MS. STANISH: Yeah, I think it's up there.

THE COURT: I think it's --

THE WITNESS: DD-1?

BY MR. STAUDAHER:

Q DD-1.

A Is that correct?

Q I'm going to leave that with you so that you've got it if you need it. A couple things I want to ask you about related to this. First of all, this is the date up here is the 25th of July of 2008; correct?

A Correct.

Q So this would have been if the infection occurred to Mr. Meana in September 2007. We're talking about the next year, mid-summer.

A This is approximately ten months after that.

Q So in this report, the part that you were asked about, and I'm going to zoom in on this a little bit so that we can see it. The part you were asked about was here where it said related to the diagnosis chronic hepatitis, clinically hepatitis C, and then it comes across here and it says with immediate -- or moderate activity Grade 3/4. What does moderate activity Grade 3/4 mean?

A That's the degree of inflammation. So you look at the inflammatory cells in the liver and you grade it.

Q So he -- his liver was pretty inflamed then at

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that time?

A Well, it's exactly what it says, it's moderate inflammation Grade 3 of 4. I don't know what pretty means, but that's a pretty good --

Q Well, your --

A -- that's a good --

Q Give me the range.

A -- pathological description.

Q What does 3 of 4 mean?

A They grade it from zero to 4. This would be considered moderate.

Q Okay. So what to you does -- if you have a scale of 1, 2, 3, 4, and 3 is what we're looking at here, is that significant inflammation?

A I would say that's moderate inflammation.

Q Is it significant?

A It's moderate. I can't answer that. I'm sorry.

Q So when we look down here where it says periportal fibrosis, what does that mean exactly?

A That means fibrosis or scar tissue that's extending beyond the structures in the liver known as portal tracts. So portal tracts are these areas all throughout the liver where an artery and a vein and a bile duct can be found that enter and exit the liver. And those areas, when you have

many types of hepatitis, not all, but many types of hepatitis are the first areas that get inflamed. And this means -- periportal means it's beyond the portal tract, it's periportal, extending beyond the portal tract.

Q Okay. This is still within the liver, though.

A This is within the liver. This is a microscopic portion of the liver, right.

Q Now, you said, if I understood you correctly, that you don't know that this was caused by hepatitis C; is that correct?

A I can't say that all that fibrosis was caused by hepatitis C, no. It would be very atypical.

Q You're familiar with the medical records of Mr. Meana?

A Yes.

Q You've reviewed all the pre-2007 September medical records available; correct?

A I've reviewed what I was given. That's what I reviewed, yes.

Q Well, what were you given?

A I was given not that many medical records prior to September 2007. There were a few medical records from his primary care doctor, and there was maybe one or two sets of labs in there. I don't have records going further and further back.

Q In the medical records you saw, limited as they were, did you see any evidence that he had fibrosis, liver disease, anything like that? Any of his labs or reports, anything like that?

A You can only tell that by liver biopsy, which he hadn't had.

Q I'm asking you based on the liver studies, whatever you saw as part of the medical records. Was there any evidence at all that he had any kind of liver disease prior to September 2007?

A There was evidence of liver disease, which were these dilated extra hepatic bile ducts, or a process that could affect the liver. Fibrosis you need a biopsy. I can't say whether he had fibrosis or not.

Q So the extra hepatic ducts, and that was in --

A June.

Q -- June of 2007. I'm putting that up right now. June 2007 report; correct?

A Yes, a report of a CT scan, I believe.

Q And do you see where it says CT scan of the abdomen?

A Yes.

Q Now, the part that you mentioned that was significant to you I've highlighted here. It says distended extra hepatic bile ducts, distal obstruction is not excluded,

changes of cholecystectomy. Do you see that?

A Yes.

Q So extra hepatic means what? Outside the liver; correct?

A Yes.

Q And bile ducts -- and it says distal obstruction on this. Let me go briefly again. Distal obstruction is not excluded. What -- what does that mean, distal obstruction?

A That means an obstruction beyond where the bile ducts are dilated. This scan cannot exclude that.

Q Okay. So that would be even further away from the liver; correct? An obstruction potentially?

A In the bile ducts outside of the liver, yes.

Q Now, what would cause the bile ducts to dilate?

A Oh, it could be a stricture, it could be a stone, it could be a tumor, it could be things that are unusual, it could be congenital, there could be many, many causes.

Q But outside the liver; correct?

A But when you have bile ducts dilated outside the liver, it's connected to the liver. You can't image the interior hepatic bile ducts with this type of scan, so you can't look at those.

Q Not my question. The obstruction was away from the liver causing the actual dilation; correct?

A That would be most consistent with this, yes.

Q So the dilation didn't come from something inherent within the liver according to this report; correct?

A Inherent within the liver? No. But it's part of the biliary system that drains the liver.

Q Any indication from this report that there is actual liver disease other than the dilation caused by an obstruction away from the liver?

A Well, this is not the type of test you would do to determine that, so I can't say.

Q So when I asked you if there was any evidence of any liver disease or anything related to it before September of 2007, you pointed to this. So I want to know what part of this you're saying shows liver disease in Mr. Meana.

A I'm saying that the extra hepatic duct dilation suggests there's an obstruction. An obstruction can cause, or a subclinical obstruction, damage to the liver over time. But this test did not look for that specifically.

Q So there is no evidence that you reviewed and had access to that showed any evidence of liver disease prior to September of 2007?

MR. SANTACROCE: I'm going to object to his

categorizing that as evidence. It was a medical record. I think he just misstated.

THE COURT: Well, no, he said he can -- he's -- that's overruled. He can answer if he's seen any evidence --

THE WITNESS: I can --

THE COURT: -- suggesting --

THE WITNESS: Sorry.

THE COURT: -- liver disease prior to 2007.

THE WITNESS: I can say I've seen evidence of a process that can affect the liver.

BY MR. STAUDAHER:

Q Later; correct? A process that could affect the liver later?

A Later?

Q Than this.

A Or at this time. I don't know.

Q I'm going to ask you this the third time. Is there any evidence at all of active liver disease at the time before September of 2007?

A I'll answer it again just by saying I can see evidence of a process that can affect the liver.

Q So the answer is no?

MR. SANTACROCE: Objection, Your Honor.

THE COURT: Overruled.

You can answer. Is the answer no?

BY MR. STAUDAHER:

Q Yes or no?

A And I think I've --

Q Yes or no?

A -- given my answer. You cannot look at the liver itself with this test.

Q That isn't my question. Is there any evidence of disease?

A Yes, of bile duct disease there is evidence. Yes.

Q Now, have you -- have you heard of -- well, I think you've mentioned them, benign cysts in the liver and the kidneys and things like that?

A Yes.

Q And benign to you means what?

A Benign usually means it's not causing any significant problem. In cancer it's not a cancer. It's a mass that doesn't grow or metastasize.

Q In fact, in kidneys, over -- people over the age of 50, typically half the people will have a cyst in their kidney; correct?

A I don't know the number, but it's not uncommon to have kidney cysts.

Q Nothing to do with any disease process, it just happens; correct?

A It's an abnormal process, but it's not serious and not significant.

Q What about the liver? Is that something that happens congenitally? It just -- it just happens, it doesn't cause any real problem?

A People may have benign liver cysts for sure.

Q You were asked about interferon. Do you recall that? Interferon ribavirin, I think, was the combination that you actually studied?

A Interferon-alpha, peg interferon-alpha is what we use to treat hepatitis C, yes.

Q And you studied that back when?

A Oh, I mean, I've been using it clinically for years. The clinical trials I did were probably in the very late '80s to early '90s.

Q Have you done --

A I take that back. I take that back. I'm sorry. It would have been the -- I was at Columbia in '95. It would have been the late '90s to around 2000.

Q Because I've got your reports, your studies, if you want to look at them. Would that help?

A No, the dates were in the late '90s where I did interferon and ribavirin.

Q Okay. Late '90s. So as far as those studies are concerned, what -- what were you studying? What were you

doing?

A Treating hepatitis C.

Q And -- and what did you find? When you -- when you said that you treated, I mean, are there different effects on different genotypes of the virus, I mean, as far as how well it works?

A Interferon-alpha and ribavirin, people with genotype 2 and 3 respond more commonly than people with genotype 1 infections or genotype 4 infections, which are extremely rare.

Q Which, in the scheme of things, a 1, 2, or 3 is going to respond less effectively?

A Well, genotype 1 probably responds to that treatment 40 to 50 percent of the type than genotype 2 and 3, closer to 60 or 65 percent at a time.

Q Okay. So we've got Mr. Meana as genotype what?

A He was 1a, I believe.

Q So he would fall under that 40 to 50 category?

A And looking at the general population for chronic hepatitis C, yes.

Q So if I understand you correctly, 40 to 50 percent of the people that were -- had his genotype will respond positively to interferon therapy; is that correct?

A With chronic hepatitis C, yes.

Q You mentioned acute. What is your definition of acute hepatitis?

A Acute is hepatitis lasting less than six months. That's a generally accepted definition.

Q So after six months we're at the chronic phase?

A You call it chronic. It's somewhat arbitrary, but that's the accepted term.

Q Now, within that time window, is that when people usually will exhibit symptoms if they're going to exhibit symptoms?

A Interestingly, most people with chronic hepatitis C don't exhibit --

Q No, I'm --

A -- symptoms.

Q -- talking about acute. I'm sorry. The acute phase.

A Oh. Interestingly, most people with acute hepatitis C don't develop symptoms. But the ones who do, it's roughly from a month or two after infection up to about six months after infection.

Q So the window would actually -- for that acute time, when you said would be the most effective at treatment would be when people are exhibiting their symptoms then primarily?

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A Well, the truth is actually the sooner you start treatment after an acute infection the better. There's not a lot of data that looks at if you start seven months or eight months or ten months or twelve months, but the general consensus is the sooner you start treatment after an infect, the better the chance of response.

Q So you, as a person who has studied this, you're a hepatologist by trade, essentially; correct?

A Yes.

Q And that's what your specialty is?

A That's what I do clinically, yes.

Q Knowing that someone like Mr. Meana with Type 1a serotype virus, the response rate in the 40 to 50 percent range for that, can you say that Mr. Meana would have responded positively to that -- to that therapy if he had been able to tolerate it?

A Okay. Just a correction, genotype virus, not serotype.

Q I'm sorry. Did I say that --

A We don't serotype --

Q -- incorrectly?

A -- the virus. I can only say he would have roughly a 50 percent chance perhaps if he were treated earlier better because there just are data that suggest the earlier the treatment the better. But I can't give an exact number.

Q So he's got maybe a 50/50 chance at even having it have any effect at all on him?

A I think he has a chance of responding to treatment that was -- I would put roughly in the 50 percent range.

Q And there's clearly side effects related to that treatment?

A Some people have side effects, some people don't. Most people who are treated go through it without having to stop the treatment.

Q Now, related to that, are neurologic conditions -- I'm not talking about related to the end stage liver failure that causes the toxins and the encephalopathy. I'm talking about in general the virus itself and the treatment, interferon with -- what was it, ribavirin?

A Ribavirin.

Q Ribavirin.

A That's okay.

Q With the treatment and -- and the actual infection, were you saying that there is no mental component to this that can be affected, that the virus doesn't affect the brain at all?

A The virus doesn't affect the brain, no. And also I was saying there's no dementia, was the question I was asked.

Q Oh. I'm sorry. So -- well, let's -- let me follow up with that. No dementia.

A No.

Q And the virus does not affect the brain?

A The virus itself does not affect the brain. You cannot find hepatitis C in brain cells or in the central nervous system.

Q I've got four articles here and I want to ask you if you're familiar with any of them. The first one, it was published in Metabolism and Brain Disease, and it's entitled Hepatitis C Virus Infection in the Brain. Have you ever read that article?

A I haven't read it. May -- may I see it? You're asking me --

Q Sure.

A -- to comment on things --

Q Absolutely.

A -- I've never seen.

Q I'll give you a copy. Have you ever seen that one?

A No, I haven't seen this.

Q Okay. I've got another one here called Emerging Evidence of Hepatitis C Virus Neuroinvasion. And I'll give you a copy of that one, too. I've got another one here called Hepatitis C Virus Neuroinvasion Identification of

Infected Cells, Journal of Virology. And one last one. It's entitled Hepatitis C Virus Infection and Health Related Quality of Life.

Now, that last one was in the World Journal of Gastroenterology. The next one was in the Journal of Virology. The next one was in the Journal AIDS, and then the last one was in the Metabolism and Brain Disease Journal, as well. All of those related to actually infection in the brain, virus getting into the brain. You say you're unfamiliar with this at all?

A Hepatitis C virus does not infect brain cells. You can show me all the articles like this you want. This does not prove anything. These are publications that are suggestive.

Q Suggestive. If we go to the one entitled Hepatitis C Virus Neuroinvasion Identification of Infected Cells, just look at the abstract. I know you haven't had a chance to read the whole thing, but take a moment and read that abstract and tell me again if you believe that that -- there's no evidence whatsoever in any peer reviewed journal that there's evidence of an infection of the virus hepatitis C into brain cells.

A I'm going to need a moment to --

Q Sure.

A -- read this.

Q Take a moment.

A [Witness complied]. Okay. I've glanced through it.

Q Okay. And the other two, the one that says Emerging Evidence of Hepatitis C Virus Neuroinvasion, and also the one that says Hepatitis C Virus Infection of the Brain, if you want to just look at the abstracts of those briefly because it talks about the same neuro-cellular invasion in the brain, all three papers, three different journals.

A Which was the other one you were talking about now? I'm sorry.

Q Hepatitis C Virus Infection and the Brian, the Metabolism and Brain Disease Journal, and also Emerging Evidence of Hepatitis C Virus Neuroinvasion in the Journal AIDS, 2008 and 2005 respectively. Actually, published in 2009 on the first one, 2005 on the second one.

A On this one I do not have the entire paper, I don't believe.

Q Which is that?

A Hepatitis C Infection and the Brain.

Q I'll let you have my copy.

A Okay.

Q Okay. Do not all of those, all three of those, those last three that I gave you, indicate the astrocytes, macronuclear invasion of the virus into the brain,

actually into the brain?

A I would say these three papers prove nothing. These are suggestive papers in second or third tier journals that just point towards more research. This is not generally accepted in the medical community.

Q So the Journal of Virology and AIDS and also the -- what was it the, World Journal of Gastroenterology, the -- what was the last one? Brain Metabolism -- Metabolism and Brain Disease, you don't consider those peer reviewed journals to be any evidence whatsoever of hepatitis C virus infection in the brain or proof thereof?

A Any suggestive evidence whatsoever, or does this conclusively prove that hepatitis C virus can damage the brain by infecting it? Those are two very different questions for me.

Q Well, does it revise your opinion at all --

A These papers --

Q -- seeing that there's some -- there's some literature out there on this very subject?

A No. In fact, I --

Q Because you were fairly unequivocal that there was no evidence whatsoever --

MR. SANTACROCE: Your Honor, I'm going to ask him to finish his last answer.

THE COURT: Yeah, let him.

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You can finish.

THE WITNESS: Well, may I read a few things from these papers?

BY MR. STAUDAHER:

Q If you wish.

A Because you're asking me --

Q Go ahead.

A -- to look at abstracts and titles. In fact, look at Hepatitis C Infection and the Brain, their last paragraph. This still hypothetical scenario connecting HCV infection and functional CMS changes could be summarized as follows. This still hypothetical scenario. Okay. We're dealing with hypothetical here. Okay.

In your prestigious journal Metabolism and Brain Disease, which I've never heard of before, while the HRQL reduction in depression may be discussed as caused by multiple factors, blah blah blah -- here we go -- it is suggested that alterations in brain function also play a role. I mean, these are the type of literature that are small studies, suggestive, oh, we did microcapture microscopy and we were able to amplify hepatitis C virus RNA from a few brains.

That is a far cry from saying that hepatitis C virus infects the brain. Now, I'm a peer reviewer for many journals. I'm an editor of medical journals, an editor of a scientific journal. There is a big jump from saying this

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proves anything to that this is suggestive -- some suggestive laboratory test.

Q Fair enough. So when it talks about detected CD69 positive cells and HCV RNA also found in astrocytes which are contained in the brain; correct? It's talking about the HCV RNA is contained in the astrocytes within the brain. Does that not mean that it's in the brain?

A Can I say that from this? Absolutely not. Do I know he's actually looked at astrocytes? Do I know there was no contaminating cells in the sample? This is just not mainstream accepted medical stuff. This is suggestive stuff from a few laboratory experiments. I can tell you that's how the medical literature works. You make an observation, you publish it, it needs further testing. You won't find this in a review in a New England Journal of Medicine. You won't find this in a textbook. This is very early suggestive stuff that may very likely be wrong. That's all I can say about these papers. I'm sorry.

Q Well, you did say just a moment ago that there was no literature at all, isn't that fair?

A Well, we have to talk about literature at all, or -- I'm sorry, maybe I'm saying is this literature that makes people believe this to a reasonable degree of medical certainty or probability?

Q So the public --

A This is just a paper describing some experiments. That's different than proving cause and effect or anything.

Q So the public medicine website, which is where these came from, which is where a lot of journal articles reside, you don't think that that's -- that's an outlet for medical providers for people looking at this to see whether or not there's any validity to it?

A I guess -- I'm sorry, sir. I guess you don't understand peer review in the medical literature. I'm very sorry. You publish things that are not necessarily facts. You publish observations. This is science. You make an observation. You amplify RNA from a cell from somebody's brain. More people have to do it. Have I seen a bigger series? Have I seen a paper in nature saying that hepatitis C virus conclusively infects the brain? Based on observations published in these small journals we have now proven. That's how medicine works. Not you get a paper from --

Q Fair enough.

A -- this journal published in China and tell me it's proof. I'm sorry.

Q Is that journal published in China?

A This is a Chinese journal, the World Journal --

Q And you're familiar --

A -- of Gastroenterology.

Q -- with it?

A Yes, I am. I even was on the editorial board for awhile or something.

Q Oh, you were even on the --

A Yes.

Q -- editorial board of that journal.

A That's right.

Q This obscure journal that is worthless --

A And I'm not saying --

Q -- as far as the scientific --

A I'm not --

Q -- community is concerned?

A And that does not mean everything is right in there.

Q But you're on the editorial board; right? Or you were.

A To help keep -- to try to help keep papers out that weren't right, except I didn't review every one of them.

Q Okay. But you --

A Okay.

Q -- were on the editorial board of that very journal that I brought up to you.

A The journal where I tried my very best to keep papers out that were not based on solid science.

Q Fair enough. You -- not based on solid science. I'm glad you asked -- you said that because in the case that you -- that counsel asked you about that you actually came in and testified in this -- gave a deposition in this particular city; correct? Related to a non-genetically matched patient?

A An alleged hepatitis C infection, yes. I testified in one case of that.

Q Okay. And in that you said that the patient didn't get hepatitis from the -- from his colonoscopy; correct?

A As best as I was able to tell from looking at all those records, I couldn't say to a reasonable degree of medical certainty that it did.

Q What was your scientific basis for that determination?

A I haven't looked at those records and I haven't looked at that report in a long time.

Q I've got your deposition. Would you like to see it?

A We can go through the deposition line by line if you like. I mean --

THE COURT: Well, no --

MR. SANTACROCE: Your Honor --

THE COURT: -- we can't.

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

THE WITNESS: I mean, I just felt there was no evidence.

THE COURT: But if Mr. Staudaher wants to ask you look at it to refresh your recollection, he's welcome to do that.

BY MR. STAUDAHER:

Q Specifically in that deposition did you not say that you believed that there was no connection, that there was no connection from a scientific or whatever your perspective is, that the person had hepatitis derived from that clinic?

A That person?

Q Yes.

A That person, if I remember correctly, there was a large window where he may have contracted hepatitis, a several month window where anything could have happened.

Q Well, was it not true that even a few weeks before he had had a negative study or a negative test for hepatitis C?

A I can't remember how many weeks before.

Q But you definitively said that he did not get it from the clinic, did you not?

A I said to a reasonable degree of medical probability I couldn't say he got it from the clinic.

Q And other than that clinic, according to the records you reviewed, there was not a single other risk factor that you identified, isn't that correct, other than the clinic?

A I didn't identify the clinic as a risk factor.

Q Oh, I forgot. You didn't identify them, but I'm saying there were no -- taking the clinic aside, there were no other risk factors that you identified?

A In that case, I don't remember. I can look at my report and see what I wrote in there.

Q Do you recall where it is in your deposition, because I can help you with that.

A Yeah, I --

Q And I believe that if you go to page 13, and you can read as much of it before and after as you need to get context.

A Page -- I'm sorry?

Q 13.

A [Witness complied].

Q And then I want you to hop forward to 24.

A Well, it's kind of hard to hop forward.

MS. STANISH: Your Honor, may we approach?

THE COURT: Sure.

(Off-record bench conference.)

THE COURT: All right. Mr. Staudaher.

BY MR. STAUDAHER:

Q Now, when you said before that you did not exclude that -- the person who had gotten hepatitis C at the clinic on 13, do you actually say that you do not believe that he got hepatitis C at the clinic?

A I think I say here he contracted it sometime in a time span roughly six months before that time or from going back a couple of weeks before that time and I think that there's many possible ways he could have contracted because, and I don't believe it was from a colonoscopy.

Q Okay. The colonoscopy is -- maybe I misspoke. I guess it could have happened at the clinic, but not from a colonoscopy according to you; correct?

A Well, it didn't happen from a colonoscopy. I think I can say exactly what I said here. There are many possible ways that it could have happened.

Q But not from a colonoscopy; correct?

A From an actual colonoscopy, no. I mean, I'm sorry. I have to read.

Q Read. Feel free.

A I can't take a sentence out of context and --

Q That's why I said read as much as you wish.

A [Witness complied]. As far as I can tell, he was not infected at the clinic.

Q Okay.

A That's all I can say.

Q And your scientific basis for that was what?

A The lack of any evidence that he was infected at the clinic. Can you tell me evidence that he was? I haven't seen any.

THE COURT: All right.

MR. STAUDAHER: All right. I'll move on, Your Honor. I'll move on.

BY MR. STAUDAHER:

Q I want to move to a different case. Sears v Foote Hospital, do you recall that case?

A Wow. That was quite some time ago, but I --

Q It dealt with --

A -- vaguely remember.

Q -- endoscopies; right?

A Yes, it did.

Q Okay. And scopes were -- people, at least three, I think, or so were coming in complaining, or at least alleging that they got their hepatitis C infections from the scopes.

A As best as I can remember that, yes.

Q What was your opinion in that case?

A Well, I looked at a few cases, and one had a blood transfusion as an infant. There was another cause of hepatitis C. I cannot remember the other two. One was

somebody who was incarcerated and was injecting himself with different dyes and sharing needles to tattoo people. I can't remember the other case. But those cases there was no acute hepatitis C and they all had other risk factors for hepatitis C.

Q But you stated that it was not from the scopes; correct?

A It absolutely wasn't from the scopes in those cases.

Q You mentioned incarceration. Did you not involve -- or were you an author on a paper involving whether or not it was appropriate to give interferon therapy to incarcerated persons or to wait because it doesn't -- I mean, there's a window of time that you have that it's not going to cause a problem?

A In chronic hepatitis C, yes.

Q Well, after --

A People --

Q -- six months you're into chronic; correct?

A No, no, no. You're playing with words a little bit. I said the sooner you're treated, the better. But if you're someone who has been in jail and you've been infected for 10 or 15 years waiting a year or two isn't going to matter. But if you're in jail and you're infected six months, seven months, eight months, ten months, there may be

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reason to do that. That -- that was dealing strictly with people who were long term infected.

Q What about people that would have been in jail that might be having some symptoms?

A I didn't comment on that in that paper.

Q Well, I'm asking you.

A Having symptoms or get acutely infected in jail?

Q I'm talking about cirrhosis, things like that, direct causes.

A Well, once you have cirrhosis, that's -- you're having symptoms from it, the treatment may not do that much. The goal of treatment is to prevent getting complications of cirrhosis.

Q So back to this exhibit, and this is the defense exhibit. And I think it's DD whatever it was, DD-1. In this particular case you say that once the cirrhosis or fibrosis or whatever is onboard that it's not really effective to have the treatment anymore; correct?

A Once you have established cirrhosis and complications, the treatment doesn't help that much.

Q So we've gone from our 40 to 50 percent down to what?

A Sorry, I don't understand.

Q Well, you said that in somebody with genotype

1a that they would have a 40 to 50 percent, 45, 50 percent. You said, I think, 50 to be fair. 50 percent chance of getting benefit from that therapy.

A Of being cured by that therapy, yes.

Q Okay. Somebody who starts to have cirrhosis or signs of cirrhosis, where does it drop down to as far as affectivity of any treatment?

A Oh, I don't know the exact numbers, but you lose some efficacy once there is histological cirrhosis.

Q In this case there is histological cirrhosis here, at least development of that; isn't that correct?

A No, that doesn't matter. I say when there is established cirrhosis, whether there's Stage 2, that's not going to really change the effectiveness that much. That's --

Q But this is histological result, is it not?

A Fibrosis. This is not cirrhosis. You were asking me about cirrhosis.

Q Oh, that's good. That's good. Okay. So fibrosis.

A Yes.

Q What's the difference between fibrosis and cirrhosis?

A Oh, as I explained before, fibrosis is scar tissue that forms in the live. Cirrhosis is a very advanced stage of liver disease where you have regenerating nodules of

liver cells with scar tissue all around those nodules. So fibrosis is just a scar tissue itself. Cirrhosis is very advanced fibrosis with abnormal regeneration of the liver.

Q And you said -- when was the first time you saw this document here?

A I don't remember.

Q Today?

A Oh, no. No, I saw this at least a few months ago.

Q Those documents that are sitting right up there, those medical records from the Philippines, when was the first time you saw those?

A I saw those a few months ago. Although, I should say I saw a clearer copy today. The copy I was provided with was a little bit hard to read, but I had seen those records before, too.

Q But you reviewed those literally before you came and testified today; correct?

A No, no. I reviewed these records, I don't remember the exact date, but one or two months ago. I just --

Q But most recently you reviewed them just before you testified?

A Just to make sure that there was nothing missing from the copies that I received, there was really nothing significant missing.

Q In Defense Exhibit DD-1, you indicated that what's listed there, the chronic hepatic -- hepatitis, clinically hepatitis C with moderate activity, Grade 3/4 and periportal fibrosis and mild microvesicular and macrovesicular steatosis; is that correct?

A Steatosis, yes.

Q Steatosis, which is a --

A Fatty liver.

Q -- fatty liver. Right.

A Right.

Q Now, with regard to the next portion, I mean, you said that the circle part, that there is no way to determine that that -- the hepatitis C infection has anything to do with that; correct?

A From -- I'm sorry. I didn't --

Q That the hepatitis C infection had anything to do with that.

A Had anything to do with what? The --

Q What's listed there, the diagnosis.

A The steatosis?

Q No, all of it, any of it.

A I didn't say that.

Q Oh, I'm sorry.

A I said --

Q What did you say?

A I said he had chronic hepatitis that clinically was hepatitis C. And then I said he had periportal fibrosis, which may have been from hepatitis C or other causes, and he has another insult in his liver, which is the fatty liver.

Q Okay. And that one actually has -- is the only one that says mild, is it not?

A It's mild.

Q Okay. It's mild. Now, when we go down here to the lower portion of this under comments, pertinent laboratory values found within Qwest Diagnostics Laboratory are as follows. Do you see that?

A Yes.

Q And it's got a date, 6/3/2008. So that's before this study on 7 -- it was -- I think the sample was taken 7/25/2008; correct? Does it say that?

A This was 7/25/2008.

Q So go down there and look at that, each HCV RNA PCR quantitation at, it looks like 8,850 international units per mil; is that correct?

A Yes, I commented that when I talked about this before. I said there was some data showing that he had hepatitis C virus RNA at a low viral load, yes.

Q And it's PCR quantitation which means that somebody did what?

A Oh, you want me to explain --

Q Sure.

A -- how PCR is done? So the virus is an RNA virus. There's an RNA genome. We have DNA. The virus has RNA. You have to take the RNA and convert it to DNA in one reaction, and then there's a reaction called PCR where you can amplify the DNA and you can semi-quantify how much virus is present in the blood. And in this case this would be a relatively or quite low value of 8,850, but the hepatitis C virus RNA was present in his blood.

Q So when it says here quantitation 3.9 log, what does that mean?

A That -- that's -- to the 10. 10 --

Q So it's 10 to the 10 --

A -- 10 to the 3.9.

Q -- to the 10 to the 10?

A No, 10 to the 3.9. So it's a little different. I mean, if you take that, I don't know, that would come out to maybe 10,000. No, it would come out to 8,850; right? Because that's the same number.

Q And if you move across here, again, it says genotype 1a.

A I think that's been established, yes.

Q Okay. No question that there's at least genetic linkage in this particular case; correct?

A There's -- I can tell from this there's genotype 1a virus. What do you mean by genetic linkage?

Q You're familiar that there was a genetic link in this case for this particular patient?

A Can you ask me a more specific question?

Q Are you aware that there was a genetic link to a source patient in this particular case --

A Oh, I'm --

Q -- with this -- with this particular patient?

A I'm aware looking at data from the Southern Nevada Health District and the CDC that there were several patients on that day that had genetically similar isolates, yes.

Q Now, with regard to the -- the test here, I mean, clearly there's evidence of disease that you even acknowledge could be caused by hepatitis C; correct?

A Well, I don't think you can get Stage 2 fibrosis after just 10 months of hepatitis C.

Q In the medical records that you saw before September 2007, did you see any evidence of anything that could have led to this? We're talking about alcoholism, infections of other kinds, whatever.

A No, the -- the bile duct obstruction and also the fact that he had microvesicular and macrovesicular steatosis here, he may have had that for quite some time.

Q And you're not a pathologist; right?

A I look at liver biopsies, but I'm not a pathologist.

Q Okay. Do you feel competent to opine as to cause of death when looking at records that two coroners, two medical examiners looked at?

A I feel competent to opine on cause of death because I've looked extensively at these medical records. I've looked at their reports, and I've looked at the death certificate, yes.

Q Extensively at medical records that -- which medical records are we talking about?

A The ones that I mentioned when we began today.

Q Did you not say that it was relatively sparse, the medical records that you had?

A I looked extensively at what I had, and it was --

Q Okay.

A As far as I --

Q So even if you didn't have very much, you looked at it really heard; is that right?

A As far as I know, it's the same medical records that these pathologists looked at. If there's other ones, I assume they would have been given to me. Are -- are there other medical -- I guess I --

Q I don't know.

A -- can't ask questions, but --

Q I don't know what you actually looked at. With regard to the kidney, I want to ask you about an issue related to that that you testified. Already we've established that little cysts, benign hepatic or renal cysts, they don't really cause an issue; correct?

A The cysts in this place were not a major contributing factor, if at all. I --

Q So the cysts don't cause any issue.

A That's true.

THE COURT: Let him finish.

MR. STAUDAHER: I'm sorry, Your Honor.

THE COURT: Did you finish?

MR. STAUDAHER: I'm sorry to the witness.

THE WITNESS: I said that's true, the cysts that were found on the radiology scans were not major factors here.

BY MR. STAUDAHER:

Q You said that one of the concerns that you had was the benign -- benign prostatic hypertrophy; correct?

A It could be a concern, yes.

Q That it might cause backing up of the urine which might affect the kidneys, that kind of thing?

A Yes.

Q If you have backing up of the urine into the

kidneys, what do you get as a result, typically?

A You can get infections, which he possibly had, but over long term you can get damage to the kidneys.

Q In what form? I mean, what do you usually see as a harbinger before the damage occurs?

A Well, I'm not a kidney pathologist, so I don't want to get into the details of what can happen, but as an internist I know having chronic kidney obstruction you can get kidney disease.

Q Do you see things like hydronephrosis?

A You might see hydronephrosis. You might --

Q And what is that?

A Hydronephrosis is when the -- the kidney where the urine is collected expands, and you can see it perhaps on an x-ray or an imaging study.

Q Okay. And there was no evidence in these imaging studies?

A On that scan, no, but we don't have any imaging since then, so I don't know.

Q Okay. Do you know what hepatorenal failure is?

A I know what hepatorenal syndrome is.

Q Okay. Tell me about hepatorenal syndrome.

A So hepatorenal syndrome is when you have a normal kidney. So your kidney has no structural kidney

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disease. There is no damage to glomeruli. There is no nephrosclerosis. There is no chronic kidney disease. So a perfectly normal kidney in a person whose liver fails, that kidney can stop working because the liver fails. Now, if you changed a person's liver, the person gets a liver transplant, that kidney works normally. If you take the kidney out of that person and put into a normal person, and this is a dog experiment, you don't do that in people, but that kidney works normally. So that's when the kidney fails solely secondary to the liver failing.

Q Isn't it true that approximately 40 percent of patients with combination cirrhosis and ascites, which was the case in this particular instance, will get renal failure as a result, and that's what is termed hepatorenal syndrome?

A That's an interesting question because there's two types of hepatorenal syndrome. So when you put that big number on it, that sort of literature saying there is a low grade renal insufficiency that some of them get, but the full blown hepatorenal syndrome where your kidney completely fails, that's a much, much, much smaller number.

Q But it's progressive renal failure caused by liver cirrhosis; right?

A That -- that can happen in a structurally normal kidney. Correct.

Q And that's what we actually have here is liver

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failure; correct?

A We have a structurally abnormally kidney, though.

Q And what are you basing that off of, again?

A I'm basing it on your -- your coroner and your pathologist reports.

Q And which reports were those?

A Those would be --

Q And read me the grossly or structurally abnormal results there.

A Okay. So this is the -- okay. This is the autopsy report from the Philippines. And I see here hypertensive nephrosclerosis kidney. I think the pathologist from -- from here in Nevada -- I can't quite find that one. I think I have it.

Q I've got a copy.

A Okay. So this is from the Clark County Coroner. It says nephrosclerosis, but I think there's a more extensive -- kidney, dissection shows mild to moderate nephrosclerosis with associated interstitial fibrosis. There also appears to be mesangial thickening within many of the remaining glomeruli, as well as the presence of excessive amounts of proteination and fluid within Bowman's space. Occasional foci of interstitial chronic inflammation are present. There is patchy parenchymal congestion, but no frank

hemorrhages observed. Occasional foci of arteriosclerosis are present. So this is describing several structural kidney lesions here.

Q Well, aside from the atherosclerotic issue, the narrowing of the arteries in the kidney, isn't that -- doesn't that seem to match up with progressive renal failure due to cirrhosis?

A No. I have nephrosclerosis here and interstitial fibrosis and mesangial thickening. This is a description of damage to the glomerulus itself. This is not just arteries being hardening. This is the unit that filters the blood in the kidney is damaged in this patient.

Q So how does cirrhosis cause renal failure.

A That doesn't cause it by doing that.

Q Well, I'm asking you.

A It causes it by hormonal and blood flow problems. The kidney is structurally normal. If it was purely hepatorenal syndrome and took the kidney out, the kidney would not have any of these changes in it. Your glomeruli look completely normal. It's because you get an imbalance of hormones, such as renin, angiotensin, aldosterone. These are hormones that control blood flow to the kidney. You get problems with that and essentially you get decreased profusion of the kidney because the liver fails. But once you start seeing these things, that's structural

damage to the kidney that probably resulted from years of hypertension and perhaps resulted from years of low grade obstruction.

Q But your opinion is that the liver had nothing to do with that?

A I'm saying he had structural kidney disease.

Q I'm not asking you whether there was structural kidney disease.

A I cannot --

Q I'm saying the findings in the kidney beyond the structural disease, is there any --

MR. SANTACROCE: Your Honor, I'm going to object. This is getting to the point of argumentative. It's been asked and answered.

THE COURT: Well, let him -- no. He can --

BY MR. STAUDAHER:

Q Is there any portion of the cirrhosis, the liver disease, that could have affected that?

A That could have? Yes. But can I say that from looking at the history in this? I don't know.

Q Now, you mentioned in the -- in the -- I think it was the -- gosh, the -- well, first of all, do you think based on your review of the medical records that he had a hepatorenal syndrome?

A I can't say he had hepatorenal syndrome from

the medical records, not with this degree of structural kidney disease. Also, the necessary --

Q The --

A -- tests for hepatorenal syndrome --

THE COURT: Let him finish again.

MR. STAUDAHER: I'm sorry.

THE WITNESS: The necessary tests to diagnose hepatorenal syndrome were not in the labs in the Philippines.

BY MR. STAUDAHER:

Q The medical records that you have up there, specifically the 4/20 -- this is the second hospitalization, the one where he died, 4/24/2012, a note indicating that he was declared to be in hepatorenal syndrome -- in the hepatorenal syndrome with associated hepatic encephalopathy.

A Can you show -- I -- I'm sorry. I can't find that in here.

Q Well, I'm asking -- I've given you the date. You've got the records in front of you.

A What was the date?

Q The date was 4/24/2012.

A You're going to have to help me a little more. I have doctor's notes and nurse's notes here --

THE COURT: Mr. Staudaher --

THE WITNESS: -- and other notes.

THE COURT: I'm sorry. Now I'm interrupting you.

THE WITNESS: I'm sorry. It's okay.

THE COURT: If you're aware of where that is in the record, can you --

MR. STAUDAHER: I know it's on that date. I don't know if it's --

THE COURT: -- can you maybe --

MR. STAUDAHER: -- tabbed or not. I can try and look.

THE COURT: -- try to kind of facilitate this.

THE WITNESS: There's doctor's and nurse's notes. I'm sorry.

MR. STAUDAHER: Well, Your Honor, I've got the date, but it may be the wrong -- wrong one here at the time. So I'll look at that for later on.

THE COURT: Okay.

BY MR. STAUDAHER:

Q If the record had shown that, and we can look at it another time, but if the record had shown that, would you -- would that change your opinion at all?

A Well, it would depend how the record showed that. If it's just a doctor writing a note, I did see a note in here at one point that said diagnosis, question mark, hepatorenal syndrome, that would not affect me at all. If I saw laboratory evidence, that might affect me, but that's not in here as far as I know.

Q What laboratory evidence would you need?

A Well, you need to check the urine sodium and see if he had extremely low urine sodium.

MR. STAUDAHER: Your Honor, I pass the witness.

THE COURT: All right. Thank you.

Redirect.

MS. STANISH: May I approach?

THE COURT: You may. You may move freely.

REDIRECT EXAMINATION

BY MS. STANISH:

Q I have the exhibit from the Philippines. Is this -- from your review of this record, was it a complete medical record in your experience? What's missing, I guess?

A Again, as I said, that's not at the standard of medical records we would have at New York Presbyterian Hospital or most U.S. hospitals. I didn't find good discharge summaries. I didn't find detailed admission notes. And I think some laboratory tests that you probably should have done on a patient like this I didn't see in there.

Q Do you know if there was reference to labs in -- if you recall, was there reference to labs, but the lab reports themselves were not contained in these records?

A Not that I can recall, no.

Q Now, the -- Mr. Staudaher had indicated that you just had to scurry to review these records before coming

to testify this -- in the morning today. You were -- when did you first received these records?

A So I actually received two copies of those records. One was a hard copy that I'm going to estimate about six to eight weeks ago. Then I subsequently received a scanned .pdf of the same records, and some of them were just difficult to read. So the only thing I did today was re-review them to see more clearly the pages that I couldn't see in the scan copies and photocopies that I had.

Q If you recall, do you remember if the copies you received had what we call little Bates stamps showing at the -- it was discovery provided by the State?

A I believe that either you or your paralegal sent a note that said these were provided by the State, but I cannot be sure.

Q Do you know if you have reviewed all the documents that the State of Nevada provided with respect to Mr. Meana's medical records?

A I've --

MR. STAUDAHER: Objection. Speculation. It's what he was provided by defense counsel. He doesn't know what we provided.

BY MS. STANISH:

Q Were you provided medical records that indicate -- had Bates stamps on them?

A Some of them at least did, yes. And maybe perhaps all of them, but there are Bates stamped records for sure.

Q With regards to peer review articles versus what you refer to as suggestive articles, can you explain why the three articles that Mr. Staudaher gave you don't fall into the category of what's accepted by -- in general by the medical community? Maybe I need you to explain the standard, to clarify that for us.

A Well, it's -- in biomedical research, it's very typical that small interesting observations often get published that are never followed up upon and never proven to be conclusive. And I would consider these type of publications in these type of, some of them highly sub-specialized journals, and some of them even journals, you know, that are not of even a middle caliber. I would say these are at best suggestive.

I mean, these are certainly types of experiments that you cannot hold to a reasonable degree of medical certainty or a reasonable degree of scientific certainty. These are suggestive findings and a few experiments. These are not in textbooks. These are not in the New England Journal of Medicine. They are not in nature. They are in science. These are small suggestive findings. This is not where I would base decisions of treating a patient, life and

death, or in a court determining, you know, causation or problems.

Q But Mr. Staudaher seemed to think it was significant that you were on the editorial board of one of those. Can -- can you explain how these middle -- what did you call them, middle range periodicals?

A Middle range journals. How'd they get me on the editorial board?

Q I don't know. Were you on the editorial board when it -- that was written?

A I was on the editorial board for awhile. I was invited to give a lecture in China and I met the editor of that journal, and he said would you be on the editorial board? And I said, sure, I'll review a few papers a year. And my only contribution to that journal was reviewing a few papers.

Q Did you review that one?

A Nope.

Q If you did, would you have let it into the -- recommended it be published?

A I haven't read it in its entirety, but I would say I certainly have a lot of questions about it.

Q All right. Now, you're not a pathologist. So are you sitting here today rendering an opinion as to what caused Mr. Meana's death?

A Well, yes, I think as an internist and a

hepatologist I can review all these records and come to a conclusion.

Q And explain to us why -- explain to us what your conclusion is based on that review.

A Well, I think Mr. Meana had several underlying medical problems. He had medical problems that were affecting his kidneys from as early as 2006, 2007. He had medical conditions that were chronic, that were to some degree affecting his liver as manifested by biliary obstruction, and also by fat in his liver. He got infected with hepatitis C on top of that. He became quite sick with both kidney failure and with liver disease and liver failure. But to look at all these records and to say it was infection with the hepatitis C virus on September 21, 2007, that led to his death, it's just not possible.

Q Why? Isn't medicine a science of certainty?

A Medicine is a science of probability. There may be some things that are 99.99 percent certain, but not looking at a complicated patient with multiple problems who had something happen to him four or five years ago and then later say, oh, it's that that killed him. I just -- as a physician and as a scientist, I cannot do that based on everything I looked at here.

Q Thank you.

MS. STANISH: I have nothing further.

THE COURT: Mr. Santacroce.

MR. SANTACROCE: Thank you.

RECROSS-EXAMINATION

BY MR. SANTACROCE:

Q Doctor, Mr. Staudaher asked you about a case many years ago that involved scopes where you ruled that out as the mechanism of transmission of hep C. Can you tell me a little bit more about that case, how long ago was it? I don't need an exact date. Was it like ten years ago?

A It was -- it was roughly ten years ago, I would say.

Q And in that particular case you ruled out the scopes because the patients or the individuals that were infected had other possible means of catching that disease. For example, you said one had blood transfusion, one, I believe, had some shared needles, and the other one you couldn't think of; correct?

A I can't remember the other one, but I know all those cases were -- there was no evidence of acute hepatitis C infection, and they all had other risk factors for hepatitis C.

Q And in that particular case you weren't making a global determination that hepatitis C can't be transmitted through scopes. That was just a fact specific case; correct?

A Correct. I was looking at those specific

cases that I looked at.

Q And, in fact, how long can hepatitis C virus live in the environment outside of the human body?

A Oh, boy. I don't know the exact number. There is some period of hours or something, but I don't know.

Q We had from 16 hours to four days. Does that comport with your knowledge?

A I would not argue with that, but I don't know for sure.

Q And it's a blood-borne pathogen; correct?

A Yes.

Q So that means it passes through blood, blood to blood contact?

A Blood-blood is the only way to really get it, yes.

Q And blood lives in fecal matter; correct? Or can be present in fecal matter?

A Can be. I would say that would be a quite low, low, low, low risk way of transmitting this virus, but it's theoretically possible.

Q Okay. And it can be passed through -- well, first of all, you're not here to make a determination as to mechanism of transmission in this case; correct?

A Correct. I was asked to look at Mr. Meana's medical records and comment on his medical history and medical

condition and how he ended up.

Q So when Mr. Staudaher asked you about the scopes, you weren't opining in this particular case the mechanism of transmission of the disease?

A All I did when he asked me that is read what I had said in my deposition from two to three years ago in a different case.

Q Okay. And your -- your testimony is emphatic that hepatitis C does not cause dementia; correct?

A It does not cause dementia.

Q If I was a neuropsychologist and I did a study of 19 people and I have had that some sort of correlation between hepatitis C virus and that these 19 individuals had some sort of neurological damage, and then I concluded that one of them, at least, had dementia, would that be a valid study?

A That would probably not even get published in some of these journals. There is no controls, there is no methodology, there is -- it's never been peer reviewed as far as I know, so, no.

Q Thank you.

THE COURT: Mr. Staudaher.

MR. STAUDAHER: No redirect, Your Honor.

THE COURT: Counsel approach.

(Off-record bench conference.)

THE COURT: Doctor, I have a couple of juror questions up here.

THE WITNESS: Okay.

THE COURT: A juror would like to know if Mr. Meana had not been infected with hepatitis C on September 21, 2007, can you say that he would probably have died from liver -- I'm sorry, from liver complications in 2012?

THE WITNESS: Boy. It's just really not possible to say that based on the records. I mean, I would say probably, maybe not from liver disease. From kidney maybe, but I -- I just can't say. That would be speculating.

THE COURT: Okay. And then another juror would like to know can hepatitis C accelerate existing kidney disease or liver disease or does it have no effect?

THE WITNESS: Well, obviously, if there is more than one insult to your liver, it can accelerate it. So a classic example is people who have hepatitis C and also drink alcohol. They do progress faster. So having two or three different diseases can make your liver worse than having one disease. Kidney disease, hepatitis C rarely affects the kidney. There are rare circumstances where you can get something called cryoglobulins where hepatitis C can affect the kidney, but there's no evidence that he had that and it's, you know, not really common.

THE COURT: Ms. Stanish, do you have any follow up

to those last juror questions?

MS. STANISH: Court's indulgence.

THE COURT: I guess that would be no.

MR. WRIGHT: I'm shaking my head no.

MS. STANISH: Can we approach, Your Honor?

THE COURT: Sure.

MS. STANISH: Thank you.

(Off-record bench conference.)

THE COURT: Ms. Stanish. Oh, I'm sorry. We need to wait for everybody to get back to their seats.

FURTHER REDIRECT EXAMINATION

BY MS. STANISH:

Q Dr. Worman, did you review all the medical records that our office forwarded to you?

A Yes.

MS. STANISH: And, Your Honor, may the record reflect that the medical records forwarded to Dr. Worman were provided by the State of Nevada and we forwarded all that we received from them to Dr. Worman.

THE COURT: Okay.

MR. STAUDAHER: State will -- will take the representations of counsel, Your Honor.

THE COURT: All right. Then that will be reflected in the record.

MS. STANISH: Nothing further.

THE COURT: Mr. Santacroce, anything else?

MR. SANTACROCE: No, Your Honor.

THE COURT: Mr. Staudaher, anything else?

MR. STAUDAHER: No, Your Honor.

THE COURT: All right. Doctor, thank you for your testimony. You are excused at this time.

THE WITNESS: Thank you.

THE COURT: And I'm sorry. We didn't have any other juror questions? I forgot to ask.

All right. Thank you, Doctor. You're free to leave.

All right. Ladies and gentlemen, in a moment we'll be taking our evening recess. We will not be in session tomorrow. On Thursday we will resume. I anticipate that we will have the closing arguments on Thursday, and following that the case will be submitted to you.

Now, trial is not over, so obviously the prohibition about discussing the case or anything relating to the case is still in effect. You are additionally reminded that you are not to read, watch, or listen to any reports of or commentaries on the case, any person or subject matter relating to the case. Do not do any independent research by way of the internet or any other medium, and please do not form or express an opinion on the trial.

If you would all please place your notepads in your

chairs. And I forgot to tell you when to come back. We'll see you back here at 9:00 a.m. on Thursday morning. 9:00 a.m. Thursday morning.

(Jury recessed at 4:39 p.m.)

THE COURT: All right. How about 10:30 for us tomorrow, or is that too early?

MS. WECKERLY: No, that's not too early. I'm just hoping we can get the proposed defense ones tonight so we can look at them.

MS. STANISH: I believe so. You know, we have 15 special jury instructions. Many of them are evidentiary right out of the Ninth Circuit pattern book. And then it's really the elements of the offense relating to the negligent charges that I think they want to focus on, but we will get those to them.

THE COURT: Well, they may want to focus on the ones from the Ninth Circuit, which by virtue of the fact that you say --

MS. WECKERLY: We're in State Court.

THE COURT: Well, we're in the -- under the -- by virtue of the fact that you say they're from the Ninth Circuit book suggests we normally, and I'm sure we normally don't give them, so, I don't know, they may have objections on those, as well.

MS. STANISH: I understand.

THE COURT: All right. We'll see you back here tomorrow at 9 -- I'm sorry, 10:30.

MS. STANISH: Thank you.

(Court recessed for the evening at 4:41 p.m.)

CERTIFICATION

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

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

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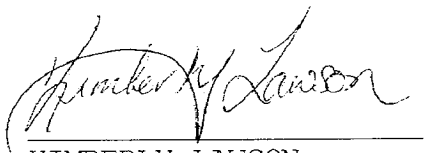

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we will consider making him an alternate and moving in one of the others because I don't want them to start deliberating and then he leave on his vacation and everything like that. So those are the only issues I can think of that may still be out there in the wind.

MS. STANISH: Judge --

THE COURT: I just want to make sure I'm not neglecting.

MS. STANISH: You know what, I have to apologize if there was something you heard that was offensive. We had a discussion --

THE COURT: Well, that's fine. You two are free to discuss whatever you want.

MS. STANISH: No, but I wanted to let you know what we discussed because Ms. Weckerly and I started the discussion in the anteroom and then we continued it in the courtroom. And we were discussing the jury instructions. I was describing for them what I had written so far, and we were trying to anticipate what issues we would have.

And the issues are, which we may agree on, is the mental element for the criminal neglect statute, and then we are probably going to have issues regarding the -- the theft statute and how to -- whether the jury needs to be instructed specially on whether or not to take into account services rendered, that whole issue that Mr. Staudaher raised. But we

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agree there has to be argument on it.

THE COURT: Right. That's why I'm saying I don't think it's fair to characterize that as an outstanding decision when there hasn't been argument on it.

MS. STANISH: No, it's something that still, you know, is --

THE COURT: And, to me --

MS. STANISH: -- contemplated in here.

THE COURT: -- you know, what do I know, that seems to be a relatively big deal, at least with the theft statute. I mean --

MS. STANISH: It depends --

THE COURT: -- on the insurance --

MS. STANISH: -- on the --

THE COURT: -- defense it doesn't really matter, but --

MS. STANISH: Correct. The great scheme of things. And then the --

THE COURT: So, I mean, what's one more if he's convicted. I mean, you know --

MS. STANISH: And then just to let Your Honor know what we were contemplating doing is hopefully having tomorrow off so that we can meet with Your Honor to do the jury instructions. We wanted to know -- that's why we were talking about what kind of argument we would expect. And hopefully

we'll get that worked out by the end of the day.

THE COURT: Yeah, I don't care when you folks meet. I mean, I would -- if you want to meet tonight, that's up to you. If you want to meet tomorrow morning, that's up to you. I would like to go on the record and settling jury instructions relatively early in the day, like 10 or 10:30.

So whenever you folks need to meet, you know, if you need to meet at 8:00 to do that or you want to do it tonight, obviously I don't care. What I don't want to have happen is waiting until like 2:00 in the afternoon to settling the jury instructions because there may be typing that needs to be done and whatnot.

The Court -- you know, it's my experience that the later we wait, the more burdensome it is on the court staff who then has to do all the typing and corrections. So for that reason I don't want us to be here at 4:30 with my staff having to do all the changes and corrections and everything like that.

So for that reason, it's better if we do it earlier, that way we can get a cleaned up packet, we can number them, we can make sure everybody has time to review the changes, that they've been done correctly, and all of those things. So I don't want to -- in other words, the whole point of that was I don't want to wait until the last minute on getting together in the afternoon because I think it could take, based on

everything else that's transpired in the case, I think it could take some time.

MS. STANISH: And what we were hoping is that we could have the afternoon off so that both parties could prepare for closing and then deliver the closing on Thursday.

THE COURT: Right. And you think we can do the closings and the jury instructions in one day?

MS. STANISH: Well, I thought we would do jury instructions tomorrow.

THE COURT: No, no, I meant read them.

MS. STANISH: If you don't do the lengthy indictment.

THE COURT: Yeah, that's what I was going to say. Do both sides --

MS. STANISH: You already read that.

THE COURT: Do both sides stipulate to the Court not rereading the indictment and just saying the indictment is here as part of Instruction No. 3. It's been read to you already. And both sides stipulate to me not reading it again?

MR. STAUDAHER: State does.

MR. WRIGHT: Who has to read it?

THE COURT: I do.

THE CLERK: It's an hour and 20 minutes.

MR. WRIGHT: You got me. I'll stipulate.

THE COURT: Mr. Santacroce, do you stipulate?

MR. SANTACROCE: Yes, Your Honor.

THE COURT: All right. So that'll save some time, then. And how many proposed instructions including the stocks does the State have?

MS. WECKERLY: You know, there really aren't that many. I didn't number them. But when you take out the indictment it's substantially smaller.

THE COURT: Okay.

MS. WECKERLY: So I think that -- I understand there will be argument on the instructions, but there really aren't -- there's probably less than 30 substantive instructions, or maybe right around 30.

THE COURT: Okay. So -- and both sides, we think we can do all the closings on -- in a single day?

MR. WRIGHT: Yeah.

MS. WECKERLY: Sure.

THE COURT: Well, I don't know. I mean, I don't know if, you know, somebody has got a three and a half hour PowerPoint.

MS. WECKERLY: Not yet.

MR. WRIGHT: I don't PowerPoint.

THE COURT: Okay. So then they'll start Friday, so that takes care of the issue regarding Juror 7. That gives plenty of time for him to deliberate and all of those things. And I think those were the only things that we needed to

discuss at this point.

MS. STANISH: Okay.

THE COURT: All right.

MR. STAUDAHER: We're to be back, Your Honor, at what time?

THE COURT: I told them 1:30.

MR. STAUDAHER: 1:30? Okay

THE COURT: Oh, should we do the Fifth Amendment admonishment, or do you guys want to do that after lunch?

MR. SANTACROCE: Whatever you prefer.

THE COURT: Let's do it now.

All right. We'll start with Dr. Desai. Everyone listen carefully to make sure I cover everything. I do it from memory.

Dr. Desai, I need you to stand up, please. And I need you to respond out loud to the Court. If it takes you some time to speak, that's fine with me. Okay?

All right. Dr. Desai, you -- do you understand that you have the right to take the stand and testify on your own behalf? Do you understand that?

THE DEFENDANT DESAI: No.

THE COURT: All right. Have you had an opportunity to discuss his Fifth Amendment right with him, his right to testify and his right not to testify?

MR. WRIGHT: Yes.

THE COURT: All right. Do you want additional time to go over those rights with him?

MR. WRIGHT: No, it doesn't --

THE COURT: Okay.

MR. WRIGHT: -- change anything.

THE COURT: We'll go over those after the lunch break. You know, I would just note that --

MR. WRIGHT: I'll talk to him.

THE COURT: -- Dr. Desai's demeanor in terms of his posture, I don't know if demeanor is the right word, and inability to face me is a little different than what I've perceived at the breaks in terms of his posture and whatnot. I'm not accusing anyone of anything. I would just say it's different. So I hope there's not some exaggeration going on. Posture, obviously, is different than his ability to understand and communicate. However, it's curious to me that it's manifesting differently than other times when I've seen movement.

MR. WRIGHT: He's not moving.

THE COURT: I understand that. But, I mean, you know, he walks out of the courtroom, he walks down the street, he walks down the stairs, and his posture standing here right now and his hunched over appearance and his failure to look at the Court is, I think, different. You know, he's walking in and out of this building unassisted. I know his daughters are

with him sometimes, but all I'm saying is I just hope that there is not some exaggeration going on because --

MR. WRIGHT: There's no exaggeration --

THE COURT: All right.

MR. WRIGHT: -- going on.

THE COURT: Well, you can say that. We're back -- you know, we're kind of a in a full circle here to square one. You know, I think your representations are well intentioned. That does not necessarily make them accurate in terms of what you're accurately perceiving and how you're communicating, I think that's well intentioned. Whether or not that's the ultimate truth, I don't necessarily know that that's -- that that's the case or the -- that that's fact. So we'll cover this again at the -- after the lunch break.

And, you know, if the State wants to be heard on some of what I've said and their observations, they will be allowed to -- to do that. But, you know, I don't know why Dr. Desai cannot face the Court, and I think that that could be evidence of some exaggeration going on. Because certainly -- well, I'm not going to opine. I'm just saying I don't understand it. So go to lunch.

(Court recessed at 12:36 p.m., until 1:45 p.m.)

(Outside the presence of the jury.)

THE COURT: We'll do the witness, start with the witness, and then at our afternoon recess we'll do the Fifth

Amendment admonishment.

MS. WECKERLY: Okay.

MR. STAUDAHER: Yes, Your Honor. Before we bring the jury in we do have to address the next witness, the scope of that person's testimony.

THE COURT: All right. Go ahead.

MR. STAUDAHER: We had -- I just want to bring it to the Court's attention and actually try and find out exactly where we plan on going with this witness because this is a witness who testified to the Chanin case, gave a deposition and gave opinions in the Chanin case regarding the fact of no transmission at the clinic and there was no genetic match to that person.

That's one of the issues is that he claimed in his attached affidavit that one of the issues as to why that person, Chanin, did not have hepatitis C from the clinic is because there was no genetic link or no genetic match to that one. He testified in a -- and this is not the Endoscopy Center of Southern Nevada. This is the Desert Shadow Endoscopy Center. Sorry, Your Honor.

So it's a different clinic, it's a different non-genetically matched patient, and he was directly involved with the review of those records and testimony about that, which we have received a deposition of. So it's a concern, obviously, that the State has as to the scope because in his

deposition he talks about having reviewed a number of cases.

I don't know which ones he reviewed and didn't review, which if they were genetically linked, if they weren't genetically linked. I know he was involved in Michael Washington, at least, and Patty Aspinwall, I believe there was a reference to that in there, as well as Chanin where he actually did give the deposition. So --

THE COURT: So what are you trying to limit?

MR. STAUDAHER: I'm not trying to limit anything. I'm just --

THE COURT: Okay.

MR. STAUDAHER: -- trying to make sure that they know that I feel it's fair cross-examination --

THE COURT: Yeah, I mean, if you --

MR. STAUDAHER: -- for bias purposes.

THE COURT: I mean, they've been pretty scrupulous about not introducing the evidence on the other 109 or 7 or whatever it is. So is what you're saying that if then they get into all this other stuff he's reviewed, it would open the door, then, to that? Is that --

MR. STAUDAHER: That's partially it.

THE COURT: Okay.

MR. STAUDAHER: That's not the main portion of what --

THE COURT: Okay.

MR. STAUDAHER: -- my concern is. I want to be able to cross-examine him on this that this -- he was involved in a non-genetically matched patient at a different related clinic, and that he opined as to what the infections were or weren't in that case and what he would --

THE COURT: This is another --

MR. STAUDAHER: -- rely upon.

THE COURT: -- another gastro -- one of their centers?

MR. STAUDAHER: Yes --

THE COURT: And so --

MR. STAUDAHER: -- the Desert Shadow, the Burnham clinic.

THE COURT: The Burnham clinic. So there was a non-genetically linked patient at the Burnham clinic and he opined that he, what, wasn't infected at the Burnham clinic?

MR. STAUDAHER: Right.

THE COURT: And, Mr. Wright, do you intend to get into that?

MS. STANISH: No, I had indicated earlier to the prosecutors that the primary purpose of Dr. Worman's testimony was to address Mr. Meana's death, and then touch upon, in general, hepatitis C and dementia, and that's it.

THE COURT: So he is just testifying strictly as a medical expert relating to the cirrhosis and the cause of

death and as to whether or not hepatitis C could cause dementia?

MS. STANISH: Correct.

THE COURT: Not as to causation of the infection or genetic linkage or anything like that?

MS. STANISH: Yeah, we're not challenging the -- the contraction of the hepatitis C by Mr. Meana, but it's to address the proximate cause issue.

MR. STAUDAHER: So that -- I mean, that's -- I mean, they've alluded to it, but I've never heard before that they --

THE COURT: Okay.

MR. STAUDAHER: -- don't challenge the --

THE COURT: If that's all they're -- they're -- I mean, if that's what it's limited to --

MR. STAUDAHER: My concern was the bias issue, that I felt it was -- especially because he had opined as to the fact that it was not that particular clinic that gave him the infection and that he also said in his affidavit that one of the reasons he based that on was that there was no genetic link to Mr. Chanin and that clinic and that he -- he believed that he must have a risk factor, although none were ever articulated, just that he must have a risk factor so, therefore, he could not have gotten it.

He also said that even though in that case Mr.

Chanin, I think a few weeks before, at least within the window of incubation, had had a test for hepatitis C that came back negative. He said, well, that could have been within the window of incubation, so the -- the most he could say was that he contracted hepatitis C from somewhere in February of 2007 up to the time --

THE COURT: So you want --

MR. STAUDAHER: -- at the clinic.

THE COURT: -- to cross-examine -- do you still want to cross-examine him about all that?

MR. STAUDAHER: That he was paid by the -- by the defense to essentially opine in a different case that --

THE COURT: But the --

MR. STAUDAHER: -- that it was not --

THE COURT: -- insurance --

MR. STAUDAHER: -- the clinic.

THE COURT: -- defense?

MR. STAUDAHER: Yes. Not this defense, not these defense attorneys.

THE COURT: Okay. So he wasn't retained by -- I'm assuming it was insurance defense or the defense team, maybe -- who was it, Teva? Was it -- was it the endoscopy's defense, was it the pharmaceutical defense?

MR. STAUDAHER: Well, I believe --

THE COURT: Do you know?

MR. STAUDAHER: Let me look.

THE COURT: Maybe you guys know, Ms. Stanish.

MS. STANISH: Give me a moment, Your Honor, please.

MR. STAUDAHER: Yes, this was -- and this was the first trial, as my co-counsel pointed out. This was the one that went to verdict, the Chanin matter against Teva and Baxter.

THE COURT: So he would have been the pharmaceutical's paid expert.

MS. STANISH: No, I don't think that's correct, Your Honor.

MR. STAUDAHER: Actually, I think --

MS. STANISH: I believe he was hired by the McFadden law firm that represented the endo center early on. And as I recall, and correct me if I'm wrong, they did depositions in groups. And then -- and then the insurance company settles out with the clinic and doctors and, of course --

MR. STAUDAHER: It says here --

MS. STANISH: -- Chanin.

MR. STAUDAHER: -- that he was hired by the defendants for the Endoscopy Center of Southern Nevada and Gastroenterology Center, as well. So that -- it was Mr. McFadden's.

MS. STANISH: Correct.

MR. STAUDAHER: But that's who he represented at the

time.

MS. STANISH: Correct. And then it settled -- the Chanin case went forward to trial, history is made, but he never -- he did not testify at the trial is my understanding.

MR. STAUDAHER: At least I don't know if it --

MS. STANISH: This is --

MR. STAUDAHER: The only thing we have is a deposition. I've asked Ms. Stanish for anything else, and she --

MS. STANISH: Right.

MR. STAUDAHER: -- doesn't have anything else.

MS. STANISH: We -- we received the deposition from the -- in the State discovery. The deposition and a couple reports that we forwarded --

MR. STAUDAHER: Right.

MS. STANISH: -- since there was --

MR. STAUDAHER: He did a report in Washington, he did a report in Chanin, and I don't know if he's done any others.

THE COURT: So, what, you want to ask him, oh, you were retained by the defense in the civil case and you provided an opinion that said Mr. Chanin didn't contract hepatitis because it wasn't genetically linked? What do you want to ask him?

MR. STAUDAHER: It wasn't genetically linked and he

said that there was no -- even though there was reported no risk factors, he opined that there must be one because he had had a hepatitis C test, and even though there was some questioning about the fact that the doctor he went to did it as a routine because his insurance would pay for it, that didn't matter.

He just felt that there should be a risk factor that this person was not disclosing and, therefore, he couldn't -- he didn't think that he was genetically linked to a reasonable degree of medical probability to that claim. I mean --

THE COURT: And you think that shows what? That --

MR. STAUDAHER: His bias.

THE COURT: -- like he's a hired gun and he'll just say whatever or --

MR. STAUDAHER: Well, I think that there is -- in my opinion, based on what he testified to at the deposition, there was no -- there was no basis for him saying that. He gave enough wiggle room. But to come forward with that kind of evidence and say to a reasonable degree of medical probability he did not get the infection at that clinic I think goes to show that he was essentially bias, that he was bias for the defense in that case. He's been hired by the defense in this case and he's -- you know, it goes to his bias, I believe.

THE COURT: Okay. So his opinion wasn't to -- his

opinion wasn't I can't say that he's linked to a reasonable degree of medical certainty, it was I can say that he's not linked to a reasonable degree of medical certainty?

MR. STAUDAHER: That was my understanding of reading his transcript.

THE COURT: All right. Ms. Stanish.

MS. STANISH: Let me just look to see what words he articulated. They ask how -- how he thinks he was infected and the doctor responds, I can only say that he was infected in that time period, and there are many possible routes of transmission. I'm not seeing where he says to a reasonable degree of certainty that he concludes that he did not get hepatitis C. I think what he was saying was he could not state with -- that there was insufficient evidence to connect him to the clinic with a reasonable degree of medical certainty. Do you find --

MR. STAUDAHER: I will -- I will look --

MS. STANISH: -- a different line?

MR. STAUDAHER: -- for it --

MS. STANISH: I guess my other issue --

MR. STAUDAHER: -- because the issue --

THE COURT: I mean, I think that that's --

MR. STAUDAHER: It says did not believe that Chanin got hep C at the clinic, page 13, from February to July. If I go to that page --

MS. STANISH: I see where you're looking. The question was do you think he contracted hepatitis C. Do you have an opinion to a reasonable degree of medical probability how Mr. Chanin contracted hep C that was diagnosed at the end of July '06? He contracted it sometime in the time span roughly of six months before the time or from going back a couple week before that time, and I think that there -- there's many possible ways that he could have contracted hep C, and I don't believe it was from the colonoscopy.

MR. STAUDAHER: So --

THE COURT: And then he says that's to a reasonable degree --

MS. STANISH: No, he doesn't say that.

MR. STAUDAHER: That's how the question was prefaced, to a reasonable degree of medical probability, and then he says he doesn't think he got it at the clinic. So -- or got it from the colonoscopy, which was at the clinic.

MS. STANISH: But then I -- you know, to put it in context, I think he continues about the -- the difficulty of trying to pinpoint what occurred. And there was something about --

MR. STAUDAHER: He never comes --

MS. STANISH: -- he traveled overseas.

MR. STAUDAHER: -- off that, though. I mean, he never says get, well, you know, he could have gotten it at the

clinic. He maintains that position.

THE COURT: All right. I think it goes to bias. I'll allow Mr. Staudaher to question her about it.

MR. WRIGHT: Well, but --

THE COURT: All right. Kenny, bring them in.

MR. WRIGHT: We object.

THE COURT: I got that from her --

MR. WRIGHT: All right.

THE COURT: -- her lengthy argument that she was -- I mean, you know, I guess you're objecting that you don't necessarily think it's relevant to anything, but I think if --

MR. WRIGHT: I don't think the gastro -- the defendants in there wasn't the defendant here. The defense wasn't -- he had no control over the defense in that case, and if he tries to lump us together, it's -- it's not correct.

And secondly, just to bring out he testified to show bias is fine, but I don't understand that you -- to show bias you then bring out what he testified to, and I don't believe what you testified to. That doesn't show bias. The bias is he's held out to give opinions.

THE COURT: Well, no, I mean --

MR. WRIGHT: So we -- we put on his rebuttal that he's right and his opinion is well founded.

MS. STANISH: Plus the standard of proof in the civil case is --

THE COURT: Well, except he's saying to a reasonable degree of medical probability, which is what they all testify to, that it couldn't have been caused that way, that he didn't believe. Now, if he had stated it the other way, that he couldn't attribute a cause, I think that's -- I mean, I see that as a significant difference. Whether he's saying it wasn't the cause or, you know what, I just can't attribute a cause. To me, those things are -- are very different and, I think, significantly different.

Mr. Santacroce?

MR. WRIGHT: But how do we know he wasn't right? I mean, what's the evidence going to be that that was incorrect?

MR. STAUDAHER: Well, the evidence he reviewed, clearly. I mean, he listed a whole list of things and he gives -- I'm sorry, Your Honor -- he gives his --

THE COURT: Well, how are you going to introduce that?

MR. STAUDAHER: He gives his opinion that -- the reason for his opinion is this, that -- just what I said, there was no genetic link, and that because he believed that there must be a risk factor when, in fact, none was articulated that that must be the reason why he got it.

THE COURT: Well --

MR. STAUDAHER: He has a risk factor that he's not disclosing and that --

THE COURT: Well, I don't think that's so out in left field because typically a physician isn't going to test you for hepatitis C. So I think what he's saying is if he's being tested for hepatitis C, he must have articulated a reason to his physician because that's not a standard -- that's not one of the standard tests.

MR. STAUDAHER: Correct. But then they ask him the questions in follow up, well, do you know if his doctor did that as a routine, if it was because of his insurance. They give the doctor, they give the information, and he goes, no, I don't know any of that stuff. Would it change your opinion? No. I mean, that's -- that's what we're basically at. So if he doesn't take into account that information, if he didn't at least say, well, if that had been the case, that would change my opinion.

THE COURT: Well, I don't want to -- okay. Here's the deal. I don't want to get into a lengthy litigation over the Chanin matter and what he should have known or asked or whatever. Now, I mean, I certainly think it's fair for you to bring up that he was retained, just like the defense did for all of the experts that have testified.

Kenny, I need a minute.

Just like the defense has done for the experts that have testified on the State's side. Oh, you were retained to, you know -- you testified and you -- you know, that the State

wound up subpoenaing that. In fact, they had originally been retained by plaintiff's counsel in those cases.

So I certainly think it's fair and goes to bias that, just like you guys did or the defense did, for those at least a couple of witnesses that the State learned about through plaintiff PI counsel. So they can certainly bring out that he opined in a civil case and that he was retained to do that and that was by the civil defense attorneys, and this was what he opined.

Beyond that there really -- he can't really comment too much because we're not going to litigate the merits of the Chanin case. So, I mean, that's -- that's what he can ask him. You were, you know, a retained expert, who retained you and what was your opinion?

Now, beyond that we're not going to -- as I said, we're not going to get into a mini trial over the merits of the Chanin matter. So, you know, do with that -- you know, do what you will with that, but that's the extent of what the State is going to be able to get into.

I do think it goes to bias that he was retained and he gave an opinion favorable to the defense attorneys in that matter, just like with the State's witness, the defense got to get into, oh, you were retained by the PI lawyers and you gave an opinion favorable in those cases and you made all this money. You know, certainly I think that that's a fair subject

for cross-examination and he can get into it in that limited way. So -- yes?

MR. SANTACROCE: I just want, for the record, to state my objection, as well. I think you've stated my objection, so I don't need to go over it again, but I think to introduce another name and an infected patient, we'll have to re-litigate that issue, put it before the jury. This serves to confuse the jury and it's really kind of a backdoor approach of the State to get in more information about infected patients at Burnham.

So I think that, yes, it's fair game to go after the bias that he was paid by the defense to testify here today, he's testified for the defense in the past and he's been paid for that. But to go into specific names and diseases and what you testified to as to whether he had hep C or not, I think it's irrelevant, it's confusing to the jury, and it's highly prejudicial over probative.

MR. STAUDAHER: We didn't choose the expert. I mean, they picked him knowing full well that he had testified in that case, that it was a non-infected patient, that he actually provided an opinion and that information has been out there, so --

THE COURT: It wasn't -- why don't you do this. Here is, I think, balancing everything you can ask -- don't introduce the name because we haven't heard about this name

before and I think that that would be unduly confusing. Again, I don't want to litigate the infection of this person and whether he got infected or not. He's not a named victim. You know, we're here at the defense's case. I don't want to, you know, open the door.

But, again, you can certainly ask he was retained in one of the civil cases for a non-genetically linked patient who was infected with hepatitis. You can ask what he was paid and that he gave an opinion that -- you know, favorable to the endoscopy center, that he did not contract hepatitis there without getting into the name or who it was or whatever. Just point out it wasn't one of the, you know, genetically linked.

MR. STAUDAHER: Can I at least put out that he -- it was at a different clinic, it was at the Burnham clinic and not the Shadow Lane clinic? I mean, that's germane because it's not a genetically linked patient. I don't want to have -- it's a misperception to the jury that it may be one of the patients like Lakota Quannah or somebody like that who was non-genetically linked who is in our case.

I mean, I understand this Court's stricture on -- on the name. I don't have an issue with that. But as far as at least a different clinic and that he -- am I going to be able to at least ask him what the basis for his opinion is?

THE COURT: Why don't you say this? You know, I don't want to start now -- I mean, I just -- you know, a

non-genetically linked patient who is not part of this case or something like that, not part of this case and you were retained, how much did he get paid, and he gave a favorable opinion that he wasn't infected at the center or he didn't receive the infection through a colonoscopy or something like that. That way we're not litigating a side issue, but the State is able to introduce this kind of, you know, hired gun, bias idea if that's -- obviously you can't refer to him as a hired gun because we know that that would be misconduct, so --

MR. STAUDAHER: And I did not use those words at all.

THE COURT: Right. I'm just saying, I mean, to me that's the gist. Those are my words, for the record, not Mr. Staudaher's words. I'm just cautioning not to use those words because that would be misconduct. But I think that's the idea, that this guy is retained, he's going to say whatever is favorable to the defense.

And, again, the defense has been allowed to cross-examine the State's experts on their bias as a result of having been retained by PI lawyers, plaintiff's attorneys in this -- in the related matters and making a lot of money from that. So I think it's the same -- it's the same line of thinking.

MR. WRIGHT: That's as far as it went, though. I didn't ask a single one of those witnesses, and what was your

opinion and what did you testify to in that other case? The bias is shown by being --

THE COURT: Well, no, I think you did because you got into the whole idea, well, who are you suing and it's the propofol and, oh, and if it wasn't the propofol or it wasn't -- if it was the -- I remember on one if it was the saline then that would be against your theory that it's the propofol. So that did come out. Somehow I remember the -- I mean, the idea was, well, you have to say that it was the unsafe injection practices through the propofol because that's where the money is was the gist of it. Not your words, but that was the -- the import of the cross-examination that I took from it that --

MR. WRIGHT: You're right.

THE COURT: -- that the reason they -- you know, they have to say it is because the saline, there's not -- there's not a lot of money there. And, you know, again, I think that goes to the bias and I -- I don't know that we have to discuss anything.

Mr. Staudaher, I trust you'll stay within the parameter set by the Court, and I'll bring them in.

MS. STANISH: If I may, Your Honor, I just want to tell the witness.

THE COURT: That's fine.

(Inside the presence of the jury.)

THE COURT: All right. Court is now back in session, and the defense may call its next witness.

HOWARD WORMAN, DEFENDANT'S WITNESS, SWORN

THE CLERK: Thank you. Please be seated. And please state and spell your name.

THE WITNESS: Okay. Is this the mic here that picks me up?

THE COURT: It is.

THE WITNESS: I'm fine?

THE COURT: The black box. Yes.

THE WITNESS: Howard Worman, W-O-R-M-A-N.

THE COURT: Howard, H-O-W-A-R-D?

THE WITNESS: H-O-W-A-R-D, yes.

THE COURT: All right. Thank you.

Ms. Stanish, you may proceed.

MS. STANISH: Thank you, Your Honor.

DIRECT EXAMINATION

BY MS. STANISH:

Q What do you do for a living?

A I'm a professor of medicine and pathology and cell biology at Columbia University.

Q And are you a practicing physician?

A In New York State I am, yes.

Q And what exactly do you do as a practicing physician in New York State?

A Well, my clinical work is focused primarily on liver disease, and I also attend on general medicine in the hospital we're affiliated with. And then I do research and teaching at the medical school.

Q And let -- let me have you take us back to your younger days of your medical education. Please describe for the jury your educational background.

A Okay. So I got a bachelor's degree from Coronel University. That was 1981. M.D. Degree from the University of Chicago in 1985. Then I trained in internal medicine at what was then New York Hospital for two to three years. Then I did a three year fellowship in cell biology at Rockefeller University with Nobel Laureate whose name was Gunter Blobel.

Then I got an assistant professor job at Mount Sinai School of Medicine where for a year I had intensive training in liver disease from someone whose name was Fenton Schaffner. I worked at Mount Sinai for three more years, then started at Columbia in 1995, assistant professor, associate professor, tenured associate professor, full professor, until now.

Q And as I understand what you explained to us earlier, you -- you -- are you consulting -- are you a consulting doctor for other doctors who have patients with liver issues?

A Well, yeah, my clinical work would be divided

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up into sort of two groups. One is there's a liver clinic at Columbia where there are probably 1,000 or so patients with hepatitis C where the fellows care for them and I oversee them and that's a large group of patients referred to other doctors at the medical center. And then I have a smaller practice where I see patients for second, third opinions who have usually seen gastroenterologists or hepatologists beforehand.

Q And you mentioned that you were involved in research. Could you overview for us what type of research you do in the area of livers?

A Okay. Well, in the area of liver disease, if I go back, I first got into that by studying auto-antibodies in a rare liver disease called primary biliary cirrhosis. After that I did some work in the laboratory on hepatitis C, characterizing some of the proteins of what was then a newly discovered virus. I've done clinical trials for hepatitis C back when interferon and ribavirin were relatively new drugs.

I did two or three clinical trials to treat patients with hepatitis C with interferon and ribavirin, one trial before the drugs were approved. And I've done some other projects in liver disease in the lab looking at some genes that cause fatty liver, involved in a project like that, and I do basic cell biology research, as well, that relates to diseases other than liver diseases.

Q And do you publish articles or review articles

in those journals that most of us don't read?

A Yes. I mean, shall I elaborate?

Q Approximately how many articles have you written in the area of liver disease?

A Oh, I can't say. It's in -- all together I've published about 180 medical articles, and maybe 30 to 40 to 50 on -- somehow related to liver disease.

Q And you are here today as an expert retained by the defense; correct?

A That's correct.

Q How much of your working life is devoted to testifying in -- in or reviewing cases involving litigation?

A It varies from year to year, and I'd say it varies from 10 percent of my time to the most, some years, 15 or so percent of my time.

Q And had you been previously -- had you previously worked for a civil law firm that represented the corporate corporation at the endoscopy center?

A I believe the -- the defendant there was called the Endoscopy Center of Southern Nevada and I worked for a law firm that was defending them.

Q And that case involved a non-genetically connected patient that was -- had nothing to do with the dates of September 21, 2007, and July 25, 2007?

A The case that I testified in?

Q In a deposition, correct.

A Yes, the case that I gave deposition testimony was not in that day.

Q All right. Now, you had occasion to review the medical records of Mr. Meana; correct?

A Yes, I did.

Q And I have those -- some of those records here. If there is anything you need to refresh your memory, please let me know.

A I will.

Q Could you generally describe for the jury what medical records you reviewed?

A As best as I remember, I hope I'm not forgetting one, I reviewed medical records from the Endoscopy Center of Southern Nevada. I reviewed medical records from Mr. Meana's primary doctor, Junari (sic) or something like that was his name. I reviewed medical records from a gastroenterology consultant he saw, Dr. -- it was Sood or Soot. And I reviewed medical records from the Philippines from two hospitalizations he had in the Philippines. And I think that covers it, although there may be one or two in there that I'm not recalling.

Q All right. And did you also have the opportunity to review the coroner's report, as well as the autopsy report relating to Mr. Meana?

A Yes, I did.

Q And do you recall what the cause of death was in the death certificate of Mr. Meana?

A It might --

Q If you need --

A -- help if I read it.

Q Sure.

A I mean, I recall, but I don't want to say something wrong.

Q I'm handing you State's Exhibit 18 and 20.

A Okay. Shall I read it?

Q Sure.

A So this is -- it says certificate of death, it's from the Philippines. It says immediate cause of death, hepatic and uremic encephalopathy, antecedent cause says sepsis, and then it says underlying cause is hepatitis C and chronic kidney disease.

Q And with respect -- did you also review the conclusions of the coroner in this case?

A Yes, I did.

Q And as well as the autopsy report?

A Yes.

Q And do you recall what the conclusions in those -- those persons and entity were?

A Maybe I can just check here. They may not be

in here.

MS. STANISH: May I approach with my copies --

THE COURT: You may.

MS. STANISH: -- to expedite it?

THE COURT: That's fine.

MS. STANISH: Thank you.

BY MS. STANISH:

Q That's a big package there.

A Okay. Well, this one is the coroner.

Q Right. Okay. I'll leave this one with you.

A Okay.

Q I'll take that.

A So the coroner's final pathologic findings, and these are pathologic findings from looking at the tissue in the organs, it says hepatitis C infection genetically typed, hepatic cirrhosis, splenic fibrosis. It says acute to subacute pneumonia bilateral, and it says nephrosclerosis mild to moderate.

Q Now, based on your review of all the medical records, as well as the coroner's report, etcetera, can you opine with a reasonable degree of medical certainty whether Mr. Meana died because of the hepatitis C that he contracted on September 21, 2007?

A Given everything else, you can't say that that is the reason he died.

Q Now, I want to explore your conclusion in some detail. But before I do that, when we use the term medically certainty, what does that mean to you?

A A reasonable degree of medical certainty would be, to me, this is the most likely thing that happened or out of several possibilities what within the understanding of medicine most likely was the cause of injury, cause of death, or cause of whatever.

Q And as you sit here today, do you know what caused the death of Mr. Meana?

A I can say there were several factors, and I can't say which one was the immediate cause.

Q Now what I'd like to do, sir, is I'm going to take you through a chronology of your review of Mr. Meana's medical records, starting with what you observed in his medical records prior to his visit to the -- to the gastro center for a colonoscopy. All right? Did you note anything in Mr. Meana's medical records prior to that date that caused you concern?

A There were a couple medical problems that were concerning and probably played a factor over the next few years. One is he had hypertension that was being treated. Another condition he had was benign prostatic hypertrophy, which is an enlargement of the prostate gland that seemed to be causing urinary obstruction so the urine wasn't flowing

properly, and that might have been increasing the pressure in the kidney.

So I noticed, for one thing, two things that were affecting his kidneys prior to then. And I also noticed on a CT scan that I believe he had in June of 2007 there were a couple of liver findings. And one in particular was dilated extra hepatic bile ducts. So the bile ducts that take the bile from the liver to the intestine were abnormally dilated. And I noted he had also had his gallbladder removed at some time prior to that, so suggesting that there had been and might have still been some low grade obstruction of the bile ducts in Mr. Meana.

Q Okay. And we're going to come back to that in a moment because a lot of that you're going to have to explain.

MS. STANISH: May I approach, Your Honor?

THE COURT: You may.

BY MS. STANISH:

Q I'm going to show you what's been marked as Exhibit DD-1. Did you review this document?

A Yes. DD-1 is the results of a liver biopsy that Mr. Meana had on July 25, 2008.

Q And there is a second page on that. If you could identify that, as well.

A Yes, that's a continuation of the description

that was on the previous page.

MS. STANISH: Your Honor, I'd move for the admission of DD-1.

MR. STAUDAHER: No objection.

THE COURT: All right. DD-1 is admitted.

(Defendant's Exhibit DD-1 admitted.)

BY MS. STANISH:

Q Now, we'll come back to that exhibit in a moment. But would you please explain to us in the most layman terms you can what you just described regarding Mr. Meana's -- the condition of his kidney?

A Well, the kidney, from what I saw, was he had hypertension that was being treated with one or two medications. And he also had obstruction of the flow of urine from his kidney out of his body. So both of those things over time can damage the kidney.

High blood pressure or hypertension, by causing the part of the kidney where the blood is filter, by getting scarred so it doesn't work too well. And a urinary obstruction is just really like a plumbing problem. The pressure backs up into the kidney, and the kidneys over time can be damaged. So with regards to his kidney, he had, at least in 2006 or 2007, two processes that could have been contributing to damaging his kidney over time.

Q And I should have dropped this off while I was

up there, but I need the exercise so let me give you what's already been admitted as Defense Exhibit AA-1. You had also mentioned that you noticed a cyst, a right renal cyst or -- could you describe what that means to us?

A Yes, there's -- there's -- well, let me just read this carefully. Hang on. So there's a cyst in the kidney and that could mean many things. Many cysts are benign in the kidney. Sometimes they could be causing -- contributing to obstruction. I can't really say just based on this.

Q And turning your attention to the second page of Defense Exhibit AA-1, an exam that was conducted on June 7, 2007. If you would review, sir, the impressions there that relate to the kidney and the extra hepatic bile ducts. Could you explain those impressions to us?

A Okay. Well, really, No. 3 is what stood out to me, which are the distended extra hepatic bile ducts. Distal obstruction is not excluded. Changes of cholecystectomy, probably small cyst of the liver, hepatic nodule not excluded. And then they say a different type of CT scan of the abdomen could be used to further assess the liver and also to previously describe -- some previously described kidney problems on here.

And it's important to look up into the finer print when I talk about the findings. There's distention of the

extra hepatic bile ducts up to ten millimeters in diameter, and normally they're not more than six millimeters in diameter. So, again, suggesting that there was some chronic obstructive process obstructing, in this case, his liver. The bile flowing from the liver into the intestine.

Q And I need you to go more basic than that. Could you start off with explaining to us what an extra hepatic bile duct is?

A Okay. So the liver sits in the right upper quadrant of your abdomen, and the liver makes bile. And bile is composed of several things. It's composed of bile salts, which are salts that the liver makes from cholesterol. It helps you digest food. It also has bilirubin in it, which comes from the breakdown of red blood cells.

And in the liver there are small bile ducts that take these substances and collect them and they go into larger and larger bile ducts. And the bile ducts that you see outside of the liver are called the extra hepatic bile ducts. And those bile ducts lead to the intestine where the bile that contains these substances is led to go where it helps with digestion or some things are excreted that way.

Q And the fact that those are somehow enlarged, is that what I'm understanding you to say?

A They're abnormally dilated, yes. They're -- they're diameter is bigger than normal.

Q What does that mean and why would you be concerned as a doctor about that?

A Well, I would be concerned that if something like that were present over time, which it seems like it was not terribly symptomatic, but over time something like that can cause damage to the liver in terms of scarring or fibrosis.

Q And the fact that the findings also say that there was no focal hep -- hepatic lesion seen at that time in June of '07, how does that factor into the findings in your analysis of this document?

A You know, focal hepatic lesions, you know, those could be things like cancers or tumors or benign cysts or things like that. And those aren't really that relevant to Mr. Meana's progression and that they're not there doesn't really contribute one way or another.

Q All right. Was there anything else you saw prior to the September '07 visit to the gastro center that you believe is important to determining Mr. Meana's ultimate demise?

A I think the chronic insults to the kidney and this dilated bile ducts that might say there's something wrong with the liver are the two most relevant things.

Q All right. Now, let's move to the next period in time, that would be after Mr. Meana goes to the clinic in

September of '07, but before he leaves the country for the Philippines. And more particularly after he's diagnosed as having hepatitis C, was there any other indication of medical problems that cause you concern?

A Well, certainly the hypertension and the -- most likely the prostatic obstruction, although I didn't see specific records at that time, continued. Otherwise, he had hepatitis C, he had an acute infection that resolved and, you know, the liver got better. He continued to have the virus in his body with the fluctuating viral load, and at some points the virus was detectable at a very low level, later to intermediate level. And then really the liver biopsy that he had in July of 2008 showed some other things that were going on.

Q And that's already been introduced into evidence, so I'm going to throw this -- my copy up on the screen. And if we can -- if you could show us, if I need to go to the next page, let me -- let me know. But if you could -- you can point to that screen, by the way, and touch it, and it will highlight information. And if you want to get rid of a highlight just tap it on the bottom --

MR. STAUDAHER: Lower right.

BY MS. STANISH:

Q -- right. Okay?

A Sorry.

Q That was very good. And so will you explain to us and maybe point out for us so we're clear what your concern is about this liver biopsy result. And by the way, what was the date and who recommended it?

A The date was July 25, 2008, and it says Dr. Sood is probably the doctor who recommended this, but I see there's names of another doctor there, too, that I don't recognize. I may actually have --

Q Can you read that okay? Are you looking at the right one?

A Oh, here we go. Dr. Sood, and there's another doctor's name above it. Can -- how do I get the arrow? There we go.

Q All right. So what is it in this lab -- point out to us in this lab report what causes you concern.

A Well, the essence of the results are really up here. I guess I just can't do this. Do you see the --

THE COURT: If you drag your finger, that would like make a line.

THE WITNESS: How's that? This --

THE COURT: Or, Ms. Stanish, just --

MS. STANISH: Well, you could actually --

THE COURT: -- move the paper.

MS. STANISH: -- make me look at what I circled here.

THE COURT: Just make a mark and she'll move the paper.

THE WITNESS: Start right there where it says diagnosis and read down. Okay?

BY MS. STANISH:

Q Okay. Go ahead.

A So there were a few things here --

Q We won't try the high-tech. Just explain it.

A Okay. Diagnosis, and here you can see it says core biopsy. That means I stuck a needle into the liver and took a tiny piece of liver tissue out. Well, it's gone.

Q No, see what I'm doing, I'm zooming in for those of us --

A Okay.

Q -- that have to actually read this. And, again, if you would tap on the bottom right with your fingernail.

A Okay. Okay. So it says chronic hepatitis. Hepatitis means inflammation of the liver. It says clinically hepatitis C, and that means the pathologist is basing that on the clinical history, and he or she even writes here that there was hepatitis C virus detected in the patient below over -- over here. Now, it says with moderate activity, Grade 3 out of 4, and periportal fibrosis, Stage 2 out of 4. So those are important when you talk about, one, the degree of

inflammation, the inflammation is inflammatory cells in the liver. Like if you banged yourself and it gets read and inflamed, at a microscopic level similar things are going on in the liver. And the second thing is fibrosis. That's the amount of scar tissue in the liver.

So the amount of liver that's been replaced by a scar. If you cut yourself and get a scar, fibrous tissue. That's the fibrosis. And secondly there is a second problem going on in Mr. Meana's liver here. Maybe not the most dramatic, but certainly something else contributing here, which is mild microvesicular and macrovesicular and steatosis. And what that, steatosis simply means is fat in the liver. And microvesicular and macrovesicular basically means the fat are in little, little, little tiny drops when you look under the microscope or the fat is in slightly bigger drops in the -- within the liver cells when you look under the microscope.

Q I'm just going to call that fatty liver.

A That's okay. That's what most people call it.

Q And let me -- before we talk about fatty liver, let me go back to this finding or this diagnosis that relates to the fibrosis. Could you explain to us what exactly is fibrosis?

A So fibrosis simply is scar tissue. The same scar tissue if any of you have ever cut yourself or had a surgery and the normal skin is replaced by scar tissue, over

time as the liver gets damaged, you get scar tissue in the liver. And that can result from many, many processes. It can result from viral hepatitis, such as hepatitis C, it can result from fatty liver, it can result from obstruction, it can result from drugs, it can result from maybe alcohol is the most common cause in our country. So that's something that can result from may long term insults to the liver.

Q And just to be clear, does hypertension or the kidney issue relate to the fibroid condition at all?

A No, what's going on in anyone's kidneys, or specifically Mr. Meana's kidneys, doesn't relate to this.

Q And sticking with the fibrosis for awhile, explain to us what Stage 2/4 means.

A So in hepatitis C the degree of scar tissue in the liver is generally graded from 0 to 4. Zero means there is no scar tissue in the liver. 4 means there is full blown cirrhosis in the liver. Cirrhosis is when the liver has sort of balls of liver cells, if you will, sort of surrounded by scar tissue. 1, 2, 3 are varying advancing degrees between nothing and that, and 1 actually, if you want to get a little technical, it's scar tissue confined to just little parts of the liver called the portal tracts.

Stage 2 is what I think the pathologist actually described here as periportal. So it means the fibrosis, the scar tissue is extending from these portal tracts where the

blood vessels enter the liver into the major body of the liver itself. And Stage 3 is a little more advanced fibrosis where the scar tissue is stretching across parts of the body of the liver called the lobule.

Q So this -- this is the sample, the liver samples collected on July 25, 2008. Can you say with any medical degree of certainty whether the hepatitis C virus that was contracted in September of 2007, approximately -- was that 10 months before this, did that cause the fibroids?

A The fibrosis? I think it would be extraordinarily unlikely that hepatitis C, in less than one year, can lead to this degree of fibrosis. I mean, typically, hepatitis C takes decades for the fibrosis to advance, at least several years.

Q Would it matter that, you know, he was -- had acute hepatitis C at one point and had a viral load that goes up and down over time?

A Viral load doesn't really correlate with the progression of fibrosis in hepatitis C, so that shouldn't matter.

Q And if you would, please give us a clarification on what is the term viral load?

A So viral load, when you measure hepatitis C in the blood, we measure hepatitis C virus in the blood because it's hard to go measuring it in the liver, you do a technique

where you can actually amplify the RNA, which is the genetic material in a virus, and quantify it, get some idea of how much virus there is in the blood, which roughly correlates with how fast the virus is replicating in the liver. So roughly a high viral load might mean the virus is replicating or dividing very rapidly in a person, whereas a low viral load would mean roughly that the virus is not replicating so rapidly in the liver.

Q Now, is there -- on page 2 is there anything else in the -- is this somehow connected to -- tap the screen, please. Again. And again. Bottom right. There you go. And does this document relate to the first page, or does it show something different or more information?

A It says that there is mild microvesicular and macrovesicular steatosis once again, which is --

Q A fatty liver.

A -- confirming what the pathologist wrote in the main diagnosis. Otherwise, most of this looks like negative or pretty much non-contributory descriptions of what's going on here.

Q Now, let me return you to the subject of fatty liver and have you explain that to us like we were three year olds. What -- what is fatty liver?

A So simply fatty liver is abnormal accumulation of fat within the liver, within the cells of the liver, fat

accumulates.

Q And is that something I need to worry about?

A Possibly.

Q Okay. What -- what -- that term fat. What is it that causes fatty liver so we can all be forewarned and understand this document?

A So there are really two major causes. There are other causes, such as drugs and other things, but the two major causes is, one, excessive alcohol drinking, and the other one, which is probably much more common in America now, is being overweight and being insulin resistant. So fatty liver now in the United States has become an unrecognized endemic maybe, probably. Some estimates say 25 percent of a population have excess fat in their liver. And in some cases over time that could also make low grade inflammation that can cause scaring in the liver.

Q So fatty liver can -- can actually cause cirrhosis?

A Fatty liver by itself can cause cirrhosis, yes.

Q And by the way, just clarify for me, you know, we've already seen that he -- he -- the liver biopsy shows fibroids in his liver. How does fibroids relate to cirrhosis? Is it the same thing or a matter of degree?

A So fibrosis, fibrosis is sort of the early

process that leads to cirrhosis. So cirrhosis is actually defined pathologically and anatomically as regenerating nodules of liver cells with fibrosis. So cirrhosis in a way is very advanced fibrosis or scar tissue where the liver begins to regenerate in an abnormal fashion. So earlier stages of fibrosis such as you see here in various liver diseases over time can progress to cirrhosis.

Q Now, I want to address a different subject during this time frame after the colonoscopy, but before Mr. Meana goes to the Philippines. Did you review the documents pertaining to his treatment following the diagnosis of hepatitis C?

A Yes, I believe after this biopsy or perhaps even a little bit before, I can't remember the exact time, but his gastroenterologist, I know he had seen a few, but I know at least Dr. Sood and maybe another recommended that he be treated for hepatitis C.

Q And what would that treatment have been?

A The treatment then would have been a pegylated interferon and ribavirin.

Q And in your opinion, based on your review of the medical records, is that something that would have been beneficial for Mr. Meana to undergo shortly after this diagnosis or biopsy, I should say?

A Well, with acute hepatitis C there's a real

benefit of starting treatment early. Most patients with hepatitis C who get treated, they have it for years or decades, so starting fast doesn't often matter that much. But the one time where it does seem to matter to start sooner is when the infection is acute because there's data that say when you're acutely infected, if you start treatment sooner, you have a better chance of clearing the virus.

Q And do you recall seeing that Mr. Meana ultimately did at least try to undergo the treatment in March of 2009?

A Yes, I can't remember the exact date, but I do remember it was sometime in 2009, not as early as his doctors had recommended.

Q And does that have any significance to you?

A Well, he may have had a better response if he was treated earlier. And from the records I have, it's not entirely clear why once he started treatment he stopped. He tried a couple times and just seemed to not do it, so I can't say.

Q Okay. Now I want to move to your review of the medical records in the Philippines. Can you first tell us why was it he was hospitalized in the Philippines?

A So from my reading of those records, he was hospitalized twice in the Philippines, once in late March or early April of 2012, and again later in April of 2012.

Q And can you explain to us what was the reason for his first hospitalization?

A So as best as I could ascertain from the records from the Philippines, the first hospitalization appeared to be for some confusion and some lab abnormalities they were attributing to hepatic encephalopathy, which is some confusion people can sometimes get when the liver doesn't work well, and also for some kidney problems. He had a rise in creatinine, which is a test of kidney function in the -- in the blood. So it seemed like a mixture of, you know, I'd say low grade problems or medium grade problems with his liver and his kidneys not working well.

Q And can you tell us what happened during his first -- well, let me ask you this. With respect to the Philippine medical records, were they understandable to you and organized for -- for your review?

A They were legible. They were understandable, but they were not, I should say the best medical records. There were not admission notes in there or discharge notes. It was not like in -- typically in the United States where you have much better summaries of why the patient came in and what the situation was when they went home. It was more small notes and sentences.

Q All right. Could you discern from the medical records what happened during the course of his first

hospitalization in late March or early April of, what was it, two thousand --

A 2012. And I think he was discharged around April 6, 2012. And apparently they treated him, from as far as I can see, fairly conservatively. And I noted right before his discharge it said hepatic encephalopathy resolving. Then they put -- said something like chronic kidney diseases, and benign prostatic hypertrophy. That's the big prostate.

Q Now I need you to stop and decode that for us. What does that mean?

A The enlarged prostate that he had had even several years previously.

Q And what was resolving?

A What was resolving was the hepatic encephalopathy. The note said, and it was just a small note, but that would be the confusion he might have had from his liver not working well. And I saw that he was discharged in a wheelchair, awake and alert, and went wherever he went from the hospital in the Philippines to his home or a relative's home or wherever that was.

Q And then when did he return to the hospital, if you can recall?

A He returned to the hospital approximately two weeks later.

Q And what was the reason for his admission into

the hospital?

A The admission into the hospital, as far as I could tell from the notes, was it said uremic and hepatic encephalopathy. But from looking at the records -- and it also said sepsis. From looking at the laboratory tests he had a markedly elevated creatinine saying that the kidneys basically stopped working in the two weeks since the previous discharge and this admission. And also he had an elevated white count, white blood count, that got even higher when he came in, suggesting that he had -- or very strongly suggesting that he had a source of infection. And they noted in the notes urosepsis, which is an infection from the urinary system.

Q And so the -- and correct me if I'm wrong, the primary reason he was admitted was because his kidneys stopped working and he had an infection due to a urinary blockage?

A It's not clear exactly if the infection was in his urine or what the cause was, but that was their clinical impression, and he did have some findings on his urinalysis, many red cells in his urine and some white cells in his urine suggesting there may have been an infection in the urinary tract. But I'd say the main reason he was admitted were those two reasons, kidney failing, and he was, in fact, started on dialysis, and infection for which he was given antibiotics.

Q Was there any indication that he had pneumonia

at the time of admission?

A As far as I was able to tell, none of the doctors had mentioned pneumonia as a high suspicion. Whether I can say he had it or not, I can't.

Q And did you -- did you find it, as you reviewed the records following the second admission into the hospital, did you find appropriate testing of the blood or other labs?

A I think there was, as far as I can ascertain from those records, some testing was appropriate. What I didn't see in there was a blood culture, which was a little atypical to see if there was an infection in his blood. And, again, I don't know if I missed it or it wasn't in there, but I didn't see that in there. But for the most part I think they treated kidney failure appropriately with dialysis. They treated him for an infection, even though they may not have known the exact cause, with antibiotics. And, you know, once you're infected and your kidneys fail, it's possible that some of -- some liver not working well was contributing. And they gave him some medication to also help with the confusion that may have come from his liver, too.

Q Give me a moment. Now, how long -- could you describe for us how they treated the kidney failure? You said they put him on dialysis?

A Yes, he received hemodialysis.

Q And what exactly does that mean?

A Hemodialysis is where an external machine basically filters your blood. So it's an artificial kidney, if you will, to some extent. You generally put a patient on that three times a week, and it helps get rid of the things that the kidney normally gets rid of.

Q And could you describe for us what you -- what you noted in his -- in the hospital records as he -- his health progressively declined during his hospital stay?

A I can't say much from those records except they dialyzed him, they gave him antibiotics. He didn't get better, his blood pressure dropped, they tried to maintain that with types of drugs that raise blood pressure, but ultimately he died.

Q And now let's discuss the findings of the -- the coroner in -- in the Philippines. Did I give that to you up there, or is it --

A Yes. Well, I have the coroner from Clark County.

Q All right.

MS. STANISH: Is it part of the Philippine package?

Court's indulgence. I've got to dig for this. I might have it up here.

THE COURT: There's maybe a copy up here, as well.

MS. STANISH: Oh, okay. Thank you.

MR. WRIGHT: What are you looking for, Margaret?

THE COURT: Is that what you're looking for?

MS. STANISH: Yeah, I believe it is. Court's indulgence.

THE COURT: I'm not sure if that's what -- what you wanted.

BY MS. STANISH:

Q Let me start with the -- I'd like your medical opinion on reviewing the findings in the autopsy. After you reviewed the medical records, what is your evaluation of the findings of the autopsy?

A Well, the autopsy report focuses on hepatic failure, cirrhosis, and chronic hepatitis C, and it does mention pneumonia. But what's a little bit striking to me about the causes of death in the autopsy, even though this pathologist mentions the condition is the lack of saying that the kidney disease contributed to death here. And in particular, even on the death certificate and from looking at the records, it really looked like kidney disease was a major player and also infection and why he came in in his final hospitalization.

Q And the -- and if you turn your attention to the death certificate, with respect to the finding of pneumonia, how was that characterized in the death certificate?

A Well, in the death certificate it's referred to as sepsis because I think the clinician knew he was infected, but wasn't sure it was from the lungs or from the kidneys or somewhere else. But clearly the patient had an overwhelming infection that they called sepsis on the --

Q Okay.

A -- death certificate.

Q That's where I was getting confused about your testimony about you didn't see pneumonia as being part of the hospitalization, but there is this infection. And so could you explain to me a bit more?

A So the clinicians who were taking care of him knew he had an infection, a severe infection because his white blood count was very high, his blood pressure was very low. And, you know, you call that, when it's a severe infection, sepsis, or you can call it septic shock when a blood pressure drops. So when the infection gets so bad, it gets into the blood and your body really begins to fail. They didn't really know what the cause was.

They suspected the urinal -- the pathologist, both the coroner in the pathologist in the Philippines, when they looked at his lungs under the microscope, they noticed that there was inflammation in the lungs or pneumonia. Now, it's hard to say whether pneumonia was the cause of that sepsis that resulted from that sepsis. But from -- clinically you

can say you had a severe infection, and at the autopsy one organ that they saw was acutely infected was the lungs, so they call that pneumonia.

Q Now, we've heard testimony about the condition of Mr. Meana's liver. By the way, how big is the liver? Is it the size of volleyball, football, what?

A The normal liver is about 1,500 grams, so that's --

Q Oh, okay.

A -- roughly --

THE COURT: And we thought it was 1,600 grams, so --

THE WITNESS: So my guess is Mr. Meana's liver at the end was a little bit smaller. It's up -- I don't know, that big, right here.

BY MS. STANISH:

Q How big? How big is this?

A Maybe the span -- the normal span in the front, in the right midclavicular line, the right middle of your chest might be about 10, 12, 14, 15 centimeters. So divide that by two and a half will give you inches.

Q Well, we don't need to go that --

THE COURT: And while we think about that, the jury tells me they need a break right now.

MS. STANISH: All right.

THE COURT: So, ladies and gentlemen, we'll take a

relatively quick break. The bailiff will let me know when you're ready.

During the break you're reminded that you're not to discuss the case or anything relating to the case with each other or with anyone else. Don't read, watch, or listen to any reports of or commentaries on this case, any person or subject matter relating to the case, and please don't form or express an opinion on the trial.

Notepads in your chairs, and through the rear door.

(Jury recessed at 2:59 p.m.)

THE COURT: One of the jurors feels sick, and that's why we needed to take an immediate break.

You can take your break. We don't need you for this.

THE WITNESS: I cannot practice medicine in Nevada.

MS. STANISH: Do they need a liver doctor?

THE COURT: So that's why I said as long as the jury needs. So we'll see what's up with that.

MS. STANISH: I'm almost done, Your Honor.

THE COURT: Yeah, I mean, she just said like she needed an immediate break.

MS. STANISH: Okay.

THE COURT: So that suggested to me like a stomach type of an issue. That's why I --

MR. SANTACROCE: Which one?

THE COURT: Ms. Booker.

MR. SANTACROCE: I saw her kind of moving -- moving around.

THE COURT: Yeah, so we'll see. So we'll -- I'll update you.

Yes?

MS. WECKERLY: I just wanted -- well, Mr. Wright left. But I wanted to put -- just enter something as a Court's exhibit. When Dr. Carrera testified, the defense entered a community letter, proffer letter into evidence after, and Mr. Pitaro was present in court when that happened. After court Pitaro contacted me and said he thinks that's the wrong letter or the witness thinks it's the wrong letter. I provided the right one to the defense. I told them if they want to switch it out that's fine, or we can leave it how it is because it was admitted, but I'd just like to have this as a Court's exhibit that I provided it to the defense on the day I got it.

THE COURT: Okay. And then, Ms. Stanish and Mr. Santacroce, how do you want to handle that?

MR. SANTACROCE: It matters not to me.

THE COURT: I mean, do you want to substitute for the correct one?

MS. STANISH: I have it --

THE COURT: I don't know what the --

MS. STANISH: Yeah.

THE COURT: -- difference is between the two.

MS. STANISH: I don't know either, so let me talk to Mr. Wright about it. I think he stepped out.

THE COURT: Okay. You might want to compare it to the other one to see really what the difference is.

MS. STANISH: Right. Thank you.

MS. WECKERLY: Yeah, so -- all right.

THE COURT: Okay.

(Court recessed at 3:02 p.m., until 3:14 p.m.)

(Inside the presence of the jury.)

THE COURT: All right. Court is now back in session.

And, Ms. Stanish, you may resume your direct examination.

MS. STANISH: Thank you, Your Honor.

BY MS. STANISH:

Q So, Dr. Worman, right before the break I was about to broach with you the subject matter of Mr. Meana's cirrhosis. We've had testimony, and I think that the document of the coroner shows that he had cirrhosis, he had at the -- during the autopsy evidence of ascites?

A Ascites.

Q Yeah, that's what I meant. So can you explain to us how he got to that point in comparison to where he was

prior to the September 2007 time period? What happened to Mr. Meana?

A Well, all I can tell from these records is the degree of fibrosis in his liver progressed from a State 2 in 2008 to a Stage 4 sometime in 2012, which would be cirrhosis. And, you know, that would be extraordinarily atypical to occur just because of hepatitis C.

Q And I'll come back to that in a moment, but I want to go back to something I meant to ask you about the mental condition of Mr. Meana when he was hospitalized. What's that word? I know I can't pronounce it.

A Encephalopathy?

Q Yeah, it sounds like something from Sesame Street, that elephant. But the -- that -- that issue, what causes that?

A So encephalopathy is a broad term, really, just meaning that the brain is not working right. It can happen in end stage liver disease or in very severe acute liver disease, but that's not the only cause. It could also result from kidney failure, which he had at the end. And, you know, looking at the death certificate and the medical records, they were attributing that to both his liver not working and his kidneys not working.

I should say after he left the hospital the first time, as best I can remember it says encephalopathy was rather

mild. He just had problems sleeping and perhaps was a little bit confused, but still awake and alert and knew, for the most part, where he was and, you know, what was going on.

Q And just briefly on the topic of dementia. Are you familiar with whether or not the medicine regiment for hepatitis C treatment, does that cause dementia?

A No, absolutely not. Interferon and ribavirin does not cause dementia. No.

Q And does having either acute or chronic hepatitis C cause dementia?

A Dementia? Absolutely not. No.

Q Are you familiar with any literature that supports that?

A There is no mainstream medical literature on that. And if you look in terms of treatment at the labels, the FDA approved labels for the drugs, dementia is not an adverse event. I mean, dementia is something different. I mean, liver disease can cause neurological problems and so could the medicines, but not dementia. Absolutely not.

Q Okay. Returning to Mr. Meana now. Based on your review of the medical records, can you -- can you tell us with any degree of medical certainty whether the hepatitis C was a direct and immediate cause of his death?

A Direct and immediate cause? I cannot say that based on reviewing all the records.

Q Thank you.

MS. STANISH: I have nothing further.

THE COURT: All right. Thank you.

Mr. Santacroce, do you have any questions?

MR. SANTACROCE: No, Your Honor.

THE COURT: Cross, Mr. Staudaher.

MR. STAUDAHER: Yes, Your Honor.

CROSS-EXAMINATION

BY MR. STAUDAHER:

Q Sir, I want to ask you a couple of questions first about your training that counsel went over with you. I noticed on your CV that it said board certifications you have two; is that correct?

A No, I'm board certified in internal medicine.

Q American Board of Internal Medicine?

A Yes.

Q Is that the only one you hold?

A Yes.

Q On your CV it says National Board of Medical Examiners back in 1986.

A Oh, yes. That's the -- means you passed all of your exams and you're certified to become a -- do an internship and become a physician. That's not a medical specialty.

Q Oh. So when it said -- the confusion there I

wanted to make sure I was clear was that you're not a medical examiner; correct?

A No, I'm not a medical examiner.

Q You're not trained in pathology?

A I have learned liver pathology in part of my training as a hepatologist, but I'm not a pathologist.

Q Okay. And that's what I'm talking about, a pathologist who studies disease of various organs and the like; correct? I mean, that's their focus.

A Well, I study disease of organs, but I'm not formally trained as a pathologist.

Q Okay. Have you ever opined or have you ever given testimony as to cause and manner of death in any case?

A Cause of death? No, I don't believe so until --

Q Until today --

A -- now.

Q -- right?

A Well, I've looked at cases and, you know, looked at what -- well, actually, I take that back. I probably have opined as cause of death in drug overdose cases related to the liver, yes, I have.

Q Okay. How many cases have you reviewed for that kind of a thing? I mean, actually primarily you're looking at why somebody died, the reasons behind it.

A In terms of legal cases how many have --

Q In general. I mean, have you ever been asked to come in and say, hey, why did this guy die?

A Well, we do that sometimes at conferences or --

Q You specifically. Not just at conferences.

A So in legal cases maybe three or four times.

Q Well, let's talk about those. What were the three or four times?

A Those were cases where there were overdose of a drug where a patient died.

Q So all of them were like that?

A Those cases all involved drug alleged overdose or possible overdose.

Q And what was the drug?

A The drug was acetaminophen.

Q Because that's toxic to the liver; correct?

A It's toxic to the liver only if you take it in excess. That's correct.

Q You were asked some questions. I'm going to use my -- I don't know what the exhibit is. I'm going to use the one that counsel gave me for -- to go through this.

MR. STAUDAHER: And, Madame Clerk, I don't know what the exhibit number is on this.

You may actually have a copy up there.

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propofol; is that correct?

A Yes.

Q And when -- when she would redose, did she use same needle and syringe or new needle and syringe?

A New syringe.

Q Okay. So the -- she -- she -- she would -- and we're talking about giving a second injection to the patient; correct?

A Yes.

Q Okay. And she would utilize a new needle and syringe to give an additional dose to the patient?

A I have written down just that new syringe.

Q Okay. I see written there separate syringes for additional doses propofol.

A Yes.

Q Okay. Is that what you're referring to?

A Yes.

Q And at the time they were still utilizing propofol as multi-dose vial; correct?

A Yes.

Q Meaning if -- if a new patient, if there's still propofol available and a new patient comes in, they would use the same vial on the new patient, but with a new needle and syringe --

MS. WECKERLY: Objection.

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BY MR. WRIGHT:

Q -- is that correct?

THE COURT: Basis?

MS. WECKERLY: Well, he said they, and I think she's only observing Ms. Hubbard.

THE COURT: All right. So be more specific in your question.

BY MR. WRIGHT:

Q Ms. Hubbard.

A I'm sorry. Can you ask that again?

Q Yes. Now, tell me the propofol was being used multi-dose; correct?

A Yes.

Q Okay. And so one vial could be used on more than one patient; correct?

A Yes.

Q Okay. And so if one patient is done and a new patient comes in and the remainder of the propofol is to be used, what would Linda Hubbard do?

A She indicated she would get a new syringe.

Q Okay. And is -- is all of that safe and aseptic as you understand it?

A Yes.

Q Okay. Because she is utilizing a new -- is it because she is utilizing a new needle and syringe each time

she goes into the vial?

A Yes.

Q Now, did anyone at that time, Thursday, okay, you three representatives from BLC are there, CDC is there, Southern Nevada Health District is there; correct?

A Yes.

Q Okay. Did anyone on Thursday step in and stop the clinic and say propofol is single-use, you shouldn't be multi-dosing?

A No.

Q Okay. I want to go -- you -- you made additional visits to the clinic; correct?

A Yes.

Q Okay. And did you make additional observations at the clinic?

A Yes.

Q Okay. And do you recall observations on January 16, 2008?

MR. WRIGHT: If I can approach?

THE COURT: That's fine.

BY MR. WRIGHT:

Q I'll direct you to the way I read your notes. Did you again see -- observe Linda Hubbard on the 16th?

A This was just an interview.

Q Okay. An interview with Linda Hubbard on

January 16, 2008?

A Yes.

Q Okay. And that's you interviewing her?

A Yes.

Q Okay. And she is the CRNA you had previously observed?

A Yes.

Q Okay. And why don't -- why don't you run through your interview with her?

MS. WECKERLY: Objection. Hearsay.

THE COURT: I'll see counsel up here.

(Off-record bench conference.)

THE COURT: All right. That's overruled.

Ladies and gentlemen, the statements made by Ms. Hubbard that are testified to may only be considered by you as to their effect on the listener, the person hearing the statements and what knowledge and what information they had in the course of their investigation.

So go on, Mr. Wright.

BY MR. WRIGHT:

Q Go ahead and explain what Linda Hubbard told you on January 16th.

A The registered nurse would give the propofol vials to the CRNA. The propofol vials were to remain in the room. A syringe and needle, both new, and 20 milligrams of

lidocaine and 110 milligrams of propofol would be drawn up. They would refill same syringe, same vial, and toss the propofol after each patient.

Q Okay. And -- and what did she tell you had been the practice in the past?

A In the past did not use the propofol as a single-use vial. Used a clean syringe for each patient, may use the propofol for two patients, clean draw.

Q Okay. Now, it -- interpret what her practice on January 16th was as you understood it. At that time were they using propofol as a single patient -- a single-use vial as opposed to multi-use?

A Yes. On January 16th Linda Hubbard indicated that the propofol was used for one patient only.

Q Okay. And so no more multi-use, single-use propofol; correct?

A Yes.

Q Okay. And if the patient needed additional dose of propofol, Linda Hubbard was refilling same syringe, same vial; is that correct?

A Yes.

Q Okay. And does that -- rather than using a new needle and syringe, she was reusing same needle and syringe, go back into the vial, redose the patient, and at the conclusion toss needle, syringe, and remnants of propofol; is

that correct?

A Yes.

Q Okay. And is all of that safe injection practices and aseptic technique?

A It would not be the best practice, but if she tossed the propofol vial after each patient, my opinion it would be safe, but not best practice.

Q Okay. What -- what would you view as best practice?

A New syringe, new needle to reenter the vial.

Q Okay. At -- at the time did you or BLC tell Linda Hubbard on the 16th you can't do that?

A No, we did not. I did not.

Q Okay. At -- at that time -- I'm taking this chronologically.

A Okay.

Q At that time you were aware of the fact that the clinic historically had been using propofol as multi-use vials; correct?

A Yes.

Q Okay. You were aware of reuse of syringes on same patient; correct?

A Yes.

Q Okay. And at that time you and the BLC did not recognize those two components as creating a health

hazard; correct?

A From what they told us, that's correct.

Q Okay. And ultimately BLC issued a -- what do you call that document where -- where the clinic then gives you a plan of correction?

A A statement of deficiencies.

Q Okay. Statement of deficiencies. That's what I was looking for. The BLC, your agency, issued a statement of deficiencies to the clinic on Shadow Lane; correct?

A Yes.

Q And that statement of deficiencies identified what deficiencies, do you recall?

A No, I would -- I would need to see the statement of deficiencies.

Q Okay. Does that look like it?

A Yes.

Q Okay. And what -- what were the deficiencies -- when did your investigation end?

A January 17, 2008.

Q Okay. So it went from January 9th through January 17th; correct?

A Yes.

Q Okay. And then a -- a report or a statement of deficiencies is issued to the clinic; correct?

A Yes.

Q And it's pointing out any deficiencies that have been identified by inspection, observation, or interviews?

A Yes.

Q Okay. And then once the clinic receives that, just like any other clinic here in Nevada or hospital or doctor's office now, they -- they get to respond; correct?

A Yes.

Q And that response is called what?

A A plan of correction.

Q Okay. And is that -- that document there, does that have the statement of deficiencies and the plan of correction?

A Yes, it does.

Q Okay. And so the statement of deficiencies was authored -- was authored or delivered to them, the clinic, about when?

A It was provided to the clinic on -- around February 4, 2008.

Q Okay. And -- and did they -- and you indicated that there is a plan of correction. Is that where they essentially -- the clinic answers and states what they will do to correct each deficiency right in on the same report?

A Yes.

Q Okay. And did the clinic provide a plan of correction?

A Yes, they did.

Q Okay. Now, explain what the deficiencies were that were that were identified for the clinic.

A The first deficiency was the facility failed to ensure the center adopted and reviewed written policies and procedures for the use of single dose of propofol vials, and for the first step of the cleaning process for the upper gastrointestinal endoscopy and colonoscopy scopes, and the use of disposable biopsy instruments.

Q Okay. So three different deficiencies?

A For the first tag, yes.

Q First tag?

A Yes.

Q What's that mean?

A In our regulations we have tag numbers to identify specific regulation sets. So when we find a deficient practice we would cite it at the most appropriate tag.

Q Okay. So you -- to a layman it sounds like you found three things wrong.

A Under the administration tag, so it's the governing body, the regulation is the governing body shall ensure that that the center adopts and enforces and annually

reviews written policies and procedures required by the NAC, inclusive and including an organizational chart, and these policies and procedures must be approved by the governing body annually. So that --

Q Okay.

A -- was the regulation, and we found three areas of deficient practice under that regulation.

Q Okay. And what were the three deficient practices? Number one was propofol?

A Failure to adopt and review written policies and procedures. The first one was the use of single-dose propofol vials.

Q Okay. And -- and the deficiency was what? Using single-dose as multi-dose?

A That's correct.

Q Okay. And it had -- when we went through it chronologically you all had been there on Wednesday and they explained that they used propofol multi-dose.

A Uh-huh.

Q It was observed on Thursday, multi-dosing propofol. And then by the 16th of January, the practice had changed; correct?

A Yes.

Q Okay. And during the interim was it brought to the clinic's attention? Between January 10th and 16th when

they changed their practices, was that because they were told use this single-dose, not multi-dose?

A Yes.

Q Okay. And that was why?

A We did not -- the BLC did not inform them to use it as a single-dose. That was done by either the CDC or Southern Nevada --

Q Okay.

A -- Health District.

Q All right. So you -- you were aware -- this investigation you were participating in, there were other agencies there at the same time?

A Yes, during the investigation.

Q Okay. And so you were aware that that was brought to the clinic's attention that propofol should be used single-dose rather than multi-dose?

A Yes.

Q Okay. And did -- did you independently learn that yourself, like by researching?

A That I have to review to my notes.

Q Okay. You don't recall?

A The -- the question -- can you repeat the question?

Q Did you like go online to AstraZeneca and look up propofol and determine whether it should be used single-use

or multi-use?

A Yes, we did do that.

Q Okay. I mean, does that refresh your recollection --

A Yes, that does.

Q -- when I told you?

A Yes.

Q Okay. And the -- do you -- do you recall from your investigation that it -- it should be single-use rather than multi-patient use because of the lack of preservatives in the propofol?

A Yes.

Q Okay. Now, what was the -- the deficiency pointed out to the clinic -- I'm just taking them one at a time.

A Okay.

Q But regarding propofol, what was the plan of correction?

A The facility implemented a policy which was approved by the governing body outlining the strict adherence to the administration of propofol. The policy states that all propofol vials are to be utilized as single-dose only, one vial per patient. The policy also states that needles and syringes are to be utilized as single-use only and are to be discarded intact in an appropriate Sharps container

immediately after use.

The nurse anesthetists and staff nurses have been informed and reeducated regarding the newly implemented policy and proper protocols for single-dose vial medications, and needle and syringe utilizations. The facility no longer uses any multi-dose medication vials.

The 50 milliliter 2 percent lidocaine and the .9 percent normal saline vials have been discontinued and removed from the facility. The 0.9 percent vial, normal saline, now comes in a prefilled single-use 3 cc syringe, 2.5 percent lidocaine injectable for use with propofol has been stopped until further notice. If the 2 percent lidocaine is reimplemented for use with propofol at a later date, 5 milliliter single-dose vials will be utilized

Q Okay. And when a clinic responds like -- you -- the deficiencies are served on them, and then a plan of correction is returned to the agency, BLC. What -- what then happens? Is it -- is it approved? Is it disapproved? What's the agency do? Like okay, or not good enough? How does this work?

A We would review the plan of correction to see if they have addressed the deficient processes that were identified. If they have, we can accept the plan of correction. If they have not addressed the deficiencies practice, then we cannot accept it and we would inform the

facility that the plan of correction was unacceptable and identify why it was unacceptable.

Q Okay. And what happened here?

A I don't know because when we accept a plan of correction we usually identify at the top of the statement of deficiencies that the plan of correction was acceptable. It's not identified on this here, so I'm not sure if this was accepted or not.

Q Okay. Do you have any recollection at all? That's the only copy I've got.

A No, I don't. We would usually, like I said, whoever reviews it will identify if it was acceptable or not.

Q Okay. Who would have reviewed that?

A It would have been either the Health Facility Surveyor III, the supervisor, myself, or any other surveyor who was available to review it.

Q Okay. And to jump back -- what were -- what were the other two deficiencies?

A In regards to this tag, the first step of the cleaning process for the upper GI endoscopy and colonoscopy scopes, the facility failed to ensure the center adopted and reviewed written policies and procedures. Again, for the first step of the cleaning process and for the upper GI endoscopy and colonoscopy scopes and the use of disposable biopsy instruments.

Q Okay. Sounds like two different things there. One is biopsy instruments, one is scope cleaning.

A That's correct.

Q Okay. There was a scope cleaning deficiency.

A Yes.

Q Okay. When you keep talking tags, you throw me for a loop. Were there additional tags in there, additional things found wrong?

A Let's see. There was another tag, again, related to the center failed to ensure the administrator evaluated and revised the policy and procedure for the use of propofol, for the cleaning of the scopes.

Q Okay. The way I read that, tell me if I'm wrong. I'm just a layman. Without tags and everything, just tell me how many things were found wrong.

A Okay. Let me see.

Q The way I read it there's three things.

A That's correct.

Q Okay.

A There are three areas of deficient practice.

Q Okay. And it impacts various ways because they didn't have written policies or else they were not following them or something, and that accounts for the different tags under the regulations; right?

A That's correct.

Q But -- but basically three things wrong.

A That's correct.

Q Okay. And one of them was the propofol. They were using multi-use; correct?

A Yes.

Q Secondly, scope cleaning problems?

A Yes.

Q And was there a plan of correction for that?

A Yes.

Q Okay. And basically did they say we will -- we'll clean them properly?

A Yes.

Q Okay. So the plan of correction was the deficiencies found in scope cleaning, they will correct and clean them properly, is that fair?

A Yes.

Q Okay. And the third deficiency you said had to do with biopsy forceps?

A Disposable biopsy instruments, yes.

Q Okay. And what was -- what was the deficiency?

A The administrator failed to ensure the policies and procedures were evaluated and revised to reflect the current practice at the center.

Q What's that mean in layman's terms?

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A In layman's terms, let me see. The administrative staff indicated that the facility used disposable biopsy instruments, and the policies and procedure had not been updated to reflect the current practice. So the facility had switched from --

Q Reusable.

A -- reusable to disposable, and the policy and procedure was not updated to reflect that current practice.

Q Okay. The policy and procedure still said using reusables and cleaning them, and, in fact, they had gone to disposable biopsy forceps and the policy was outdated?

A Yes.

Q And I guess the plan of correction would be we updated the policy?

A Yes.

Q Okay. Now, I want to go back to your notes. Aside from January 16th interviews at the clinic, did you also interview Vincent Mione, another CRNA? And if you'll go to the third page -- you found it?

A Yes.

Q Is that January 16, 2008?

A Yes.

Q And Vincent Mione, a CRNA?

A Yes.

Q And what did -- in this interview, what did he

explain?

A He indicated that the RN distributes the propofol vials to the CRNA, the vials were to remain in the procedure room, propofol single-use vials, they were 20 milliliter vials. He would open the vial, draw up 20 ccs, same vial, same patient, same syringe. Throw out remaining propofol and open bottle after each patient. The usual propofol dose was 120 to 180 milligrams, and lidocaine 2 percent, they would draw up -- or he would draw up .5 ccs first, and then 10 ccs of propofol.

Q Okay. Now, on January 16th when you interviewed Mr. Mione, his practice on single-use -- because it's January 16th now. So propofol being used single-use vial, and his practice for a patient was the same as Linda Hubbard's; is that correct?

A Yes.

Q Okay. Meaning one needle and syringe, dose patient, if patient needs more, use the same needle and syringe back into the same propofol vial, same needle and syringe back into the patient, and then at the conclusion, discard propofol vial, needle, and syringe; correct?

A Yes.

Q And once again, at that time on January 16th, you didn't say anything to Mr. Mione about this being an improper procedure; correct?

A That's correct.

Q Because at -- at that time it was viewed as a safe aseptic procedure, meaning on January 16th.

A It was a safe procedure. Now, again, not best practice, but, yes.

Q Okay. But the -- I mean, Linda Hubbard and Vincent Mione are telling you in interviews, BLC, this is the way we are doing it under our new policy of single-use propofol; right?

A Yes.

Q And no one said to them, well, this is okay, but it's not best practices; correct?

A That's correct.

Q Okay. That -- that determination came at a later time?

A I'm not sure what you mean.

Q Did -- did you have discussions with Brian Labus like in February about the dangers of such a practice?

A That I don't recall.

Q Okay. Well, at -- at what point was the determination made, as you understand it, to put them on notice that, hey, you need to use a brand new needle, brand new syringe every single time you enter the propofol vial or the patient?

A So a brand new syringe, brand new needle for

each patient?

Q Well, you tell me. You're a nurse and you're an inspector for the BLC; correct?

A I didn't -- I did not tell them that, no. Not during my -- not during the investigation --

Q Okay.

A -- that I participated in.

Q And had you -- had you been there on January 16th and seen a practice that was putting patients in danger because they were operating and doing it exactly the way they were telling you; correct?

MS. WECKERLY: I'm going to object, unless she --

THE COURT: That wasn't really --

MS. WECKERLY: -- observed procedures.

THE COURT: -- a question, either.

MR. WRIGHT: I threw a correct on the end.

THE COURT: Well, I know, but the first part didn't match up with the second part. Is your question -- I mean, state your question again.

MR. WRIGHT: Okay.

BY MR. WRIGHT:

Q I presume other inspectors were there other than yourself; correct?

A Yes.

Q And if -- if a clinic is telling you they are

engaging in certain practices and you have any inkling that those are unsafe practices putting patients at risk, you would stop those practices and advise them; correct?

A That's correct.

THE COURT: Maybe this would be a good time for a morning recess.

MR. WRIGHT: Thank you.

THE COURT: Ladies and gentlemen, we're going to go ahead and take until about 11:30 our morning recess.

During the recess you're reminded that you're not to discuss the case or anything relating to the case with each other or with anyone else. You're not to read, watch, or listen to any reports of or commentaries on this case, any person or subject matter relating to the case, and please don't form or express an opinion on the trial.

Notepads in your chairs, and follow the bailiff through the rear door.

And, ma'am, during the break, don't discuss your testimony with anyone else.

THE WITNESS: Okay.

THE COURT: Okay. And if you want to take a break, it's just through the double doors there.

THE WITNESS: Okay. Thank you.

(Court recessed at 11:15 a.m., until 11:28 a.m.)

(Inside the presence of the jury.)

THE COURT: All right. Court is now back in session.

Mr. Wright, you may resume your questioning.

MR. WRIGHT: Thank you.

BY MR. WRIGHT:

Q Did you also observe or interview another CRNA on January 16th, Mr. Vincent Sagendorf? And the -- like on page 5.

A Yes.

Q Do you have that? Yes.

A Yeah.

Q January 16, 2008, interview of Vinnie Sagendorf, CRNA; correct?

A Yes.

Q And what did Mr. Sagendorf explain regarding his procedure?

A The RN distributes the propofol in the morning. He draws up 1 cc of Xylocaine first, then 10 ccs of propofol. It's a 20 cc standard vial. When -- when a patient -- when with the patient and ready to start the procedure, that's when he would draw up the propofol. Start with 100 milligrams of propofol, augment as needed, use a new syringe, discard the propofol after each patient, standard practice for CRNA.

Q Okay. So as -- tell me if I'm incorrect, but

as far as Mr. Vinnie Sagendorf, he indicates that he would be doing what you refer to as best practices.

A Yes.

Q Is that right?

A Yes.

Q Whereas Linda Hubbard and Mr. Mione were reusing needle and syringe for same patient, Vincent Sagendorf is saying every time I draw up again I use a new needle and syringe.

A Yes.

Q And at the end, toss the propofol because it's single-patient use as of now; correct?

A Yes.

Q Okay. And do you recall you and Nadine Howard and Leslee Kosloy, the three BLC investigators, were interviewed by the Metropolitan Police Department in March 2008? Do you recall that?

A Yes.

Q Okay. Have you seen your transcript of interview?

A Briefly.

Q Okay. And do you recall that at that interview in March -- on March 5, 2008, it was all three of you; correct?

A Yes.

Q Okay. And you are all three nurses?

A Yes.

Q And inspectors?

A Yes.

Q Okay. And you explained to the detectives that the procedures described on January 16th by Mr. Mione, Mr. Sagendorf, and Linda Hubbard were proper and correct procedures; right?

A That I don't recall. I'll need to see the --

Q Okay. 23 to 27 -- 23 to 26, read that to yourself, all four pages.

A Okay.

Q Starting like about there on line -- page 23.

A [Witness complied]. Okay.

Q Does that refresh your recollection?

A Yes.

Q And that's on March 5, 2008. I'll tell you because I didn't hand you the cover page.

A Okay.

Q And that's interview of Leslee Kosloy, Dorothy Sims, Nadine Howard at the BLC; correct?

A Yes.

Q And it's by Detective Gray and Detective Hahn of the Metropolitan Police Department.

A Okay.

Q And at that time you were interviewed, you all, let me put it that way, and the practices described of Mr. Mione, Linda Hubbard, Sagendorf were stated by you all to be perfectly acceptable.

A That's correct.

Q Is that correct?

A Yes.

Q And there was nothing in there to the detectives about not best practices or anything else. It was they are using acceptable safe practices --

A Yes.

Q -- correct?

A Uh-huh.

Q And it was talking specifically about reusing needle and syringe; correct?

A Yes.

Q And apparently at some later time after March 5, 2008, there was a determination that that may not be safe practices or best practices; right?

A My opinion, yes, not best practice.

Q Okay. After March 5, 2008?

A Yes.

Q Okay. And -- because on March 5, 2008, you and the other two inspectors are agreeing that those are safe practices; correct?

A Yes.

Q Okay. And you're now saying today it's not best practices; right?

A That's correct.

Q Okay. So that change occurred after March 5, 2008?

A Yes.

Q Okay. And investigation of Shadow Lane had ended by BLC on January 17th when the statement of deficiencies was issued; correct?

A That's correct.

Q Additional -- did additional investigation by BLC occur at the sister clinic on Burnham Lane?

A Did we do an inspection over there?

Q Yes.

A Yes, we did.

Q Okay. And that was after Shadow Lane?

A Yes.

Q Okay. And so -- and you knew Burnham was simply another clinic of the same practice; correct?

A That's correct.

Q Okay. And so BLC went and inspected there --

A Yes.

Q -- correct? And did another statement of deficiencies; correct?

A Yes.

MS. WECKERLY: I'm going to object as to foundation unless she was at Burnham and observed it.

MR. WRIGHT: Okay. Well, the -- I'm not going to go any further with going into Burnham.

THE COURT: Okay. Move on.

BY MR. WRIGHT:

Q There -- thereafter did your agency conduct further investigations of other ambulatory surgical centers, starting in February 2008?

A We did do inspections of other ambulatory surgery centers. I don't know the exact date as when they were started, but we did do other investigations, yes.

Q Okay. And was that precipitated, started because of what was found at Shadow Lane?

MS. WECKERLY: Objection. Calls for speculation.

THE COURT: If she knows.

You can answer. Don't guess if you don't know.

THE WITNESS: That I don't know.

BY MR. WRIGHT:

Q Okay. You don't know why the governor asked all of the ambulatory surgical centers in the state to be inspected starting right after the Shadow Lane clinic?

THE COURT: Well, that would --

MS. WECKERLY: Objection.

THE COURT: -- be speculation.

MS. WECKERLY: That's not in evidence.

THE COURT: Yeah, so --

BY MR. WRIGHT:

Q Okay. Do you know?

THE COURT: Mr. Wright, I already sustained the objection --

MR. WRIGHT: Okay.

THE COURT: -- so you need to move on.

BY MR. WRIGHT:

Q Did you -- in February did BLC inspect another clinic on Maryland Parkway, an endoscopic clinic?

MS. WECKERLY: I'm going to object unless she personally did the inspection. I mean, she could, I guess, say that --

THE COURT: Well, she could --

MS. WECKERLY: -- she heard

THE COURT: -- be aware of it in her role as part of the team.

So do you know whether or not there was another inspection?

THE WITNESS: We did do an inspection on an ambulatory surgery center on Maryland Parkway. I don't know the exact date, though.

THE COURT: Okay. Were you involved in that

inspection?

THE WITNESS: No, I was not.

BY MR. WRIGHT:

Q Would you look at that document and tell me -- tell me what that is?

A Going back to your -- the Judge's question on was I involved with it, is that directly involved with it, or as a supervisor?

Q As a supervisor.

A As supervisor, I may have been involved with it, but I wasn't directly onsite.

Q Okay.

A This is a state --

MS. WECKERLY: My objection, then, is foundation as to any observations if she wasn't onsite.

THE COURT: All right. Lay a foundation, Mr. Wright.

MR. WRIGHT: I'm having her -- I handed her an exhibit and I'm asking her what it is --

THE COURT: Okay.

MR. WRIGHT: -- before I move its introduction.

BY MR. WRIGHT:

Q What is that exhibit?

A This is a statement of deficiency for a gastrointestinal diagnostic clinic on 3196 South Maryland

Parkway.

Q Okay. And is that the inspection we've -- you and I have been talking about?

A The one on Maryland Parkway?

Q Yes.

A Yes, this occurred in February.

Q Of 2008?

A Yes.

Q And that -- and that's a document of your agency; correct?

A That's correct.

MR. WRIGHT: I move its admission.

MS. WECKERLY: Objection. Hearsay.

THE COURT: I'll see counsel up here.

(Off-record bench conference.)

BY MR. WRIGHT:

Q Would you look at that page by page and tell me if that appears to be an accurate copy of a record of your agency?

A [Witness complied]. Yes, this is a statement of deficiencies from our agency.

Q And it's page 1 through 29 and every single page is there; correct?

A Yes.

MR. WRIGHT: Move it's admission.

MS. WECKERLY: Same objection that I previously stated.

THE COURT: Basis, why are you --

MS. WECKERLY: Foundation.

THE COURT: -- admitting it?

MS. WECKERLY: Oh, sorry.

THE COURT: Mr. Wright?

MR. WRIGHT: Pardon? I'm sorry.

THE COURT: I'll see --

MR. WRIGHT: -- I didn't --

THE COURT: -- counsel up here.

MR. WRIGHT: -- hear you.

THE COURT: I'll see counsel up here.

(Off-record bench conference.)

MR. WRIGHT: Thank you, Your Honor.

THE COURT: Go ahead.

BY MR. WRIGHT:

Q Do you have Exhibit CCC -- CC-1; correct?

A Yes.

THE COURT: Two Cs.

BY MR. WRIGHT:

Q CC-1

A Yes.

Q The -- these inspections of an endoscopy -- a gastrointestinal diagnostic clinic, is that an ambulatory

surgical center?

A Yes.

Q Okay. And these inspections take place unannounced?

A Yes.

Q Okay. So it's inspectors walk in the door, watch, and interview?

A Yes.

Q And look at records?

A Yes.

Q Okay. And this occurred on February 15, 2008?

A That's the date that the investigation was completed. It started on February 13, 2008.

Q Okay. Looking at page 25 -- 25 of 29.

A Okay.

Q Did the observations begin on February 14th, general observations of four patients receiving endoscopy procedures at the facility between 7:35 a.m. and 9:30 a.m.?

A Yes.

Q And going to page 26 of 29 -- and this is a different clinic in Las Vegas; correct?

A Yes.

Q It's not -- not Burnham, not Shadow Lane, not associated with the Gastroenterological Center of Las Vegas?

A Yes.

Q Okay. Now, on page 26, Patient No. 3, okay.

A Yes.

Q Would you read the paragraph as to Patient 3?

MS. WECKERLY: I'm going to just object as to foundation unless she was there and observed this.

THE COURT: What was your role as a supervisor on this investigation or document?

THE WITNESS: I would have assigned the surveyors to go out to investigate. They would call for any questions or guidance. And then once the investigation was completed, I would review the report, and then I would mail the report out to the facility. And then I would track the inspection process.

THE COURT: Okay. When you say track the inspection process, what does that mean?

THE WITNESS: I would track as to what facilities we are going at to do any inspections at, which day we started, what day we've completed, did the statement go out, and did we get a plan of correction in.

THE COURT: Okay. And then as the supervisor, did you have any role in making sure the plan of correction was actually adhered to or the changed -- the recommended changes were made?

THE WITNESS: It looks like I reviewed the plan of correction and accepted it. And this is a federal statement,

so because of the conditions we would be then responsible to do a follow up visit to make sure they are in compliance with the regulations.

THE COURT: And you do that as a supervisor?

THE WITNESS: I would assign --

THE COURT: Okay.

THE WITNESS: -- the -- the surveyors to go out and do the follow up investigation. But I would not have been the investigator going out to do it.

THE COURT: All right. Go ahead, Mr. Wright.

MR. WRIGHT: Okay.

BY MR. WRIGHT:

Q And do you all -- your -- your agency, you do the inspections for the centers for Medicare and Medicaid services, federal government; correct?

A Yes.

Q I mean, just the way our government is set up here, the feds for Medicare and Medicaid contract to the state, your agency, to do the inspections of their clinics that are qualified for Medicare and Medicaid services?

A That's correct.

Q Okay. And so that's what was taking place here?

A Yes.

Q Okay. Now, Patient No. 3, read that

paragraph.

A Patient No. 3 was brought into the procedure room at 8:35 a.m. The anesthesiologist injected the patient with propofol through the patient's intravenous IV tubing. The anesthesiologist opened a new vial of propofol. The anesthesiologist used an open needle and syringe to draw up additional propofol from the vial. The anesthesiologist was observed putting the used vial with the remaining propofol back on the counter after the case. This was the only used propofol vial observed. The other vials on the countertop were new, unopened vials.

Q Okay. And then Patient 4 follows Patient 3; correct?

A Yes.

Q Okay. And what happened with Patient 4?

A Patient No. 4 was brought into the procedure room at 9:15 a.m. The anesthesiologist was observed drawing up propofol in the same -- the anesthesiologist was observed drawing up propofol from the same vial that he had used on Patient No. 3 to inject Patient No. 4.

Q Okay. I had -- I had skipped Patient 2 before that, but read the next paragraph about Patients 2, 3, and 4. What then occurred?

A Patients No. 2, 3, and 4 were observed being transferred into the procedure room one at a time on a gurney

with their intravenous IV bags lying on the gurney with them. An observation was made that one of the patients -- the patient's blood flowed back into the IV tubing. When the IV bag was hung on an IV pole, the blood cleared from the tubing.

Q Okay. Next paragraph.

A During the observation time frame, the anesthesiologist was never observed opening new syringes.

Q Okay. And then was the anesthesiologist interviewed? What's the next paragraph?

A On 2/24/08 at 9:45 a.m., the anesthesiologist stated that it was okay to use a single patient use propofol vial on multiple patients because the purpose of the single patient use label on the vial was to prevent bacterial growth in cases that required a long period of time. The anesthesiologist stated that because these cases were of short duration there was not enough time for bacterial growth to occur, that way it was safe to reuse the propofol vials on multiple patients.

The anesthesiologist was asked what the process was when he went from a used propofol vial to a new patient. The anesthesiologist stated that he would change the needle and reuse the same syringe. The anesthesiologist explained that because a high port was used on the IV line it was safe to change the needle and reuse the same syringe on multiple patients.

Q Okay. And that -- that was an anesthesiologist, M.D., not a CRNA; correct?

A That's correct.

Q Okay. And the report, the statement of deficiencies, the same syringe was being used by the anesthesiologist, multi-patient, but simply changing the needle; correct?

A Yes.

Q Okay. And all of the investigation at Burnham, Shadow Lane, the entire investigation, there was never any finding ever of any reuse of needles, reuse of syringes between patients; correct?

A At the Shadow Lane, that's correct.

Q Okay. I don't recall the Burnham clinic.

Q Okay. You would have to look at the report on Burnham?

A Yes, I would.

Q Okay. But at Shadow Lane no reuse of syringe between patients?

A That's correct.

Q Okay. And then this on February 15, 2008, reuse of syringe, changing needle between patients and multiple use of propofol; correct?

A That's correct.

Q Okay. And was a plan of correction filed?

A Yes.

Q Okay. And plan of correction is propofol used single-use and new needles and syringes?

A It would be in the attachments because they attached their policies and procedures. But if I accepted it, then --

Q Okay.

A -- they would have changed their policies and procedure.

Q Now, thereafter was a plan put in place to survey or investigate, inspect, I guess, is the correct word, all of the ambulatory surgical centers in the state of Nevada in 2008?

A That's correct.

Q And did -- did you -- did your office participate in that?

A Yes.

Q Okay. Did CDC participate in that?

A Yes.

Q And do you recall the time frame?

A No.

Q Look at that document to yourself and tell me if you recognize what that is.

A [Witness complied].

Q Do you know what that is?

A It looks like it's a report that was done by our administrator, Richard Whitley.

Q Okay. And who is Richard Whitley?

A He is the administrator for the Health Division.

Q And is that your division?

A Yes, it is.

Q He's the boss?

A Yes, he is.

Q And does -- is that report the -- a report of the results of the inspection of ambulatory surgical centers in Nevada in 2008 regarding infection control practices?

MS. WECKERLY: Your Honor, I'm going to object unless she independently recognizes it. It sounds like she -- or it looks like she's reading it.

THE WITNESS: I -- to be honest, I don't recall seeing this report.

THE COURT: Okay.

BY MR. WRIGHT:

Q Okay. Do you know was it -- let me show you Exhibit R-1.

MS. WECKERLY: Can I see that exhibit? I don't --

THE COURT: Yeah. It's already been admitted.

MS. WECKERLY: Right. I just want --

THE COURT: That's fine. He can --

MS. WECKERLY: I just want to --

THE COURT: -- show it to you.

MS. WECKERLY: -- know what it is.

THE COURT: And R-1 is what, Mr. Wright?

MR. WRIGHT: It's a Nevada State Health Division technical bulletin --

THE COURT: Okay.

MR. WRIGHT: -- regarding potential exposures to hepatitis C in -- in ambulatory surgical centers in Las Vegas.

THE WITNESS: Okay.

BY MR. WRIGHT:

Q Are you familiar with that?

A No, I'm not.

Q Okay. Do you -- do you -- who is -- that's in evidence already. That technical bulletin is from whom?

A It looks like it was written by Dr. Ihsan Azzam.

Q Who is he?

A He is the state epidemiologist.

Q Okay. And is he in your agency or in a different state agency?

A It looks like he's with the Nevada State Health Division, so --

Q That's different than you all?

A The Nevada State Health Division is a division

within the Department of Health and Human Services, and then our bureau is like a program within that Health Division. So he's with -- he's the state epidemiologist, but he's not with the Bureau of Healthcare Quality and Compliance.

Q Okay.

A Or the BLC?

Q Do you recall that as a result of inspections taking place a technical bulletin was sent out to healthcare providers about multi-use vials and reuse of syringes?

A I don't recall personally, but this is --

MS. WECKERLY: I'm going to object unless she recalls.

THE COURT: All right. Okay.

BY MR. WRIGHT:

Q Now, you do recall that there was -- your agency participated in an inspection of all the ambulatory surgical centers in the state of Nevada; right?

A Yes.

Q And do you recall how many of them were inappropriately using single-use items, especially syringes?

A I don't recall how many of them.

Q Let me show you something and see if this refreshes your recollection.

A Without seeing the inspection reports --

Q That does not refresh your recollection?

A No. We have a total of about 60 facilities all throughout the state. So without seeing each of the inspection reports, I really can't say.

Q Okay.

THE COURT: That's fine. I mean, the question is does that refresh your recollection.

THE WITNESS: Yeah.

THE COURT: And if it doesn't, then Mr. Wright is going to move on.

BY MR. WRIGHT:

Q Right. My question was do you recall of the number inspected, like 60 of them, how many of them were found to be reusing syringes?

A No, I can't recall how many of them.

Q Does looking at that refresh your recollection?

MS. WECKERLY: I'm going to object. She just said it didn't.

THE COURT: I think she just said it didn't.

THE WITNESS: No, it doesn't.

THE COURT: All right.

MR. WRIGHT: I move the admission of the exhibit.

MR. STAUDAHER: Well --

MS. WECKERLY: I'm going to object as to foundation.

THE COURT: That's sustained.

MS. WECKERLY: Among others.

THE COURT: That's sustained, Ms. Weckerly.

BY MR. WRIGHT:

Q So you don't --

THE COURT: I don't think that's been --

BY MR. WRIGHT:

Q -- have any idea --

THE COURT: -- marked yet, either.

BY MR. WRIGHT:

Q Do you remember you were working and participating in it; correct?

A Yes.

Q Okay. And this is 2008. And an inspection of all the ambulatory surgical centers because we had this outbreak here; correct?

A Yes.

Q Okay. And can you remember if there was zero found? Do you have any memory whatsoever of the results of this investigation?

A Without looking at those inspection reports I couldn't tell you what was found at each of the facilities.

Q Okay. So for all you know it was 100 percent reusing; correct?

A Without looking at the inspection reports, I can't say.

Q Okay. In preparation for your testimony here, have you been interviewed by anyone?

A For?

Q In preparation for testifying --

THE COURT: For coming in today did anyone interview you, like a police officer or investigator or attorneys, anybody like that?

THE WITNESS: I met with the DA awhile ago.

THE COURT: Okay. By awhile, a week ago, two weeks ago, a month ago, what do you mean?

THE WITNESS: Prior to -- prior to jury selection.

THE COURT: Okay. So that would have been a couple of months ago?

THE WITNESS: Yes.

THE COURT: All right. Go on, Mr. Wright.

BY MR. WRIGHT:

Q Okay. Who did you -- you never met with me; right?

A No, I have not.

Q Okay. But you met with the District Attorney's office?

A Yes.

Q Okay. Who did you meet with?

A The gentleman here and the lady here.

THE COURT: Which gentleman?

BY MR. WRIGHT:

Q This is Mr. Staudaher.

A Mr. Staudaher.

Q Ms. Weckerly.

A Yes.

Q You met with them?

A Yes.

Q Did you discuss what I'm talking about here today?

A No.

Q What did you discuss?

A He -- we discussed the police officer's interview.

Q Okay. That March 5, 2008, interview I showed you?

A Yes.

Q Anything else?

A No, I don't recall.

Q Okay. Thank you very much.

THE COURT: Nothing else, Mr. Wright?

MR. WRIGHT: No, Your Honor.

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

MR. SANTACROCE: I do not.

THE COURT: Thank you.

Ms. Weckerly, is this your witness?

MS. WECKERLY: Yes.

THE COURT: Cross?

MS. WECKERLY: No cross.

THE COURT: All right. Do we have any juror questions for this particular witness? I see no juror questions.

Ma'am, thank you for your testimony. Please do not discuss your testimony with anyone else who may be called as a witness in this matter.

THE WITNESS: Okay.

THE COURT: You are excused.

THE WITNESS: Thank you.

THE COURT: Thank you.

I'll see counsel at the bench, please.

(Off-record bench conference.)

THE COURT: Ladies and gentlemen, we're going to go ahead and take our lunch break now. We'll be in recess for the lunch break until 1:25.

During the lunch recess you are reminded that you're not to discuss the case or anything relating to the case with each other or with anyone else. You're not to read, watch, or listen to any reports of or commentaries on this case, any person or subject matter relating to the case by any medium of information. Please do not do any independent research, and

please do not form or express an opinion on the trial.

Place your notepads in your chairs and follow the bailiff through the rear door.

(Jury recessed at 12:20 p.m.)

THE COURT: And before we take our break, I overheard the attorneys commenting that there was an outstanding ruling on something prior to resuming the testimony.

MR. STAUDAHER: No.

THE COURT: Can you enlighten me as to what that might be?

MR. STAUDAHER: Outstanding ruling regarding jury -- so it was related to jury instructions where --

THE COURT: Is that regarding the statute or -- because how can there be an outstanding ruling on jury instructions when we haven't --

MR. STAUDAHER: Well, not --

THE COURT: -- covered jury instructions?

MR. STAUDAHER: -- a jury instruction, but the issue regarding the theft that the Court -- we provided the authority for the Court.

THE COURT: Right. I'm expecting argument on that --

MR. STAUDAHER: Okay.

THE COURT: -- so I don't really think it's fair to

characterize that as an outstanding ruling because I was going to give the defense time to argue that, unless they agree that that's an appropriate --

MR. STAUDAHER: I think we said that we need a ruling from the Court, not necessarily that there was an outstanding ruling.

THE COURT: Okay. Well, I heard outstanding ruling. So I just want to make sure that other than the exhibit that we talked about this morning that there's no outstanding rulings. The only other issue is the graph thing that may be considered outstanding. So I just want to make sure that I haven't neglected to remember anything other than that.

And as I said, I don't consider that an outstanding ruling because I'm assuming -- well, first of all, I don't know. Maybe the defense will agree that that's an appropriate statute to use and an appropriate instruction. I would assume not, but, you know, I'm obviously not as wise as they are, so perhaps they'll agree to that.

If not, I certainly would anticipate there's going to be some argument on something that critical to a case. So I don't consider that outstanding, as I said, because it hasn't been -- it hasn't been argued, litigated yet, and, you know, whatever. So is that --

MS. STANISH: No, Your Honor --

THE COURT: Am I missing something? Is there

anything else that either side feels they need a ruling on that hasn't been ruled on?

MS. WECKERLY: I think we were -- we were discussing jury selection -- or, sorry, jury instructions. And what we were talking about is how we could probably reach agreement --

THE COURT: Right.

MS. WECKERLY: -- on some things, probably not that issue. I mean, I don't know if Ms. Stanish was talking about something else, but that was my recollection, that we thought we could get agreement on certain parts of the --

THE COURT: Right. And you're fine to talk about whatever you want to talk about. All I'm saying is if there is an outstanding ruling, I certainly want to, you know, make sure the record is complete and rule on anything that hasn't been ruled on. So to the extent I may have overheard that, I just want to make sure that I haven't neglected to make a ruling on something that I have forgotten.

Like I said, those are the only two things at the forefront of my mind, but it's possible I'm not recollecting something. So if that's the case, then I need to be made aware of that. The only other potential is the Ms. Pomykal issue, which she's been kept here, you know. I'm concerned about the thing -- I was going to review her -- I've reviewed it already. You folks have reviewed it. You know, if we decide to make her an alternate, then it's going to be the

next number alternate.

I am not going to shuffle the alternates to benefit any particular side. So the next in number alternate, I believe, is the blonde gal that you folks have complained about has been sighing and doesn't appear to like Mr. Wright. That, I believe, is our next in order. And, like I said, I'm not shuffling the alternates unless there is a real reason. And the fact that she may sigh and, you know, express boredom is not a reason to shuffle the alternates.

So just to -- I don't know if anyone would have had that idea, but to the extent someone would have, that is not going to happen. The only one -- you know, we could make Ms. Pomykal an alternate because she has -- and I'm going to decide if I'm even going to make that option available. But, you know, she has expressed something that could create, at least in the minds of the defense, a conflict. So there is that.

The only other remaining issue that really, I don't know is a remaining issue, is the gentleman in Chair 7 who will be allowed to go on his vacation starting early in the morning on July 4th. So, you know, if we finish up Friday like we think, that would give them three days to deliberate, and my belief is he should remain as one of the main members of the jury.

If for some reason it takes longer than that, then

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IN THE SUPREME COURT OF THE STATE OF NEVADA

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

APPELLANT'S APPENDIX VOLUME 38

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BY MR. WRIGHT:

Q Right. But you can't rule -- you can't say hepatitis C, he still had it, correct?

A Not from my direct observation, no, I can't.

Q Right.

BY MR. STAUDAHER::

Q Did you see medical records which showed that he had active lab results, laboratory results showing hepatitis C up until he went to the Philippines at least?

A Yes.

THE COURT: Okay.

BY MR. STAUDAHER:

Q So at least -- and he was only in the Philippines a couple of weeks before he died?

A That's correct.

THE COURT: If you've had hepatitis C for five years, is it suddenly going to go away? Is that something that could happen?

MR. WRIGHT: Asking a non-expert.

THE COURT: Does that make any sense, if you know?

THE WITNESS: I don't -- I don't know enough about the natural --

THE COURT: Okay.

THE WITNESS: -- history of hepatitis C to answer that one.

THE COURT: Okay. Anyone else? All right, ma'am, thank you. You can go ahead and return to the vestibule.

She's expect -- I'm looking at the expert witness disclosure, page 13. She is disclosure number 62, Alane Olson, Medical Examiner, is a medical doctor employed by the Clark County Coroner's Medical Examiner. She is an expert in the area of forensic pathology and will give scientific opinions related thereto. She is expected to testify regarding the cause and manner of death of Rodolfo Meana, as well as her direct and indirect involvement in the autopsy of Rodolfo Meana. I think that covers it. So I mean I think --

MR. WRIGHT: I thought -- I told you, when I read the grand jury, I thought she would be capable of properly testifying to it. Now I know she isn't, she didn't. Well, our initial motion opposing, defendant's opposition to foreign documents pointed out the autopsy report refers to serological and histopathological testing that were apparently conducted by others outside the presence of Olson. That's the very blood test I'm talking about, those tests. And she doesn't -- she didn't test -- she can't even say he still has hepatitis C. And so now I'm supposed -- I want -- I want to articulate again the dilemma I have on cross-examining her.

I -- I -- I want -- my problem is, I need the witnesses from the Philippines because she's -- she says -- I'm looking at the death certificate. What I believe occurred

here, my theory in this defense as to how all of a sudden cause of death only became hep C and not kidney problems is the death certificate says both. And then along comes the autopsy report, which is done in a funeral home at the request of the family allegedly resulting from hepatitis C and then lo and behold, look at the cause of death. There isn't a single thing in the autopsy report about his kidney disease as the cause of death.

So I'm supposed to cross-examine her when she concludes remarkably the same as the autopsy report done by the family that it's just hepatitis C. And so what -- and so I'm -- my witnesses I want to examine are about how it changes from both to go into the autopsy. They don't even -- what's bilateral?

MR. STAUDAHER: Both sides -- two sides.

THE COURT: Both sides.

MR. WRIGHT: Okay. So it's bilateral lung? See, I mean, look at that. Other significant conditions contributing to death. They don't even relegate his chronic kidney failure, which is the cause of death in the death certificate to a footnote in this autopsy. And so I'm supposed to cross-examine her about it? She's going to say, Mr. Wright, I agreed with the autopsy report, I already said that. That's where I'm hamstrung.

MR. STAUDAHER: Two -- two things, Your Honor. First

of all, when she was in here under questioning from counsel or from myself, from the Court, she did not say one word about basing, first of all, any of her findings or her opinions on the autopsy report at question -- in question. She used her direct observations that she delineated to the Court, her observations under the microscopic -- the fact that that -- everything she talked about was medical records, medical records. Those medical records are in in this particular case and that's certainly something she can rely upon. She did not say one time even for the confrontation -- just isolating the confrontation clause issue, that she relied upon the autopsy report. The only testimony she gave about the autopsy report was that it was consistent with what her opinion was and her belief and her findings. So that's not something that she said she relied upon. So the things that she did rely upon are certainly germane.

She also said as far as the active infection, that she believed it was active and ongoing because under the microscopic she saw focal areas of inflammation, which would indicate an ongoing infected process. So with regard to the fact that she didn't find a virus in the samples that she directly had, she did see laboratory results in evidence a couple of weeks before he dies that he had evidence of a hepatitis C infection. And then she sees actual physical findings consistent with that herself, which is what she

relied upon. But in no case -- what case did she actually come in and say, I only relied, if I didn't have that autopsy report, I couldn't have come up with this opinion.

MR. WRIGHT: She testified on direct examination, Your Honor, that she didn't even reach a cause of death and she didn't go there to perform an autopsy or give a cause of death and she relied upon the autopsy conducted in the Philippines, her own examination of the tissue and on the death certificate. And she was in full agreement with them. And, of course, the answer is, she isn't in full agreement with them.

THE COURT: Let me ask this or just put this out there as more of a legal question then a medical question, and that is this. So what if he had died from both liver failure and kidney failure at the same time? Okay, let's assume that's true. He still died of the liver failure. So, I mean, in terms of cause, I mean if everyone adopted -- let's just say, well, he had both, he had renal failure and he had liver failure and those are both the causes of death. And let's even set aside the issue that she's spoken to that well, even if it was kidney failure, it's likely caused by the liver failure. Let's just say maybe he had kidney failure -- just for right now, let's just say from an infectious disease or some other unrelated cause, whatever that -- that may be. So what? He still -- I mean, isn't the cause of death still, as

a legal matter, still the liver failure?

MR. WRIGHT: No.

THE COURT: Even if it was also partially contributed --

MR. WRIGHT: No, it wasn't.

THE COURT: -- to the kidney failure if they're working together? I don't know that -- I mean, I'm asking. Because to me you still have a --

MR. WRIGHT: It's two things.

THE COURT: -- legal cause of death being the liver failure. And she's explained how they go together, but even setting that aside.

MR. WRIGHT: It's -- it's two -- two different things. First of all, I am saying from the records I introduced that he had renal and hepatic abnormalities showing up on the tests prior to hep C. Okay? So that's one thing.

THE COURT: All right.

MR. WRIGHT: She -- she'd like to rule out or ignore. First she told me on cross that there was nothing in the medical records at all that showed any hepatic abnormalities because I asked her what the word meant, hepatic abnormalities. Anything in the records that he had any at all before September 21st? No, Mr. Wright. What do you call this? What's that word? Hepatic abnormality. I impeached her on it, showed he had renal and hepatic problems ahead of

time. So that goes to a causation issue.

Then we get to the intervening cause. Is there an independent intervening cause that preceded it actually here, kidney disease. And then we add on to it for our independent intervening, the decision I don't even want to be treated for it and, I mean, because that can be an intervening cause.

THE COURT: Right. Well, that's different. That's not related to her. I mean, you still can argue the independent intervening cause of his refusal to even try the treatment, that's different.

MR. WRIGHT: Well, I think an independent intervening cause on the evidence may be he -- he died of kidney failure and he would have died of it anyway at the same time because he had it before he got hepatitis C. That's -- but --

MR. STAUDAHER: There's no evidence of that. There's no evidence of that at all. He couldn't make that argument.

MR. WRIGHT: Look at the death certificate.

MR. STAUDAHER: It doesn't say that that was before he got hepatitis C and that's not what the evidence has come in to and not what she testified about, nor anybody else in this case.

MR. WRIGHT: And I say she's not qualified to testify about it. She's not a kidney expert and she's not a hepatitis expert. She's a coroner who did a show and tell and didn't even get her ring back right.

THE COURT: Well, neither is the coroner from the Philippines. I mean, assuming we were to get the coroner from the Philippines here, he's not a liver expert or a kidney expert either. All I'm saying is even if the two went hand in hand, legally I'm thinking that just the one, even if they're acting in concert would be sufficient as the cause of death, if they're acting together. So, you know --

MR. WRIGHT: Well, I -- I disagree and I don't think that rose my confrontation rights.

THE COURT: Well, no. I said that that's a separate issue and we've already made a record on that. And I think, you know, it may be, it may come down to where you have to actually have the coroner who performed the autopsy in these murder cases. I think the state of the law is somewhat unclear on that. On the -- on the -- I think that's not decided and I think, like I said, right now all over this country coroners who didn't perform autopsies are testifying about autopsies in older murder cases, either because the coroner's unavailable who did the autopsy and coupled with that maybe the body's unavailable and -- or they just, you know, can't do it anymore, don't want to do it anymore, whatever.

I think that the notice, on the notice issue, I think the notice -- even setting aside the grand jury transcript, I think the notice was adequate. It said she's going to testify

to the cause and manner of death. So I think that that disclosure there was adequate. How you choose to proceed with cross-examination is up to you, Mr. Wright. I mean, you asked me to strike the exhibit and normally the reports don't come in. I struck the exhibit. If you think you want the report to come in now, then that's fine. If you want to just question her about the report, that's up to you. Or you want to do nothing with the report, that's certainly your decision. You know, proceed as -- as you want.

But I think going -- I mean, they did disclose her and I think that they're disclosure was adequate. And so, you know, and just my questioning of her, I'm comfortable on this confrontation clause issue that she does have independent knowledge. She's not relying solely on the report, she's relying on the -- her eyeball observations of the liver. She's relying on her looking at the slides of the liver. She's relying on the yellowing of Mr. Meana's skin. And she's relying on the bruising, although in response to my question she admitted that that could also be caused she felt possibly by kidney failure.

So I think while there still may be a confrontation issue, I think certainly a lot of the information she's giving and her opinion is based on, in part, significant part I would say, her own observations and her own conclusions based upon those observations.

So if anyone needs to take a two or three minute break, do it and we'll finish up.

MR. WRIGHT: If she's relying upon the blood test done in the Philippines, which we objected about -- the first objection we filed in this that we don't have that and it's hearsay and -- and even with all the notice to this day we don't have that blood test result, which was done at a different hospital at a different time.

MR. STAUDAHER: And just for the record, do we -- did she come in here and say that she relied upon the blood test result?

MR. WRIGHT: I asked her.

MR. STAUDAHER: No. When we were in here and the Court was asking her what the basis of her opinion was and she told us what it was. She didn't say that she was relying on the blood test result in the Philippines. That -- she didn't say that. Now that's --

MR. WRIGHT: Judge, I stood up and said, you -- you don't know if he still had hepatitis C when he died, you're relying upon the blood --

THE COURT: Well, that's a different question that that -- I mean that's a different question than that she's relying on the blood testing concluding that he died from hepatitis or a condition caused by his hepatitis. Those are two different questions. In -- in response to -- I don't know

why, I mean I don't know if they tried to get the results -- I mean, I don't know what the background is there. But your question is you didn't know if he had hepatitis, I'm relying on the blood test is a different question than why do you think he died from complications or --

MR. WRIGHT: No. If he didn't have hepatitis C, if it -- if it tested very low and -- or negative, okay, would that impact her decision?

THE COURT: I don't know.

MR. STAUDAHER: Well he should -- he can ask that question.

MR. WRIGHT: Oh, right, I can ask it about the report that we don't even have that we asked for.

MR. STAUDAHER: He -- or she actually testified that her blood results were -- that she was relying on were from the United States. She said she reviewed the medical records from the United States and saw that he had active hepatitis infections.

MR. WRIGHT: Can we play it back? I stood up and asked her what she relied upon. I stood up when he was talking and said you don't know whether he had hepatitis C when he died or not and she said that's correct. All I can rely upon is the report from the Philippines because she brought it back to accomplish all of this.

THE COURT: I don't remember. I mean, when I asked

her she said she brought it back to confirm her belief about the cause of death relating to the liver. Janie, do you know where that is? All right. If anyone needs a couple minute break, take that and then if Janie can find it, great. If not we'll --

THE CLERK: Mr. Wright, was that in your direct or was it in -- I mean was that in your cross or recross?

MR. WRIGHT: I don't know. This was just when she came back in.

THE CLERK: Oh, you mean outside the presence?

MR. WRIGHT: Right.

THE CLERK: Oh, okay.

(Court recessed at 5:03 p.m. until 5:07 p.m.)

(Outside the presence of the jury.)

THE COURT: Mr. Wright, what was your memory of the exchange in question?

MR. WRIGHT: I thought I -- when she was -- when Mr. Staudaher was resummarizing for her after you were done, you relied upon medical records --

THE COURT: Oh, you mean just in this last exchange?

MR. WRIGHT: Correct, just in this last -- you finished, said any questions from counsel and Mr. Staudaher said you looked at his medical records and the blood -- your tissues, et cetera and she said, yes, yes and I made my conclusion. And I said -- and I stood up and said, and the

only -- what you don't know is whether he had hepatitis C at the time he died and she said correct. That -- I know that only from the autopsy report.

THE COURT: Okay, I think that's fair. I don't think we need to play it back. I think that's -- I think that's a fair recollection of what she said. And I think that's consistent with what she told me essentially so -- where's Ms. Stanish? Restroom?

MR. SANTACROCE: She's in the vestibule.

THE COURT: If I had known that I wouldn't have waited for you. Would you get them? Oh, Mr. Santacroce?

MR. SANTACROCE: Yes?

THE COURT: Could you do me a favor and grab the witness?

MR. SANTACROCE: Sure.

THE COURT: That's your problem for sitting so close to the door.

MR. SANTACROCE: I didn't make the seating assignment.

THE COURT: I know. Ma'am, come on back up.

(Jury reconvened at 5:12 p.m.)

THE COURT: All right. Court is now back in session. Mr. Wright, you may resume your examination.

MR. WRIGHT: Thank you.

BY MR. WRIGHT:

Q Dr. Olson, Mr. Meana had a history of high blood pressure, correct?

A Yes, he did.

Q Okay. And that often manifests itself in kidney disease, correct?

A It can, yes.

Q Okay. And he had chronic kidney disease.

A Yes.

Q And at the autopsy you not only looked -- saw the liver but you saw the kidney, correct?

A Yes.

Q Okay. And it had scarring on the kidney?

A Microscopic -- under the microscope it had scarring. Sometimes it's difficult to tell just looking at it if there's scarring. But definitely under the microscope he did have evidence of scarring.

Q Okay. And the scarring on the kidney most likely the result of high blood pressure, correct?

A Likely, yes.

Q Okay. And -- and that -- that's not -- not the result of liver disease.

A Correct.

Q And the cause of death on the Exhibit 18 in evidence, on the certificate of death, one more time, hepatic and uremic encephalopathy four.

A Yes.

Q Okay. And that's the immediate cause.

A Yes.

Q Okay. And sepsis was the antecedent cause.

A Yes.

Q And then the underlying was hepatitis C and chronic kidney disease, correct?

A Yes.

Q Now this report, this certificate, finding of cause of death in the Philippines is inconsistent with the autopsy performed later in the Philippines for the family, correct?

A The statement of cause of death differs from the death certificate to the autopsy report.

Q Okay. Because the autopsy report -- and I'm going to hand you a copy of it because it was stricken and it's not in evidence. In the autopsy report the immediate cause of death -- oh, immediate cause, I added the of death, right?

A Yes.

Q Okay. Immediate cause hepatic failure, right?

A Yes.

Q Okay. And that's kidneys -- pardon me, liver.

A It's liver failure.

Q Liver. Antecedent cause, micronodular

cirrhosis.

A Yes.

Q Liver?

A Yes, liver, scarring in the liver.

Q And then 1C, underlying cause, chronic hepatitis C.

A Yes.

Q Okay. Once again, liver.

A Correct.

Q And then other significant conditions contributing to death, down below, almost like a footnote, right?

A Yes.

Q Okay. Pneumonia?

A Yes.

Q Lungs?

A Yes.

Q Bilateral?

A Yes.

Q What's bilateral mean?

A It means both sides.

Q Okay. And so in -- in the autopsy report, even in the footnotes, the chronic kidney disease, which is the cause of death, doesn't even bear a mention, correct?

A That's correct.

MR. WRIGHT: No further questions.

THE COURT: All right. Mr. Santacroce?

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

MR. STAUDAHER: No redirect, Your Honor.

THE COURT: Any juror questions for this witness? No juror questions? All right, Doctor. Thank you for your testimony. There are no further questions for you. You are excused at this time.

THE WITNESS: Thank you, Your Honor.

THE COURT: All right. Thank you.

MR. STAUDAHER: May we approach, Your Honor?

THE COURT: You may.

(Off-record bench conference.)

THE COURT: We're going to go ahead and take our evening recess. We will reconvene tomorrow morning at 9:30.

During the evening recess you're reminded that you're not to discuss this case or anything relating to the case with each other or with anyone else. You're not to read, watch, listen to any reports of or commentaries on this case, any person or subject matter relating to the case by any medium of information. Don't do any independent research by way of the Internet or any other medium. And please do not form or express an opinion on the trial. We'll see you all back here tomorrow morning at 9:30. Notepads in your chairs.

(Jury recessed at 5:19 p.m.)

THE COURT: All right. Mr. Wright, did you need to put something on the record before I leave?

MR. WRIGHT: Yes.

THE COURT: You mentioned something at the bench regarding a deposition or something?

MR. WRIGHT: Yes. The -- Mr. Meana in his deposition in November 23, 2011. I would propose reading into it pages -- it's like a total of about one page but it goes from 38 to 45 because there's a lot of objections and things. But the essence of it was Dr. Sood, he confirms Dr. Sood told him he should take this and that would cure him and that he knew he didn't want to and he felt that he -- he would -- he could be cured without it. "Did Sood tell you the interferon treatment could cure you? Yes. Did you understand there was a risk you would develop cirrhosis of the liver if you did not continue? Yes. I understand that but I was told that it depends on how strong is your immune system. Sometimes the immune system might be able to cure you. Did you feel that you had a strong immune system and that you would be cured without interferon? Yes."

And there's a few other, just rehashing the same thing and him describing that he just didn't like it. He only tried it once and he didn't feel well and he's feeling good so why should I.

THE COURT: Which is consistent with what Dr. Sood's

records indicated?

MR. WRIGHT: Correct.

THE COURT: Any objection, State?

MR. STAUDAHER: We want to look at it.

THE COURT: That's fine. So we can do that in the morning and then also write out the stipulation regarding the amount the Meana family received in --

MS. WECKERLY: You have that, right?

THE COURT: Well --

THE CLERK: It's a Court's exhibit.

THE COURT: Yeah, thank you because -- you have it?

THE CLERK: Yeah.

THE COURT: Denise has it.

MS. WECKERLY: Okay.

THE COURT: I read it out the other day but --

MS. WECKERLY: Yeah, I just didn't remember the number.

THE COURT: Yeah, Denise has it if you guys forget. And so just make sure we do that in the morning. And then that's that.

(Court recessed for the evening at 5:23 p.m.)

CERTIFICATION

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

AFFIRMATION

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

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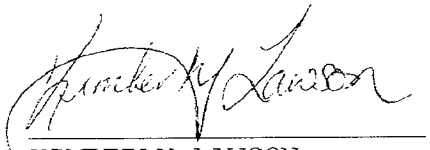

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TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

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

BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE

JURY TRIAL - DAY 43

TUESDAY, JUNE 25, 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.

RECORDED BY JANIE OLSEN COURT RECORDER
TRANSCRIBED BY: KARR Reporting, Inc.

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LAS VEGAS, NEVADA, TUESDAY, JUNE 25, 2013, 9:30 A.M.

* * * * *

(Outside the presence of the jury.)

THE COURT: Did anyone need me for anything before we start?

MR. WRIGHT: I was going to mark that as an exhibit. It's simply the Meana family proceeds received from the civil litigation.

THE COURT: Oh. Okay.

MR. WRIGHT: That's the number we got from you.

THE COURT: Right. Which --

THE CLERK: It's a Court's exhibit.

THE COURT: All right. So are we just going to read that as a stipulation, or do you want it to be an exhibit exhibit or what?

MR. WRIGHT: I'll just make it a defense exhibit.

THE COURT: Okay. So make it BB-1 or whatever is next.

MR. WRIGHT: And then I was going to read in a portion of Meana deposition.

THE COURT: Okay.

MR. STAUDAHER: Which we don't necessarily have an issue with, but the issue that's concerning that area that counsel gave us a head's up on was related to interferon. And if he wants to read it in, I want the entirety of that section

dealing with interferon read, which is pages 31 through 45.

MR. WRIGHT: Well, I -- I object to it.

THE COURT: Basis?

MR. WRIGHT: I never got the right to cross-examine him. I am -- at all. This was already offered by the State, denied confrontation, then over our objections you introduced the -- his deposition.

THE COURT: Yeah, I mean, that would be the point of them introducing the deposition testimony that they didn't get to complete their cross-examination. I mean, it's not fair to say you didn't get to cross-examine him. You didn't complete your cross-examination.

MR. STAUDAHER: I don't have a problem with him introducing it. I just don't want it to be piecemeal. I think that that whole section should --

THE COURT: Well, what's the whole section say?

MR. STAUDAHER: It's all about -- it's the exchange back and forth about his understanding about his interferon therapy, why he didn't do it, what his symptoms were, things like that. I think it's fair if --

THE RECORDER: I'm not picking you up, Mr. Staudaher.

MR. STAUDAHER: Oh. I think it's fair that if we bring that in, which I don't have an objection to, that we do the complete section of that to get context so it's not just

parsed out. That's what would have happened at a deposition.

MR. WRIGHT: Well, let's -- let's read the entire thing because it is the entire thing. I selected the portions that were relevant because he was confused between Dr. Lipman and Dr. Sood and who gave him the -- or the questioners were, or the lawyers or he were confused and mixing up Lipman and Sood.

Lipman was only in the case from like April -- no, February, March, April 2008. And Sood and the interferon treatments were in the spring of 2009. And so if you read that part, Lipman's name hasn't even been introduced here in evidence as to who Dr. Lipman is.

MR. STAUDAHER: But that's what he's saying. He got advice, at least, from Dr. Lipman in this part of the deposition. So, I mean, that's what I mean. It's a collective whether it was --

THE COURT: Well, my other concern is now you're introducing this purported hearsay from Dr. Lipman that Dr. Lipman gave him advice that he wasn't supposed to do or could -- what's the advice? I don't even know.

MR. STAUDAHER: That he didn't need to continue it if he had -- if he had problems.

THE COURT: That's kind of big stuff, that he didn't need to continue it. So to me, now to introduce something with this Dr. Lipman, do you see what I'm saying? I mean,

then that's putting that out there that it's true that Dr. Lipman told him he didn't need to continue it. Is that basically --

MR. STAUDAHER: But it's in the context of the exact -- I mean, it's not -- I mean, you just can't take a little piece out and out of context. That's the whole discourse back and forth about interferon therapy, what he was -- that it was offered to him, who offered to him, when did they offer it, what were the -- what -- what did he know about side effects or lack thereof, why he stopped it, why he didn't start it. That's the questioning that goes on.

So to take an individual question out of it and put that out there I don't think is fair. I think if that's the case, read it in context, and then he can argue to his heart's content.

MR. WRIGHT: You know it's misleading deposition testimony when they say it was Lipman who told him to discontinue it when he is wrong by a year as to what doctor he is talking about. And you're trying to interject information you know is not accurate. That's why I edited it to make it comport with the truth, which is what we're supposed to be looking here --

MR. STAUDAHER: Again --

MR. WRIGHT: -- for here.

MR. STAUDAHER: -- I would ask him --

MR. WRIGHT: There is no --

MR. STAUDAHER: -- to address the Court --

MR. WRIGHT: -- question --

MR. STAUDAHER: -- instead of counsel.

THE COURT: Okay. First of all, address the Court.

MR. WRIGHT: Yes.

THE COURT: Second of all, don't interrupt each other. And third of all, and most significantly, don't interrupt me. You may speak.

MR. WRIGHT: There -- there is no question in the evidence if you go through all of the medical records of Mr. Meana that starting in February -- January and February of 2007 Dr. Carrera and Dr. Clifford Carrol told him to start interferon treatment. That's in evidence by the documents AA-1.

And then it's -- there is no question that he learned of the outbreak and obviously I'm not going back to Gastro Center, terminated his relationship. Then there's no question Dr. Jurani told him you need to start interferon, go see another gastroenterologist. Instead, there's no question Mr. Meana hired a lawyer and the lawyer said I want you to go to Infectious Diseases Specialist Lipman.

And so he went from March, April, into May to Infectious Control Dr. Lipman. And finally Lipman said I'm not going to treat you for hepatitis C. You need to go to a

gastroenterologist. Dr. Jurani then referred him to Dr. Sood like in May or June of 2008. From May or June of 2008, Dr. Sood raised various questions. You need a cardiologist clearance, you need an ophthalmologist clearance because of your blood pressure. Those took -- took from -- took six months because of foot dragging or problems with medical -- with --

THE COURT: Getting --

MR. WRIGHT: -- insurance.

THE COURT: -- appointments, whatever.

MR. WRIGHT: Right. Then into 2009, spring, Dr. Sood, records are in evidence in AA-1, told him you need to start this. No more foot dragging. No more excuses. And he then started it and next treatment by Dr. Sood in evidence, he said I'm not taking it anymore. I took it once and I can't tolerate the side effects.

And so the testimony I am offering is solely about Dr. -- Mr. Meana's testimony about his relationship with Dr. Sood and why he stopped doing it. And significantly did Dr. Sood tell you the consequences it could flow? Yes, he told me I could get cirrhosis, but he said I could beat it on my own if I have a strong immune system, and I do have a strong immune system, so I elected not to take it.

THE COURT: All right. Two questions. Number one, you, I'm assuming, have the Lipman records that you're

referring to and you reviewed them and that's what the Lipman records indicate, that Lipman said to him, said I can't treat you, you need to go to a gastroenterologist?

MR. WRIGHT: I have Lipman's records that Dr. Jurani -- I'm unclear where I acquired them, but I have Lipman's records, Sood's records, and Jurani's records.

THE COURT: Okay. So do you have -- the question is do you have records from Dr. Lipman showing from Dr. Lipman, yes, I can't treat him here anymore, he needs to see a gastro specialist? Are those in the records that you have?

MR. WRIGHT: I -- I --

MR. STAUDAHER: Because I don't have Dr. Lipman's records, so --

THE COURT: Yeah, I'm just wondering where that's coming from. Is that coming from Jurani's records, is that --

MR. WRIGHT: Jurani's records.

THE COURT: Okay.

MR. STAUDAHER: Those aren't Lipman's records, then.

MR. WRIGHT: Well, it's -- it's -- I don't know.

THE COURT: Okay. Then the second question I've now forgotten. What does he say, then, in the deposition about Dr. Lipman that you think is not true that Mr. Staudaher wants to read?

MR. STAUDAHER: No, I just want it to be complete.

THE COURT: Well, and it's the part you want to read

or have read or present to the jury.

MR. WRIGHT: Well, where I stop is, question -- I mean, this is part of what I left out.

Do you remember seeing Dr. Lipman in November 2008?

Answer, I cannot remember.

Do you remember Dr. Lipman offering to set up the interferon treatment plan for you?

I mean, I just know these questions are wrong.

THE COURT: Who is asking the questions in the deposition? Is it the --

MR. WRIGHT: Civil attorney.

THE COURT: I know. Is it the defendants that are asking those questions or his own lawyer?

MR. WRIGHT: Stoberski.

THE COURT: Oh, yeah, Mr. Stoberski. Okay. He was on the defense side. I don't remember who he represented, but --

MR. STAUDAHER: It says right in the deposition, and I'm referring to page 34.

It says, question, You first saw Dr. Lipman in March of 2008?

His answer, I don't remember.

Do you recall discussing with Dr. Lipman whether you should go on interferon treatment? Yes. Dr. Lipman told me I don't have to take the treatment because I'm too old

for the supposed treatment and I may not be able to -- to be the side effects.

Did you start treatment despite his warning?

Yes, only once.

Then there's an objection.

Did Dr. Lipman advise you start interferon treatment?

No.

Did he want you to start interferon treatment?

The what?

He didn't want you to do interferon treatment?

Yes.

And you tried interferon treatment once?

Yeah. Not Dr. Lipman, but another gastro specialist.

So he's telling -- he's saying that's not who he did it with. He's saying it was with another one.

Later on after Dr. Lipman?

Yes.

Do you remember the other specialist that you went to, what his name was?

Dr. Rajat Sood. I'm not sure about the first name.

I think you're correct, it's Dr. Sood. What is your understanding of what kind of specialist Dr. Sood is? And then he goes on. But that's clearly a conversation he had

with Dr. Lipman beforehand. He knows that there's a difference, that he actually treated with interferon with -- with Dr. Sood. So I don't necessarily think based on that that it appears as though it's false or inaccurate. He went to Dr. Lipman in the time frame in question, he got advice from him, and then he went to Dr. Sood for the actual treatment.

THE COURT: Here's the deal. Because the limitations with cross-examination and the fact -- I mean, we've heard abundant evidence of Mr. Meana's sort of weakened mental state and everything like that, I'm not going to allow either side to introduce something that's inconsistent with the medical records. Because I think we can assume that that would be the truth. So do we -- that's why I ask. Do we have anything from either Dr. Jurani or from Dr. Lipman showing that he was told he wasn't a good candidate for interferon or --

MR. STAUDAHER: I don't have --

THE COURT: -- that that was --

MR. STAUDAHER: -- Dr. Lipman's records.

THE COURT: Okay.

-- or that was discussed or if they're in Dr. Jurani's records? Because at some point he came back from Dr. Lipman to Dr. Jurani; is that correct?

MR. STAUDAHER: I don't know the answer to that.

THE COURT: You see what I'm saying? So if the medical records don't comport with that, then I'm reluctant to let you get into it because I would defer to the medical records. If the medical records are consistent with that or -- then I would say certainly I think you're -- you can introduce the whole thing or that portion.

MR. STAUDAHER: Right. I mean, then that's just what we're talking about. The State's position is that if you piecemeal put in between those two pages, which is 31 to 45, it's incomplete and misrepresents what the questions and answers were about that very issue. So that's why I'm just asking for completeness --

THE COURT: Okay.

MR. STAUDAHER: -- if he's going to put it in.

THE COURT: Does someone have Dr. Jurani's medical records --

MR. WRIGHT: Yes.

THE COURT: -- that show when he came back and was referred to Dr. Sood?

MR. WRIGHT: Yes.

THE COURT: Can I see that, please?

Are the jurors all here, Kenny?

THE MARSHAL: Yes, Judge.

(Pause in the proceedings.)

THE COURT: So am I correct that neither side

requested the medical records from Dr. Lipman?

MR. STAUDAHER: The State did not, Your Honor.

MR. WRIGHT: Yeah, I --

THE COURT: Okay. No, I'm just -- just trying to get to the bottom of things. I'm not --

MS. STANISH: I can tell you when we arranged for the deposition we requested complete records so we could be prepared for the deposition and the State provided us with what it had and it did not include that.

THE COURT: Okay.

MR. STAUDAHER: Your Honor, while --

THE COURT: Like I said, with all of the limitations that have been imposed with the -- on the defense, I'm going to go with whatever the medical records say.

MR. STAUDAHER: Your Honor, while Mr. Wright is looking that up, I just wanted to -- I went through the -- I went up and went through the exhibits today. There are a couple of issues with some things related to the -- I know there was all this stuff that was going on with the billing records. There were some things related to that that appear as though they're not marked as being admitted. It's my understanding that they were. I'm willing to go through it with counsel to go through that, but as far as our resting, I would rest with the caveat that we have to get that straightened out.

THE COURT: Okay. That's fine.

MR. STAUDAHER: And I believe that there is -- those are the only -- I've marked the areas and I'll go over that with counsel if we -- if we have some time to do that. But I just wanted to make sure that that was on the record that we're resting kind of --

THE COURT: Okay.

MR. STAUDAHER: -- with that.

THE COURT: And then, defense, you have your witness here?

MS. STANISH: Yes, she's here, Your Honor. And then we, basically just for scheduling purposes, should be done today.

THE COURT: Okay. So we're going to do her -- is she a full day witness?

MS. STANISH: She's a half day witness, and then we have our expert, and he'll be -- we figured he probably wouldn't get on until the afternoon.

THE COURT: Okay.

MS. STANISH: I don't imagine he'll be very long.

MR. STAUDAHER: And we do need to talk about him before he gets on the stand.

THE COURT: Okay. And then I'll do the -- probably then at the lunch break or so I'll do the Fifth Amendment admonishment with the defendants.

MS. STANISH: Correct.

THE COURT: I still have to do that.

MS. STANISH: And, Your Honor, just kind of long term if you could bear with us, we -- both sides, I believe, would like to have tomorrow off to address with you the jury instructions, as well as prepare for closing arguments.

THE COURT: That's fine. I think -- I don't know. I mean, my guess would be jury -- there might be a lot of argument on the instructions. That would be my guess, but I -- I don't know.

MS. WECKERLY: We haven't received any yet, so I think we're going to get those tonight. And so that -- you know, I mean, we can maybe --

THE COURT: Right.

MS. WECKERLY: -- shorten some of it.

THE COURT: What I like to make the lawyers do, I mean, if it's clear that there's just, you know, you're not going to agree on some of them, I like the lawyers to meet themselves. Sometimes it's just rewriting one. For example, you may find the defendant guilty or innocent. You know, if they want it changed to not guilty, I normally make that change.

Little things like that you may be able to just agree on and make those changes together. Or let's say you want to add a paragraph to one of theirs and if you agree to

that or -- you know, things like that if you can agree. On the ones you can't agree on, then, obviously, we just -- we'll settle them in here in front of me. And then I just ask that you just do the special ones that you want either alternatively or in addition to whatever specials they have.

And then is this a concerted effort between Mr. Santacroce and Ms. Stanish on the jury instructions?

MS. STANISH: It will be. I have --

THE COURT: Okay.

MS. STANISH: I have my --

THE COURT: So there's just --

MS. STANISH: -- first draft done.

THE COURT: -- going to be, in other words, one defense packet for both defendants; is that correct?

MR. SANTACROCE: Yes.

THE COURT: Okay. And then I want you to then, of the ones that can't be agreed on that you are submitting, I want those to come to the Court to be made a Court's exhibit in their original form as well. I don't really care about annotations if you want to also submit an annotated form. That's fine. So a copy, two copies, one for me to work off of and one that's a clean copy that won't have my notes on it to be the original Court's exhibit.

MS. WECKERLY: Right.

THE COURT: Okay.

MS. STANISH: Well, we're giving you an annotated one because that fan man statute is -- you know, there's nothing published on it.

THE COURT: Okay. That's fine. I'm just saying, you know, I definitely want a clean copy and an annotated copy --

MS. STANISH: Absolutely.

THE COURT: -- if you're going to do the annotated. And then, like I said, clean to go to the clerk so that anything that we don't use then is definitely part of the record for potential appellate purposes.

MS. STANISH: Okey-doke.

MR. WRIGHT: May I -- I'm going to read six pages of deposition of Dr. Jurani, and the reason I'm doing it is that's his records.

THE COURT: Okay. May I see that, please?

MR. WRIGHT: Okay. And so you can't tell anything from his records, but he testifies to those records.

THE COURT: Okay. Would you just show this to the State so they can see what page you're talking about?

MR. WRIGHT: Right. I'll just --

THE COURT: His writing is pretty impossible to read, I will say.

MR. WRIGHT: Right. The -- the portion I'm going to read, 67 to 73, is his reading of the documents --

THE COURT: Okay.

MR. WRIGHT: -- for March and April regarding Lipman and why it's being switched to Dr. Sood. Page 67 of his May 14, 2009, deposition of Dr. Jurani.

March 6, 2008, can you go over the clinical history with me, please?

Okay. It states he's hired an attorney to sue Endoscopy Center. GI Center was closed. He needs a new referral. He is referring to a gastroenterologist.

What does it say under that?

It says he knows that it's out of plan, his insurance will not pay if you refer him to a gastroenterologist that's not -- that's out of plan.

Okay.

Answer, The insurance will not pay. It states Dr. Lipman-- he's referring to his notes. It states Dr. Lipman and attorney will manage the payment. He was very specific about getting referred to a specific person.

And that specific person was Dr. Brian Lipman?

Answer, Well, that's -- initially that was, you know, Dr. Lipman, infectious disease specialist.

Did you refer him to another GI?

Well, at that particular time he was insisting on going to -- we have like a healthy discussion of -- because I don't really feel like he should go there, but he insisted on

going there.

Going where?

To see Dr. Lipman. I said patient will go on his own to Dr. Lipman.

Why? Did you want him not to go to Dr. Lipman?

No, because the appropriate consult would be a gastroenterologist, the one who deals with hepatitis more than infectious diseases.

Is that why you wrote in the clinical history needs referral?

When he insisted on seeing Dr. Lipman, I crossed it.

Do you know if he's still seeing Dr. Lipman?

No.

Under this note under the test results and medication notes, are you saying that Dr. Lipman -- the note here says -- does that say Dr. Lipman will take care of payments? Can you read that? Can you read it again, please?

Okay. GI referral is crossed out, and it says Dr. Brian Lipman, infectious disease, and then the note, it says patient will go on his own.

THE COURT: Okay. I'm assuming -- I'm just -- my comment would be, my assumption would be Dr. Lipman would have been treating him on a lien if he was referred by the plaintiff's attorney. That's what that sounds like to me.

MR. WRIGHT: Right.

Under test results, medication notes, his insurance will not pay. That's under clinical history. Then it continues into test results. He states Dr. Lipman and attorney will manage payment. And is the payment for you or for Dr. --

Objections.

Okay. I was not involved because he knows insurance will not pay, so they will take care of payment.

When did you next see Mr. Meana?

April 3, 2008.

Can you read the clinical history for me?

Saw Dr. Lipman, has more blood tests, no fever, no further treatment. No further treatment was given. He was given a hepatitis B shot, and then below that is the hepatitis RNA report, 12/27/07, $5,980,000.

Going back on something. Brian Lipman.

Yes?

Have you ever referred to an infectious disease specialist? Why did you have a problem with Dr. Lipman?

Well, my concern is treating hepatitis C, an infectious disease, while they deal with that, apparently that's not the normal course that we take when we are dealing with hepatitis C. It has to be either a gastroenterologist, or even a hepatologist. So you're granting, as primary care physician, you're told hep C to refer to a gastroenterologist

or a hepatologist.

THE COURT: All right. I've heard enough. Balancing everything, you know, like I said the constraints placed upon the defense, the fact that we don't have the Lipman records, the fact that he went to this doctor against the advice of his primary care physician, apparently on an attorney's lien or a personal injury lien it sounds like, it was a separate arrangement, that he ultimately comes back to Dr. Jurani, his primary care physician who has been sort of managing his care this entire time, who then sends him to -- I'm sorry --

MR. WRIGHT: Dr. Sood.

THE COURT: -- Dr. Sood. The fact that the defense is limited in their ability to cross-examine, clearly, Mr. Meana on all of these things, including the incredibly important question of, well, why would you go against the advice of your primary care physician, Dr. Jurani, who you presumably trusted, to go to this other specialist who is not the recommended kind of specialist at the advice of your lawyer I think is opening up a huge Pandora's box of questions.

So balancing everything out, the constraints that have been placed due to the, you know, death of Mr. Meana, the fact that he left the country, you know, to die in his homeland, you know, that -- obviously, he had the right to do

that, but that placed further constraints on the ability to depose him.

The unfortunate timing in the matter and everything else, I'm going to have Mr. Wright just read the portion of the deposition that he selected because, as I just said, looking at the records of Dr. Jurani, which really we can't make out, but Dr. Jurani's testimony, what we understand from that, I think that that creates more questions that then would open more doors for cross-examination that would need to be pursued.

Because, like I said, you know, the question is, well, why on earth would he disregard the advice of his primary care physician, Dr. Jurani, and go to a lawyer who was suggested apparently by his attorney when he had insurance in place which would have covered initially a gastroenterologist, presumably. So reading the rest of it along -- and then, you know, if you're going to read that, then we have to read the testimony of Dr. Jurani. I mean, it just opens up a whole new kettle of worms, if you will.

So I'm going to have Mr. Wright just read the -- you know, balancing everything, the limitations that were place, the fact that the deposition was played, I'm going to let Mr. Wright just read that portion. Because, again, I think that the testimony, the independent testimony of the primary care physician, who I'm assuming testified as not an expert, but as

a treating -- he may have also been an expert, but certainly he was testifying as a treating physician in the civil cases -- I think suggests that the recommended course of treatment was a GI specialist, was Dr. Sood, and there was this sort of deviation that ultimately resulted in him going back to Dr. Jurani and pursuing the course of action that Dr. Jurani had recommended in the first place. So for those reasons I'm going to deny the State's request.

Are they ready?

MR. STAUDAHER: Your Honor?

THE COURT: Yes.

MR. STAUDAHER: I understand the Court's ruling, I just want to make a record on it --

THE COURT: That's fine.

MR. STAUDAHER: -- because of the accusation that was proffered. I did not hear in any of the discourse that counsel read regarding the deposition or any reference to any medical record that what was contained at least in the deposition transcript of Mr. Meana was false, as was implied. We're talking about a date of March of 2008. The dates that counsel referenced were March of 2008, and then in April 2008 also when he followed back up after seeing Dr. Lipman. So I think that that was consistent.

THE COURT: I think it is consistent with what Mr. Meana said. All I'm saying is I think it opens up --

MR. STAUDAHER: I have no problem with that.

THE COURT: -- a whole array of other questions and more cross-examination, which obviously he would want to know, well, why are you disregarding Dr. Jurani's suggestion? Why is your lawyer telling you who to treat with that ultimately could have contributed to, you know, a misunder -- I don't want to say contributed to his death, but certainly could have contributed to a misunderstanding in his own mind that led him to refuse treatment?

Now, we -- we don't know the answer to that question, but that's certainly a question that pops into my mind hearing the deposition of Dr. Jurani. The reason I said he's certainly a treating physician is because if he testified solely as a treating physician, then he has no dog in the fight. He's not a retained expert. He's just there to say these are my notes, this is what happened as opposed to, as you know, a retained expert that's been paid by either side.

So certainly he's testifying as a treating, possibly as an expert, but I don't -- I don't know. But I think, you know, his records as -- my point being I think the records of a treating are more inherently reliable than something that's done by an expert who has been retained by one side or the other and is being paid to form, essentially, a particular opinion.

You know, Dr. Jurani's records, he was strictly

treating at that point in time, had been his primary care physician. So I think there is a great deal of reliability in those records and the testimony that was based on the records. So if anyone needs to take a quick restroom break, let's -- oh, we're not done.

MR. WRIGHT: He was a treating physician.

THE COURT: No, he was a treating, but I'm saying he could have also then been brought in as an expert. I suspect he wasn't, but that's what I meant.

MR. WRIGHT: He was not.

THE COURT: Clearly he was a treating. And like I said, all of his records and the testimony was based on his role as a treating physician, which I think is more accurate or is more likely to be accurate because there is no dog in the fight at that point. And he wasn't -- it doesn't sound like he's working on a medical lien, either. He was paid by insurance.

MR. WRIGHT: Correct.

THE COURT: So in any event --

(Court recessed at 10:00 a.m., until 10:03 a.m.)

(Outside the presence of the jury.)

MR. STAUDAHER: Your Honor, we're going to -- we will be resting with the reservation about the exhibits.

THE COURT: Okay.

MR. STAUDAHER: And also with the reservation that

there's just a couple of cleanup things we want to put on the record in our case in chief, outside the presence, obviously, later on. It doesn't have to be done now, but we just want to make sure that that's reserved, as well.

THE COURT: Okay. Like what?

MR. STAUDAHER: Well, things that were brought up initially about records with Tom Pitaro involved with attorney-client privilege stuff, things like that.

THE COURT: Oh.

MR. STAUDAHER: We ferreted out some of that and want to make sure --

THE COURT: Okay. So you just --

MR. STAUDAHER: -- we put it on the record.

THE COURT: -- want to correct some representations --

MR. STAUDAHER: I just want to put --

THE COURT: -- that were made --

MR. STAUDAHER: -- it on the record, yes.

THE COURT: -- that maybe weren't correct? That's fine.

MR. STAUDAHER: And also that we made a disclosure to the defense as to who the CI was listed in the search warrant so that that's on the record, too.

MR. WRIGHT: And -- and at the same time I -- I want to reserve arguing about Exhibit 87. That's the affidavit

prepared for CRNAs that I had stipulated to, then withdrew my stipulation because I didn't know where it came from.

THE COURT: Oh, this was from the search warrant that they found?

MR. WRIGHT: Right. I want to -- and we reserved on that, and so I want to -- and we don't have to do it now.

THE COURT: Okay.

MR. WRIGHT: I mean, but at the same time I want to argue about --

THE COURT: Yeah, we never had any testimony on that anyway about where that came from --

MR. WRIGHT: Right.

THE COURT: -- as a result of the search warrant, if it was in a box, if it was --

MR. STAUDAHER: Well, it's because it was a stipulated --

THE COURT: -- on a computer. Right. It was stipulated.

MR. STAUDAHER: He can get back up on the stand if we need to deal with that.

THE COURT: I don't know if -- I mean --

MR. WRIGHT: Well, I -- I stipulated to it not knowing that it was -- what I stipulated to was when I went over there on that Friday afternoon and looked at everything and I understood it had all come from, and then this appeared

and I didn't stipulate to that. I agree I --

THE COURT: What do you mean this appeared? Was it there when you looked at the exhibits in their office --

MR. WRIGHT: No.

THE COURT: -- or wasn't it?

MR. STAUDAHER: I don't believe that -- at least at court beforehand, the two weeks before or whatever, or the week before we started trial, it was not part of that. It was part of the exhibits that I brought over to show --

THE COURT: That particular day.

MR. STAUDAHER: -- before we started, then they stipulated in court that day as to them, but I don't believe that he realized, afterward, at least that was what he said, that he didn't realize what it was until later. So --

MR. WRIGHT: Right.

MR. STAUDAHER: But -- but we did, then, disclose where that information came from one of the computers, and I think that --

THE COURT: Right. Well, here's the deal. Where did that -- does --

Detective Whitely, do you know where that particular exhibit even came from?

MR. STAUDAHER: He does.

MR. WHITELY: I'll find it.

THE COURT: Okay.

MS. STANISH: Well, he didn't know where the other exhibits came from yesterday.

MR. STAUDAHER: He knows. He said that he needed a cover sheet. And he can actually do that, it's just that you didn't provide the cover sheet for him.

MR. WHITELY: Where's the cover sheet?

MS. STANISH: I didn't provide the cover sheet?

MR. WRIGHT: We can do this --

THE COURT: All right. We can do it later. I'm just -- just making sure that we have a witness who even knows where it comes from as opposed to --

MR. STAUDAHER: He does.

THE COURT: -- oh, here's just this exhibit that came out of the search warrant, but we don't know if it's from a computer or if it was in a file or, you know, who downloaded it or where it was, if it was an email. Because that was the attorney-client issue --

MR. WRIGHT: Right.

THE COURT: -- that I had raised that I was concerned about that this better not have been an attachment to an email or in a file or something like that because it could also be -- I mean, it's clearly written by a lawyer or appears to be. Clearly, I'm pretty sure it wasn't written by Dr. Desai based on the other things he's written. There is no way he wrote that. Nothing against --

MR. STAUDAHER: Just so the Court would be aware that if we -- if there was an issue on that and we had to then bring it in through the detective --

THE COURT: Okay.

MR. STAUDAHER: -- we would have to reopen --

THE COURT: That's fine.

MR. STAUDAHER: -- our case.

THE COURT: That's fine. All right. Bring them in.

(Inside the presence of the jury.)

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

Mr. Staudaher.

MR. STAUDAHER: Your Honor, at this time with the reservations that we have discussed previously related to exhibits and other things, the State would rest at this time.

THE COURT: All right. Mr. Wright.

MR. WRIGHT: Yes, before calling a witness I'm going to offer two items.

THE COURT: All right.

MR. WRIGHT: One is Exhibit BB-1.

THE COURT: All right. And that's stipulated to; is that correct?

MS. WECKERLY: Is that this one?

THE COURT: Yes.

MS. WECKERLY: Yes.

MR. STAUDAHER: Yes.

THE COURT: Thank you.

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

THE COURT: All right. And would you just present that? You can publish that to the jury, if you'd like.

MR. WRIGHT: Thank you. Exhibit BB-1 deals with resolution of the civil cases with the Meana family by the Meana family's civil litigation against various individuals. And the Meana family total proceeds received from civil litigation, $2,349,268.18.

THE COURT: All right. Thank you.

MR. WRIGHT: And I'm going to read, Your Honor, a portion of a deposition of Mr. Meana taken on November 22, 2011, in civil litigation.

THE COURT: All right. Thank you.

And, ladies and gentlemen, this deposition, as Mr. Wright just told you, was taken in connection with one of the civil lawsuits that Mr. Meana was involved with.

MR. WRIGHT: And I will read the questions and answers, Your Honor.

THE COURT: All right.

MR. WRIGHT: Question, Did Dr. Sood recommend that

you start the interferon treatment?

Answer, Dr. Sood actually was the one who told me to undergo the tests, the treatment of the interferon.

Question, Did you start the interferon based on Dr. Sood?

Answer, And Dr. Sood.

Question, And how many times did you take interferon?

Answer, Only once.

Question, Did you give yourself a shot?

Answer, Yes.

Where did you take the shot?

Answer, On my thigh.

Question, And what type of side effects did you have from the shot?

Answer, I have a flu-like symptom. I have diarrhea, jaundice, and some sort of slight depression.

Question, Did Dr. Sood explain to you what might happen if you didn't continue with the treatment?

Answer, Yes.

What do you remember him telling you?

Answer, Telling me that I might not -- telling me that I might have some scar -- scar in my -- and that I might also possibly will have later on cirrhosis and it will actually try to destroy some cells in my liver.

Question, Did Dr. Sood tell you how long the cirrhosis might take to develop?

Answer, No.

Question, Was it your decision to not stay with the interferon, to not keep going with the interferon?

Answer, Yes, I have decided not to take it.

Question, And was that because of the side effects only?

Answer, Yes.

Did Dr. Sood tell you that the interferon treatment could cure you?

Answer, Yes.

But the side effects were too much, so you decided not to stay on the interferon?

Answer, Yes.

Did you understand that there was a risk that you would develop cirrhosis of the liver if you did not continue with interferon treatment?

Answer, Yes, I understand that, but I was told that it depends on how strong is your immune system. Sometimes the immune system might be able to cure you.

Question, Did you feel that you had a strong immune system that would be cured without the interferon?

Answer, Yes.

THE COURT: All right.

MR. WRIGHT: Thank you, Your Honor.

THE COURT: Thank you, Mr. Wright. And the defense may call its first witness.

MR. WRIGHT: We call Dorothy Sims.

THE COURT: Ma'am, just right up here, please, up those couple of stairs. And then just remain standing facing that lady right there who will administer the oath to you.

DOROTHY SIMS, DEFENDANT'S WITNESS, SWORN

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

THE WITNESS: Dorothy, D-O-R-O-T-H-Y, Sims, S-I-M-S.

THE COURT: All right. Thank you.

Mr. Wright, you may proceed.

DIRECT EXAMINATION

BY MR. WRIGHT:

Q Dorothy Sims, is it Nurse Sims or what's your title?

A I am a registered nurse, yes.

Q Okay. And tell the jury a little bit about your education.

A I attended the University of Nevada at Las Vegas. I have a bachelor's degree in nursing. I have five years experience in neonatal intensive care nursing, I did two years of case management, and for the last eight years I've

been with the Bureau of Healthcare Quality and Compliance.

Q Okay. The Bureau of Healthcare Quality and Compliance was previously known as what?

A The Bureau of Licensure and Certification.

Q Okay. In the courtroom here for the period in 2007 and 2008 we've been referring to a state agency as the BLC. Is that where you work?

A Yes.

Q Okay. And it's now changed its name?

A Yes.

Q Okay. Just for continuity and what we've been doing here in the courtroom I'm going to call it the BLC, okay?

A Okay.

Q And so you were employed by the BLC in January 2008, five and a half years ago?

A Yes.

Q And you're still so employed?

A Yes.

Q And what is your current position?

A I'm a Health Facilities Inspector III, supervisor position.

Q Okay. And in January 2008 what was your position?

A I was a Health Facilities Inspector II as a

surveyor, and then I got promoted to a Health Facilities -- or at the time it was a Health Facilities Surveyor III, supervisor position.

Q Okay. And so did you participate in January 2008 for the BLC with an inspection at the endoscopy clinic on Shadow Lane here in Las Vegas?

A Yes.

Q Now --

THE COURT: Keep your voice up.

MR. WRIGHT: Okay.

BY MR. WRIGHT:

Q Do -- do you recall your first involvement? When did you first go to the clinic?

A That I can't recall.

Q Okay.

A Can --

Q I'm going to show you some documents. It's been five and a half years; correct?

A Yes, it has.

Q Okay. And we have not met until I just saw you in the anteroom; correct?

A Yes.

Q So I have not interviewed you or had meetings to prepare your testimony; correct?

A Yes.

MR. WRIGHT: May I approach, Your Honor?

THE COURT: You may.

BY MR. WRIGHT:

Q I'm going to show you something called a ACPS complaint incident investigation report.

A Okay.

Q Look at that to yourself and tell me if you recognize what that is.

A Yes, I do recognize it.

Q Okay. Is that the incident investigation report pertaining to the Shadow Lane clinic for January 2008?

A Yes, it is.

Q Okay. And was this report produced based upon BLC's investigation at the Shadow Lane clinic?

A Yes, it is.

Q Okay. You -- you may utilize that to refresh your recollection as to dates, times, meetings.

A Okay.

Q And the -- what I'm -- what I'm initially looking for is do you recall a first entry meeting when it was the first time you went to the clinic?

A Yes.

Q Okay. And can you tell when that was by refreshing your recollection?

A January 9, 2008.

Q Okay. And do you -- using that date, do you recall the meeting and who you went with?

A Yes.

Q Okay. And who was that?

A There was another member of the Bureau of Licensure and Certification, there were two members from the CDC or Center for Disease Control, and one member from the Southern Nevada Health District.

Q Okay. And would that have been Brian Labus?

A Yes.

Q Okay. And do you -- you -- you went to the clinic to participate in an investigation because there had been a hepatitis C outbreak; is that correct?

A Yes.

Q Okay. Do you recall that independently?

A No, I read it from the --

Q Okay.

A -- report.

Q The -- okay. Well, I'm just trying to figure -- do you recall going to the clinic and participating in the investigation? Forget in the time frame and day of the week. Just tell me if you remember that.

A I do remember going to the clinic to participate in an investigation.

Q Okay. And do you remember that it was a

hepatitis C -- outbreak was my word, but there had been several cases of hepatitis C identified for patients from the clinic?

A That's correct.

Q Okay. And do you recall that they had been patients, the victims had been patients at the clinic on a couple of specific days?

A I'm not -- I'm not understanding the question.

Q Okay. Do you recall that they -- the -- the patients who contracted hepatitis C had been patients at the clinic on Shadow Lane on a couple, two specific dates in 2007?

A Yes.

Q Okay. Now, your -- your purpose in going -- you -- you went with -- who did you go with from BLC?

A On the first day of the survey, so on Sep -- no, on January 9th it was Nadine Howard.

Q Okay. And the first meeting you had at the clinic, do you recall who was present on behalf of the clinic?

A Can I refer to my --

Q Yeah. Do you --

A -- notes?

Q Do you recall was a -- well, you can go ahead. I don't want to lead you.

A According to the report we met with the chief operating officer, a physician, the charge nurse, and the

director of nursing.

Q Okay. And would the -- would the -- do you recall the name Tonya Rushing?

A Yes.

Q Okay. Would she be like the chief operating officer?

A Yes.

Q Okay. And Dr. Clifford Carrol?

A Was the physician.

Q Okay. And Jeffery Krueger?

A Was the charge nurse.

Q Okay. And the director of nursing, Katie Maley?

A Yes.

Q Okay. And at -- at this initial meeting, tell the jury what the purpose of the initial meeting was.

A The initial meeting was to inform the -- the facility that we were there to investigate a complaint allegation regarding infection control.

Q Okay. And did you tell them what the issue was?

A The Southern Nevada Health District informed them of the issue.

Q Okay. And was the issue the outbreak of hepatitis C connected to that clinic?

A Yes.

Q Okay. And did -- at that meeting did the clinic representatives cooperate?

A Yes.

Q Okay. And did the clinic representatives explain their procedures and what they do there?

A Can you clarify the procedures?

Q Okay.

A Like as to what you're asking.

Q Okay. Like what type of anesthesia they use for the procedure.

A Yes.

Q Okay. And do -- do you recall what -- what they -- what you learned?

A And I can go by my notes here?

Q Sure, if you need to refresh your recollection.

A Okay. Okay.

Q Do you recall what they said about the anesthesia used at the clinic?

A Yes.

Q And what did they say?

A They use propofol and lidocaine to sedate the patient.

Q Okay. And did they use multi-dose vials?

A Yes.

Q Okay. And you were -- you were -- you and everyone at the meeting were told that at the initial entry meeting; correct?

A Yes.

Q Did you have familiarity with propofol?

A No.

Q Okay. Did -- did you know if propofol is single-dose or multi-dose vials on Wednesday, January 9th at the first meeting?

A No, I did not.

Q Okay. Did -- is -- is it fair to say that at that meeting the -- do you recall specifically who of the individuals, who explained that they use multi-dose propofol and multi-dose lidocaine to sedate?

A No, I don't.

Q Okay. The -- did anyone at that meeting, the CDC or the -- you're the BLC, but your other BLC member there with you, or the Southern Nevada Health District, did anyone at that meeting say stop, you can't multi-dose propofol at that initial meeting?

A No.

Q Okay. At that initial meeting it -- it was not known by the -- by yourself that propofol could not be used multi-dose, is that fair?

A Yes.

Q Okay. You learned differently, correct, after the initial meeting?

A Yes.

Q Okay. I mean, I saw some hesitancy on your face. I want to be clear. That initial meeting Wednesday the 9th we multi-dose propofol and no one -- no representative of the government said anything about stopping that practice; correct?

A That's correct.

Q Okay. And did you -- did you all return the next day?

A Yes.

MS. WECKERLY: I just want to -- if we could just clarify who it is that's returning.

BY MR. WRIGHT:

Q Okay. Who -- who is returning on January 10th?

A The BLC returned with -- Nadine returned, I returned, and we had another surveyor from the BLC, Leslee Kosloy joined us. There were representatives from the CDC and representatives from the Southern Nevada Health District.

Q Okay. And on that next day, Thursday, January 10th, did -- did you -- were you there all day, the three of you, from BLC?

A Yes, we were.

Q Okay. And did you participate in chart reviews and observations in the clinic?

A Yes.

Q Okay. And were you observing procedures and cleaning of scopes and everything that goes on in the clinic?

A Yes.

Q And you were looking to see if, in layman's terms, they were doing everything right?

A Yes.

Q Is that -- is that fair?

A Yes.

Q Okay. Because there -- there had been an outbreak of hepatitis C tied to the clinic, and you all were investigating to determine if you could figure out how the hepatitis C spread and any wrongdoing in any of the procedures or processes in the clinic; correct?

MS. WECKERLY: I'm going to object to leading.

THE COURT: Overruled.

You can answer.

THE WITNESS: We were looking at whether they were following infection control practices. Whether they were -- the cleaning of the scopes was done properly, so that's what we were looking -- looking at.

BY MR. WRIGHT:

Q Okay.

A So we were looking at infection control practices in the facility.

Q Okay. And so in doing that you would observe procedures?

A Yes.

Q Okay. And follow a patient through -- a patient is done and following to the cleaning of the scopes and all that takes place?

A Yes.

Q Okay.

THE COURT: You are leading.

MR. WRIGHT: Okay. Correct.

BY MR. WRIGHT:

Q Tell me, who did -- do you recall who you observed on Thursday, January 10th? And I'm going to give you some more notes.

A Okay.

Q Okay?

A Okay.

Q Because it's been five and a half years.

MR. WRIGHT: I'm going to ask her to identify --

MS. WECKERLY: Okay.

MR. WRIGHT: -- what they are.

MS. WECKERLY: Yeah, would you, please.

BY MR. WRIGHT:

Q I have one stack here. Can you -- do you -- can you tell me what those represent?

A These are my handwritten notes.

Q Okay. And so the -- your handwritten notes, you write well, I can read it. And the -- to your right, you were actually looking at the typed report; correct?

A That's correct.

Q And so this -- your handwritten notes were made simultaneously while you were at the clinic?

A Yes.

Q Okay. And I have another package of notes. Can you tell me what those represent?

A These are notes that were taken during telephone calls after the investigation was completed.

Q Okay. And are those your notes?

A Yes, they are.

Q Okay. You can just hang on to those three things as I go through because the first question I have is on January 10th did you observe an endoscopic procedure in which a CRNA participated? Looking at your handwritten notes, look at the second to the last page.

A Okay. Okay.

Q Is that a 1/10/08 observation?

A Yes.

Q Okay. And is -- and these are your notes, and is this your observation?

A Yes.

Q Okay. And do you recall who is the CRNA you were observing?

A Linda Hubbard.

Q Okay. And it's -- the date is January 10, 2008. That's a Thursday. I'll tell you that. We know it because we've been dealing with it here. Okay?

A Okay.

Q And what time?

A 3:35 p.m.

Q And the -- the administration of anesthesia, did the CRNA administer propofol?

A Yes.

Q Okay. And is it -- is she using the propofol -- Linda Hubbard using the propofol vial as a multi-dose vial on Thursday afternoon?

A Yes.

Q And if -- do you recall watching her like administer propofol?

A I watched her administer the propofol to the patient.

Q Okay. And if the patient needed additional propofol, another dose, she was utilizing the same vial of