THE COURT: I understand. We're -- Mr. Wright's not
20 done arguing about it.

21 MR. WRIGHT: Right. I'm not done arguing my motion
22 to strike. I only got to the first sentence. I'm moving to
23 strike her flawed testimony. This hocus focus of coming up
24 with a fantasy should have been used number, that's testimony
25 that's before this jury. Forget the charts. That needs to be

1 struck from the records --

2 THE COURT: I'm not comfortable --

3 MR. WRIGHT: -- her analysis.

4 THE COURT: Okay. I'm not comfortable with her
5 saying should have been used and this and that. I -- she can
6 summarize the numbers that she finds from the records, I'm
7 perfectly fine with her doing that, that's within the ambit of
8 her so-called expertise. But beyond how many should have been
9 used or this or that, that's medical and she's not allowed in
10 her role to rely on that. And so that part may be stricken,
11 but we're going to be more specific about that. But in terms
12 of just numbers, you know, 50 patients versus 10 syringes,
13 that she can say. She can say that, but she can't spin it
14 because how many should have been used, this and that, that's
15 -- that's medical. What?

16 MS. STANISH: But that's a graphic depiction of
17 that --

18 THE COURT: Ms. Stanish, I just said that we're going
19 to have additional argument and I'm not admitting the
20 exhibits, which were stipulated to, so they're already
21 admitted. So now what you want to do is unstipulate and get
22 them withdrawn. We're going to argue about that later because
23 we have jurors sitting around waiting to come back in. Now
24 going forward, I told Mr. Staudaheer don't lead and he can go
25 back over things. And then if it appears that her

1 conclusions, A, are based on things without -- that are beyond
2 her area of knowledge, which would be medical things and
3 things like that, then I will fashion a remedy later to tell
4 the jury that they can't consider the testimony of this and we
5 may withdraw the exhibits in front of the jury. But I'm not
6 going to sit here for another 30 minutes and argue about this
7 when the jury is still waiting in the hallway and we've had a
8 break of about 40 minutes, now 45, 47 minutes.

9 MR. STAUDAHER: Well, could I then go -- just take
10 those four charts and ask her to base how they were produced,
11 period?

12 MR. WRIGHT: We already did that.

13 MR. STAUDAHER: Well, I thought that but apparently
14 there's confusion about that because --

15 MR. WRIGHT: No. Now it's time for recross and she's
16 going to go through, did you account for what Mr. Krueger
17 told you and doesn't that make the chart flawed because you've
18 intentionally concealed from the chart and from the jury --

19 MR. STAUDAHER: She didn't intentionally do anything,
20 concealment or --

21 MR. WRIGHT: Who made the chart?

22 MR. STAUDAHER: That's why she put a total down on
23 it --

24 THE COURT: See, I -- I --

25 MR. WRIGHT: Okay. On cross we'll bring it out,

1 recross.

2 THE COURT: Okay --

3 MR. WRIGHT: You've established it.

4 THE COURT: Well, to me the total number does reflect
5 movement back and forth. I don't see the big deal of
6 isolating Shadow --

7 MR. WRIGHT: But that's the other numbers.

8 THE COURT: -- and Burnham and then reflecting a
9 total because the total number would account for any movement
10 back and forth.

11 MR. STAUDAHER: And that's why it's on the chart.

12 THE COURT: So to me, as long as you have the total,
13 it's an accurate number. It accounts for movement so who
14 cares if there's movement back and forth, you still have less,
15 you know, not -- you still have now -- she can't say, oh, it
16 should have been these number of syringes or this or that
17 because to me that's beyond -- you know, if she's here as a
18 financial analyst, she can't be opining as to how many
19 syringes should have been used and this and that.

20 And I'll just point out another way her analysis
21 would be flawed, because let's just say you do 20 in one
22 patient. You could reuse the same syringe as long as that was
23 a complete bottle. So I mean I think it's a little more
24 sophisticated than what her analysis would necessarily call
25 for -- call --

1 MR. STAUDAHER: We don't have anything like that on
2 the record.

3 THE COURT: You don't and that's why I'm saying it's
4 wrong.

5 MR. STAUDAHER: Okay.

6 THE COURT: And so, you know, she can't be opining on
7 things that call, in my view, for some kind of medical -- just
8 for example, the 50 versus one and how it's injected. She
9 doesn't know. I mean, I'm looking at that and I'm thinking --
10 and Mr. Lakeman nodded, it's probably you go in for 50, you
11 wait, you know, is this person dead? Oh, no, okay they're
12 tolerating it. You go in for another 50.

13 Well, that's medical stuff. She can't know that.
14 That's beyond her ambit. So as long as we're cognizant of
15 that, mindful of it, you can go forward. But all she can say
16 is numbers to numbers. I'm not going to let her spin it in
17 something that calls for medical expertise. I asked her, did
18 -- you know, was there any consultation with someone as to
19 what the -- these numbers mean, she said no. So, you know,
20 she -- it's beyond her ambit. So Kenny, bring them in, go get
21 her.

22 (Jury reconvened at 11:38 a.m.)

23 THE COURT: All right. Court is now back in session
24 and Mr. Santacroce -- oh, have a seat, sorry. Mr. Santacroce,
25 you may proceed with your re-cross.

1 MR. SANTACROCE: Thank you.

2 RECROSS--EXAMINATION

3 BY MR. SANTACROCE:

4 Q Ms. Sampson, I need for you to tell me what your
5 purpose was in preparing State's Exhibit 156 and 157 and
6 that's these charts that we've been talking about. What was
7 your purpose in doing this?

8 A My purpose was to put the patients on a chart so
9 we could see what the day was like and would have something to
10 refer to.

11 Q For what purpose?

12 A So that we wouldn't have to keep looking back
13 through the patient records. It's a summary of the patient
14 records.

15 Q Well, these charts went through various
16 addendums and changes, correct, through -- through a period of
17 time?

18 A They went through various sorts.

19 Q And finally, what we have left after those
20 various sorts are Exhibit 156 and 157, which the State
21 admitted into evidence --

22 A That's correct.

23 Q -- correct? Who did you confer with when you
24 prepared these charts?

25 A No one. I did them on my own.

1 Q Okay. Did -- but you must have had some
2 meetings with someone in order to discuss the changes from
3 these previous versions to the final version.

4 A I don't understand your question.

5 Q Okay. As you were preparing the charts, you
6 certainly went over them with Detective Whitely and the
7 district attorneys, correct?

8 A No.

9 Q You didn't?

10 A No.

11 Q Okay. So all the changes came from you?

12 A Yes.

13 Q And your direction was just to pull out all the
14 numbers and collate them and put them in a chart form.

15 A Yes.

16 Q Okay. One of your objectives was to sort the
17 patients by rooms, correct?

18 A Eventually, yes.

19 Q And one of your objections was to categorize the
20 patients by times; isn't that correct?

21 A I sorted by time, yes.

22 Q And you told us on your redirect examination
23 that you can't verify the accuracy of the information,
24 correct?

25 A I took the information from the patient records.

1 That's the information I cannot verify as to the accuracy. My
2 numbers are correct from those records.

3 Q So what you're telling me is that you correctly
4 took the numbers out of the patient records, put them on the
5 chart, but as far as whether those numbers are accurate or
6 not, you can't testify to that?

7 A Yes.

8 Q You did tell me, however, yesterday that you
9 believed that this final column of times is accurate, correct?

10 A It's -- it's the -- the information that I took
11 from the patient files is accurate, yes.

12 Q As far as the times, you believe these to be the
13 most accurate of what you recorded; is that correct?

14 A Yes.

15 Q I want to look at those times in those columns
16 only. You want to step down again for me, please? Does she
17 need a mic?

18 A I have it.

19 Q Oh, you have. And I want to focus on the two
20 columns that you told me were the most accurate.

21 A Yes.

22 Q I want to go to Stacy Hutchinson. What time did
23 her procedure start?

24 A Her procedure started at nine -- sorry, her
25 procedure started at 9:52.

1 Q And what time did Lakota Quannah's procedure
2 start?
3 A 10:04.
4 Q So Ms. Hutchinson's started some -- her
5 procedure started some 12 minutes prior to Lakota Quannah,
6 correct?
7 A In this room it did, yes.
8 Q And she was in room two, Stacy Hutchinson?
9 A Yes.
10 Q So while Stacy Hutchinson's procedure is 12
11 minutes into it -- and by the way, Dr. Desai was doing that
12 procedure. We know from the evidence he was very quick.
13 She's 12 minutes into her procedure before Lakota Quannah even
14 starts his procedure, correct?
15 A According to the time in this room, yes.
16 Q Okay. And according to the columns you said
17 were accurate, what time does Ms. Hutchinson's procedure end?
18 A It ended at 10:06.
19 Q And what time does Mr. Quannah's procedure end?
20 A 10:16.
21 Q Some 10 minutes after Ms. Hutchinson's already
22 done, correct?
23 A According to the times on the computers, yes.
24 Q One other thing while you're down here. Mr.
25 Staudaher asked you about this column that had all these 11

1 minutes recorded in it. What is that column?

2 A This is the calculation from the beginning time
3 to the ending time.

4 Q And he pointed out how suspicious it was that
5 all these times for this were 11 minutes, correct? Save for a
6 couple, correct?

7 A I don't know that he used the word suspicious
8 but --

9 Q That's my word.

10 A Okay.

11 Q But that was to me the implication. But he
12 pointed that out to you, correct?

13 A Yes, he pointed out that column.

14 Q And that column where all the 11 minutes are
15 recorded are for Mr. Mathahs's procedures, correct?

16 A Yes.

17 Q If we look down for Mr. Lakeman's procedure, we
18 don't find that same 11 minutes in those columns, do we?

19 A No, they're all different.

20 Q They're all different in Mr. Lakeman's room.

21 A Yes.

22 THE COURT: Do you want her to return to the witness
23 seat or stay down there?

24 BY MR. SANTACROCE:

25 Q Let's do this on the screen. You had occasion

1 to look at the propofol logs, correct?

2 A Yes.

3 Q And what are the propofol logs again?

4 A The propofol logs were the sheets of paper that
5 were filled out by the people taking the propofol out and
6 checking it back in.

7 Q And you came up with a figure for July 21st as
8 to how many bottles of propofol Mr. Mathahs checked out in the
9 morning. Do you know what that figure was?

10 A I can look.

11 MR. STAUDAHER: Are we in July or August?

12 MR. SANTACROCE: September 21st.

13 MR. STAUDAHER: September.

14 A On September 21st, is that the date?

15 BY MR. SANTACROCE:

16 Q Yes.

17 A Okay. There were 63 patients. Mr. Mathahs
18 signed out 18 vials and returned none. And then he signed out
19 20 vials and returned 14 for a total of 24.

20 Q So Mr. Mathahs used 24 vials on September 21st,
21 2007. Is that your testimony?

22 A No. Mr. Mathahs checked out 24 vials.

23 Q Okay. And how -- do you know how they were
24 distributed?

25 A No, I don't.

1 Q I believe you're aware that half or some of the
2 bottles would be placed in room one and some would be placed
3 in room two, correct?

4 A I'm assuming that, yes.

5 Q You came up with a calculation or a ratio as to
6 how many patients would equal one propofol bottle. Do you
7 remember that?

8 A The ratio of patients to propofol vials was 2.62
9 patients to one vial.

10 Q Okay. And do you remember testifying in front
11 of the grand jury?

12 A I do.

13 Q Okay. I'm showing you page 136 of that grand
14 jury transcript. What did you tell the -- the grand jury the
15 ratio was on September 21st?

16 A I used the figure three to one.

17 Q Okay. So as I understand that, that's three
18 patients per every bottle of propofol, correct?

19 A That's correct.

20 Q I want to direct your attention to Exhibit 156.
21 Is that clear? Can you read that?

22 A Yes.

23 Q So if we use your ratio of three patients for
24 every bottle of propofol, I want to count these. Okay?
25 Counting from the top, one, two, three patients, one bottle of

1 propofol, correct?

2 A Yes.

3 Q One, two, three patients, another bottle of
4 propofol, correct?

5 A Yes.

6 Q One, two, three patients, another bottle,
7 correct?

8 A Yes.

9 Q This patient now a new bottle is open, one, two,
10 three, the bottle's empty, correct?

11 MR. STAUDAHER: Objection, Your Honor. Mis -- I
12 mean, it's asking her to analyze, which we just talked about.

13 THE COURT: Well, no, that's overruled. I mean, he's
14 talking about the numbers.

15 BY MR. SANTACROCE:

16 Q Correct?

17 A It would depend on --

18 MR. STAUDAHER: Then vague and ambiguous and
19 speculation on --

20 THE COURT: Well, Mr. Staudaher --

21 MR. SANTACROCE: How is that vague and ambiguous?

22 THE COURT: Okay. Mr. Staudaher, that's overruled.

23 However, Mr. Santacroce, you have to allow the witness to
24 answer. So the objection's overruled and I think -- you know,
25 if you don't agree with what Mr. Santacroce -- you know, the

1 witness is free to answer however she wants.

2 BY MR. SANTACROCE:

3 Q Well, I'm using your numbers, ma'am ---

4 A Yes.

5 Q -- that you told me you calculated three
6 patients for every bottle of propofol September 21st, correct?

7 A Yes.

8 Q One -- starting from the top, one, two, three is
9 one bottle. One, two, three is another bottle. One, two,
10 three is another bottle. A new bottle is opened, one, two,
11 three. It's empty with Lakota Quannah, correct?

12 A Well, it would depend on what they took out of
13 the -- the vials of propofol.

14 Q So are you telling me that your ratio of three
15 to one is incorrect?

16 A No. I'm telling you my ratio was correct, but
17 the way that you are doing it by patient, does not take into
18 account the amount of propofol that was used for each patient.

19 Q So you're telling me that your figures are
20 accurate?

21 A Yes.

22 Q But if I use them to disprove your theory,
23 they're no longer accurate?

24 A No, that's not what I said.

25 Q Okay. Tell me through all of your calculations

1 and things, how many syringes Linda Hubbard used on July 25th,
2 2007.

3 A I don't -- I don't have that broken down.

4 Q Okay. Tell me how many syringes Mr. Lakeman
5 used on July 25th of 2007.

6 A I don't have that broken down.

7 Q Tell me how many syringes Mr. Mathahs used on
8 September 21st, 2007.

9 A I don't have that broken down.

10 Q Tell me how many syringes Mr. Lakeman used on
11 September 21st, 2007.

12 A And I don't have that broken down.

13 MR. SANTACROCE: I don't have any further questions.

14 THE COURT: All right. Ms. Stanish?

15 RECROSS-EXAMINATION

16 BY MS. STANISH:

17 Q Ms. Sampson, let's start with the big chart --

18 A Okay.

19 Q -- and the doses of propofol. In the grand jury
20 you counted each of those doses -- what -- 50, 50, 50 as
21 injections, three injections, correct?

22 A Yes.

23 Q And you came up with a total then for the
24 September 21st date of 2007 of I believe 185 syringes,
25 correct?

1 A Injections.

2 Q Injections.

3 A Yes.

4 Q And you also took -- did the same kind of
5 calculation with respect to the July 25th date, correct?

6 A Yes.

7 Q And that was 120 something, right?

8 A For July 25th there were 123 injections.

9 Q And then as I understood your testimony in the
10 grand jury and now cross-exam yesterday, you took -- you came
11 up with what you called a developed ratio.

12 A Yes.

13 Q Using those two dates.

14 A Yes.

15 Q And by taking this -- the injections.

16 A Yes.

17 Q And adding them together for both dates.

18 A Yes.

19 Q Then dividing by two.

20 A Yes.

21 Q And that came up with your developed ratio of
22 2.4 as I recall; is that correct?

23 A Yes.

24 Q What did you do with that 2.4 ratio? How did
25 you employ that ratio in your analysis?

1 A I took the ratio of 2.4 injections per patient
2 and I determined how many syringes should have been ordered in
3 2006 and 2007 to a -- to adhere to the one injection -- one
4 syringe per injection.

5 Q And -- and as I understand, and please correct
6 me if I'm wrong, the whole purpose of your analysis was to
7 take the numbers and put in graphic depictions for us the --
8 the -- what it would look like if the clinics adhered to the
9 CDC best practice recommendation.

10 A My charts don't reflect that. My analysis does,
11 but the charts reflect how many patients and how many vials of
12 propofol were ordered and how many patients and how many
13 syringes were ordered.

14 Q Would you agree with me that your charts are
15 based on an assumption that there's no end of year inventory
16 for either propofol or syringes?

17 A They would.

18 Q You agree with me?

19 A I agree with you.

20 Q And your -- and the reason you conclude that
21 there is no end of year inventory is because you have applied
22 to the year, calendar year 2006, that anything that showed on
23 your order or from the supplier on the charts -- oh, I'm
24 sorry. Anything that was ordered in 2006 was depleted because
25 your -- of your assumption that the -- if they had adhered to

1 that CDC gold standard, there would be no inventory for either
2 propofol or syringes, correct?

3 A That's correct.

4 Q And so -- and to -- and when I look at these
5 charts I -- with connection to -- let's start with one --
6 Exhibit 152. When we -- when we're talking about the number
7 of syringes here, we are then talking about your assumption
8 that there is no end of year inventory from 2006 because if we
9 used your hypothetical adherence to the CDC gold standard,
10 there -- there wouldn't be any inventory. I'm trying -- I --
11 just I guess to -- to -- to state it more simply, I'm sorry.
12 This figure right here assumes there is no end of year
13 inventory for 2006, correct?

14 A That figure there is the amount that was ordered
15 in 2007 and the patients that were seen in 2007. It does not
16 include anything from 2006.

17 Q And the reason it does not include anything from
18 2006 is because of your assumption that there is no inventory
19 based on your hypothetical attachment to the CDC gold
20 standard?

21 A That's correct.

22 Q And that's the same, is it not, with this chart
23 in Exhibit 154 that also comes up with a 2007 propofol count,
24 just like what we discussed a moment ago, this also excludes
25 the reality of there being an end of year inventory because of

1 your application of the CDC gold standard to the 2006 ordering
2 of propofol and syringes?

3 A Yes.

4 Q And going back to State's Exhibit 154, just to
5 be very clear, you have this graphic depiction of a breakdown
6 of propofol vials between Burnham and Shadow Lane. I want to
7 focus on that a bit, ma'am.

8 A Could you show the whole --

9 Q Oh, I'm sorry.

10 A -- the whole thing.

11 Q Sure. Is that it?

12 A Yes, thank you.

13 Q This chart -- and I'm referring to these first
14 two bar graphs labeled Shadow and then the second one labeled
15 Burnham.

16 A Yes.

17 Q Is it -- and I had asked you this yesterday and
18 I -- I thought -- and I might have misunderstood your answer
19 yesterday or your answer that was given today, the -- I had
20 asked you if the invoices that you reviewed, you took
21 addresses out -- off of those invoices and I asked you, did
22 they reflect the shipping address or did they reflect the
23 address of the ordering location. And I thought I understood
24 you to say you weren't sure, but then today I understood you
25 to say it's the shipping.

1 A No, I believe it's the shipping.

2 Q You think it was shipping?

3 A Yes.

4 Q Okay. And then you are aware, are you not, of
5 the interviews that were conducted by your partner, officer --
6 or Detective Whitely, correct, of the various staff members?

7 A Yes.

8 Q And you were aware in your analysis that it was
9 -- that supplies were being exchanged -- or usually from
10 Burnham to Shadow where a CRNA would take a box of propofol,
11 take a box of syringes and bring it to Shadow Lane?

12 A Well, I knew that they did share these supplies.

13 Q Okay.

14 A I don't know if a CRNA brought them over, but
15 they were exchanged between the two locations.

16 Q And so these two, these two bar graphs that
17 refer to Shadow and Burnham, do not account for the sharing of
18 supplies at all, correct?

19 A Well, the last one does.

20 Q Because you totaled them?

21 A Yes, that's correct.

22 Q And -- and then, of course, neither of these --
23 this entire chart assumes there was no year end inventory,
24 correct?

25 A That's correct.

1 Q And with respect to State's Exhibit 152, same
2 point, that you broke down Shadow and Burnham as receiving
3 syringes, but these first two bars -- graphs of -- labeled
4 Shadow and Burnham in no way account for the sharing of
5 supplies.

6 A No, but the last one does.

7 Q The third one does?

8 A Yes.

9 Q Just to clarify it. Thank you. In discerning
10 the ordering of supplies in your investigation, did you speak
11 with -- did you identify the person who was responsible for
12 conducting the ordering?

13 A I believe it -- it was -- I -- he was identified
14 through interviews. I didn't identify him.

15 Q Did -- did you or anybody discuss the ordering
16 of supplies with this individual? Was it Jeff Krueger, to
17 your knowledge?

18 A I believe it was Jeff Krueger and I don't know
19 if anyone discussed ordering supplies with him. I don't
20 remember.

21 Q You -- in your -- you didn't meet with Mr.
22 Krueger, I assume?

23 A No.

24 Q And so you -- when you were trying to identify
25 vendors, you didn't talk to Mr. Krueger?

1 A No.

2 Q And the -- and I believe your testimony was
3 yesterday that there were a number of -- of computers that
4 were seized, you didn't know how many. Do you know if the --
5 Mr. Krueger or anybody maintained a, like a Quicken book or
6 some kind of accounting system that would account for payments
7 made to vendors?

8 A I don't know about that.

9 Q You've been a financial analysis -- analyst for
10 many years, correct?

11 A Correct.

12 Q And as I understand it, you're the person that's
13 the go-to person when trying to analyze -- when trying to, you
14 know, follow the money, correct?

15 A Well, I don't know that I would be termed that,
16 but I'm a financial analyst.

17 Q And when -- as a financial analyst, you analyze
18 bank records, correct?

19 A Yes, I do.

20 Q And I -- am I right to assume, since you're in
21 the intelligence unit, that your unit does more of what I will
22 call white collar cases?

23 A The squad I was assigned to was the Public
24 Integrity Squad.

25 Q Oh, okay, uh-huh.

1 A So I -- as opposed to violent crime, yes, we did
2 white collar cases.

3 Q So you analyze the records of businesses.

4 A Yes. Bank records, yes.

5 Q And is, in your experience in -- in -- in
6 analyzing past businesses, is it your experience that most
7 businesses maintain an accounting system, such as Quicken or
8 Peachtree or whatever?

9 A They may. I generally look at bank records to
10 determine the money that was deposited and the money that was
11 withdrawn into the bank accounts.

12 Q Right. But in this particular case, your use of
13 the bank records as far as getting -- taking canceled checks
14 and comparing it to invoices, you didn't do that part of the
15 analysis.

16 A No, I relied on the vendor information.

17 Q Understood. Oh, I want to -- let me just go
18 ahead and -- did -- did -- by the way, did anybody talk to
19 anyone who -- who knew anything about inventory and ordering
20 as to whether they had storage area for inventory?

21 A I don't recall.

22 Q And, you know, moving to the year 2008 when the
23 search warrants were executed and I believe it was March of
24 2008, you discovered no propofol. And is the reason for that
25 is because the businesses were already shut down?

1 A That's correct.

2 Q And were -- did -- did -- were you made -- did
3 -- Tonya Rushing was interviewed, correct? Or do you know?

4 A I didn't interview her. I believe she was
5 interviewed.

6 Q Were you aware that the supplies of propofol
7 were donated to various hospitals?

8 MR. STAUDAHER: Objection, hearsay, Your Honor.

9 MS. STANISH: I'm asking her if she's aware.

10 MR. STAUDAHER: It calls for -- to even answer that
11 question it calls for hearsay.

12 THE COURT: Well, I think the question really is not
13 what they did with it, but was she aware that there were
14 supplies of propofol that -- at the close of the clinic that
15 were given away or thrown away or whatever happened with it.

16 BY MS. STANISH:

17 Q I mean, you -- you -- your analysis is all about
18 the -- about the supply of propofol according to vendor
19 records, correct?

20 A Yes.

21 Q And so I'm -- I'm trying to see if you explored,
22 if you were aware of where the inventory went. Do you know?

23 A No.

24 Q Did your analysis of the syringes, based on
25 vendor records, show the ordering of 5cc syringes?

IN THE SUPREME COURT OF THE STATE OF NEVADA

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SEP 02 2014 09:13 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

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

APPELLANT'S APPENDIX VOLUME 27

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INDEX TO APPENDIX VOLUMES 1 through 41

<u>DOCUMENT</u>	<u>VOL.</u>	<u>PAGE(S)</u>
Indictment	1	000001-000042
Amended Indictment	1	000043-000084
Court Minutes 7/21/10	1	000085
Court Minutes 2/08/11	1	000086
Finding of Competency	1	000087-000090
Recorder's Transcript - Hearing: Video Deposition Tuesday, March 20, 2012	1	000091-000129
Indictment (C-12-283381 - Consolidated Case)	1	000130-000133
Second Amended Indictment	1	000134-000176
Third Amended Indictment	1	000177-000212
Defendant Desai's Motion and Notice of Motion for Competency Evaluation	1	000213-000229
Recorder's Transcript - Hearing Re: Defendant Desai's Motion for Competency Evaluation Status Check: Experts/Trial Readiness (All) Tuesday, January 8, 2013	1	000230-000248
Fourth Amended Indictment	2	000249-000284
Notice of Motion and Motion to Use Reported Testimony	2	000285-000413
Reporter's Transcript Re: Status Check: Experts (All) Thursday, March 7, 2013	2	000414-000440

<u>DOCUMENT</u>	<u>VOL.</u>	<u>PAGE(S)</u>
Defendant Desai's Opposition to State's Motion to Admit Foreign Documents Relating to Rodolfo Meana	2	000441-000445
Order	2	000446-000449
Court Minutes 3/21/13	2	000450
Defendant Desai's Opposition to State's Motion to Use Reported Testimony	2	000451-000454
Court Minutes 3/26/13	2	000455
Independent Medical Evaluation, 4/14/13 Filed Under Seal - Separately	2	000456
Reporter's Transcript - Calendar Call (All) State's Motion to Admit Evidence of Other Crimes Tuesday, April 16, 2013	2	000457-000497
Fifth Amended Indictment	3	000498-000533
Reporter's Transcript - Jury Trial Day 7 Friday, May 3, 2013	3	000534-000622
Reporter's Transcript - Jury Trial Day 8 Monday, May 6, 2013	3 & 4	000623-000773
Reporter's Transcript - Jury Trial Day 9 Tuesday, May 7, 2013	4 & 5	000774-001016
Reporter's Transcript - Jury Trial Day 10 Wednesday, May 8, 2013	5	001017-001237
Reporter's Transcript - Jury Trial Day 11 Thursday, May 9, 2013	6 & 7	001238-001517

<u>DOCUMENT</u>	<u>VOL.</u>	<u>PAGE(S)</u>
Reporter's Transcript - Jury Trial Day 12 Friday, May 10, 2013	7 & 8	001518-001784
Reporter's Transcript - Jury Trial Day 13 Monday, May 13, 2013	8 & 9	001785-002061
Reporter's Transcript - Jury Trial Day 14 Tuesday, May 14, 2013	9 & 10	002062-00
Reporter's Transcript - Jury Trial Day 15 Wednesday, May 15, 2013	10 & 11	002303-002494
Reporter's Transcript - Jury Trial Day 16 Thursday, May 16, 2013	11 & 12	002495-002713
Reporter's Transcript - Jury Trial Day 17 Friday, May 17, 2013	12 & 13	002714-002984
Reporter's Transcript - Jury Trial Day 18 Monday, May 20, 2013	13 & 14	002985-003247
Reporter's Transcript - Jury Trial Day 19 Tuesday, May 21, 2013	14 & 15	003248-3565
Reporter's Transcript - Jury Trial Day 20 Wednesday, May 22, 2013	15 & 16	003566-003823
Reporter's Transcript - Jury Trial Day 21 Thursday, May 23, 2013	16 & 17	003824-004014
Reporter's Transcript - Jury Trial Day 22 Friday, May 24, 2013	17	004015-004185
Reporter's Transcript - Jury Trial Day 23 Tuesday, May 28, 2013	18	004186-004384

<u>DOCUMENT</u>	<u>VOL.</u>	<u>PAGE(S)</u>
Reporter's Transcript - Jury Trial Day 24 Petrocelli Hearing Wednesday, May 29, 2013	19	004385-004510
Reporter's Transcript - Jury Trial Day 24 Afternoon Session Wednesday, May 29, 2013	20	004511-004735
Reporter's Transcript - Jury Trial Day 25 Thursday, May 30, 2013	21	004736-004958
Reporter's Transcript - Jury Trial Day 26 Friday, May 31, 2013	22	004959-005126
Reporter's Transcript - Jury Trial Day 27 Friday, June 3, 2013	22 & 23	005127-005336
State's Exhibit 18 - Meana Death Certificate Admitted 6/3/13	23	005337-005345
Reporter's Transcript - Jury Trial Day 28 Tuesday, June 4, 2013	23 & 24	005346-005611
Reporter's Transcript - Jury Trial Day 29 Wednesday, June 5, 2013	24 & 25	005612-005885
Reporter's Transcript - Jury Trial Day 30 Thursday, June 6, 2013	25 & 26	005886-006148
Reporter's Transcript - Jury Trial Day 31 Friday, June 7, 2013	27 & 28	006149-006430
Reporter's Transcript - Jury Trial Day 32 Monday, June 10, 2013	28	006431-006641
Reporter's Transcript - Jury Trial Day 33 Tuesday, June 11, 2013	29 & 30	006642-006910

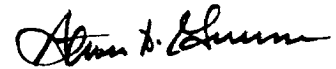
<u>DOCUMENT</u>	<u>VOL.</u>	<u>PAGE(S)</u>
Reporter's Transcript - Jury Trial Day 34 Wednesday, June 12, 2013	30 & 31	006911-007143
Reporter's Transcript - Jury Trial Day 35 Thursday, June 13, 2013	31	007144-007382
Reporter's Transcript - Jury Trial Day 36 Friday, June 14, 2013	32	007383-007619
Reporter's Transcript - Jury Trial Day 37 Monday, June 17, 2013	33	007620-007827
State's Exhibit 228 - Table 20-1 - Modes of Transmission and Sources of Infection Considered Admitted 7/17/13	33	007828
Reporter's Transcript - Jury Trial Day 38 Tuesday, June 18, 2013	34	007829-008038
Reporter's Transcript - Jury Trial Day 39 Wednesday, June 19, 2013	35	008039-008113
Reporter's Transcript - Jury Trial Day 40 Thursday, June 20, 2013	35 & 36	008114-008361
Reporter's Transcript - Jury Trial Day 41 Friday, June 21, 2013	36 & 37	008362-008537
Reporter's Transcript - Jury Trial Day 42 Monday, June 24, 2013	37 & 38	008538-008797
Reporter's Transcript - Jury Trial Day 43 Tuesday, June 25, 2013	38	008798-009017
Reporter's Transcript - Jury Trial Day 44 Wednesday, June 26, 2013	39	009018-009220

<u>DOCUMENT</u>	<u>VOL.</u>	<u>PAGE(S)</u>
Reporter's Transcript - Jury Trial Day 45 Wednesday, June 27, 2013	39 & 40	009221-009473
Defendant's Proposed Instruction No. 2	41	009474-009475
Defendant's Proposed Instruction No. 3	41	009476
Defendant's Proposed Instruction No. 4	41	009477
Defendant's Proposed Instruction No. 5	41	009478
Instructions to the Jury	41	009479-009551
Verdict	41	009552-009559
Reporter's Transcript - Sentencing Hearing Thursday, October 24, 2013	41	009560-009583
Judgment of Conviction	41	009584-009589
Amended Judgment of Conviction	41	009590-009595
Notice of Appeal	41	009596-009600

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TRAN



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DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

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

BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE

JURY TRIAL - DAY 31

FRIDAY, JUNE 7, 2013

APPEARANCES:

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

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006149

I N D E X

WITNESSES FOR THE STATE:

NANCY SAMPSON

Redirect Examination By Mr. Staudaher(Continued)	6
Recross Examination By Mr. Santacroce	100
Recross Examination By Ms. Stanish	109
Further Redirect Examination By Mr. Staudaher	120

JAVOID ANWAR

Direct Examination By Mr. Staudaher	138
Cross-Examination By Ms. Stanish	182

ROD CHAFFEE

Direct Examination By Mr. Staudaher	198
Cross-Examination By Mr. Wright	261

E X H I B I T S

STATE'S EXHIBITS ADMITTED:

PAGE

175 and 176	17
177	151

1 LAS VEGAS, NEVADA, FRIDAY, JUNE 7, 2013, 9:12 A.M.

2 * * * * *

3 (Outside the presence of the jury.)

4 THE COURT: Is everyone ready?

5 MR. SANTACROCE: I have one matter outside the
6 presence, Your Honor.

7 THE COURT: Okay. Would you shut the door? And
8 while I think of it, this fellow, juror number six who was in
9 the military, he -- remember, he was doing telephonic
10 interviews for jobs and we told him jury -- I told him during
11 jury selection, yes, we absolutely will accommodate telephonic
12 interviews. He has one at 11:00, which he can do from his
13 cell phone. So we just need to break a couple minutes of 11
14 to allow him -- it won't be our lunch break probably, to allow
15 him to do the telephonic interview. Just so you folks know.
16 Yes, Mr. Santacroce?

17 MR. SANTACROCE: This has to do with Mr. Lakeman's
18 bail. He has two bails posted, one for the murder charge and
19 one for the other counts.

20 THE COURT: Uh-huh.

21 MR. SANTACROCE: The murder charge isn't up for
22 renewal until August, so that's not at issue. But the other
23 bail is up next week and the bail company wants another whole
24 year premium. And, you know, we're going to be done in about
25 two weeks probably, three weeks at the most. Since he already

1 has a bail up -- you don't think so?

2 THE COURT: We're not going to be done in three weeks
3 but, you know.

4 MR. SANTACROCE: Well, okay, let's say a month.

5 THE COURT: Four -- whatever.

6 MR. SANTACROCE: Four weeks, whatever.

7 MR. WRIGHT: Easily by August.

8 MS. WECKERLY: No, it will be sooner than that. We
9 will.

10 THE COURT: Hey, you know, I paid \$2,000 for a
11 conference August 5th, so I'm going.

12 MR. SANTACROCE: In any event, I'm asking the Court
13 to exonerate that bail on those charges.

14 THE COURT: Can we maybe discuss that, Mr.
15 Santacroce, at the 11:00 break?

16 MR. SANTACROCE: Sure.

17 THE COURT: Okay. All right, let's get started then.
18 Can you -- Mr. Staudaher, would you grab the witness?

19 MR. STAUDAHER: I will.

20 MS. STANISH: And just so the Court knows, I -- we
21 were handed some discovery relating to the witnesses that are
22 coming in after this. It looks to be about, I don't know, 20
23 to 25 pages. So I'm frantically trying to review it and I may
24 need more time after Ms. Sampson's testimony to do so.

25 THE COURT: Okay, well she may take until 11 anyway.

1 MS. WECKERLY: Yeah.

2 MS. STANISH: You think?

3 THE COURT: That way at the 11:00 break you'll be
4 able --

5 MS. STANISH: Redo her direct?

6 THE COURT: -- to review that. Ma'am, just come on
7 up and have a seat. Also, we have jurors with upcoming
8 vacations that they'd apparently told us about in jury
9 selection, but we were, oh, no, we'll never take this long.
10 So we're going to review that at the break. Kenny got the
11 dates, but he got one of the dates wrong, so I'm not going to
12 discuss it until we confirm the dates. Just to give you guys
13 a heads up.

14 MS. STANISH: My understanding is we have two doctors
15 coming in who are going to say almost the identical thing.
16 Right? I mean is there any difference between the two?

17 MR. STAUDAHER: I don't know. They both were present
18 during an evaluation at the clinic --

19 MS. STANISH: All right.

20 MR. STAUDAHER: -- from a quality assurance
21 perspective, so I would assume that they'll be short.

22 THE COURT: When are they here, today?

23 MR. STAUDAHER: Yeah.

24 MS. STANISH: Today. It's the one that we just got
25 the report on.

1 THE COURT: Well, in any event, I'm assuming the
2 telephonic interview, that's going to be at least 15, probably
3 20 minutes, so that will give the defense time to look at
4 those additional materials.

5 (Jury reconvened at 9:17 a.m.)

6 THE COURT: All right. Court is now back in session.
7 Everyone may be seated.

8 And Ms. Sampson, you are, of course, still under
9 oath. All right.

10 Mr. Staudaher, you may proceed with your redirect
11 examination.

12 MR. STAUDAHER: Thank you, Your Honor.

13 REDIRECT EXAMINATION (Continued)

14 BY MR. STAUDAHER:

15 Q When we left off last time we were on one
16 subject. I'm going to kind of divert from that for a moment
17 because I brought something to look -- have you look at.
18 There was a chart -- one of the charts that you were shown had
19 some markings on it and you were unsure if you had actually
20 put those on since there had been some modification to the
21 charts since you made them. Do you recall that?

22 A Yes.

23 Q I have brought one that I believe was an earlier
24 version that you actually produced just so you can look at it
25 to see if those markings about hepatitis -- hepatitis C

1 positive patients on the 25th of July -- July were on your
2 record initially. Okay?

3 A Okay.

4 MR. SANTACROCE: Can I see that?

5 MR. STAUDAHER: Sure.

6 MS. STANISH: Is that her original one?

7 BY MR. STAUDAHER:

8 Q Now, this is not an exhibit, it's just to show
9 you -- this is one of the different sorts that you did. You
10 sorted this one, apparently, under doctor report procedure
11 time, but it appears to be for the July 25th date. Do you
12 recall that?

13 A Yes, I do.

14 Q Okay. So if we look over in the column marked
15 hepatitis C --

16 A Yes.

17 Q -- and we see that including Michael Washington,
18 it appears as though those X's were on your original --

19 A Yes, it does.

20 Q -- is that correct? Okay. So as the chart is
21 depicted here with those X's on the 25th, even though Michael
22 Washington is listed there --

23 A Yes.

24 Q -- hepatitis C at that time, does that mean that
25 he was hepatitis C positive after you reviewed that chart?

1 A No, he was not after I reviewed the chart.
2 That's a mistake.

3 Q And you confirmed that after you actually looked
4 at the record itself, correct?

5 A Yes, I did.

6 Q And I'm just going to leave that up here for
7 right now in case you need to look at it for any reason. I
8 want to go back a couple of moments. Let's -- I don't want to
9 do -- if we can avoid it, too much mathematics, but a couple
10 of things I want to get down as a -- sort of a basis before I
11 ask you some questions about the records that you talked --
12 were testified to on cross-examination. Okay?

13 A Okay.

14 Q I -- so that nobody makes a mistake, my
15 co-counsel has been gracious enough to provide her county
16 calculators so that we can make sure that we get this
17 completely right. Okay? First of all, I wanted to just get a
18 couple of -- of things down before we go forward as a basis.
19 The patients per day 2007, I have listed that -- and I wrote
20 these down as you were -- as you were testifying, so this is
21 my handwriting. But patients per day 2007, on you charts you
22 have listed in your records of 14,957 patients at the Shadow
23 Lane clinic in 2007.

24 A Okay.

25 Q Does that sound about right? Do you want to see

1 a chart to review that?

2 A Yes.

3 Q Okay. I'm going to bring the charts up to you,
4 all of them. And do you have your medical supplies analysis
5 with you?

6 A I do.

7 Q Okay. Get that out because we're going to let
8 you use yours because you've got the marked up, and just refer
9 to Bates numbers on that if you need to. And just for
10 counsel's sake, if you refer to a Bates -- actually there's
11 two different numbers on this one. This was used at the grand
12 jury.

13 A Uh-huh.

14 Q The one we want you to use is the one up here
15 that is not of the grand jury that says DA Endoscopy and then
16 the number. Okay?

17 A Okay.

18 Q All right. So got those records up there. How
19 many patients were in the clinic, the Shadow Lane Clinic, in
20 2007?

21 A There were 14,957 patients in the Shadow Lane
22 Clinic.

23 Q I'm going to do this right on the screen. So if
24 we turn it on. Fourteen thousand -- how many?

25 A Nine hundred fifty-seven.

1 Q Nine fifty-seven. Does that number appear on
2 the calculator?

3 A Yes.

4 Q Okay. Divided by, and I think you said the
5 number of -- of active workdays that year were 254, if I
6 remember correctly.

7 A Yes, 254.

8 Q So 254 equals 58 -- bless you -- 58.88 patients
9 per day on average; is that correct?

10 A That's correct.

11 Q Okay. So that's where I -- where I wrote down
12 the 59 patients. I rounded it up because we can't have
13 partial patients. When we get to the other one, though, the
14 actual syringes, do you remember that for 2007, the total
15 number of syringes, what was that number? I'm talking about
16 at the Shadow Lane Clinic in 2007.

17 A At the Shadow Lane Clinic there -- what was the
18 question?

19 Q How many total patients -- excuse me, total
20 syringes, according to your records, were used at the Shadow
21 Lane Clinic in 2007 ordered?

22 THE COURT: Is that used or --

23 MR. STAUDAHER: Ordered, ordered.

24 THE COURT: -- ordered. Okay. So that's syringes
25 ordered during the year 2007, correct?

1 MR. STAUDAHER: Correct.

2 THE COURT: Okay.

3 THE WITNESS: I have 36,000 for both clinics.

4 BY MR. STAUDAHER:

5 Q Okay. And the Shadow Lane facility?

6 A In 2007 they had 17,100.

7 Q So that's the number that is written right here?

8 A Yes.

9 Q I'm going to put that in, 17,100 and divide it
10 by again the 254 --

11 A Yes.

12 Q -- equals 67.3, so 67 syringes on average
13 available based on what was ordered per day --

14 A That's right. That's right.

15 Q -- for 2007. Now when counsel was asking you
16 some questions about a report, and I believe that this was the
17 one involving the -- this was from the Federal authorities,
18 correct?

19 A We talked about many reports yesterday.

20 Q Let me show you this.

21 A Yes.

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

23 THE COURT: Sure, you can move freely.

24 BY MR. STAUDAHER:

25 Q I'm just going to leave this up with you. This

1 has been marked as proposed State's 174.

2 A Okay.

3 Q Do you see that?

4 A Yes.

5 Q Keep that up there with you. And is that the
6 document that actually -- Ms. Stanish showed you and you went
7 through yesterday?

8 A Yes.

9 Q And in there -- and I tried to write this down,
10 so if you flip to the second page I believe it is, of that
11 document --

12 MS. STANISH: Could I have a Bates stamp? I don't
13 know what you're doing.

14 MR. STAUDAHER: It's 93147 is the page I'm referring
15 to.

16 BY MR. STAUDAHER:

17 Q On that I wrote down these numbers and I want to
18 make sure that -- that they're accurate based on the
19 questioning that you had yesterday. Patients total 2006,
20 22,374?

21 A That's correct.

22 Q Okay. And you had from all sources, vendor --
23 all the things that you did, you were able to come up with
24 just 6,600 and this -- this is propofol we're talking about,
25 correct? Bottles of propofol that were ordered?

1 A Yes.

2 Q Now, according to the document that you were
3 given from Ms. -- or given by Ms. Stanish, there was a
4 discussion about that in there, about your work and 6,600 and
5 then another number, which was 10,739; is that correct?

6 A That's correct.

7 Q Was it -- I mean basically, it's my
8 understanding from this record and your testimony on cross,
9 that that number reflects the patients that were contained in
10 the logbooks for the -- or not the patients, but the propofol
11 bottles that were documented in the logbooks of the clinic
12 itself.

13 A That's what this report says, yes.

14 Q Okay. And, in fact, in the report, does it not
15 say that they looked at your analysis and that they felt that
16 your analysis was correct and they could not reconcile the
17 fact that there were 6,600 bottles ordered and 10,739 used
18 according to the clinic?

19 A Yes.

20 Q Or checked out?

21 A Yes.

22 Q So the number of syringes though is not part of
23 that particular analysis, is it? It's -- this is related to
24 propofol?

25 A Yes.

1 Q Now, under the syringes for the same year, 2006,
2 the number that I wrote down based on your analysis was
3 31,100; is that correct?

4 A Yes.

5 Q Okay. So the issue of not being able to find
6 records that fill out or at least match up with what was in
7 the records at the clinic, relates to the propofol only; is
8 that fair?

9 A That's fair.

10 Q Okay. We move to 2007 and you had full records
11 for 2007.

12 A I believe I did.

13 Q I mean, the records are every single month,
14 correct? Well, let me show you this. And I've done an
15 excerpt -- I don't know that -- does counsel have an issue
16 with this at this point? These are an excerpt of just the
17 charts from her -- you've seen them correct?

18 MR. WRIGHT: Right. Not offering them.

19 MR. STAUDAHER: I'm offering them.

20 MR. WRIGHT: I object.

21 THE COURT: I'll see counsel up here.

22 (Off-record bench conference.)

23 THE COURT: All right. Mr. Staudaher, you may
24 proceed.

25 BY MR. STAUDAHER:

1 Q I'm going to show you what has been marked as
2 State's proposed 175 and 176. And I'll represent to you and
3 you can look at them, but they're excerpted out of your
4 medical supplies analysis.

5 A Okay.

6 Q Okay. So can you tell us -- first of all, what
7 -- what is 175?

8 A 175 is the vials of propofol that were ordered
9 from different vendors.

10 Q Now, on this record is there -- the information
11 that is contained in this -- what is this? Is this a
12 spreadsheet or what is it?

13 A This is a spreadsheet that I prepared.

14 Q Okay. When you prepared the spreadsheet, did
15 you make a commentary anyplace in there or did you just
16 straight put the numbers in from the records that you
17 received?

18 A No comments, so it's straight from the records.

19 Q So a number from document or invoice or whatever
20 it is, order form, directly into that spreadsheet and then you
21 produce that record; is that correct?

22 A That's correct.

23 Q Now, I'm showing you what has been marked as
24 State's 176. The same questions. What, first of all, what is
25 it and how was it prepared?

1 A This is a spreadsheet that I prepared to capture
2 the information from the vendors on the syringes, on the 10cc
3 syringes.

4 Q Same questions. Were -- was there -- is this
5 straight information coming from the records into the
6 spreadsheet and then a production of a spreadsheet or did you
7 have any commentary, did you alter or change, analyze, I mean
8 put your own analysis on the records themselves?

9 A No. What I may have done is -- is added a
10 column for the vendor if the records didn't have that vendor
11 file -- information on them.

12 Q What do you mean by that?

13 THE COURT: How were you able to figure out then who
14 the vendor was to add that information?

15 THE WITNESS: Because of the subpoena. I subpoenaed
16 the different vendors and when I got that information from the
17 vendor, if it wasn't on their record, where I -- where I
18 imported it, I typed that in.

19 THE COURT: So you matched it up?

20 THE WITNESS: I matched it up.

21 THE COURT: Okay.

22 BY MR. STAUDAHER:

23 Q Okay. So the information you got, whether it be
24 from the clinic or from the subpoenas and the vendor,
25 whatever, all of that goes into this record wholesale; is that

1 correct?

2 A This -- I identified the vendors. The
3 information on these spreadsheets is the information from the
4 vendors.

5 Q Okay. No commentary or anything else?

6 A No.

7 Q Okay.

8 MR. STAUDAHER: I would move for admission of State's
9 175 and 176 and ask to publish, Your Honor.

10 THE COURT: All right. Does the defense want to --

11 MS. STANISH: No objection.

12 THE COURT: -- no objection? All right. Those will
13 be admitted. You may publish.

14 (State's Exhibit 175 and 176 admitted.)

15 BY MR. STAUDAHER:

16 Q Now, as I go through some of this, I just want
17 to be clear that when we're -- I'm going to probably -- I will
18 -- I'll start off with the propofol one because that's the one
19 that -- that was at issue where you didn't have inventory, at
20 least that seemed to match with the records at the clinic
21 itself when you were there, correct?

22 A Correct.

23 Q The year of 2007 is what is contained in these
24 various charts that have been produced to the jury, correct?
25 The 2007 records, those charts that are in front of you --

1 A These charts?

2 Q Yes. Do those contain 2006 information or does
3 it contain just 2007 information?

4 A They're just 2007.

5 Q Okay. So they're not relying on any records,
6 per se, from 2006?

7 A Right.

8 Q Those actual charts, are they derived as just
9 straight numbers? I'm talking about number of patients, hard
10 numbers of patients compared to say syringes ordered for that
11 year?

12 A Yes.

13 Q So that's it?

14 A That's it.

15 Q Okay. There's no ratio analysis or whatever of
16 what happened in 2006 that went into -- into those charts,
17 correct?

18 A No.

19 Q Okay. Now --

20 MR. WRIGHT: Which charts are in front of her?

21 THE COURT: Are you talking about all the charts, Mr.
22 Staudaher?

23 MR. STAUDAHER: I'm talking about the bar graph
24 charts, the four bar graph charts that were there.

25 THE COURT: That we looked at yesterday?

1 MR. STAUDAHER: Yes.

2 THE COURT: Okay.

3 BY MR. STAUDAHER:

4 Q Okay. Now, with -- let's stick with 2006. You
5 -- the purpose, if I understood you correctly, for even
6 looking at 2006 was to see how much, if any, inventory may
7 have been in -- in the clinics going into 2007.

8 A That's correct.

9 Q So is that -- is it fair to say that you wanted
10 to find out if there were stacks and stacks of boxes of supply
11 that you would have to incorporate into your analysis for
12 2007?

13 A That's correct.

14 Q So when you go back and look at 2006 and from
15 all the records, you can see that basically you came up with
16 6,600 bottles of propofol.

17 A Yes.

18 Q That were ordered.

19 A Yes.

20 Q Now according to this other report that Ms.
21 Stanish showed you from the federal authorities, the number of
22 patients -- or the number of bottles that were checked out at
23 that time, according to the propofol records, were the 10,739
24 bottles.

25 A That's correct.

1 Q Now, if we look at the number of patients from
2 year to year and the number of syringes from year to year and
3 the number of propofol bottles from year to year, does it look
4 more along the lines that maybe the 10,700 plus would have
5 been used in that year based on just looking at the numbers?

6 A Yes, it does.

7 Q Okay. Now in the report that came from the
8 Federal authorities, which is State's -- and I don't have the
9 -- the actual number, so I'm referring to -- State's proposed
10 174, they actually looked at your analysis and agreed with it,
11 correct?

12 A Yes.

13 Q Okay. Now, they didn't find any fault with your
14 analysis, they just couldn't reconcile it.

15 A That's correct.

16 Q Now, if we look to -- starting with the
17 propofol, this record, which is State's now admitted 175,
18 contains the records of propofol dating back to 2005, '06, '07
19 and going into 2008 before the clinic closed, correct?

20 A Yes.

21 Q Okay. And for the record, these are Bates
22 numbers DA Endoscopy 5358 through 5365. I'm going to display
23 them on the screen. And this is propofol that we're talking
24 about, correct?

25 A Yes.

1 Q And you can look up on the screen because I'm
2 going to show it right to you. Now, according to your
3 spreadsheet, you've got source. Tell us what that means.

4 A That's the vendor that provided the information.

5 Q And the next one is address shipped to?

6 A Yes.

7 Q Is that the location that the records show that
8 -- those materials were actually shipped?

9 A Yes.

10 Q The date on which that occurred?

11 A Yes.

12 Q The vendor item number?

13 A Yes.

14 Q The description of the product?

15 A Yes.

16 Q The quantity in those particular orders?

17 A Yes.

18 Q And then what is this PK? What is that?

19 A That's how many units were in the -- the box.

20 Q So 16 box, in the first one it would be 16 boxes
21 that contained 25 units each.

22 A Yes.

23 Q And then the next column is the amount and it
24 has 20 mills, 50 mills and various -- and does the mills stand
25 for milliliters?

1 A Yes.

2 Q And I want to be clear on one thing before I go
3 any further because I believe there was some confusion in
4 milligrams and milliliters and the like. Is it your
5 understanding that propofol is -- comes in either 10cc, 10
6 milliliter bottles, 20 milliliter bottles, 50 milliliter
7 bottles, 100 milliliter bottles, that's the actual volume
8 contained in the bottles?

9 A Yes.

10 Q And that the milligram amount of the drug,
11 contained in a single milligram -- excuse me, single
12 milliliter of propofol is 10 milligrams per one milliliter; is
13 that correct?

14 A I believe.

15 Q So when we have the injections on the chart that
16 -- where it said 50 and 100, those aren't 100 milliliters,
17 they're 100 milligrams according to the record, correct?

18 A That's correct.

19 Q So if it was 100 milligrams on the chart, that
20 would be just 10 milliliters of fluid, correct?

21 A Yes.

22 Q Okay. And if I get that mixed up, correct me,
23 please, because that's something that I -- seem to be going
24 interchangeably as we reviewed the testimony yesterday. Okay?
25 Going through this record, and we looked -- in 2005 it goes --

1 there's just a few records of 2005 and then it looks like --
2 actually I say 2005, this is just 2006. I was looking at the
3 five but it's a six, correct?

4 A Yes.

5 Q So these records are just from 2005.

6 A 2006.

7 Q Excuse me. I'm sorry. 2006 going into 2007 and
8 2008.

9 A Yes.

10 Q Now, if you look at the propofol ordered at the
11 clinic in 2006, we start off in January, looks like there are
12 three orders in January, correct?

13 A Yes.

14 Q In February it looks like there are three
15 orders?

16 A Yes.

17 Q And Ms. Stanish said there was a skip. So in
18 March, April there were no -- at least according to this
19 record, propofol orders that you could find at the clinic.

20 A That's right.

21 Q Then we pick up in May and there are two orders
22 in May.

23 A Yes.

24 Q And then also another skip of June and July that
25 don't appear as well. So four months that we're missing --

1 A Yes.

2 Q -- at least according to the records you were
3 able to locate.

4 A Yes.

5 Q In 2006, not 2007.

6 A That's correct.

7 Q If we go down the line here, we see that in
8 August though there is one, two, two separate orders.

9 A Yes.

10 Q September, one, two, three, four separate
11 orders.

12 A Yes.

13 Q And in July -- excuse me, October, it looks like
14 there are a total of five -- excuse me, July, did I say that?
15 October there's a total of five. November there's a total of
16 four. And December there appears to be a total of four.

17 A Yes.

18 Q Now, if we look at the location shipped to it
19 varies; either Shadow Lane or Burnham, but it appears as
20 though for each month ordered, there appears to be material
21 going to both locations, does that -- is that fair?

22 A That's fair.

23 Q Now, specifically I want to go down to the very
24 last orders of the year. I'm going to slide this over. We
25 know that -- I want to -- before I do that, I'm looking in the

1 month of December because all of them were ordered on the same
2 day in December, correct?

3 A Correct.

4 Q December 11th of 2006, two orders for Burnham,
5 two orders for Shadow Lane.

6 A Correct.

7 Q As I -- if I slide this across to the actual
8 amounts that were ordered during that time period, and again,
9 you've -- it looks like there's a calculation here of the
10 total number of bottles of either the 50 milliliter or the 20
11 milliliter containers; is that correct?

12 A That's correct.

13 Q So we can see that on the last four entries in
14 December, December 11th, that for -- the first two of these
15 are for Burnham, so there were a total of 300 bottles of 20
16 mill variety ordered and on the 50 mill level there were 200
17 for Burnham.

18 A Yes.

19 Q Shadow Lane, under the 20 mill variety, there
20 were 400 bottles ordered and under the 50 there were just 200
21 ordered.

22 A Yes.

23 Q Correct?

24 A Yes, that's correct.

25 Q Now, if we move to the very next record -- oh,

1 and I guess there's one -- one additional one for Burnham here
2 in December, December 14th, Burnham ordered some additional
3 supply, just 100 bottles and that's where you come up with
4 your 660 -- 6,600?

5 A Yes.

6 Q Now, if we look to the very next order in 2007,
7 do you see that it appears as though in -- in January,
8 specifically January 5th, so right after the first of the
9 year, that additional propofol is being ordered by both
10 clinics at the same time?

11 A That's correct.

12 Q So two orders for Burnham, two orders for Shadow
13 Lane.

14 A Yes, that's right.

15 Q If we go across and we see how much they ordered
16 on January 5th of 2007 for those clinics, three -- and we're
17 talking about Burnham first. So at Burnham 300 bottles of the
18 20 mill variety.

19 A Yes.

20 Q 180 bottles of the 50 mill variety.

21 A Yes.

22 Q And then at Shadow Lane they ordered 400 20's
23 and 200 50's.

24 A Yes.

25 Q If we go back over and look from that point

1 forward -- so we know at least on the 5th of January, that
2 they had -- their supplies were at whatever level they were at
3 that they required additional medication, at least according
4 to the orders.

5 A Yes, that's correct.

6 Q When we look at the months in -- in 2007, which
7 is what your basic analysis is containing, correct?

8 A Yes.

9 Q And that's part of what the summary charts are
10 that you've looked at?

11 A Yes.

12 Q There's -- well, let's go through them. I want
13 to -- and my question is, are there any skips in month in this
14 particular year? Before you answer that question, let's just
15 go through it. So January there's orders, correct?

16 A Yes.

17 Q February there are orders.

18 A Yes.

19 Q March there are orders. It looks like four
20 orders each month so far.

21 A Yes.

22 Q April there are five orders.

23 A Yes.

24 Q May, three.

25 A Yes.

1 Q June, at least on this sheet there are four,
2 correct?

3 A Yes.

4 Q And then in -- oh, there's one month missing. I
5 think we have a July date that's missing. Do you see that?

6 A Yes.

7 Q Okay. So we have orders not in July, but we
8 have orders in August.

9 A Yes.

10 Q September, we go over to the next page, order in
11 September, September, September, all of those are Shadow Lane,
12 correct?

13 A Yes.

14 Q Then Burnham again also in September, September,
15 Shadow Lane, September. So lots of orders in September.

16 A That's correct.

17 Q Shadow Lane in October, October, Burnham in
18 October, Shadow Lane in October. Then we're into November,
19 November, November --

20 A You're off the screen.

21 Q -- oh, I'm sorry. I'm not paying attention. So
22 November all the way to the bottom.

23 A Yes.

24 Q Going up to the top again. November in Shadow
25 Lane again, December at Shadow Lane. And now we're into the

1 beginning of the year.

2 A That's correct.

3 Q Now, in the beginning of the year, we're talking
4 about 2008, we have orders for both Burnham and Shadow Lane
5 and your understanding the clinic's still operating at this
6 point?

7 A Yes.

8 Q If we look to this area here, this last order
9 from Shadow Lane was on 12/18 of 2007 for 250 milliliter
10 bottles -- whoops, let me move that over, 250 milliliter
11 bottles, correct?

12 A Yes.

13 Q If we go down to the very next Shadow Lane
14 order, which was at 1/2, they ordered 250 -- or 250 of the 20
15 milliliter bottles and 320 of the 50 milliliter bottles.

16 A Yes.

17 Q Now when you went with -- at the search --
18 search warrant that occurred and you said in March you went to
19 the facility there was no propofol anywhere?

20 A No, there wasn't any propofol.

21 Q We go down here and we keep going on the dates.
22 I just want to make sure we know on the orders. January,
23 February and it looks like your record goes just to February
24 on this -- on this page.

25 A Yes.

1 Q Let's see, there's one more page. Oh, there is
2 some more additional and -- but all of these entries are for
3 Burnham, correct?

4 A It looks like it. It looks like -- if you can
5 show the top of the page.

6 Q The top of the page?

7 A It was to -- that's the sort by location.

8 Q Okay. So this -- well, this page here just
9 shows orders at Burnham on this particular page for the months
10 of -- finishing up on February, March, April, May, June, July
11 -- oh, but I'm on 2007.

12 A You're on 2007.

13 Q I must have gone back. I'm sorry. Let's make
14 sure we get to 2008. No, just those two -- just those 2008
15 ones before. So you -- was there a reason why you tracked
16 2008 at all?

17 A Yes.

18 Q What was that?

19 A Because the clinics were informed of the
20 infection in either January or February of 2008 and I wanted
21 to see if their ordering changed.

22 Q Did it change?

23 A Yes.

24 Q Tell us about that.

25 A Okay. I've got it in my report broken down by

1 the supply that was ordered.

2 Q Just tell us what page your report we're --
3 we're on so counsel can refer to it.

4 A Let me see if it's in my beginning summary. On
5 Bates stamp number 5206.

6 Q Okay. And is that the DA Endoscopy 5206?

7 A Yes.

8 Q Okay. So we're on the same page.

9 MS. STANISH: I'm sorry, what Bates number?

10 A 5206.

11 BY MR. STAUDAHER:

12 Q So what -- what is -- talk to us about your
13 analysis.

14 A I -- it's -- I wrote the 2008 records were
15 analyzed to compare the orders for 2007 to the orders placed
16 from January 9th through February 28th to determine if the
17 business practice changed -- let me see. The business
18 practice changed after the clinics were informed of the
19 infection. The clinics operated for seven weeks in 2000 --

20 MR. WRIGHT: Objection --

21 BY MR. STAUDAHER:

22 Q Don't -- don't read it. Just tell us -- just
23 tell us what your analysis showed.

24 A Okay. My analysis showed that they were -- that
25 the orders changed dramatically. Let me find my summary. I

1 -- I broke it down by -- by the supplies. So do you want me
2 to talk about the bite blocks?

3 Q That's exactly what I want you to do.

4 A Okay. In --

5 Q And what Bates numbered page are you on for
6 counsel? Just so --

7 A I'm on 5210.

8 Q Okay.

9 A The bite blocks that they ordered, they ordered
10 1,400 bite blocks in 2008. In 2007 they ordered 3,250. So I
11 broke it down by week.

12 Q So for the first two months of the year they
13 ordered --

14 A Fourteen hundred.

15 Q So almost half as many -- I mean, when you look
16 back, but twice that number essentially is what they ordered
17 for the whole prior year; is that correct?

18 A Right.

19 Q Okay. Go ahead.

20 A Do you want me to tell you what it was by week?

21 Q You broke it down by week?

22 A I broke it down by week.

23 Q Okay. Tell us what it was by week.

24 A In 2007 they ordered 62.5 bite blocks and had
25 approximately 145 procedures per week. In 2008 they ordered

1 234 bite blocks per week.

2 Q So a lot -- a lot more?

3 A Yes. I didn't count procedures in 2008.

4 Q Fair enough.

5 A Okay.

6 Q Go to your -- go to the next supply that you're
7 talking about and give us the Bates number when you get there.

8 A Okay. It's 5214 is the Bates number. And this
9 is on the propofol vials. In the first five weeks of 2008 the
10 clinics ordered 3,125 vials of propofol. In --

11 Q So the first how many weeks?

12 A Five weeks.

13 Q Three thousand -- how many?

14 A One hundred twenty-five.

15 Q Okay.

16 A In the year 2007 they ordered 11,844 for the
17 entire year. And I broke it down by week. In 2007 the
18 clinics ordered 228 vials per week. In 2008 the clinics
19 ordered 625 vials per week.

20 Q And did you break it down by actual type,
21 meaning 50cc bottles versus 20's?

22 A No.

23 Q In the year of -- after the outbreak, were they
24 ordering the 50cc vials anymore?

25 A No.

1 Q So the bottles themselves were even smaller in
2 size, correct?

3 A That's correct.

4 Q Now, what about the syringes?

5 A In 2000 --

6 Q The Bates number again for counsel?

7 A Bates number 5216. In 2007 they had 36,000
8 syringes, they ordered 36,000 syringes. And the orders placed
9 after January 9th -- wait. I've got it broken down by week in
10 this particular paragraph. The number of syringes ordered per
11 week in 2007 was approximately 692.

12 Q All right.

13 A The number of syringes ordered for five weeks in
14 2008 was approximately 1,040.

15 Q Per week?

16 A Per week.

17 Q Okay. So significant increase in the number of
18 syringes.

19 A That's correct.

20 Q Now, I'm going to go to what's been admitted as
21 State's 176 and ask you a few questions about that. Now, this
22 is the -- again, as we go through, I just want to make sure is
23 it set up the same way where the address is the shipped to
24 address?

25 A That's correct.

1 Q And across the date of the order?
2 A Yes.
3 Q The vendor?
4 A Yes.
5 Q What the item is?
6 A Yes.
7 Q And in this case the first portion of this is
8 10cc syringes, correct?
9 A Yes.
10 Q And that's -- if I understood you correctly, is
11 what you understood they used for the propofol administration.
12 A That's correct.
13 Q Go across to the last portion of this where it
14 has, again, the units -- when it says BX, is that box?
15 A That's box.
16 Q So this is the number of boxes?
17 A Yes.
18 Q And when it says amount, is that how many there
19 are in each box?
20 A Yes.
21 Q And then the number of syringes total was just
22 the calculation of those two?
23 A Yes.
24 Q And then obviously, this price -- there's a
25 price on this one but it's got the vendor on it as well.

1 A That's correct.

2 Q Now, if we go across to this first record here,
3 it starts -- and it looks like in 2006. Do you see that?

4 A Yes.

5 Q Very first one is a December of 2006 date and it
6 has a Burnham location.

7 A Yes.

8 Q Okay. I'm a little confused on that because
9 this is 50cc syringes, it's not the 10cc.

10 A Right. That one wasn't included in my
11 calculations.

12 Q Okay. So when you did your analysis for the --
13 those summary charts, it doesn't include something like that
14 in it?

15 A Right.

16 Q Just the 10cc syringes?

17 A That's correct.

18 Q And we go down here and we look just at the
19 dates for 2006. And again, the issue -- the only issue if --
20 if I'm clear on this, where there was any discrepancy between
21 2006 and 2007 on what you could get from the vendors went to
22 the propofol and not the syringes.

23 A That's right.

24 Q When we look at the records in 2006 for the
25 orders, January, February, March, April, May, June, July,

1 August, September, October, November and December, not missing
2 a month there at all.

3 A No.

4 Q So they ordered syringes every single month that
5 -- that year.

6 A That's correct.

7 Q Now if we move down to 2007, January, February,
8 March, March, April, May, June, July, August, September,
9 October, November and December; is that right?

10 A That's right.

11 Q And all of these again were all 10cc syringes?

12 A That's right.

13 Q So they were ordering -- and you came up with a
14 total for the year ordered in 2007 of 36,000 syringes.

15 A That's correct.

16 Q This record that you have up here, and I'm
17 talking about the one that was -- the one from the Federal
18 authorities?

19 A Yes.

20 Q And that is State's 174. And have you ever seen
21 this report shown to you by the counsel in Court today -- or
22 yesterday?

23 A No.

24 Q Okay. And you've had a chance to read it?

25 A This morning.

1 Q Is there anything in here that indicates that
2 there was some discrepancy -- some issue with how you analyzed
3 anything?

4 A Not that I read.

5 Q Okay. And, in fact, it just talks about the
6 fact that they couldn't reconcile it just like you said you
7 couldn't reconcile it for 2006.

8 MS. STANISH: I'm sorry, Your Honor, may --

9 MR. WRIGHT: Approach?

10 MS. STANISH: -- may we approach?

11 THE COURT: Sure.

12 (Off-record bench conference.)

13 BY MR. STAUDAHER:

14 Q Just a couple of ground rules here. You knew
15 that yesterday when you left here you shouldn't talk to
16 anybody about your testimony?

17 A That's right.

18 Q Did you call me and talk to me?

19 A No.

20 Q Did you call Ms. Weckerly and talk to her?

21 A No.

22 Q Did you call Mr. Whitely or anybody else from
23 Metro or any other person and talk to them about your
24 testimony?

25 A No.

1 Q About what you were going to say about what has
2 happened -- anything that happened between yesterday and
3 today? Discuss your testimony, review any of the evidence in
4 the courtroom, anything like that?

5 A No.

6 Q Okay. So when I showed you this, you were shown
7 this document yesterday?

8 A Yes.

9 Q And I showed it to you again today?

10 A Yes.

11 Q And actually read from portions of it, correct?

12 A Yes.

13 Q Okay.

14 MR. STAUDAHER: At this time I'll move for admission
15 of State's 174.

16 MS. STANISH: Object.

17 THE COURT: All right. 170 --

18 MR. WRIGHT: Can we approach the bench?

19 THE COURT: This is her report?

20 MR. STAUDAHER: This is the report that she was
21 cross-examined on.

22 THE COURT: Okay. Well, I think it's -- it's hearsay
23 and I don't know --

24 (Off-record bench conference.)

25 THE COURT: -- see an exception to that under the

1 hearsay rule, Mr. Staudaher. So the exhibit is not admitted.

2 MR. STAUDAHER: Can we at least make it a Court's
3 Exhibit?

4 THE COURT: Yeah, it will certainly be that.

5 BY MR. STAUDAHER:

6 Q Now, I'm going to move away from -- from that
7 analysis issue for the moment. Okay? And I want to go to the
8 chart issue that -- that Mr. Santacroce went over on
9 cross-examination with you. And I believe -- where are they?
10 I think I've got them up there with you. I'm going to put up
11 on the board, on the easel here, one of these and I'm going to
12 have you come down in just a moment because it's a little
13 difficult and I'm going to try to do it as we can for the
14 moment. Okay?

15 A Okay.

16 Q Now, it's regarding 156 and this is obviously
17 just a portion of 156. I know it doesn't come up very
18 clearly. But it's my understanding that the last column in
19 this record over here, which is marked report time, is what
20 you believed was the most accurate of the times that you saw.

21 A That's correct.

22 Q And that's why you used that to order this chart
23 using the spreadsheet program, correct?

24 A That's right.

25 Q Now, this is -- these are just numbers in a

1 spreadsheet and information in a spreadsheet program, correct?

2 A Yes.

3 Q Could you have gone back and ordered it any,
4 many different ways, by CRNA, by this first, by that second,
5 different things like that to come up with the order?

6 A I could, yes, and I did.

7 Q You did? So you did that multiple times and you
8 believed that this was the best one that you could come up
9 with?

10 A That's correct.

11 Q Now, again, the numbers -- the information that
12 is contained in this chart and we've taken off your comment
13 section --

14 A Right.

15 Q -- is there anything about this, any portion of
16 this that is not contained in the actual records that you
17 derived the information from?

18 A Just that Michael Washington X.

19 Q And that's on the other record, correct?

20 A And that's on the record, but this -- no, this
21 is all from the records from the clinic.

22 Q Okay. So the two -- last two columns, actually
23 the last three columns over here, the one that says report
24 time, the one that says monitor read two and the one that says
25 tape read one, do you see those?

1 A Yes.

2 Q Those are actual -- actually computer generated
3 machine times, they don't rely on -- well, I guess the report
4 time relies on somebody actually putting in the start and
5 putting in the stop at the end of the procedure, correct?

6 A That's correct.

7 Q But the actual computer would generate the time
8 when that occurred, either start or stop, correct?

9 A Yes.

10 Q Now, with regard to the monitor read two line,
11 it's my understanding that that is that sort of EKG tracing,
12 the one that occurred in the room off of again, a computer
13 generated report.

14 A That's correct.

15 Q That you received at various times from the
16 beginning of the procedure to the end of the procedure, that
17 kind of thing.

18 A Yes.

19 Q And at the last one is supposedly out in the
20 recovery room with a -- a similar device that has times on it
21 that -- that are machine generated, correct?

22 A Yes.

23 Q Now the issues that have come up in this case
24 that we've discussed with you relate primarily, do they not,
25 to the first -- or the last two columns, which are the things

1 that occurred inside the procedure room.

2 A Could you restate -- state that?

3 Q The issues and one of the reasons why it's
4 sorted in this particular way is that the issues in this case
5 pertain to what happened inside the procedure room primarily.

6 A Yes, that's correct.

7 Q So inside the procedure room, we already know
8 that when we -- when we look at the other records over here,
9 that these are ones that are primarily written by a person
10 onto the record and then you extracted that information and
11 put it into the chart.

12 A Yes.

13 Q With regard to the nurses record, it appears as
14 though from this record, that a lot of times it seems to match
15 or be fairly close to the actual tape read one -- or excuse
16 me, the monitor read two record that came out of the room; is
17 that fair?

18 A I hadn't noticed that before, so give me a
19 minute.

20 Q Okay. If you didn't analyze it, I don't want to
21 ask you about it. Okay?

22 A Okay.

23 Q But you -- in relying on these records, as Mr.
24 Santacroce, when he was up there asking you questions about,
25 well, you know, obviously this is -- this person was here and

1 then they were down here and so forth, can you say with any
2 degree of -- of confidence, that the accuracy of these records
3 that you -- you produced, I mean we're talking about the
4 numbers and -- are, in fact, accurate?

5 A I have no idea if they're accurate.

6 Q They're just an accurate representation of
7 what's in the record that you then used to populate this
8 chart.

9 A That's right.

10 Q In fact, what I want to do is I want to go
11 through a couple things with you, specifically related to this
12 last column, which you believe was the most accurate of all of
13 them to sort by.

14 A Yes.

15 Q And I'm going to go ahead and zoom in on that.
16 Let me do something here. Now, I may have -- I'm going to try
17 this with this thing, we may have to go to the board, but I'm
18 going to try this and I may have to slide back and forth
19 because the part that I want to get to is -- is --

20 MR. STAUDAHER: I'm sorry?

21 MS. WECKERLY: The big chart's sort of blocking the
22 screen.

23 MR. STAUDAHER: Oh, it is? I'm sorry. And if you
24 have to step down, please be careful.

25 A Okay.

1 BY MR. STAUDAHER:

2 Q Is that better? Can all the jurors see the
3 chart? I want to specifically look at -- at this one column.
4 Okay? And are you a physics major at all?

5 A No.

6 Q Have you ever studied time travel, anything like
7 that?

8 A No.

9 Q Just want to make sure before I start asking
10 these questions. Now, again on the right-hand column, very
11 right-hand column is a reproduction of the patients' names and
12 numbers that are on the far left of the -- of the chart. So
13 I'm not going to try to slide back to get to those. Okay?

14 A Okay.

15 Q Because we can see that on these records that
16 Kenneth Rubino and -- this one here you said was for Lakota
17 Quannah.

18 A Yes.

19 Q Although it's designated as 55c. And then we
20 have Rodolfo Meana?

21 A Yes.

22 Q And then we have a number of designations for
23 the rest of them; is that fair?

24 A That's fair.

25 Q Now I want to go to -- and this is the only time

1 I'm going to have to do this, but for patient number five, do
2 you see patient number five right here?

3 A Yes.

4 Q Actually it's that particular patient, number
5 five, and I have to do it for this one purpose. I'm going to
6 slide all the way across. This patient number five. So there
7 -- so we're talking about the patients are ordered -- the
8 total number of patients in this column here and then they
9 have a patient number, which designates their actual chart,
10 correct?

11 A Yes.

12 Q Okay. And, again, then there's a file number
13 that goes along with that. And I know that there were names
14 here originally in your chart, but we've redacted those so --
15 for privacy purposes for those -- the people who were not
16 directly tied in this case.

17 A That's correct.

18 Q On number five, if we go to number five, when
19 we're down here on patient five, the next one is a blank. Do
20 you see that before we get to six?

21 A Yes.

22 Q And if we go across and look at that particular
23 patient -- or that particular five, does it appear as though
24 this one -- this one patient had two procedures on the same
25 day?

1 A Yes.

2 Q And, in fact, if we go across and look, it shows
3 that he had a colonoscopy and then an upper endoscopy.

4 A Yes.

5 Q Now, we already know the issues with this
6 particular column here, which is the anesthesia record. So
7 I'm going to slide back across now to this particular portion
8 where if we get to five, let me go across here, it would be --
9 starts off -- and let me -- let me just do this to make sure
10 everybody's -- I don't want to be the one to -- to mislead
11 here. So patient number nine, patient number -- number nine
12 and number 10, those two files relate to patient number five,
13 correct?

14 A Correct.

15 Q So if we go back across, I'm sorry, this is the
16 last time, you've got number nine and number 10?

17 A Yes.

18 Q So that's the same patient, correct?

19 A Yes.

20 Q Different procedures.

21 A Yes.

22 Q If we go to this purple column, which is the
23 report stop time --

24 A Uh-huh.

25 Q -- and the report -- and then the white column

1 that's the report end time, if I understand correctly and I've
2 got the record, we can show it to you again if you need to,
3 computer generated, somebody populates the chart in the room
4 at the beginning of the procedure, whether it's the doctor or
5 a staff member or somebody, they do that --

6 MR. SANTACROCE: I'm going to object as to how she
7 has this knowledge that it was populated in the room.

8 THE COURT: Well, okay --

9 MR. SANTACROCE: All she said --

10 MR. STAUDAHER: Fair enough. I'll ask it a different
11 way.

12 THE COURT: -- ask -- okay.

13 BY MR. STAUDAHER:

14 Q I'm going to represent to you that the testimony
15 in this case has been that's how it happens. That the doctor
16 or the nurse or somebody populates that chart, populates that
17 record for that patient by entering some information about the
18 patient.

19 A Okay.

20 Q It generates the start -- or a note initiated
21 time on the chart, which if I believe -- I understand
22 correctly, is where you put down the procedure start time.

23 A Yes.

24 Q The procedure end time, I will represent to you,
25 is when the doctor is finished with the procedure, just before

1 the patient get -- they're getting ready to go out of the
2 room, goes over to the computer and does the various things,
3 makes his notes, clicks off on that and that's when the
4 procedure ends for the doctor.

5 A Okay.

6 Q Maybe a minute, 30 seconds, whatever it is
7 before that patient rolls out of the room, that that is the
8 time window. The computer at the beginning, computer at the
9 end.

10 A That's correct.

11 Q And you -- you've been in -- in the clinic,
12 there's not two separate computers in those rooms, right?
13 There's one sort of monitor for the procedure, correct?

14 A That's right.

15 Q If you look, starting on patient number five,
16 which is -- excuse me, patient number five, which is -- this
17 one is designated nine and 10. If we go across and we look at
18 the start time of the first procedure for that patient, do you
19 see it says 8:12?

20 A Yes.

21 Q And the end time for that first procedure is
22 8:33?

23 A Yes.

24 Q Do you see if we go down to the very next one,
25 it is the start of the second procedure was at 8:14?

1 A Yes.

2 Q And the end time was 8:25?

3 A Yes.

4 Q So within -- somehow within that window of his

5 first procedure he had the computer repopulated, regenerated

6 within the procedure, according to the record --

7 MR. SANTACROCE: I'm going to object as to who he

8 was.

9 THE COURT: Well, the --

10 MR. STAUDAHER: The patient, he/she. I'm sorry.

11 Well, I didn't mean a he/she, I mean that it was -- he or she.

12 Or, well --

13 THE COURT: A person. Some person of unknown gender.

14 BY MR. STAUDAHER:

15 Q Was in the room, correct?

16 A Could you -- could you --

17 Q Is that -- is that --

18 A -- say that again?

19 Q That's a bad -- maybe that's a -- we got a

20 little discombobulated there. But clearly, we've got the

21 second procedure occurring within the time, according to that

22 record, we're relying on that record.

23 A Yes.

24 Q On this first procedure?

25 A That's right.

1 Q So if we go down -- and let's just go down to
2 Rodolfo Meana. Do you see him on the record here?

3 A No. You're pointing to Kenneth Rubino.

4 Q Oh, I'm sorry. Kenneth Rubino, then I need to
5 go down to Rodolfo Meana, right down here.

6 A Yes.

7 Q Rodolfo Meana. So if we look over here and we
8 see what the start time of the procedure was, it was eight --
9 or 10:22. The procedure ended at 10:36.

10 A Yes.

11 Q Now, Mr. -- in this case Meana would supposedly
12 have had to have left the room, a new patient come into the
13 room, be hooked up. Whoever starts populating the new chart
14 does so in that room. This is one room sorted and the bottom
15 is a different room and you knew that because of the computer
16 glitch in this very record on the second -- in the second
17 room.

18 A That's correct.

19 MR. SANTACROCE: Your Honor, I'm going to object to
20 this leading line of questioning. I mean there's a
21 narration --

22 MR. STAUDAHER: Well, let me go through, I'll --

23 MR. SANTACROCE: -- before every question.

24 THE COURT: Okay. Try not to, you know, lead. Okay,
25 there's a glitch and how did you know again that there -- I

1 mean it's -- it's -- we covered a lot of this so I mean
2 he's --

3 MR. STAUDAHER: I know. I just want to make sure
4 we're on the same page here.

5 BY MR. STAUDAHER:

6 Q The record as it shows here is sorted top and
7 bottom, correct? I mean we've got -- we've got a section of
8 record above and a section of record below, which you've
9 sorted into rooms.

10 A Yes.

11 Q And how did you sort the rooms again?

12 A By the -- the date that was wrong on the one set
13 of rooms from the computer in one room.

14 Q Okay. So there also is another error in the
15 computer.

16 A That's correct.

17 Q But that allowed you to sort the rooms.

18 A Yes.

19 Q So back up here, again with Mr. Meana, his
20 procedure ends at 10:36 and the next patient in that room
21 somehow starts before he leaves at 10:34. Do you see that?

22 A Yes.

23 Q Now, if we go down to number 15, we see that the
24 procedure ends at 10:55. Do you see that?

25 A Yes.

1 Q And the procedure -- the next patient again
2 starts before that patient's procedure is even done.

3 A Yes.

4 THE COURT: And let me just clarify. Both of these
5 numbers, the 10:55 number and the 10:53 number, they're both
6 coming off the computer?

7 THE WITNESS: Yes.

8 THE COURT: Okay.

9 MR. SANTACROCE: What -- what computer?

10 THE COURT: The computer in -- as you understood it
11 in the procedure room.

12 THE WITNESS: Yes.

13 THE COURT: That's the record that you're looking at?

14 THE WITNESS: Yes.

15 THE COURT: So both of these numbers are computer
16 generated.

17 THE WITNESS: Yes.

18 THE COURT: Okay.

19 MR. SANTACROCE: But, Your Honor, there was two
20 computers.

21 THE COURT: Well, I -- I mean, you can clarify that.

22 MR. SANTACROCE: Okay.

23 THE COURT: I'm trying to --

24 BY MR. STAUDAHER:

25 Q I'm -- I'm talking about the one that the

1 doctor --

2 THE COURT: I'm trying to understand the chart as
3 well.

4 BY MR. STAUDAHER:

5 Q That's fine. And let's make sure we're clear on
6 this. This column here is the report record and let's just be
7 completely clear. I'm going to grab Stacy Hutchinson's chart,
8 Exhibit Number 5, as an example, and I'm going to show Bates
9 numbers 260, 2648 and 2649. And I know that this is -- I
10 don't -- I'm just going to show them to you up here because I
11 don't want to do the zooming in and out. You see these
12 records?

13 A Yes.

14 Q Do you see on the second page there is a note
15 initiated time and the end?

16 A Yes.

17 Q And the procedure -- where it says report time,
18 this is the record that you were using?

19 A Yes.

20 Q Okay. So that column relates to what the doctor
21 or whoever put that information into the computer, not the
22 actual anesthesia [indiscernible], correct?

23 A That -- it's the computer that generated that
24 report.

25 Q Okay. So we're clear on which computer we're

1 talking about. So as we go down the line, we were last on I
2 think 15, went to 15 was 10:44 and that -- or excuse me, it
3 was the 10:55 end time for 15 and then the next patient starts
4 two minutes before that patient gets out of the room.

5 A Yes.

6 Q Now, if we go down to Ms. Martin, is that still
7 on the screen?

8 A Yes.

9 Q Ms. Martin, we do the same thing. We look over
10 here at the end time for Ms. Martin is 10 -- is 1324?

11 A Yes.

12 Q And --

13 MR. SANTACROCE: Your Honor, I've got to object to
14 this. The document speaks for itself. She testified --

15 THE COURT: Okay, overruled. He can --

16 MR. SANTACROCE: -- she had no idea --

17 THE COURT: -- orient her to what he's asking about
18 and then we're looking at 1322, which is obviously two minutes
19 less than the purported end time of Ms. Martin.

20 THE WITNESS: That's right.

21 THE COURT: Let me ask you this. These two columns
22 of numbers are coming off the same computer, correct?

23 THE WITNESS: Yes.

24 THE COURT: Okay. So the computer is generating an
25 end time for one patient and a start time for a different

1 patient that's two minutes less than the time it's generating
2 as an end time.

3 THE WITNESS: Yes.

4 THE COURT: Is that what's happening?

5 THE WITNESS: Yes.

6 THE COURT: Okay.

7 MR. SANTACROCE: Your Honor, I object to the --
8 you're asking her to interpret the data --

9 THE COURT: No, no. I'm asking her if it's the same
10 computer as opposed to two different computers.

11 MR. SANTACROCE: But you asked her the -- the times
12 and she testified I have no idea the accuracy. That's for the
13 jury to decide, Your Honor.

14 THE COURT: I'm not trying to determine. Maybe I
15 didn't make myself clear. I'm trying to just determine --
16 we're talking about a single computer that's generating these
17 numbers; is that correct?

18 THE WITNESS: Yes.

19 BY MR. STAUDAHER:

20 Q Now, I want to go down here to --

21 THE COURT: Of course, ladies and gentlemen, what it
22 all means is entirely up to you.

23 BY MR. STAUDAHER:

24 Q I want to go down to page -- patient 38. Do you
25 see that?

1 A Yes.

2 Q End time is 1411?

3 A Yes.

4 Q Start time is 1409 for the next patient.

5 A Yes.

6 Q And there's a series of them after this. So the
7 next one is 15 -- it starts -- ends at 1435?

8 A Yes.

9 Q The following patient starts two minutes before
10 that at 1433?

11 A Yes.

12 THE COURT: I think you've made the point, Mr.
13 Staudaher.

14 BY MR. STAUDAHER:

15 Q Okay. And it goes on --

16 THE COURT: I don't know how many of these we're
17 going to go through.

18 BY MR. STAUDAHER:

19 Q -- in this whole room, correct?

20 A Yes.

21 Q Now, I want to also look to the next column,
22 which would be the one that Mr. Santacroce said was the other
23 computer in that same room, which would have been the
24 anesthesia one with the tracing that we saw.

25 A The monitor?

1 Q The monitor.

2 A Yes.

3 Q And it's titled monitor -- let's go up here,
4 monitor read two.

5 A Yes.

6 Q So two computers now, we're looking at the
7 second computer. I'm going to do the same thing with the
8 second computer, talk about accuracy. Now, number five, as we
9 recall, was nine and 10 and let me try and see if I can get
10 all of that on there. So nine and 10, those columns, and I'm
11 going to keep my finger on it as I slide it -- oh, there it
12 is. We got it all on the screen. Okay. So if we look across
13 on nine and 10, the procedure -- first procedure for that same
14 patient went -- started at 8:23 and went to 8:34?

15 A Yes.

16 Q The next procedure on that patient started at
17 8:18 and went to 8:29.

18 A Yes.

19 Q Within the window time of the first procedure.

20 A Yes.

21 Q According to the record of that computer.

22 A Yes.

23 Q And if we go down to 14, where is 14, right
24 there. Okay. So 14 is right here and we go across and we
25 look here, we have the procedure here starting -- or ending

1 for that patient at 9:02 and the next procedure is starting
2 for the next patient -- and this is off of the anesthesia
3 computer, nobody's involved in inputting information into
4 that, correct? I mean, to your knowledge.

5 A To my knowledge, no.

6 Q And that procedure actually starts at --

7 MR. SANTACROCE: Your Honor, I've got to object to
8 that --

9 THE COURT: Yeah, I'm going to sustain -- I'm going
10 to sustain as to who inputs and that's beyond what her role
11 was, so that's sustained.

12 MR. STAUDAHER: Fair enough.

13 BY MR. STAUDAHER:

14 Q So the procedure before ended at 9:02 and the
15 new -- next procedure on the next patient, according to that
16 computer, starts at 8:57.

17 A Yes.

18 Q And then for Rodolfo Meana, again, we look at
19 that one, we go across and do the same thing, procedure for
20 him ends at 10:35.

21 A Yes.

22 Q The next patient's procedure starts at 10:34.

23 A Yes.

24 Q And if we go to the last one, last one of these,
25 Your Honor, on this one, is going down to 34, patient number

1 34, and we come across. Patient there ends at 1334, the next
2 patient starts at 1331.

3 A Yes.

4 Q Not -- I want to look at one more place, that's
5 on -- I'm done with that room. Let's go to the bottom row.
6 See if anything like that happens in the other -- in the
7 procedure one -- the one that you felt was the most important
8 to sort on. Go to patient 22, go across and look at -- at the
9 start time of -- or the end time rather here is 9:39.

10 A Yes.

11 Q The next patient starts at 9:37.

12 A Yes.

13 Q Go down to Ms. Grueskin. And we see that Ms.
14 Grueskin's procedure ends at 10:31, next patient starts at 10
15 -- excuse me, 12:31 and the next patient starts at 12:30.

16 A That's correct.

17 Q Her procedure, that next patient's procedure
18 ends at 1301 and the following one -- following patient's
19 procedure starts at 12:59.

20 A Yes.

21 Q Okay. One day, two different rooms, same issue
22 going on.

23 A That's correct.

24 Q And I'm not going to go through as many of them,
25 but I'm going to -- try to look at the 25th now.

1 A Okay.

2 Q So we've got that record on the chart or on the
3 screen rather. Let's start off with report time and this one
4 is not -- this one is not as significant except for the fact
5 that in -- under the monitoring, which is that second computer
6 in the room that you understand, the one that --

7 MR. SANTACROCE: I'm sorry. What date are you on?

8 MR. STAUDAHER: The 25th now.

9 BY MR. STAUDAHER:

10 Q That every one of the procedures is exactly 11
11 minutes long and that's computer generated, according to this
12 record, at least in this room on that date --

13 A Yes.

14 Q -- correct? And if we look specifically down
15 here at -- slide it over if I can get it over there, patient
16 28, 11:57 is when that patient -- have I got my finger on it?
17 There we go. Sorry. 11:57 is when that patient's procedure
18 ends, according to the monitor, and 11:40 is when the next
19 patient's procedure begins.

20 A Yes.

21 Q On that same patient, 28, let's slide back over
22 here. On the report time, that's the other computer in that
23 room, patient's procedure ends at 12:48 and the next patient's
24 procedure begins at 11:37.

25 A Yes.

1 Q Going down to the second room on that same day,
2 I'm just going to do the report time issue over here. Going
3 down to patient 30.

4 A You're off the screen.

5 Q Again, there's some -- there's some other glitch
6 obviously with the -- because it's an hour -- an hour and
7 something minutes, correct?

8 A Correct.

9 Q So if we just looked at the last two digits --

10 MR. SANTACROCE: Your Honor, I have to object. He's
11 acknowledging a glitch and then he's trying to argue that the
12 chart times are all wrong.

13 MR. STAUDAHER: Well, I can point out what's on
14 the --

15 MR. SANTACROCE: He's interpreting the numbers that
16 she put on the chart with no foundation. That's my objection.

17 THE COURT: All right. Mr. Staudaher --

18 MR. STAUDAHER: Fair enough. I'll just read the
19 numbers straight --

20 THE COURT: -- just read the numbers and, you know,
21 anything as to what they mean is, you know, argument. The
22 numbers kind of speak for themselves. Although you can
23 highlight particular numbers by reviewing the chart with her
24 if that's what you choose to do. Okay?

25 MR. STAUDAHER: Sure.

1 BY MR. STAUDAHER:

2 Q So on that, just so we're clear on that, and I'm
3 not going to interpret this, I'm just going to want to point
4 it out. Procedure -- this is that report one, the one we
5 showed you. This -- these are the times of the procedures
6 according to the computer on that entire day, both rooms. I'm
7 going to go down the whole line.

8 A Yes.

9 Q And they appear to be at least an hour and
10 something minutes for every single entry, correct?

11 A Yes.

12 Q Every single one of them.

13 A Yes.

14 Q And there were a total of 65 patients that day?

15 A Yes.

16 Q Now, going back, I just want to do these last
17 few and then I'm finished with this. Let's put my finger on
18 the chart here, there it is. So looking at patient -- patient
19 30, procedure here -- where is it? At 13 -- it looks like it
20 had the end time of patient 30 as 1312?

21 A Yes.

22 Q The next patient starts at 12:03, right?

23 A Yes.

24 Q Going down to 46, patient's procedure starts at
25 -- where is it, 46, 1617?

1 A Yes.

2 Q And the next patient's procedure starts at 1454?

3 A Yes.

4 Q And then on 49, patient's procedure starts at
5 1643?

6 A It ends at 1643.

7 Q The next one ends at 1520?

8 A Yes.

9 Q Change your opinion at all about the accuracy of
10 the actual numbers on that record?

11 MR. SANTACROCE: I'm going to object on what her
12 opinion --

13 MR. STAUDAHER: I'm just asking based on that
14 overview.

15 MR. SANTACROCE: -- he's asking again for her to make
16 an opinion based on --

17 THE COURT: That's sustained, thank you.

18 MR. STAUDAHER: Court's indulgence, Your Honor.
19 Court's indulgence.

20 BY MR. STAUDAHER:

21 Q I'd like you to come down with me to this chart.
22 We're only going to do this for the first couple.

23 MR. SANTACROCE: May I approach, Your Honor?

24 THE COURT: You may.

25 MR. SANTACROCE: Thank you.

1 BY MR. STAUDAHER:

2 Q Remember when we got into the whole thing of the
3 injections and so forth that we had talked about yesterday?

4 A Yes.

5 MR. WRIGHT: Can't hear him.

6 THE COURT: Okay. Speak up, Mr. Staudaher.

7 BY MR. STAUDAHER:

8 Q Do you remember when we were talking about the
9 injections yesterday when Ms. Stanish was cross-examining you?

10 A Yes.

11 Q Okay. Now as far as your analysis in those --
12 those records, the straight number of things we talked about,
13 did that -- any of that injection appear on any of those
14 charts?

15 A No.

16 Q Okay. So that's -- those are separate, correct?

17 A Right.

18 Q And I had asked you to look at -- if we gave the
19 benefit of the doubt of a 10cc syringe, that that was full,
20 that it was either predrawn or it was --

21 MR. WRIGHT: Objection. Can we approach the bench?

22 THE COURT: Sure. Yeah, approach.

23 (Off-record bench conference.)

24 THE COURT: All right. Mr. Staudaher, you may
25 continue.

1 BY MR. STAUDAHER:

2 Q So yesterday when -- I get you oriented here.
3 Yesterday at -- when Ms. Stanish asked about how you did your
4 calculations when you did your ratio injections and doses,
5 things like that, do you remember that?

6 A Yes.

7 Q It seemed like there was some differences in how
8 you calculated this or how you came up with the numbers; is
9 that right? Well, let me just ask the question. Originally
10 when you were going through the analysis, how did you
11 determine how many syringes you believed would be used in a --
12 in a case or in a -- in a particular day? What did you look
13 at?

14 A For syringes?

15 Q For syringes.

16 A I looked at -- I'm sorry.

17 THE COURT: And you need to hold it close up --
18 that's good.

19 THE WITNESS: Okay. I looked at the -- the amount.
20 So I added 50 and 50 for 100 and that I assumed would be a
21 full syringe.

22 THE COURT: Okay. So -- you -- you need to just be
23 mindful to hold it close because as you were talking your
24 hands going like -- drifting off to the side and it's tougher
25 for us to hear you up here.

1 THE WITNESS: Okay.

2 THE COURT: Okay.

3 BY MR. STAUDAHER:

4 Q Okay. And I -- and I want to make sure when Ms.
5 Stanish was asking you about doses and your ratio that you
6 came up with --

7 A Yes.

8 Q -- what were you referring to there?

9 A I was -- I called them injections.

10 Q Okay, injections.

11 A And I count every one of these as an injection.

12 Q Okay. And did you do something in your
13 analysis, overall, related to that issue?

14 A I'm sorry. Could you ask me again?

15 Q Did you do something to figure out a ratio or
16 some kind of -- I'm talking about back when you were looking
17 at all this. And I know --

18 A At the injections?

19 Q At the injections.

20 A Okay.

21 Q Did you do anything with the injections to come
22 up with some sort of analysis initially related to that?

23 A Yes, I did.

24 Q And what was that, just so we're clear.

25 A I applied one vial, one syringe to one patient.

1 Because they had larger vials, I knew that they needed one
2 syringe for every time they went into the vial. So I took
3 each injection would require a new syringe.

4 Q So that's what you did back then when you were
5 doing the analysis?

6 A Yes.

7 Q Now any of the charts that we're talking about
8 over there that have been admitted as evidence that you
9 testified about, do they take into account that injection
10 issue?

11 A No.

12 Q Okay. Now after -- after you did that initial
13 analysis, the thing that you just testified about is what I
14 want to ask you. If you assumed that a full syringe was 10cc,
15 10 milliliters, and it contains 100 milligrams of propofol --

16 A Yes.

17 Q -- if you assume that and you look at those as
18 you called them injections, how many syringes would you need
19 to -- to do all of those injections?

20 A Well, it would depend on how many doses each
21 patient got.

22 Q Certainly. But did you -- well, let's look at a
23 -- the first file, please. Can you tell me how many syringes
24 per patient you would need based on that?

25 A Okay.