Q What did he do with them, the vials?

A He threw them away.

Q He threw them away? And that was, to my understanding, after the CDC is there, but before you go to Burnham?

A I think that's when it happened, yes.

Q When you were working at -- at hospitals and prior to your employment at the endoscopy center, how did you calculate your anesthesia time?

A It was the time of the actual procedure.

Q Okay. And at the endoscopy center, what was your way of calculating the anesthesia time?

A There was the time of the procedure, plus we added on a little for a pre-op evaluation, a pre-anesthesia evaluation, and then kind of rounded it off.

Q Okay. Well, let me ask you a couple questions about that. The pre-anesthesia evaluation, where did that take place?

A Either outside of the procedure room or inside the procedure room. It depended upon how things were moving.

Q Well, when you were doing those 60 or more patients a day, how much time -- or how often did you have time to go to the pre-op area and do an anesthesia evaluation in pre-op?

A Depended upon if the next patient was on the

stretcher or if they were sitting back after getting their IV started or whatever.

Q Right. I understand what it's dependent on. My question is how often?

A I really can't tell you.

Q Half the time?

A I -- I --

Q A quarter of the time?

A I don't know.

Q You don't have any recollection of how often you went out to pre-op to do the pre-anesthesia?

A Well, it was -- the pre-op and the post-op were kind of together. Everybody was on stretchers lined up outside the door.

Q But you're doing a different thing; right?

A Yeah, but I'm also looking at the post-op patients, too.

Q Okay.

A I don't know, maybe -- maybe 50 percent of the time.

Q So maybe half the time you went out and did a pre-op evaluation?

A Outside of the room, yes.

Q And how long would that take typically?

A Depending on how much the patient had going

on.

Q Okay.

A Ten minutes.

Q Ten minutes? And that was while you were doing 60 or 70 patients you could spend 10 minutes out in pre-op?

A Yes.

Q Okay. And then you would do a 10 minute procedure typically; right?

A Correct.

Q And then what would happen to the patient?

A The patient would then be discharged to the recovery area.

Q Okay. And once they went to recovery, how much contact did you have with them?

A Contract was -- contact was probably very rare.

Q Okay. So there really wasn't contact after they left the procedure room, is that fair?

A Correct. But we were supposedly responsible for these people.

Q Okay. Well, I'm not asking about your liability because liability and anesthesia time aren't the same thing.

MR. WRIGHT: Objection.

MR. SANTACROCE: Objection.

MR. WRIGHT: That's a total misstatement of their prior witness's testimony.

THE COURT: All right. Well, Ms. Weckerly, don't, you know, you don't need to make comments as to where you're going.

BY MS. WECKERLY:

Q Okay. Is it your understanding that your liability could end if you left the facility?

A When?

Q Well, let's say you did a procedure and let's say you were concerned about your -- your liability. Could you just leave the center and not be responsible for the patient anymore?

A Would I tell somebody else that I was leaving?

Q Yeah, sure.

A As long as it was somebody that I trusted.

Q Okay. But is it your understanding, like you just said, well, I was still responsible for the patients in recovery.

A Correct.

Q Is it your understanding that if you left the building and left someone else in charge that would end your liability for that patient?

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

foundation. When, where?

THE COURT: Well, that's sustained. Kind of rephrase it.

BY MS. WECKERLY:

Q Do you have --

THE COURT: Do you -- did that ever happen that she left a patient, you know.

BY MS. WECKERLY:

Q Do you have an understanding of -- well, let me ask you this. You said that when you worked at the other hospitals prior to coming to the endoscopy center that you didn't calculate anesthesia time the same way; is that right?

A Correct.

Q It was the procedure time?

A Correct.

Q And at the endoscopy center you added time on at the beginning and added some time on at the end.

A Correct.

Q But if I understand you correctly maybe 50 percent of the time you were in pre-op; correct?

A 50 percent of the time?

Q You were able to go and spend --

A That I was able to talk to the patient before they came into the room, yes.

Q Okay. And so then they come into the room.

And once they leave the room, correct me if I'm wrong, but my understanding was you said you really didn't have time to go see them in recovery.

A Yeah, I -- yes.

Q Okay. So your time with them would end after they left the procedure room?

A But if there was a problem, the nurses that were in the recovery area would come get one of us to come take care of that patient.

Q Okay. But your normal face time with the patient would end after they left the procedure room; is that --

A Correct.

Q Okay. Now, do you remember any special consideration for patients who had PacifiCare insurance?

A I think they were supposed to be 31 minutes for the procedure itself.

Q Okay. And why -- why -- was that? What's your understanding of that?

A I think it was that the patient would have to pay for their anesthesia if it wasn't at 31 minutes.

Q And did you only do that for PacifiCare patients?

A I tried initially, but then it just got to be too difficult because I didn't have time to find out who had

what insurance.

Q Okay. So was some of the information you put on the anesthesia time wrong?

A Probably, yes.

Q Okay. And you knew that form was going to insurance companies because you knew the thing about PacifiCare; right?

A But I understood that it was a flat fee for anesthesia --

Q Okay.

A -- so it really didn't matter what time was on there.

Q Well, actually, that's my question. If your understanding was that it was a flat fee, why would PacifiCare patients have to show a time of over 31 minutes?

A Because PacifiCare was different than the other insurances.

Q So are you saying that it's PacifiCare that wasn't a flat fee, or they all were a flat fee?

A The way I understood it, PacifiCare wasn't, that's why they wanted the 31 minutes.

Q Okay. And other than PacifiCare, though, you started putting over 30 minutes on people that didn't have PacifiCare insurance?

A Correct.

Q And was that correct? Was the time correct that you put on those forms?

A No.

Q And was it longer than those procedures were?

A It could have been, yes.

Q Okay. And so did you actually put vital signs that didn't exist?

A I could have.

Q Okay. And you knew that that form was going to an insurance company; right?

A No, I really didn't.

Q You didn't know it was for billing?

A No, I knew the time was for billing, yes.

Q Okay. So --

A But I didn't think that it really mattered because I really thought that it was just a flat fee --

Q Okay.

A -- except for PacifiCare?

Q Why did you bother to put the false vital signs?

A To make it look good.

Q Why would you need to make it look good?

A Just because.

Q To make it look like the patient was in there and you were taking vitals when you weren't?

A Probably.

Q Was that what you were trained to do?

A No.

Q Do you remember anyone telling you to do it that way?

A No, I don't.

Q Do you remember telling the police, this is on page 12, that Ron Lakeman told you to do it that way?

A As far as the time, yes.

Q Okay. So you actually do remember Ron Lakeman telling you to do over 30?

A Because it -- because it was the way it was done, that PacifiCare's had to be 31 minutes.

Q Right. Not just PacifiCare. Did he tell you that that was the way the timing was supposed to be done?

A Not for everybody, no.

Q So he just limited it, in your recollection, to PacifiCare?

A Correct.

Q And you just took it upon yourself to do everyone else that way?

A Just because there wasn't enough time in the day to check everybody's insurance.

Q Okay. And in that 10 minutes that you were spending in pre-op doing the pre-anesthesia evaluation you

didn't have time to ask what the insurance was?

A That was the least of my problems.

Q Okay. Did Dr. Desai ever tell you about billing 31 minutes or --

A Yes.

Q What did he say about that?

A That it was -- that it should be billed 31 minutes.

Q Did he ever look at your anesthesia records to see --

A Yes, he did.

Q -- that you were billing 31 minutes?

A Yes, he did.

Q Did the policy of billing 31 minutes ever change in your employment there?

A After the whole thing with the CDC and stuff, yes.

Q And then what happened? How did it change?

A We were told to bill for the time that the patient was in the room.

MS. WECKERLY: Court's indulgence.

I'll pass the witness, Your Honor.

THE COURT: All right. Let's get started on cross. Who would like to go first?

MR. WRIGHT: I'm going to, but can we take a brief

recess.

THE COURT: All right. Let me see counsel at the bench, please.

(Off-record bench conference.)

THE COURT: Ladies and gentlemen, we're just going to take a quick like 10 minute recess. And during the recess you're reminded not to discuss the case or anything relating to the case with each other or with anyone else, not to read, watching, or listen to any reports of or commentaries on the case, person or subject matter relating to the case, and please not to form or express an opinion on the trial. Notepads in your chairs. Follow the bailiff out the double doors this time.

(Court recessed at 11:24 a.m., until 11:36 a.m.)

(In the presence of the jury.)

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

And Mr. Wright, are you ready to proceed with your cross-examination?

MR. WRIGHT: Yes, Your Honor.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. WRIGHT:

Q Ma'am, my name is Richard Wright. I represent Dr. Desai. You -- you testified about transcripts you have

looked at because you were previously interviewed. You brought those with you --

A Yes, sir.

Q -- correct? How many -- how many of those do you have?

A Two.

Q Two? Do you -- do you understand -- which two do you have? Do you have them there?

A I have one from the FBI and one that was a two-day thing with the police.

Q Okay. You have an FBI interview, summary of an interview; correct?

A Yes, sir.

Q And that's August 14, 2008?

A That's the date on there, yeah.

Q Yeah, the date on there.

A Uh-huh.

Q And you also have a transcript, and the date on that is October 14, 2008?

A Yeah, and I think it's continued on the 15th.

Q Okay. October 14th and 15th.

A Yes, sir.

Q Two days with police. And, in fact, you were interviewed by the FBI; correct?

A Yes, sir.

Q Okay. And you were interviewed by the police over two days?

A Yes, sir.

Q Okay. And in addition to that you also went before the Grand Jury --

A Yes, sir.

Q -- correct? And that -- do you recall when in the chronology you went to the Grand Jury?

A That was before the FBI and the police.

Q Okay. And did they -- were you provided a transcript of your Grand Jury testimony?

A No, sir.

Q Okay. Your -- your Grand Jury testimony transcript shows July 17, 2008.

A Okay.

Q So we have Grand Jury, July 2008; FBI, August 2008; police, two days, October 2008. Do you think that's a correct chronology?

A Yeah, I guess.

Q Okay. Now, at -- at that time you were unemployed?

A Yes, sir.

Q Okay. And you had worked up until the closing of the clinic; correct?

A Yes, sir.

Q And then did -- did you -- did you surrender your CRNA license --

A Yes, we --

Q -- when the other --

A -- voluntarily surrendered them.

Q Okay. And you voluntary -- let me finish the question so that --

A Oh, I'm sorry.

Q -- we get a good record of it. Did you surrender at the same time all the other CRNAs turned in their license? Do you know?

A Yes, sir.

Q Okay. And it was at the same time?

A Yes, sir.

Q Okay. And you -- you had an attorney that was hired to represent you all, Tracy Singh? Did you know that?

A Yes, sir.

Q Okay. And you followed her advice to turn in your license?

A Yes, sir.

Q Okay. And thereafter you didn't practice any further --

A Correct.

Q -- CRNA-ing?

A Or nursing.

Q Or nursing. Okay. And I want to go back now to your career. Okay?

A Yes, sir.

Q Starting back in where did you go to nursing school?

A Cooper Hospital in Camden.

Q Okay. In Camden New Jersey.

A Correct.

Q And is that -- how -- how long of nursing school?

A It was three years.

Q Three years? And you got out of nursing school when?

A 1967.

Q Okay. And did you immediately go to CRNA school?

A No, sir.

Q Okay. You went into nursing --

A Yes.

Q -- is that correct? At what point in time did you go back and study anesthesia?

A I believe it was 1969.

Q Okay. So you worked a couple years as a nurse?

A Yes, I worked nights in intensive care.

Q Okay. And then did you go back to nursing school to become a CRNA?

A I went to Nazareth Hospital School of Anesthesia for Nurses in Northeast Philadelphia.

Q Okay. How long is that?

A It was 18 months at the time.

Q Okay. And you graduated?

A Yes, sir.

Q Okay. And to become a CRNA do you take tests, a board?

A Boarded.

Q Boarded?

A Uh-huh.

Q Okay. And what does that mean?

A That means you have satisfied the requirements of the American Association of Nurse Anesthetists to be a nurse anesthetist, a CRNA.

Q Okay. And then you went to work as a CRNA in the New Jersey area?

A Yes, sir.

Q Okay. And tell -- run through your CRNA career.

A I worked at Helene Fuld Hospital for probably about five or six years. And then I went to Hamilton Hospital for another maybe five years. And then I came back into the

city of Trenton and worked at Mercer Hospital, and then that became Mercer Medical Center and then it combined with Helene Fuld. I was there for 18 years.

Q Okay. And did -- did you -- was that your last job in New Jersey?

A That was my last job in New Jersey.

Q Okay. And then you came out to Las Vegas?

A Correct.

Q Okay. And that was in -- we know you started August 2005 at the clinic --

A Yes, sir.

Q -- correct? And you saw an advertisement for a nurse anesthetist in your --

A In the AANA Journal.

Q Okay. IN the AA --

A Bulletin. Bulletin. The American Association of Nurse Anesthetist.

Q Okay.

A Yeah. We have -- we have little things -- they have the classified ads in the back.

Q Okay.

A And it sounded like a good sounding job. And I wanted to get my husband out of New Jersey because it was too cold and he had a very, very bad winter. So we liked Las Vegas and it was warm.

Q Okay. You just held up -- I'm going to describe for the record, you held up a --

A Yeah, this is a page. This is the -- the next one. This was not the one -- this was the one that Mr. Sagendorf was hired from, but it was basically the same advertisement.

Q Okay. And this -- this is a page out of the AANA news bulletin --

A Yes.

Q -- that you looked at here on the --

A Yes, sir.

Q Okay. And --

A It's right there under Nevada. It sounded like a good job.

Q This -- this is a May 2007.

A Yes, that's what I said. That's probably the one that Mr. Sagendorf was hired from, but it was basically the same ad.

Q Okay. There was an ad run -- and this is a journal you receive monthly?

A With your membership, yes.

Q Okay. And you've been a member all along throughout your career?

A Yes, sir.

Q Okay. And the --

A Until 2008.

Q When the clinics closed and you turned in your license?

A Correct.

MR. WRIGHT: Can you mark that?

THE COURT: Any objection to the ad in the nursing magazine? Are you shaking your head no, Mr. Staudaher?

MR. WRIGHT: It's your --

MR. STAUDAHER: No.

MS. WECKERLY: No objection.

MR. STAUDAHER: No.

THE COURT: Okay.

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

MR. WRIGHT: Just because she brought it and we're talking about it, so --

THE COURT: That's fine. They don't object. So it'll be Desai next in order.

Which is, for the record?

THE CLERK: L1.

THE COURT: L1.

(Defendant's Exhibit L1 admitted.)

BY MR. WRIGHT:

Q Even though that's a later edition, that's the same ad you were responding to back in 2005?

A Correct.

Q Okay. And when -- when you responded, if you -- you started in August 2005, but you were interviewed prior to that?

A I was interviewed in June, I think.

Q Okay. And you -- you fly out or you and your husband?

A Both of us flew out.

Q Okay. And interviewed by Tonya Rushing?

A Yes, sir.

Q Okay. And another lady you don't recall?

A Yes.

Q Okay. And meet any of the doctors at that time?

A I met Dr. Carrol.

Q Dr. Carrol?

A And Ron Lakeman.

Q And Ron Lakeman.

A Uh-huh.

Q Okay. And were you hired -- were you offered a job on the spot?

A Yes, I was.

Q Okay. And then even though that's June it took until August to get your licensing in Nevada; is that correct?

A Correct.

Q Okay. And there was a delay in there because of your fingerprints or something?

A Correct.

Q Okay. So when -- when you started work at the clinic, Shadow Lane, okay, you were starting as a full time CRNA?

A Correct.

Q Okay. So I think you said Keith Mathahs, you were replacing him?

A That's what I understood, yes.

Q Okay. And he was retiring from full time CRNA --

A Yes, sir.

Q -- correct? But he -- he -- he still remained vacations and call back?

A Yes, sir.

Q Because you -- you continued to work with Keith intermittently up until the clinic closed?

A Very rarely, yes.

Q Okay. Rarely you worked with him?

A Correct.

Q Okay. And by with him, I mean he had a shift at the same time you did and --

A He had one room and I had the other.

Q Okay. And you -- you would mainly work -- the

majority of your time, you were there two and a half years; correct?

A Yeah.

Q Approximately?

A Approximately.

Q Okay. The majority of the time you would have been working Ron Lakeman in the other room?

A Yeah, until Ron left. Right.

Q Okay. And he left in the fall of 2007. Do you recall that?

A I don't recall when he left, no.

Q Okay. Now, you were -- you, when you were hired, already had experience with gastroenterology; correct?

A Yes, sir.

Q Because you had worked in -- you had worked where there were endoscopies and colonoscopies done; correct?

A Yes, sir.

Q And you worked with propofol?

A Yes, sir.

Q And you were very experienced with it?

A Somewhat experienced.

Q Okay.

A Yes.

Q Somewhat like you had used it frequently?

A We used it a lot with same day stay -- same

day stay patients and patients that wouldn't have a lot of post-operative pain. Because patients that would have pain, our nurses in recovery room would just turn around and give morphine to. And, you know, why use propofol which is probably four times as expensive as pentathal if they were just going to get slammed with a narcotic post-operatively? So when I worked endoscopies and when I did some other things like smaller surgeries that were supplemented with local anesthetics like arthroscopies and that kind of stuff, I would use propofol, yes.

Q Okay. Because basically with those type of procedures, when you've had it you're going to wake up relatively pain free from the procedure; correct?

A Yeah, it's -- it's a procedure that would not have a lot of pain associated with it. Yes.

Q Okay. So when -- when you came and started work at the clinic, August 2005, you -- you started doing procedures and you started working in one of the rooms; correct?

A Yes, sir.

Q Okay. And the -- you -- you stated that your patient interview about half the time was done in the pre-op area, and about half the time in the procedure room; is that correct?

A Correct.

Q Okay. Run through the patient interview process.

A Start off with asking if they had any problems with their heart or their lungs. It was all basically on the back of the anesthesia record was like a mini physical kind of thing. And you would cover all the systems, ask them if they had an problems with anesthesia in the past, if their family had had any problems with anesthesia because some of the things are familial.

Q Okay. And you would do all of that with every patient whether it was out in the pre-op area or in the procedure room before the procedure started?

A One way or the other, yes, sir.

Q Okay. And if it was done in the procedure room, that would be a situation where you didn't have time to do it in pre-opinion, but the patient is brought in and you interview them before the procedure begins?

A Yes, sir.

Q Okay. And the -- did you do that with every patient?

A Yes, sir.

Q Okay. I mean, it never got so busy that you just like skipped interviews and things?

A No.

Q Okay. The -- you've -- you've indicated that

the practice, the clinic patient load escalated; correct?

A Yes, sir.

Q Okay. And you started off, you doing in your room, what, maybe 25 patients?

A Maybe 20, 25, yeah.

Q Okay. And then it got up to around 30?

A Yes, sir.

Q Is that correct?

A And then it kept on going.

Q Okay. How far did it go?

A I think there's a couple of days like to the end of the thing where we were doing -- there were like 80 patients on the schedule for the day.

Q Okay. All in the schedule?

A Correct.

Q Okay. And the -- some percentage of them may not come?

A And there would be some percentage that would be added as well.

Q Okay. And so do you know what the highest ever done was in the records for the clinic?

A I'd say in the 80s.

Q Okay. Did the district attorney or the police show you any records showing there was never a day where it was in the 80s?

A No.

Q Okay. Now, you were asked some questions by Ms. Weckerly, and she was asking you about you doing 60 or 70 patients.

A The clinic doing them.

Q Okay. But you would do one half of those; correct?

A Yes, sir.

Q I mean, you weren't doing 60 or 70 patients?

A No.

Q Okay. Now, when it's time to administer the propofol -- I want to go through your process. And did your process remain the same -- your practice and procedure, okay.

A Uh-huh.

Q Did it remain the same from August 2008 until the CDC came in January 2008?

A Yes, sir.

Q Okay. Did I say August 2005? That's what I mean.

A I think so.

Q Okay. I'm getting mixed up here. The -- your procedure remained the same, your method of administering propofol, and then it changed on propofol multiuse after the CDC came; is that --

A Correct.

Q -- correct?

A Yes, sir.

Q Okay. So before the CDC comes, tell me what would you do first thing in the morning?

A We'd open syringes and put the syringes -- put the needles on the syringes. Draw up some lidocaine in some of them. Go over to the procedure room that had the locked closet, get flats of propofol, bring one to each room, and draw up propofol in some of the syringes that had the lidocaine in it and some of the syringes that didn't have lidocaine in it.

Q Okay. Now, assuming -- were you the first -- normally scheduled to be the first CRNA there?

A I was one of the first.

Q Okay.

A There were two of us that opened in the morning.

Q Okay. And each of you would be there and one of you or both of you would go get the propofol?

A No, one person would go do it.

Q Okay. Go check it out. There was a checkout procedure; correct? Did you sign it out?

A I don't -- I don't really -- I think we signed out by the flats. I'm not really sure.

Q Okay. And a flat would be like 25 bottles of

20s?

A Correct.

Q Okay. And so you would get your flat, 25 bottles in a flat container; correct?

A Yeah, a little cardboard bottom.

Q Okay. And take it to your room and the other CRNA would take a flat to his room?

A Sometimes. And sometimes the one person would just take out two --

Q Okay.

A -- and leave the one in the one room and go to the other room.

Q Okay. And the -- the propofol, it -- other than end of the day, last patient, the propofol would stay in each procedure room; correct?

A As far as I remember, yes.

Q Okay. The -- and so you would get out needles and syringes, and they're packaged separately; correct?

A Correct.

Q Put -- put together -- put the needle on the syringe; right?

A Yes, sir.

Q Okay. And then you would preload, you'd put lidocaine in some. Like, what, 1 cc?

A One to two, yeah.

Q Okay. And then you'd fill the balance with propofol?

A Correct.

Q Okay. So it's like 10 ccs of propofol.

A Between eight and ten, right.

Q Eight and ten. And then you would fill another stack of needles and syringes with just propofol.

A Correct.

Q Okay. And -- and you would -- if you used -- if you filled 10 syringes you would have used like five vials of 10; correct?

A Yeah, I guess that would be it.

Q Well --

A Yeah.

Q Okay. And you -- you would use each of those up; correct?

A Yes, sir.

Q Okay. So it's empty and you toss them out?

A Yes.

Q Okay. And so then the patients start coming in. The first patient comes in. You -- you may have pre-interviewed the patient already, right, in the pre-op area?

A I may have or I may talk to them in the room.

Q Okay. Either way, first patient comes in,

okay.

A Yes, sir.

Q Is the heplock in?

A It might be or it might not be.

Q Okay. And if it's not, you put it in?

A Yes, sir.

Q Okay. And if it's in, that means a nurse did it out in pre-op; correct?

A Yes.

Q Okay. So the patient is there, doctor comes in, tech is there, nurse is there; correct?

A Yeah.

Q Okay. Now, what is your practice? What do you then do when you're ready to put the patient to sleep?

A Put the monitors on the patient, turn the patient on their side, get a baseline reading on all of the monitors, and give the patient propofol and --

Q Okay.

A -- monitor them while the procedure is being done.

Q Okay. And what's get a baseline reading on the monitors mean?

A Get a blood pressure recording, make sure I know what the EKG says because if the -- if the stickies -- if the electrodes aren't in the right place you may not get a

good tracing. Make sure that the pulse oximeter is reading right.

Q Okay.

A Make sure you know where you stand before you give that patient any medication.

Q Okay. So the -- everything is totally hooked up so that you can fully monitor the patient the entire time of the procedure?

A Correct.

Q Okay. And then that -- that everything, the patient is okay and hooked up, and then your -- your first injection, you -- you put it in the heplock; right?

A Yes, sir.

Q The needle and syringe. Do you clean the little heplock?

A Sure.

Q Okay. And then do you put the full -- you pick up one with lidocaine and propofol, okay.

A Yes, sir.

Q Do you inject the full 10 ccs?

A Depends on how big the patient is. It depends on -- you know, you're -- you're talking to them while you're doing this and you're saying, you know, it may burn a little bit while you're going off to sleep, just let yourself relax, and you watch the patient.

Q Okay.

A And when the patient starts to flutter their eyes or their eyes close, then you know that they're pretty well asleep.

Q Okay. And -- and you are going to, on the charts, what you chart, you're going to keep track of the quantity of propofol administered; correct?

A Yes, sir.

Q And you're going to have the total and the number of doses; is that correct?

A Yes.

Q Okay. So if at the beginning, assuming you -- what, do you slowly give the full thing, assuming you were going to give 10 ccs?

A Yes, slowly.

Q Okay. You just slowly -- the patient goes to sleep, and then you like jot down 10 ccs, check that or write it down?

A Or -- or 2 ccs of lidocaine and 10 of propofol. It depends on what was in the syringe, yes.

Q Okay. But you chart that?

A Yes, sir.

Q Okay. And then we -- we've -- I'm asking you this methodically because we've had different CRNAs explaining different procedures they utilized. Okay?

A Okay.

Q So after your done with that first -- and I'm presuming you gave the full syringe, okay.

A Okay.

Q And let's make it a colonoscopy.

A Okay.

Q What do you do with that syringe?

A It goes in the red box.

Q The red box?

A Uh-huh.

Q That's the Sharps container?

A Yes, sir.

Q Okay. And then you pick -- you pick up another and insert it, or do you wait?

A Probably insert another syringe.

Q Okay. So you would be ready if more propofol is needed?

A Correct.

Q And this would just be no lidocaine, just the -- another syringe of propofol?

A Yes, sir.

Q Okay. And then you are watching the patient, you're watching the monitor or their -- what do you call those -- what are you watching?

A Monitors and the patient.

Q Okay. And if -- if more is needed, you have the needle and syringe in the heplock, and you would, if more is needed, you would give some dosage; correct?

A Yes, sir.

Q And you might give 5 ccs?

A Yes.

Q Okay. And if you did, you would then chart that?

A Yes.

Q And if -- if you ended up giving another 5, you would chart that?

A Yes, sir.

Q And if the procedure was -- goes on, you -- you've stated for colonoscopy you might use two, sometimes three syringes; correct?

A Correct.

Q Okay. So assuming on this you used the second one fully, okay.

A Okay.

Q Do you then toss that one?

A Yes, sir.

Q Okay. Now, the -- say the patient needs more. You pick up another needle and syringe full of propofol --

A Yes, sir.

Q -- correct? Put it in the heplock, patient

needs more, you'd give whatever additional dosage is needed.

A Yes, sir.

Q Okay. Now, in that situation, suppose you had given 150, 50, 50. So that's 250, or 25 ccs, okay.

A Uh-huh.

Q Third -- third syringe, patient is done, procedure is done. You still have propofol in the third syringe; correct?

A Uh-huh.

Q What do you do with that?

A Usually squirt it out in the trash can.

Q Okay.

A And then put the needle and syringe in the -- in the Sharps container.

Q Okay. You would not use that on any other patient?

A No, sir.

Q You wouldn't put it back in the vial or something?

A No, sir.

Q Okay. And you -- you testified on direct examination with Ms. Weckerly that there were occasions when you would -- like let's take the hypothetical. You've used the second syringe so that the patient has received 20 ccs, okay.

A Okay.

Q And suppose there's a little bit left still in the propofol vial, okay.

A Okay.

Q Propofol vial holds more than 20; correct?

A A little bit more, yeah.

Q Okay. I mean, it's 22?

A Whatever.

Q Okay. So suppose the patient just needs a little bit more propofol. Rather than picking up a new fully loaded 10 cc propofol, you may take that same needle and syringe that's used on the patient for the second time, go into the vial and get what's left, and inject that into the patient; correct?

A Yes, sir.

Q Okay. And in doing that, that is a fully, totally clean aseptic procedure; correct?

A Well, yeah, because then you're going to toss that bottle. You're not going to use that on another patient.

Q Okay.

A You wipe the top of the -- the rubber -- the stopper off with alcohol before you put the needle through.

Q Okay. And so -- and -- and reusing the needle and syringe --

A The inside is sterile.

Q -- same patient -- right. And there -- you have on occasion done that; correct?

A Yes, sir. The inside is sterile. The inside of the syringe is sterile, the inside of the needle is sterile, and the propofol is clean.

Q Okay. And -- and what is then done? The propofol vial is tossed; right?

A Yes, sir.

Q And the needle and syringe?

A After the patient is injected, yes.

Q Okay. Now, same -- I -- I want to go -- same process when you are using 50s, the big propofol vial.

A Yes, sir.

Q Okay. Did -- did you use the spike or the --

A Sometimes.

Q Did you use the spike?

A Sometimes.

Q Okay. And if you use the spike, that's a device that you punch through the rubber; right?

A Yes, sir.

Q And allows you to draw propofol without having to enter with the needle and syringe?

A Yeah, you just screw the syringe onto the spike and draw it up --

Q Okay.

A -- into the syringe.

Q So if on a given morning you had 50s rather than 20s, okay.

A Yes, sir.

Q You would take five syringes, hook each of them onto the spike on the 50 propofol vial, and draw up five syringes?

A One at a time, yes.

Q Right. One at a time. And then you would put the needle on it and the cap on it and put them in the box?

A On the syringes; yes.

Q Okay. Now, you would be monitoring the patient and determining if more propofol is needed, and your monitoring of it means is the patient starting to come up, wake up --

A Yes, sir.

Q -- right?

A Yes, sir.

Q Okay. And is that visibly looking at the patient, or also looking at -- did the monitors change when I'm starting to wake up?

A It can.

Q Okay.

A Your pulse rate will get faster.

Q Okay. So when I'm under the influence of

propofol, my pulse rate slows down normally?

A It's basically a general anesthetic, yes, sir.

Q I didn't hear you.

A It's a general anesthetic, yes.

Q Okay. Well, I'm not familiar with it. You are. Okay. With a general anesthetic, it slows me down, all of my -- my heartbeat?

A Yes, sir.

Q Okay. And -- and that's why it has to be carefully monitored because you're slowing down my heartbeat; right?

A Yes.

Q Okay. And as -- as more is needed, you -- you are determining, the patient is starting to wake up, where is the procedure, meaning is it almost done; correct?

A Yes, sir.

Q Okay. And you went through various physicians, Carrol, Desai, Carrera, on your direct examination. As you were going to give more propofol and the physician says no more, I'm done, words to that effect; correct?

A Or close to done, yes.

Q Pardon?

A Or close to done.

Q Okay. I'm close to done. And that -- and

that would be like code for you don't need anymore, I'm close to done; right?

A Yeah.

Q Okay. And then you would go ahead and make the judgment yourself; correct?

A Well, you're -- you're twisting that.

Q Okay. Well, I don't want to twist it.

A Because I would be watching the screen as well. When you watch the screen you know how much scope is there to go in or out or where are they with that.

Q Okay.

A And, you know, you're -- you're kind of -- you're watching the patient -- it's kind of like a whole area that you're observing at the same time.

Q Okay.

A And if you see them playing with a polyp or a little node kind of thing, you know they're not really on the way out because you know they're going to put something in there and either remove the polyp or burn the nodule, whatever.

Q Okay. And so you being aware of all of the --

MR. STAUDAHER: Could we approach for one moment, please?

THE COURT: Sure.

(Off-record bench conference.)

THE COURT: Ladies and gentlemen, we're going to go ahead and take our lunch break at this point. We'll be in recess for the lunch break until 1:20.

During the lunch break you are 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, or listen to any reports of or commentaries on this case, any person or subject matter relating to the case. Don't do any independent research by way of the Internet or any other medium. And please do not form or express an opinion on the trial. Notepads in your chairs, and follow Kenny through the rear door.

And, ma'am, during the break, please don't discuss your testimony with anybody else. Okay?

(Jury recessed at 12:14 p.m.)

THE COURT: All right. Ma'am, you're excused for the lunch break.

THE WITNESS: Thank you.

(Court recessed at 12:15 p.m., until 1:23 p.m.)

(In the presence of the jury.)

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

And, ma'am, of course you are still under oath.

Mr. Wright, you may resume your cross-examination.

BY MR. WRIGHT:

Q We -- on those occasions when physicians would tell you no more, I'm about done during a procedure and you determined that you believed more propofol was needed, you would go ahead and give more propofol; correct?

A Yeah. It depended where I was looking at it on the screen and what the patient was presenting me.

Q Okay. And despite what Carrol -- Dr. Carrol or Dr. Carrera or Dr. Desai said, you would make your own independent judgment; correct?

A Yes, sir.

Q Okay. And then you would give more propofol if that was your judgment?

A Yes, sir.

Q Okay. And did any of them ever discipline you for disobeying?

A No.

Q Okay. Now, CDC comes in January 2008, and you were present at a time when evaluations and reviews were taking place, observations; correct?

A Yeah.

Q Okay. Do you recall it?

A I don't actually remember them observing us.

Q Okay.

A They were floating all around the clinic. They -- somebody drew our blood and asked us a whole bunch of

questions about our past medical history.

Q Okay. And --

A And then there was a summation with a bunch of people sitting around the table and that was -- that is all I really remember.

Q Okay. The -- do you remember that afterwards certain changes were implemented in the clinic?

A Yes, sir.

Q Okay. And one of the changes would be no more lidocaine; is that correct?

A Yeah, I guess that was probably one of them.

Q Okay. Well, do you recall it?

A No, I really don't.

Q Okay. Do you recall that no more multi-use of propofol?

A Yes, sir.

Q Okay. And do you recall that 50s would no longer be used?

A Yes, sir.

Q Until that time, 50s would be used for multiple patients; correct?

A Yes.

Q Okay. And after the CDC is there, use only 20s; correct?

A Yes, sir.

Q And if it's not totally used up, discard it?
A Yes, sir.
Q Meaning the vial of propofol --
A Yes, sir.
Q -- correct? And any time you're going to enter a vial of propofol, use a new needle and syringe?
A No.
Q No?
A No.
Q You don't recall that?
A No.
Q Okay. What do you recall?
A It was one patient, so why did it matter if we were using the same syringe and needle?
Q Okay. And I don't know the answer to that.
A And that's what I told the inspector when they were leaving. She asked me if I had ever reused needles and syringes. And I said no, but now where we're using a 20 -- one patient, 20 ccs, that's it, there's no -- what -- what's the sense in using another syringe?
Q Okay. Because --
A And she couldn't give me an answer, so --
Q Okay. And because -- and explain why that's totally safe now that it's -- the rule is one 20 cc vial for a patient, okay.

A Yes, sir.

Q Okay. And if I use simply one needle and syringe for that one patient, and then throw away that needle and syringe and the vial, that's totally safe; correct?

A But it's totally safe to redraw from that same vial for that same patient.

Q Right. Is that what you're saying?

A Yes, sir.

Q Okay. And you -- you absolutely believe that's totally safe; correct?

A Yes, sir.

Q Okay. Now, what if after CDC was there a patient needed more than one 20 vial?

A And that did happen.

Q Okay. What happened -- so you've used one -- one 20 and the patient needs more, so you get another 20.

A Right, but now that belongs to that patient, too.

Q Meaning?

A It gets tossed when the patient leaves the room.

Q Okay. So if there's any left, throw it out?

A Correct.

Q Okay. Now, you were asked about a meeting with the CRNAs present where saline propofol mix or push was

discussed.

A Push.

Q Push. Okay. A saline push means after -- after injecting propofol, separately inject saline?

A Correct.

Q Not mixing the two.

A Correct.

Q And not using saline instead of propofol; correct?

A Correct.

Q It's simply propofol injection, then follow with saline; right?

A Correct.

Q Okay. And do -- do you recall that at the meeting, see if this refreshes your recollection at all, that there was the discussion by a CRNA about that practice, that saline push being utilized at the VA?

A No.

Q You don't recall that?

A No.

Q Do you recall Mr. Mione discussing that?

A No, I really don't.

Q Okay. Now, when the new -- the new rules post CDC are in place, you have your incident in February with Dr. Carrol, okay.

A Yes, sir.

Q And what --- what actually did you do before we discuss what Dr. Carrol claims he saw? Tell me what you did.

A What I did?

Q Yes, with the propofol. Do you recall?

A I drew up the propofol to give to a patient.

Q Okay. And what happened?

A I don't understand --

Q Okay.

A -- what you're saying.

Q Okay. Tell me what Dr. Carrol accused you of. Let me start that way.

A He accused me of using left over propofol from another patient for that patient.

Q Okay. He accused you at the time. At the time it was propofol can't be used on another patient; right?

A Yeah.

Q Okay. And he accused you of drawing up propofol to use for a different patient?

A He accused me of drawing up propofol from a vial that had been used on another patient.

Q Okay. And so did you draw it? I mean, that's what he accused you of.

A Correct.

Q Okay. What did --

A It was --

Q Did you --

A -- it was what was --

Q -- do that?

A No, it was -- it's what was remaining in that -- in that vial that hadn't been drawn up for the patient that was on the bed at that time.

Q Okay. I'm not -- I'm not understanding. Did -- did he observe --

A There's more than 20 ccs of propofol in the vial.

Q Okay.

A And I was just drawing up what was left in that vial into another syringe because I knew -- you know, I didn't want to take the time to draw it up in that same syringe, in the full syringe, because I knew he wanted to get these cases down and get out.

Q Okay. So were you drawing up the left over in the propofol to use on the patient that was still there?

A It was not left over. It was that vial of propofol that was for that patient.

Q Okay. So you were redrawing to use for that patient; correct?

A I was drawing another syringe into another

syringe for the patient that was on that.

Q Okay. On -- right there, the patient in the room?

A Yes, the patient that was right in front of me.

Q Okay. And -- and Dr. Carrol accused you of drawing that up to use for a subsequent patient?

A No, he thought it was propofol that was left from a patient before.

Q Oh, I see. He -- he thought that you --

A That I had it in my coat pocket or wherever and that I pulled it out to give it to that patient.

Q Okay. And that did not happen?

A Correct.

Q Okay. And he takes you upstairs? Dr. Carrol --

A Yes.

Q -- takes you to Tonya's office?

A Yes.

Q Okay. And he asks that you be fired?

A Yes.

Q Okay. And what happens with you and Tonya?

A She asked me what happened and I told her what happened.

Q Okay.

A And she told me to go home and that she'd be in touch with me.

Q Okay. And that's when she called you and said report to Burnham?

A Correct.

Q And you went to Burnham?

A I went to Burnham and Mr. Mione came to Shadow.

Q Okay.

A We traded places.

Q And at Burnham you were working under Dr. Mason?

A Correct.

Q Okay. And did you discus with him what had occurred?

A Well, as I already stated, he called me into his office when we sat down and we talked it all out before I started my first case.

Q Okay. And you stayed there two weeks and returned to Burnham?

A Correct.

Q Pardon me. To Shadow.

A To Shadow.

Q I got them mixed up. Okay. Now, you -- I'm going to jump now to July of 2008, okay. Clinic closes in

March 2008 and you go to the Grand Jury. Do you recall that?

A Yes, sir.

Q Okay. And when you went to the Grand Jury, do you recall what you told them?

A Not totally, no.

Q Okay. The -- do you recall telling the Grand Jury that your procedure, your practice method of dispensing propofol, drawing it up, mixing with lidocaine, medicating a patient, was the same as you had previously done before you ever came to Las Vegas?

A I don't recall that, but that's basically what my practice was, yes.

Q Okay. That -- that -- but that is true if you told the Grand Jury that; correct?

A If that's what I said, yes.

Q Okay. And do you recall explaining to the Grand Jury that you used propofol for multiple patients aseptically, cleanly?

A Yes.

Q Okay. And do you recall being asked about single-dose or single-use vials and what it means?

A I don't remember that and I -- I never remember seeing the word single-dose on the bottles of propofol.

Q Okay. And the -- were you honest with the

Grand Jury when you testified?

A Yes.

Q Okay. I mean, you testified to the best of your ability to what you then knew. Is that a fair statement?

A Yes, sir.

Q I mean, you didn't go in and lie to anyone; correct?

A Not that I -- not that I know of, no.

Q Okay. Do you -- do you recall telling the Grand Jury, and going back to this saline flush meeting, okay.

A Okay.

Q It was mainly --

MR. WRIGHT: I'm on page 151.

BY MR. WRIGHT:

Q It was mainly it was the difference between the practice at VA because we were providing services for the Veteran's Administration, as well, where a lot of the patients are sicker and a lot less propofol could be used. So one of the nurse anesthetists said he used smaller doses and used saline flushes with everyone so that the propofol would totally get into the vein and be totally used. Does that ring any bells?

A No.

Q Okay. Do you recall then stating that the individual you were talking about was Vincent Mione?

A No.

Q What -- that -- that -- if you stated that, that would have been -- you -- you were testifying truthfully at the time; right?

A I'm telling you that I don't remember that now, sir.

Q I understand you don't recall that. What I'm saying is if you'd said that in July 2008, you were truthfully answering questions?

A Yes, sir.

Q Do you recall being asked at the Grand Jury whether you had ever told the CDC representatives that you were instructed to reuse syringes with multiple doses of propofol?

A No, I don't remember.

Q Okay. Do you remember telling the Grand Jury that you were not instructed in that fashion?

A No, I don't remember.

Q Okay. Do you remember telling the Grand Jury that you did not tell that to the CDC?

A No, I don't remember.

Q Okay. Now, you don't remember your testimony at the Grand Jury; correct?

A Correct.

Q Okay. You haven't seen that transcript. I

know you've looked at other transcripts. Would it refresh your recollection if you looked at your Grand Jury testimony?

A I doubt it.

Q Do you want to attempt it?

A No.

Q Because?

A Because it's been almost five years ago, and some of the things that have been put in these testimony I don't honestly believe I said. And I remember discussing with the CDC before they left that I had not reused syringes and needles, but that we probably would be due to the fact that now we're just using 20 ccs -- the 20 cc on a patient. When the patient leaves the room, we throw it out.

Q Okay. That much -- that -- that's your best recollection of your conversation with the CDC?

A Yes, sir.

Q Okay. Now, ask you some questions out of your Grand Jury testimony. You tell me if you recall the questions and answers, okay?

A Sure.

Q Did you ever -- did propofol ever move from room to room? No, sir. Do you recall giving that testimony?

A No, because it did in the afternoon. It did for the last patient.

Q Okay. For the last patient it would go to

be --

A It wasn't a room to room to room to room kind of thing. It would be from one room, the last patient would be in the other room and we would bring over the last of the propofol. So it wasn't like a tennis ball kind of thing, no.

Q Okay. Question, did you ever tell the Center for Disease Control that you were instructed to use or reuse syringes and to use these syringes with multiple doses of propofol? Did you make that statement to the Center of Disease Control? Answer, not that I remember, no. Do you recall giving that?

A No, I don't.

Q Okay. Do you recall -- did you tell them that you were instructed, though? Answer, I don't think so. Question, could you have? Answer, no. Do you recall that?

A No, I don't.

Q Okay. Your -- as I understand your recollection of the meeting, what you recall of meeting with CDC, those answers would be correct.

A Yes, I think so.

Q Now, after -- after your Grand Jury appearance in July, you were next interviewed by the FBI in August. Do you recall that?

A Somewhat, yes.

Q Okay. And you -- I'm going to ask you some

questions about your responses in this summary. And once again, this is simply --

A The summary is ridiculous.

Q You have a report; correct?

A Yes, I do.

Q And it's not a transcript like of a tape recording?

A No, it's not.

Q I'm going to ask you about page 7.

A Okay.

MR. WRIGHT: If I may approach the witness to point out --

THE COURT: That's fine.

MR. WRIGHT: -- where I am because it's a lot of writing.

BY MR. WRIGHT:

Q I'm starting on Hubbard claimson page 7, the first big paragraph. Did you tell the FBI that ECSN, that's the clinic; correct?

A Uh-huh. Yes, sir.

Q Always used clean needles and syringes. Do you recall telling him that?

A No, but we did.

Q Okay. That's true.

A Yes.

Q She would -- she, that would be you --
A Yes.
Q -- you would sometimes reuse a syringe if there was a small amount of propofol left in the bottle; correct?
A For that patient, yes.
Q Yes. It says she would only do this if the syringe was being used on the same patient.
A Right.
Q Okay. And that is true?
A Yes, it is.
Q Okay. Do you recall telling them that?
A No.
Q Okay. Now, in the -- the next paragraph --
A Yes.
Q -- same page, you were asked about your conversation with the CDC --
A Okay.
Q -- in January of 2008. It said you do not recall advising the CDC that you were instructed to reuse syringes.
A Correct.
Q Okay. You -- you don't recall it and -- do you recall?
A No, I don't.

Q Okay. And do you believe you told the FBI that?

MS. WECKERLY: Excuse me. I think you said CDC and then FBI. So --

MR. WRIGHT: Okay. I'm mixing these up.

THE WITNESS: I thought he was referring to this being the FBI thing, so --

MS. WECKERLY: Yeah, that's what I mean. I just want to clear it for the record.

MR. WRIGHT: I don't even know what I was referring to.

MS. WECKERLY: I just want it clarified.

MR. WRIGHT: Okay.

THE COURT: Okay.

BY MR. WRIGHT:

Q Did you tell -- the FBI asked you, did you tell the CDC that you had been instructed at the clinic to reuse syringes? And you told the FBI you did not recall telling the CDC that.

A Correct.

Q And that is a true statement?

A Yes, it is.

Q Now, you were interviewed, same interview, FBI, and they asked -- they were asking about your billing practices, timing of anesthesia practices, okay.

A Okay.

Q I'm on page 2, third paragraph down. Right here. She -- she claims that the CRNAs were responsible for patients after procedures had been done and the patients were recovering, not the nurses.

A If there was a problem, they would come get us, yes.

Q Okay. But you were explaining -- do you recall explaining to them that your responsibility as a CRNA continued while the patients were in recovery?

A Correct.

Q And that's true?

A That's true.

Q Now, you were next interviewed for two days -- for -- on two separate days by the police department?

A Correct.

Q Okay. And that was in October 14 and 15?

A Uh-huh.

Q And you have that --

A Yes, I do.

Q -- transcript? You were represented by counsel. You had a lawyer --

A Yes.

Q -- when you went to the Grand Jury --

A Yes.

Q -- right? And who is that lawyer?

A Michael Pariente.

Q Okay. And so he accompanied you to the Grand Jury in July?

A Uh-huh.

Q He was present with the FBI --

A Uh-huh.

Q -- when you were interviewed in August?

A Yes.

Q And he's present when you were interviewed by the police; correct?

A Yes, it was in his office.

Q Okay. It was in his office. Now, the -- had -- had you received -- entered into an agreement with the State to protect yourself?

A At what time?

Q You tell me when it was entered into.

A There was -- I am not an attorney, sir. I'm a nurse.

Q Yes, I --

A And I know that Michael talked to somebody and I -- I -- really and truly I don't remember when it happened. I don't know when in the sequence of the -- I -- I really -- I'm sorry, but that was five years ago, and --

Q I understand.

A -- I don't remember what I had for breakfast yesterday, you know.

Q Okay. Did the -- you understood that at some point an agreement was entered into; correct?

A Yes, sir.

Q Okay. And what did you understand that agreement to be?

A I really can't tell you now.

Q Okay. Did -- did you believe that if you were honest with them you would not be charged, prosecuted?

A If I was honest, yes.

Q Okay. I mean, generally that -- that was the -- what your understanding was?

A Yes.

Q Okay. And when you're interviewed by the police after the FBI interview, they started questioning at one -- well, many things. But they questioned you at one point about your anesthesia billing times. Do you recall that?

A Yes.

Q Okay. Do you recall trying to explain to the officers that your time included the responsibility you still had for the patients in recovery?

A I can't remember the specific things, but that's what -- that's the way I've always looked at it, so,

yes.

Q Okay. Do you recall -- let me -- do you recall there were times that it appeared the detectives did not like your answers?

A Well, yeah.

Q Do you recall there were times when they -- when it was said let's go off the record?

A Yeah, and I don't remember what they were. I've read over this like three or four times and I -- I just don't remember what that was about.

Q Okay. Why -- why would someone go off the record and have conversations and then turn the tape recorder back on?

A I don't know, sir.

Q I want you to look at pages 13 through 18. Well, let's start on page 13 there.

A Okay.

Q I'm starting on Now you have said you personally give anesthesia to an average of 30 patients a day. Okay?

A Yes, sir.

Q The -- the question, Now, you said that you'd personally give anesthesia to on average approximately 30 patients a day. And you answered, Correct.

A Yes.

Q Right? And that is true; correct?

A Yes.

Q Okay. And then the detective says, So we figure that up, and if you're billing 31, 32, 33 minutes a day, that's a 15 to 16 hour day. And then you -- you answer, That's not saying that I'm personally with them for that time, but it's saying that I was responsible for them.

A Yes, sir.

Q Correct? The detective says --

MS. WECKERLY: Your Honor, can we approach?

THE COURT: Sure.

(Off-record bench conference.)

THE COURT: All right. Mr. Wright, you may proceed.

MR. WRIGHT: Okay.

BY MR. WRIGHT:

Q You had answered, No, because patients that are not in recovery room are still our responsibility, but we're not sitting there with them. Detective, Okay. We're not -- I guess you're not understanding where I'm going with this. You answer, No, I'm not because you're -- you're blocking out what I told you before where there's a pre-anesthesia evaluation. Detective, No, we understand that. You answer, There's the time we spent with them.

Detective, And we understand that you were fudging the anesthesia on the front side because you would go

backwards. You answer, But I really don't call that fudging. I'm sorry. I'm still responsible for that patient until they walk out the door. Detective says, Okay. M.P. Who is that?

A That's my attorney, Michael Pariente.

Q Okay. He says -- your attorney says, I guess what she's asking, Linda, that it's not -- you weren't looking at it -- one could look at it and say 16 hours for not actually there with that patient the entire 16 hours. In other words, that's all they're trying to say. You answer, Well, we already went over that before. Your attorney says, Why don't we take a break? And it goes off the record. Okay?

A Okay.

Q Correct? Do you -- do you know what happened during that break?

THE COURT: And any --

THE WITNESS: No.

THE COURT: I was just going to tell you anything you discussed privately with your attorney you don't have to tell us about if it was just you and your attorney talking privately. Okay?

THE WITNESS: I -- I don't remember.

THE COURT: Okay. And that's --

THE WITNESS: I really --

THE COURT: -- fine, too. I'm just --

THE WITNESS: -- don't remember.

THE COURT: I'm just letting you know that if it was a private conversation with your lawyer, you don't have to tell us. Now, if you're talking to your lawyer and the police are sitting there or the DA or the FBI or something like that and you're listening, then you have to tell us in response to a question. Okay?

THE WITNESS: Okay.

THE COURT: And so, Mr. Wright, she's testified --

MR. WRIGHT: Okay.

THE COURT: -- that she doesn't remember.

BY MR. WRIGHT:

Q Okay. You don't recall what happened during the off the record; correct?

A Correct.

Q Okay. Now -- all right. Operator, We're back on the record. Time is 10:12. Same persons present. Detective, Okay. So we're just going to go back for a minute and talk about the 31 minutes. In the first interview you told us that you billed 31 minutes universally; is that correct? Yes. Okay. And you told us on the average you thought that you probably spent about 20 minutes face to face time with each patient on average, yes or no? Yes. Okay. And did you follow most of your patients out to the recovery room physically?

You say, Physically taking them out? Detective,

Yes. Did you? You say, Yes. Detective, That's our sticking point. Another detective, Taking them out, just wheeling them out, dropping them off in recovery, and then going back into the room to start the next patient? You answer, Correct. Detective, So you're taking them out. What you're saying is most of the time you took them, you physically wheeled them out? Answer, I would take my patients out. Most of the time I would disconnect them and take them out.

Detective, Well, that doesn't really add up either because your records reflect the time the patient left the room is when you ended your time. You answer, Okay. Detective, Because you told us in the first interview, correct me if I'm wrong, that you would put the actual end time which is when they wheeled out of the room, and then you would backtrack 31 minutes. You say, minutes. So that when I said you were fudging on the front side, that's what I meant, that you were altering the billing time when the patient got in there, not when the patient left. You answer, Correct.

Detective, So that doesn't make sense with what you're telling me now. If you were following the patient out of the room, then you would put your end time at the time that the procedure ended because almost every file of yours, and I've reviewed your anesthesia time, ends when everybody else's procedure time is ending. So it doesn't, if you're following the patient out to the recovery room every time, wouldn't you

put the time that they hit the recovery room within a few minutes instead of ending it when the patient was wheeling out of the room?

You say, That's the time. Okay. Yeah. Detective, Okay. Right, what? You answer, Whatever you said. Operator, We're going back off the record. What happens when you go off the record again?

A I don't know, sir.

Q Operator, We're back on the record Detective, Okay. We're just going back to go back and review one more time the billing for the at least 31 minutes of anesthesia time. Do -- do you know -- can you tell me what --- what the purpose was for those stops, why you -- did you leave the room?

A No.

Q No recollection?

A No.

Q Is what you were attempting to tell the detectives about you viewing your responsibility as beginning, start time, beginning when you start your patient interview either in pre-op or the procedure, and that your responsibility continues until during the recovery period and until they are discharged from the -- the recovery room?

A Yes, sir.

Q That is your true belief; correct?

A Yes, sir.

Q And you told the FBI that; correct?

A Yes, sir.

Q And you attempted to tell these detectives that; correct?

A Yes, sir.

MR. WRIGHT: Court's indulgence.

BY MR. WRIGHT:

Q After the CDC came, still on billing time, okay.

A Okay.

Q The CDC came, and then as I understand your testimony, you then had a meeting with Dr. Carrol and Dr. Desai about start time, end time. Do you recall that?

A I -- I remember reading about it. I don't really remember the meeting, no.

Q Okay. But you don't -- you don't recall the meeting.

A No, I don't.

Q Okay. Do you recall that after, among the changes that were implemented after the CDC time frame, that one of the procedures that was implemented, was utilized, first as the start time, your first interaction with the patient wherever it would be, and then you utilize end of the procedure as your end time. Do you recall that being

implemented?

A Yes.

Q But you just don't recall at what meeting or how --

A No.

Q -- it came about?

A I don't.

Q Okay.

(Pause in the proceedings.)

MR. WRIGHT: I've completed, Your Honor.

THE COURT: All right. Mr. Santacroce, cross.

MR. SANTACROCE: Thank you.

CROSS-EXAMINATION

BY MR. SANTACROCE:

Q Good afternoon, Ms. Hubbard. I represent Ron Lakeman.

A Yes, sir.

Q I know you've been up here a long time --

A Yes, sir.

Q -- and probably want to get out of here --

A Yes, sir.

Q -- so I'll try to make this as brief as possible. Okay?

A Thank you.

Q I want to talk about some of the things you

testified to as it relates to Mr. Lakeman.

A Okay.

Q You testified that you came to the clinic in, I think, August of 2005; is that correct?

A Yes, sir.

Q That Mr. Lakeman was already working there; right?

A Yes, sir.

Q And I think you testified that you observed Mr. Lakeman do a procedure. You didn't know how many or exactly when, but you did observe him do a procedure; right?

A Yes, sir.

Q And your testimony was that you didn't observe anything out of the ordinary.

A Correct.

Q So when you -- when you mean nothing out of the ordinary, are you saying that his technique and procedure was something you had seen in the past, was familiar to you, and possibly you had used the same procedures?

A Probably, yes.

Q Okay. Was there ever a time when you, Mr. Lakeman, and Mr. Mathahs worked together all at the same -- on the same day?

A There were a few occasions, yes.

Q And I believe you testified that you worked

Monday to Friday, correct, at Shadow?

A Yes, sir.

Q And it would be you and Ron?

A Yes, sir. But sometimes Keith would -- Mr. Mathahs would come in, as well.

Q Okay. I want to show you a couple of things on a couple of days that are in question in this case. You can look on your screen there if you would.

A Thank you.

Q This is the patient procedures for September 21, 2007. And can you read that?

A Yeah. I didn't work that day.

Q That's exactly my point. Do you know why you didn't work that day?

A Yeah, I was at a continued education thing done at New York New York.

Q So on that day Mr. Mathahs was in one room and Mr. Lakeman was in the other room; correct?

A Probably, yes.

Q Okay. Would you have called Mr. Mathahs in, or would someone else have done that for you?

A I don't know how that was handled.

Q Okay. Let me show you another day in question here, July 25, 2007. Do you see that day?

A Yes, sir.

Q You did work that day, though; correct?
A It looks like it.
Q Okay. Well, I'll represent to you that this is information the State prepared from plaintiff records, okay.
A Yeah, I was going to say it's got a lot of places with my name on it, so I guess I must have been there.
Q Okay. So let's talk about that. You see the first patient of the day?
A Yes, sir.
Q Started at 6:50; correct?
A Yes, sir.
Q And you did every patient in that particular room throughout the whole day ending at 16:25 or 4:25 in the afternoon; correct?
A It ended at 16:57.
Q Okay. So that would be 4 --
A It was 5:00.
Q 5:00.
A Yeah.
Q You did every patient in that room; correct?
A Yes, sir.
Q Now, I'm going to show you the other room. You see that room?
A Yes, sir.

Q Who did that procedures in that room as far as CRNAs go?

A Ron Lakeman.

Q Okay. And Mr. Lakeman's first procedure started at 7:05 --

A Yes, sir.

Q -- in the morning; correct?

A Yes, sir.

Q And went through the whole day ending at 17:21, or what time is that?

A I don't know if that's 5:21 or if there's -- I don't know. It says that there's one missing for the 25th. I don't understand.

Q Okay. His last procedure --

A The line under the one that says 5 -- yeah, that says 5:21, but then the one afterward, the line after it says that there's a procedure missing or something.

Q Okay. So at least according to this chart his last ending time was 5:21?

A Yes, sir.

Q Okay. Now, I noticed something unusual when I looked at this chart, and that is neither one of you appear to have taken a lunch break, or at least it doesn't show that you went and covered for Ron in his room, or that he covered for you in your room at any time on this particular day. Is that

unusual?

A No, because we covered for each other. I've never seen this record before. I don't --

Q Okay. Well --

A -- understand what this is.

Q -- I'm not asking you if you have or haven't. I'm asking you if you remember on that day why neither one of you appear to be in the other person's room at any time during the day.

A Probably because, you know, if I would start it, it would be my case. If Ron would start it, it would be his case. Now, as to who typed all this stuff up, it evidently wasn't slash, you know, Hubbard/Lakeman or Lakeman/Hubbard. I -- I have nothing to -- I understand this.

THE COURT: Did you ever relieve each other in the middle of a patient, like there'd be a patient already under anesthesia and then you --

THE WITNESS: Well, that's what I said. For lunch, you know --

THE COURT: Okay. So you -- he'd go to lunch and you'd take over and the patient was already there getting the procedure done?

THE WITNESS: Yeah, that's what I was trying to explain.

THE COURT: Okay. And so was there ever any days

that you didn't -- you just worked straight through the whole day and didn't --

THE WITNESS: No.

THE COURT: -- go lunch? Always went to lunch?

THE WITNESS: Yes.

THE COURT: Okay.

BY MR. SANTACROCE:

Q Okay. So the fact that this diagram doesn't show you being in his room or he being in your room doesn't mean it didn't happen, is that what you're telling me?

A Correct.

Q So tell me the standard procedure. If you took a lunch, you would go into Ron's room or vice versa?

A Well, if I was going to lunch, you know, if Ron was working in the other room, if we had one doc and we were working back and forth, that's when we tried to get our lunches done before the afternoon when the second physician would appear. And, you know, I'd go over and tell him that I was going to lunch, or he'd come in and relieve me and tell me to go to lunch.

Q When you went in -- when -- when someone relieved the other person, you would use the supplies and propofol in that person's room?

A Yes, sir.

Q And you would use the same aseptic techniques

and practices that you talked about all day today?

A Yes, sir.

Q Okay. Let's go back up to you, okay.

A Okay.

Q On this particular -- I'll represent to you that the orange line indicates people that came into the clinic that already had hep C, that the white lines or no colored lines are people that haven't reported hep C, and the yellow lines or the green lines are the people that allegedly were infected at the clinic. Do you see that?

A What's the blue one?

Q I'm not sure what the blue one is.

MS. WECKERLY: It's the source patient.

BY MR. SANTACROCE:

Q Oh, it's the source patient. So in other words, this person had hep C when they came into the clinic.

A And my red patient had hep C when he came in?

Q Correct. So the blue one would be what the State is alleging was the source patient for -- for this green one, Washington, you see that? The other orange ones are people that came into the clinic that already had hep C, as well as this person with the blue. Did I make myself clear, or am I confusing you?

A Okay. So the blue guy should really be a red guy?

Q No, the blue guy had hep C when he came in, but --

A Well, that's what you told me the red guy did, too.

Q Okay. Well, let me finish.

A Okay.

Q The blue guy had hep C when he came in, but he is allegedly the one that -- that infected --

THE COURT: The green guy.

BY MR. SANTACROCE:

Q -- Mr. Washington, the green guy.

A So the green guy didn't have hep C when he came in?

Q Correct. That's what the State is saying. The green guy didn't have hep C when he came in, but they're saying he got it from the blue guy.

A Okay.

Q Okay? You with me?

A Gotcha.

Q Okay. My question --

A But my red guy had hep C when he came in?

Q Yeah. Would you --

A Okay.

Q -- have known that?

A Would I have known that he had hep C?

Q When he came in.

A No.

Q You would have no way of knowing that?

A We had no records. And we asked patients if they ever had any bloodborne problems, you know, if they ever had hepatitis or HIV or Aids or any of that kind of stuff. But half of them didn't have the foggiest idea of what was going on with their bodies anyway, so --

Q Okay. So you wouldn't have done anything different to your red guy here; right? I mean, you would have used the same universal precautions you would normally use; correct?

A I wouldn't -- right.

Q Okay. And you notice it's -- it doesn't appear, at least it hasn't been reported, that anybody you treated after the red guy came up with hep C. Good for you. It's a good thing.

A It was my lucky day, huh?

Q Yeah, apparently. Now, let's look at Mr. Lakeman's room. A guy comes in with hep C. Do you see that?

A Yes, sir.

Q There's been no switching of rooms back and forth between you and Mr. Lakeman at this time of day.

A No.

Q There's been no transfer of propofol from room

to room at this time of day; correct?

A Correct.

Q Because you testified the only time you would bring another bottle of the propofol to another room was late in the day with the last patient; correct?

A Correct, sir.

Q All right. So now the blue guy comes in with hep C. Mr. Lakeman treats one, two, three patients; correct? Apparently, from this chart anyway.

A Correct.

Q And then Mr. Washington comes in and gets hep C, correct, according to the chart?

A According to this, yes.

Q And then nobody after that for the rest of the day gets hep C.

A Okay.

Q Okay. Now, when you first found out from the CDC that they were saying that poor injection practices from propofol caused the outbreak, what was your reaction?

A It was ridiculous.

Q And why did you --

MS. WECKERLY: Your Honor, may we approach?

THE COURT: Sure.

(Off-record bench conference.)

BY MR. SANTACROCE:

Q In your opinion is there anything in the procedures that you employed while at the clinic in using propofol that could -- could account for this hep C outbreak?

A I don't think so.

Q I want to talk to you a little bit more about the billing because you said that when you got there Mr. Lakeman told you to bill at 31 minutes; correct?

A Yes, sir.

Q And your belief was he told you that because of PacifiCare?

A Yes, sir.

Q And your belief was that it didn't matter how much time you billed because you believed that it was a flat fee anyway; correct?

A Yes, sir.

Q And was that common knowledge among the CRNAs?

A That --

MS. WECKERLY: Objection. Foundation.

BY MR. SANTACROCE:

Q Well --

THE COURT: Yeah, you need to --

BY MR. SANTACROCE:

Q -- you discussed this --

THE COURT: -- lay a foundation.

BY MR. SANTACROCE:

Q -- with other CRNAs; correct?

MS. WECKERLY: Objection. Hearsay.

THE COURT: Yeah, that's sustained.

MR. SANTACROCE: I didn't ask what they said, Your Honor. I'm asking her --

THE COURT: Well, I know, but --

MR. SANTACROCE: -- if she based --

THE COURT: -- then you're going to --

MR. SANTACROCE: -- her opinion on it.

THE COURT: -- say based on what they said did they do this or that, and that would call for her to comment on what they said. So she can say what her practice was or what she was directed by management to do or --

MR. SANTACROCE: Well, she particularly --

THE COURT: -- you know, if her -- in her practice this would have occurred or something like that.

MR. SANTACROCE: Well, I can ask her about my client since she said my client told her to bill 31 minutes.

THE COURT: Okay.

MR. SANTACROCE: Okay.

BY MR. SANTACROCE:

Q And your basis for that was because of the PacifiCare issue?

A Correct.

Q Okay. Nothing else in your mind; correct?

A Correct.

Q And you had nothing to do with billing anyway, did you?

A No, and I never have.

Q Do you know if any of the other CRNAs had anything to do with billing?

A No.

Q You don't know or they didn't?

A I don't know.

Q Okay. But as far as you're concerned, you had nothing to do with it?

A Correct.

Q You were asked some questions about who you perceived to be your supervisor, and I believe you said Jeff Krueger and Katie Maley, and as far as billing went it was Tonya; correct?

A Correct.

Q Did you ever have discussions with Tonya regarding practices of billing?

A Not really. She would send Jeff down or one of the other people would come down from upstairs and tell us that, you know, we had to change our times and do this stuff because the patient -- you know, we needed to bill for 31 minutes.

Q So in other words, if you had filled out an

anesthesia record and didn't have 31 minutes, they would bring it back and say fix it?

A Correct.

Q Other than that, that was as far as you had to do with billing?

A Yeah, I -- I never knew anything about billing. I've never done any billing for anybody or anything and I -- I know nothing about it.

Q And you didn't get paid, your salary wasn't based on how much billing you did or how many patients you saw?

A No, sir.

Q You were on salary plus bonuses?

A Well, yeah. It was salary. We -- I really -- I didn't count on the bonuses because you never knew when you were going to get them.

Q And those bonuses weren't tied to any performance by you as far as how many patients you did?

A No, sir.

Q And, in fact, bonuses stopped at some point; correct?

A They were very delayed, but -- I guess they did stop.

Q I'm sorry?

A I guess they did stop.

Q In the procedure room itself -- well, strike that. You said that you were responsible for patients all the way until they were discharged; right? Basically in the post-op area?

A Correct.

Q So in other words, if there was an emergency, the nurses would come get you?

A Would get one of the nurse anesthetists, right.

Q What about in the procedure room? Did you have emergency medications other than propofol that you were able to use in case of a patient emergency?

A We had to go out to the locked cabinet outside.

Q Okay. And what source of emergency medication would you have?

A We have all of the epinephrine and everything that we needed for cardiac arrest, sodium bicarbon, everything else would be out there.

THE COURT: So you didn't have that in the procedure room? If someone had an emergency somebody had to run out and get --

THE WITNESS: You had to --

THE COURT: -- somebody to unlock --

THE WITNESS: -- run out and --

THE COURT: -- the cabinet and --

THE WITNESS: -- unlock the red cart and --

THE COURT: -- then you'd run back in or whatever?

THE WITNESS: Yes.

BY MR. SANTACROCE:

Q Okay. There's been some testimony about a tackle box. Do you recall seeing a tackle box in any of the rooms that had medication in it?

A No.

Q Did you carry a tackle box from room to room?

A No.

Q There was testimony about the saline pushes. Remember that testimony --

A Yes, sir.

Q -- the saline push? Do you know -- did you know a Janine Drury?

A She was one of the RNs, yes.

Q Okay. Did she have something to do with saline that you used for those pushes?

A There were a time -- I think there were a couple mornings where they really wanted us to implement this thing that she and Katie were out at the desk and they were drawing the syringes up.

Q For the saline pushes for the propofol?

A Yes.

Q And they would draw them out of a common saline bottle?

A A bag, yeah.

Q A bag?

A A small bag.

Q And they would draw multiple syringes of saline out of that common bag?

A [Nods head yes].

Q Is that a yes?

A Yes, that's a yes.

THE COURT: You have to answer yes or no.

THE WITNESS: Oh, I'm sorry. I did it again.

THE COURT: I know. People do it all the time. It's a taped transcript. Well, it's a tape and then it'll be a written transcript.

BY MR. SANTACROCE:

Q And your testimony was that you never reuse a syringe or needle on more than one patient, isn't that correct?

A Until after the CDC was there, correct.

Q And then after the CDC came, what was the change?

A I would reuse the syringe because the propofol was just for one patient.

Q And you thought that was aseptic?

A Yes, sir.

Q And you tried to explain that to the CDC person?

A Well, that's -- she asked me if I would ever, and I said, yes, now that the propofol would be for one person, yes.

Q And you didn't see how there could be contamination based upon the procedures you were using; is that correct?

A Correct.

Q I believe you testified on direct examination that it wasn't the only way people got sick. What did you mean by that?

A Well, there were other ways that a virus can be transferred.

Q Okay. Specifically tell me what you meant when you made that statement.

A Well, from what I understand there was also a bottle of saline used --

MS. WECKERLY: Objection. Foundation.

BY MR. SANTACROCE:

Q You saw this at the clinic during the time period of the infection; correct?

A During the time period before the CDC was there.

Q Okay. What -- what did you observe?

A We had -- they had taken our break room and made it into a room where the patients would come and get their IVs started. And there was one to two of the nurses back there and they used a multi-dose vial of saline to flush the IVs, you know, to put saline in through the heplock to make sure that the IV was open prior to bringing the patient over to us.

Q And that was multiple patients, one dose -- I mean, one container?

A One container.

Q Okay. What other -- did you have any other things when you said it wasn't the only way people got sick?

A Well, I think part of it could have come from the scopes themselves, from the endoscopy scopes.

Q And did you see something in particular during this time period before the CDC got there?

A Well, there is always -- there's always a chance of contamination with feces and body fluids between one patient and another.

Q From the scopes, is that what you're telling me?

A From the scopes.

Q Is there anything else that you observed during that time period that caused you concern?

A That I personally observed?

Q Yes.

A No.

Q No?

A I've learned a lot from reading the newspaper, but --

THE COURT: Well, we're not going to talk about that.

BY MR. SANTACROCE:

Q Well --

A But that's not what I saw.

Q Okay. I only want you to tell me what you saw.

A When the CDC observed you, you testified that there was an exit interview or a summation period.

A Yes, sir.

Q What do you mean by that?

A They called each -- each one of us out into this room with a big table and talked to us before they left.

Q Do you know who -- was it a male or a female who talked to you?

A Female.

THE COURT: And was it individual? Each employee went to this table individually, or were you there as a group?

THE WITNESS: I was there by myself.

THE COURT: That's what I meant. Okay.

BY MR. SANTACROCE:

Q And this person is female from the CDC tell you that they observed you and that you were doing something wrong?

A No.

Q Okay. Did they mention anything about gloves to you?

A No, they never did.

Q Okay.

A They talk -- I think they spoke to different people about different things, but --

Q And you in particular, that's all I want you to talk about. When you had this summation or interview with this female from the CDC, she didn't say, hey, we observed you doing this, this, and this, and you need to do this?

A No.

Q Nothing?

A No.

Q Okay.

THE COURT: Why don't we go ahead and just take our --

MR. SANTACROCE: I'm done, Your Honor, so --

THE COURT: Okay. Well --

MR. SANTACROCE: -- let me just review my notes.

That's all I have, ma'am. Thanks very much.

THE WITNESS: Thank you.

THE COURT: All right. Ladies and gentlemen, we're going to go ahead and take a quick 10 minute 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 the case, person or subject matter relating to the case. Please don't form or express an opinion on the trial. Notepads in your chairs. If you have any questions, hand them to the bailiff on the way out the door.

(Jury recessed at 2:48 p.m.)

THE COURT: And, ma'am, don't discuss your testimony with anybody else during the break.

(Court recessed at 2:48 p.m., until 3:03 p.m.)

(In the presence of the jury.)

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

And, Ms. Weckerly, you may conduct your redirect examination.

MS. WECKERLY: Thank you.

REDIRECT EXAMINATION

BY MS. WECKERLY:

Q Ms. Hubbard, if I understood you correctly on

cross-examination, you said there were occasions where you or another CRNA might start a procedure and take a break and another one would come in and finish?

A For lunch, yes.

Q For lunch. Okay. In -- in those instances where one of you started it and the other one finished, would the patient actually be sedated when you switched over?

A Yes.

Q Okay. In those instances is there anywhere in the record, the anesthesia record or the medical record, that would tell us that occurred?

A Usually we put a slash and then the other person's name.

Q Okay.

A That's why I don't understand on those ones that were presented there weren't two names on a couple of them.

Q So your recollection is when that occurred mid-procedure, there's be a slash and both names would appear?

A Yes.

Q Now, when you would go -- I assume you'd go over in the other CRNAs room during the lunch period when you're covering for that person?

A Yeah, that person would come in and relieve me in my room, or I would go over and relieve them in their room,

yes.

Q Okay. When you would go over to their room, did you ever see partially used vials of propofol in the room?

A There might be one from that patient.

Q And would you use those partially open vials or was it your practice to just start over and open all new ones?

A I would -- I would use what was there.

Q Okay. So --

A It would only be one -- it would be the bottle from that patient.

Q Okay. So you would use the partially open vial even though maybe you didn't witness it being opened?

A We were all professional people. Yes.

Q Okay. You were -- you were asked about if there was anything on the patient's record that would indicate whether or not they were hepatitis C positive.

A Yes.

Q And to your recollection that wasn't something that would be filled out, you know, when they first got to the clinic or anything like that?

A I don't remember ever seeing anything, you know, like there's nothing -- there wasn't anything that came with them from the office or anything, you know, like --

Q Would it be in their history and physical at

all if they were hepatitis C positive to your recollection?

A It should be.

Q Okay. And so --

A But most of the time we didn't have a history and physical.

Q You didn't have that available to you?

A No, that's why we had to ask them all the questions.

Q Okay. And would that be one of the questions that you'd ask in your pre-anesthesia evaluation?

A Yes.

Q And so you would know before you did the procedure --

A If they knew.

Q If they knew. Right. If they had reported it, you would know.

A If they realized that they actually had it, yes.

Q Okay. Now, you -- you were interviewed by the FBI and then you were interviewed by the police twice. And you indicated that occurred over a two-day period?

A Yes.

Q And one at -- the second date was October the 15th of 2008? I can show you my copy --

A I guess.

Q -- if you don't want to dig yours out.

A The first one was the 14th?

Q Yeah, this is page --

A It was one day after another.

Q Yeah. And I meant -- I just want to just want to make sure I have the date right. It looks like on page 22 that the second part starts on the --

A This was the 14th, yes.

Q Right.

A So on the 22nd was the 15th. Yes.

Q Okay. And your lawyer was present; correct?

A Yes, sir -- ma'am.

Q And Detective Whitely here was present?

A Yes.

Q And what -- what did he do in that interview that you found coercive?

A I felt -- it wasn't just him, but I felt that they really didn't believe what I was saying.

Q Okay. And so how did -- how did that seem coercive to you? What was done that made it seem like a coercive setting?

A It was just challenging what I said.

Q And that would be like verbally saying that doesn't make sense or we don't believe you, that sort of thing?

A Yeah.

Q And other than that, was there anything coercive, were you not allowed to take breaks when you wanted to or were you not allowed to speak with your attorney?

A Not that I remember.

Q And -- and as I understand it, you don't remember a single part of this interview; correct?

A I really and truly -- I -- I'm drawing a total blank with it. I'm sorry.

Q So you don't remember anything discussed in that interview?

A Basically, no.

Q Now, you -- you said on cross-examination that it's your view that anesthesia time is calculated from your per-assessment time through recovery; correct?

A Yes, ma'am.

Q Okay. And when you were -- you were interviewed by the FBI prior to being interviewed by the Las Vegas Metropolitan Police Department, and you described the timing for anesthesia time. You said that we would get creative or use, quote, creative timing. And this is on the bottom of page 4 and the top of page 5 of that document. And my question is what do you mean by get creative or use creative timing?

A I don't know because I have question marks

there, too.

Q Okay. So you don't -- you don't know.

A I don't know what those words of getting creative -- I -- I don't know.

Q Okay. But it is your -- your belief that you can legitimately claim time for pre-op through recovery?

A It was my belief, yes.

Q Okay. And -- and if that's true, why was it necessary to chart false vital signs as though they occurred in the procedure room?

A Because they didn't take vital signs when I was talking to the patient, and I didn't take vital signs when the patient was in the recovery room.

Q Right. But if you could chart all the way through recovery legitimately, why would you need to make it look like they're in the procedure room longer than they were?

A I don't know.

Q Now, you discuss that you thought that there were other ways that this virus could have been transmitted besides through propofol; correct?

A Yes, ma'am.

Q Did you do any independent research in this case like reviewing patient files or anything like that?

A On our patients?

Q Yes.

A No.

Q Did you review which scopes were used to see if there was any commonality between the scopes and when they were used and processed and who ended up getting infected with hepatitis C?

A No.

Q Did you do any research about how the scopes were processed between the patients that ultimately ended up infected?

A No.

Q Did you do any research regarding the number of syringes that might have been used at the clinic?

A No.

Q How about the number of vials of propofol? Did you look into that?

A No.

Q Okay. Did you -- did you look into or observe any practices in the pre-op area that you thought were improper?

A Me myself?

Q Yes.

A No.

Q No. Okay. So you didn't have any first hand view of anything going on in pre-op that you thought was a dangerous practice?

A I didn't, no.

MR. WRIGHT: I'll pass the witness.

THE COURT: All right. Mr. Wright, any recross?

MR. WRIGHT: Your Honor, I do have a question which would be cross that I forgot to ask.

THE COURT: That's all right.

RECROSS-EXAMINATION

BY MR. WRIGHT:

Q When Dr. Carrol wanted you fired, okay --

A Yes, sir.

Q -- that time frame, do you recall discussing with Tonya or with Dr. Desai your need to remain employed because of your husband being on your insurance?

A No.

Q Okay. You don't recall anything about that?

A He wasn't on my insurance.

Q Okay.

A It was disability Medicare.

Q Okay. Thank you.

THE COURT: Mr. Santacroce.

MR. SANTACROCE: Yes.

RECROSS-EXAMINATION

BY MR. SANTACROCE:

Q Ms. Hubbard, what time would you typically take lunch?

A 11:00, 11:30.

Q I want to go back to Exhibit 157. Do you see the green stripe there?

A Green stripe. Yes, sir.

Q What time was that procedure started?

A 8:25.

Q And that was the procedure Mr. Lakeman did?

A Yes, sir.

Q And now I want to go back up to here. You notice any procedures you started at 8:25?

A No.

Q Huh?

A Yes, I do.

Q So you were in a procedure room at 8:25 on one patient, Mr. Lakeman was in the other procedure room on Mr. Washington at 8:25. So there was nothing -- he wasn't relieving you for lunch or you weren't relieving him for lunch at 8:25 in the morning; correct?

A Correct.

MR. SANTACROCE: I have nothing further.

THE COURT: Ms. Weckerly.

MS. WECKERLY: Nothing further.

THE COURT: All right. We have a couple of juror questions up here. A juror would like to know who would be charging for anesthesia if you started a procedure but another

CRNA finished it? For example, if you left the proceeding, who would fill out the time for the procedure, you or the --

THE WITNESS: I would say the person finishing the case.

THE COURT: Okay. During the time all CRNAs were using saline to push any propofol in the heplock into the bloodstream, from where were you drawing the saline?

THE WITNESS: That's what I was asked. Those syringes most of the time were drawn up for us by the RNs.

THE COURT: Okay. So did you have a bottle of saline there with you, or were you getting syringes that already had saline in them? This is when you administered, not to flush the heplock, but when you were administering the propofol with saline that you talked about before.

THE WITNESS: That was the flush.

THE COURT: Okay. There was no time that you were administering propofol and saline? Not talking about the flush when they first put the heplock in, but unrelated to that.

THE WITNESS: No, the syringe -- the heplocks were usually flushed by the RNs back in the back --

THE COURT: Okay.

THE WITNESS: -- in the -- in the room when they were started if they were started back there. And then the 5 cc flushes the RNs drew up for us in the morning and gave us

this bundle of syringes --

THE COURT: That already had saline in it.

THE WITNESS: That already had the saline in it.

THE COURT: Did you ever have a bottle of saline that you or another nurse anesthetist could draw from in the procedure room?

THE WITNESS: I don't remember that.

THE COURT: Okay. And were new syringes and needles used for each patient that had the saline in them?

THE WITNESS: The saline syringes, yes.

THE COURT: Okay. Did you ever take those syringes from one room to another, from one procedure room to another procedure room?

THE WITNESS: I don't remember doing that, no.

THE COURT: Okay. Now, when you and another nurse anesthetist such as Mr. Lakeman would work on the same patient, was that reflected anywhere in the patient's chart? I mean, did you both sign off on the patient's chart or how did that work?

THE WITNESS: It should be on the anesthesia record.

THE COURT: Okay.

THE WITNESS: And the nurses should have noted it on their record for the procedure.

THE COURT: Is it the kind of thing where you would both sign the patient's record or that --

THE WITNESS: Yeah, or slash and we'd write each other's name down.

THE COURT: Okay. So you wouldn't necessarily, if you were the second nurse anesthetist or the first, you wouldn't necessarily yourself write on it, but it was the job of the other nurse anesthetists to make sure both names were on the chart or were you both required to write on the chart?

THE WITNESS: Yeah, someone would make sure that both names were on there.

THE COURT: Someone?

THE WITNESS: Right.

THE COURT: Okay.

THE WITNESS: Be it nurse anesthesia A or nurse anesthetist B, you know --

THE COURT: Someone should have done it.

THE WITNESS: Yes.

THE COURT: Okay.

Ms. Weckerly, do you have any follow up to those last juror questions?

MS. WECKERLY: No, Your Honor.

THE COURT: Mr. Wright, do you have any follow up to those last juror questions?

MR. WRIGHT: No, Your Honor.

THE COURT: Mr. Santacroce?

MR. SANTACROCE: Yes.

FURTHER RECROSS-EXAMINATION

BY MR. SANTACROCE:

Q We're talking about two terms, two different terms here, a push and a flush. They're two different things; right?

A Correct.

Q The flush is when the nurses in the pre-op room would flush a heplock and they would use saline; correct?

A Correct.

Q And the push is when you would use saline for the propofol?

A Correct.

Q And the saline that you used for the push came from the nurses in the pre-op area like Janine Drury?

A Well, not -- they didn't draw -- they weren't drawn up in the pre-op area. They were drawn up at the nurse's desk --

Q Okay.

A -- out in the front.

Q And that would have been done by the RNs in another area with a saline bottle?

A Correct.

Q A multi-use saline bottle?

A I would think so.

Q And those syringes were brought to you;

correct?

A Yes.

Q Okay. You didn't fill them out of any bottle?

A No.

MR. SANTACROCE: Nothing further.

THE COURT: Ms. Weckerly?

MS. WECKERLY: Nothing else.

THE COURT: Any additional juror questions for this witness?

All right. Ma'am, I see no additional questions. Please don't discuss your testimony with anyone else who may be called as a witness in this matter and you are excused.

THE WITNESS: Thank you.

THE COURT: State may call its next witness.

MS. WECKERLY: Peter Maanao.

THE COURT: And, sir, just face this lady right here who will administer the oath.

PETER MAANAO, STATE'S WITNESS, SWORN

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

THE WITNESS: My first name is Peter, my last name is Maanao, and that's spelled M-A-A-N-A-O.

DIRECT EXAMINATION

BY MS. WECKERLY:

Q Can you pronounce your last name for me again?
A It's Maanao.
Q Okay.
A Close enough.
Q I'll try that.
THE COURT: Say it about another ten times and maybe we'll get it.
BY MS. WECKERLY:
Q I don't know if I'm going to get that one right.
A It's been 20 years.
Q Sir, how were you employed in 2007?
A In 2007 I was an employee of the Shadow Lane Endoscopy Center.
Q And when were you hired?
A In the month of December 2007.
Q Okay. So December 2007. Do you remember what day your first day of work was?
A I believe it was maybe two days after Christmas, so either the 26th or the 27th.
Q Of '07?
A Yes.
Q And you were hired to work as what?
A As one of the registered nurses.
Q Where did you go to school to be a registered

nurse?

A CSN.

Q And when did you graduate from nursing school?

A March 2007.

Q So less than a year earlier?

A Correct.

Q After you graduated from nursing school, did you work anywhere else before the endoscopy center?

A Yes, I did. I was at Spring Valley Hospital.

Q And also as an RN, I presume?

A That's correct.

Q Where were you assigned to work at Spring Valley Hospital?

A Med tele.

Q What is that?

A It's basically you take -- how do I explain this to you? It's medical telemetry. While patients are on the unit being monitored by heart monitors, they're sick, but not sick enough to be anywhere else on our floor.

Q Okay. And so is that -- you're not doing procedures, but monitoring problems with patients as they come up; is that correct?

A That's correct. After they're transferred from the emergency room, they usually end up on my unit.

Q Okay. And then if there's problems you have

to decide how to address them?

A Correct.

Q You -- when you decided to go work for the endoscopy center, who was it that interviewed you from the center?

A Her name is Katie Maley.

Q And you were obviously hired -- do you remember how long it was between your interview and the time you started work?

A Maybe two weeks.

Q And it's still like over the -- the holidays kind of of '07?

A Correct.

Q When you first got or you first started work at the endoscopy center, was there anyone who kind of oriented you or showed you around?

A Yes.

Q Who was that?

A It was Janine Drury.

Q And did Ms. Drury sort of walk you through the place and give you sort of the -- the responsibilities for each part of the center?

A Yes.

Q And in your time that you worked there, did you work in pre-op?

A Yes, I did.

Q Did you work in the procedure room?

A On occasion to either start the morning with the surgeons or to break the nurses that were already in there doing the rest of the cases.

Q And did you ever work in recovery?

A Sometimes.

Q How about discharge, did you do that?

A Every once in awhile.

Q Okay. So you actually worked in all the areas that nurses work in at the endoscopy center?

A Yes.

Q When you were working in pre-op, what were your responsibilities?

A I would receive the patient, get them checked in, do their vital signs, put their IVs in, and just make sure that all the documents that were needed for today's procedure were in that patient's chart. And then --

Q And when you were putting the IVs in, did you flush those, the IVs you put in with saline?

A Yes, I did.

Q And was that saline a multi-use container of saline?

A Yes, it was.

Q And did you do that aseptically or according

to how you were taught in nursing school?

A Yes, I did.

Q And what does that mean when you have a multi-use container?

A When you go into a multi-dose vial, it's one syringe and one needle every time you go into it.

Q Okay. So you never injected someone with saline and went back in the bottle with the same syringe?

A No.

Q Would you ever do something like that?

A No.

Q You -- after you flushed the IVs with saline I assume that patients would wait or move on to the procedure room if there was a room available?

A Correct.

Q When you worked in -- at the center, was there ever a time when the center moved from the multi-use bottle of saline to actual prefilled saline syringes?

A It was several days after my employment, my first day of work, when they went to the 5 -- 5 ml prepackaged saline syringes.

Q And those are individually filled with saline; correct?

A Yes.

Q When you -- when you worked in the procedure

room, my understanding is that you -- you weren't in there except for maybe to relieve people to go on breaks?

A Yes.

Q So was the majority of your time in pre-op or --

A Usually typically in the morning. But as it became -- needed to break nurses in other areas, then I would, of course, be told to go and relieve this person or that person, to go ahead and have them get their lunches in.

Q When you were in the procedure room, what -- what was your -- what were your roles? What was your responsibility?

A If the surgeon found any polyps or anything like that he would biopsy that and I would have to chart down where in the colon they were taken so that I could fill out the Quest Laboratory, the pathology forms, and then I would document the vital signs that I saw on the monitors, just basically just try to fill out my paperwork before that procedure was completed.

Q During the time you worked at the endoscopy center, did you ever see the reuse of any equipment used in the procedure rooms?

A No, I did not.

Q You also worked in post-op?

A That's correct.

Q And what were your responsibilities in post-op?

A I would receive the patient after their procedure. They would be placed on a monitor, observed for half an hour. If after a half an hour their vital signs were stable, they would be escorted to a bathroom where they were given their clothes to change. If -- and then they were escorted from that point over to the discharge area.

Q Now, when you were working in pre-op, did you ever have the CRNAs come out and interview patients before their procedures?

A I don't recall.

Q Okay. I mean, you don't remember that at all, or you don't recall that occurring?

A They may have. It's just so busy. It's hard to say who was talking to who at what time because you're focused on that one patient. Once you get them squared away, you move on to your next patient to pre-op and you just try to keep pace with as many of those patients that were coming back as best you can.

Q Were patients moving, from your observation, were patients moving through pre-op pretty quickly?

A I would say so.

Q Okay. Were they sitting there for half hour periods at a time, or less time than that in your

recollection?

A Half an hour or more.

Q Okay. When -- when you were working in recovery, I assume your responsibility was to make sure that patients were coming out of the procedure okay?

A Yes.

Q Did you ever have a doctor come out and check on the patient?

A I can't say that I have.

Q Okay. How about a CRNA? Did you ever see that happen?

A I can't say that.

Q Okay. Do you know what pre-charting is?

A Yes, I do.

Q What is that?

A That's filling in information on a patient's chart before they either arrive in your area or you've taken a set of vital signs or you've even had a chance to assess the patient.

Q In nursing school what is taught to you regarding pre-charting?

A You chart what you see and what you do when you do it.

Q So you're not supposed to pre-chart?

A Correct.

Q Were you -- when you worked at the endoscopy center, were you trained by anyone to pre-chart?

A I was trained by Janine Drury to do that.

Q Okay. And would that include the times and everything?

A Yes.

Q Before -- before those events occurred?

A Correct.

Q And so on the -- I know you were there very briefly, but were there times that you actually pre-charted?

A Probably.

Q Now, you -- you were there a very, very brief amount of time. Do you remember the CDC coming into the center and observing?

A Yes.

Q And if I represented to you that was around January the 8th, does that comport with your recollection?

A Somewhere around after January 2nd, I believe.

Q Okay. And when they came in, did you -- did you see -- strike that, better question. When they came in, did they watch you work in any part of the facility?

A Yes.

Q Where did they watch you? Where were you when they observed you?

A I was in pre-op and also in recovery.

Q Okay. And so they would have observed your practices in those two areas?

A Yes.

Q Do you recall how long it was that they observed you?

A Maybe 15 minutes at a time.

Q While -- while you were at the endoscopy center, did you ever work with -- with Dr. Desai?

A No.

Q Never in the procedure room with him?

A No.

Q Okay. Did you ever hear a conversation about syringes involving Dr. Desai?

A Yes.

Q Can you give us the time frame on when that conversation occurred to the best of your recollection?

A I would have to say on -- before -- it was before the end of the year.

Q So before -- before the CDC and obviously after you're employed, so sometime towards the end of December --

A Correct.

Q -- of 2007? Where -- where did this conversation take place?

A There is an area between one of the procedure

rooms and the pre-op room which is no further than five feet in front of me.

Q And was the conversation between yourself and Dr. Desai?

A No, it wasn't.

Q Who -- who was in the conversation?

A It was between Dr. Desai and Dr. Carrol.

Q And what did you hear Dr. Desai say?

A I heard him say that -- discussing the amount of the price of syringes and that, you know, staff should be -- should try to minimize the amount of supplies used during patient care.

Q And was it a lengthy conversation or did you just hear those couple comments?

A Just those couple of comments, and they just end up walking away from me at that point.

Q And I assume you didn't follow along?

A No, I've got other things to do.

Q Thank you, sir.

MS. WECKERLY: I'll pass the witness, Your Honor.

THE COURT: All right. Cross.

CROSS-EXAMINATION

BY MR. SANTACROCE:

Q Good afternoon, sir.

A Good afternoon.

Q I represent Ron Lakeman sitting back there. You don't know Ron, do you?

A I can't say that I do.

Q Okay. You were employed at the end of December at the clinic; correct?

A Correct.

Q And I'll represent to you that he left employment in October. So you don't recall him coming back at any time and working with him, do you?

A I can't say that I do.

Q And all of the procedures that you talked about were procedures that were employed at the clinic from December 26th or 27th until the clinic closed; correct?

A Correct.

Q You have no knowledge or did not see anything firsthand prior to that time period, and specifically September 21, 2007, or July 25, 2007?

A No, sir.

Q You talked about when you worked in the pre-op area that you would flush every heplock; correct?

A Correct.

Q And you would do that with saline?

A Yes.

Q And when you first got there you would use multi -- you would use saline on multiple patients; correct?

A I would use a multi-dose saline bottle, but I didn't ever practice the -- I never practiced that way of using a multi-dose vial on the same -- on different patients.

Q Okay.

A That's just not my practice.

Q Okay. But you can't speak for what others did prior to you getting there, can you?

A No, I can't.

Q All we can tell from you is that there was multi-use saline in the pre-op area and you didn't use that on more than one patient with the same needle and syringes; correct?

A Yes, sir.

Q Were there other RNs in the pre-op area when you were there?

A Yes, there were.

Q And who were they?

A That would be Janine Drury and on occasion Jeff Krueger.

Q Okay. And did you ever witness them flushing heplocks?

A Yes, I did.

Q Would they use the multi-dose vials as well?

A Yes, they would.

Q You testified that Janine Drury, I guess, sort

of mentored you when you got there; is that correct?

A That's correct.

Q You testified that she instructed you on pre-charting?

A Yes, she did.

Q So if she was here testifying contrary to that she'd be mistaken about pre-charting?

A Yeah.

Q I wasn't clear about the pre-op patients. Did you say that they could possibly be in the pre-op area for a half hour or more before they went to a procedure room?

A That's correct. That would be more so in the afternoon times or maybe 10:00, 11:00 in the morning. That's when things start to slow down --

Q Started to back up.

A -- and back up.

Q So when you administered a heplock and flushed that heplock, they could be sitting in that room for a half hour before they get called into your procedure room?

A Yes.

Q When you worked in the procedure rooms themselves, you never saw propofol reused on multiple patients, did you?

A No.

MR. SANTACROCE: That's all I have. Thank you.

THE COURT: Ms. Stanish.

CROSS-EXAMINATION

BY MS. STANISH:

Q Good afternoon.

A Good afternoon, Counselor.

Q My name is Margaret Stanish. I am counselor to Dr. Desai. And how do I say your last name?

A It's Maanao.

Q Ma --

A Close enough. That's fine.

Q Clarify for me a couple things about the pre-charting issue, okay? Let's start when you're in pre-op. When you're doing the assessment when the patient first comes in, do you recall writing a time for a pre-op assessment in the chart?

A Yes.

Q What time would you use?

A The time that the patient was received by me.

Q And what would you do, would you look at your watch?

A Or there was a clock similar to that one in the pre-op room.

Q Okay. And when you're in the pre-op doing the patient assessment, did you have -- have a quick time to assess the patient?

A Yes.

Q And the -- let's move into the procedure room now. What time did you use to denote the start time of the procedure?

A Again, the time was taken off the clock.

Q And what time did you use to end the procedure time?

A When the patient leaves the room.

Q And, again, you're taking it off the clock?

A Yes.

Q Is that something that Ms. -- is it Drury, Janine Drury told you to do, or is that something you did just because that's how you were trained?

A Well, that's how I was trained.

Q And when you're in the procedure room -- or, I'm sorry, when you're in the recovery room, did you denote the time that the patient -- well, what kinds of times did you note, if any, when you were in the recovery room?

A The arrival time of the patient, and then of course the portable monitors are hooked up to the patient and the times are taken off of that to write down those vital signs, and they're set for every five minutes.

Q Okay. So you would take the time from the monitor?

A Yes.

Q And why would you use a monitor instead of a watch or clock?

A Because the monitors are set for every five minutes. They're set to go off and take vital signs every five minutes.

Q Okay. And then you get a little strip with the time on it?

A Right.

Q And that's what you would use to denote the time in the chart?

A Yes.

Q Did you ever see anybody reuse a syringe in the clinic?

A No.

Q Okay. I have nothing further. Thank you, sir.

A You're welcome.

THE COURT: Any redirect?

MS. WECKERLY: No redirect.

THE COURT: Any juror questions for the witness? No juror questions.

All right. Sir, thank you for your testimony. Please don't discuss your testimony with anyone else who may be a witness in this case.

THE WITNESS: Yes, ma'am.

THE COURT: Thank you and you are excused.

State, call your next witness.

MS. WECKERLY: Can we approach?

THE COURT: Sure.

(Off-record bench conference.)

THE COURT: All right. Ladies and gentlemen, apparently that's all the witnesses that were scheduled for today, so we are going to go ahead and take our evening recess.

During the evening recess you are 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. Do not do any independent research by way of the internet, or any other medium, and please do not form or express an opinion on the trial. We'll reconvene tomorrow morning at 9:00 a.m. And please place your notepads in your chairs and follow the bailiff through the rear door.

(Jury recessed at 3:42 p.m.)

THE COURT: Okay. On scheduling, tomorrow one of the jurors has a graduation at 1:15.

MS. STANISH: First grade?

THE COURT: No, it's actually eighth grade.

MS. STANISH: Oh, okay.

THE COURT: Well, you know, it's at 1:15, so scheduling, we'll be breaking for lunch around 1:00, so make sure you have witnesses here through until 1:00. And another juror has a graduation at 5:00, so we'll be breaking for the day at --

MS. STANISH: Second grade?

THE COURT: -- at 4:40. So just so you know with scheduling -- okay. This is -- I know, you know, early on we had witnesses who had to come back a couple of days, this is the second day -- you know, Friday we had to break really early, and I know defense had said they thought they'd take all day and they didn't, and today we've had to break an hour and 15 minutes early.

So, you know, I don't want anyone to be inconvenienced, but I would rather one juror -- one witness, excuse me, be inconvenienced than the Court, and more significantly 16 jurors. So, you know, even if some people have to come back, I don't want to keep running out of people. And I know in the beginning we had too many -- too many witnesses for the, you know, how far we got, but maybe things are picking up speed now. So just be mindful of that.

As I said, I don't want anyone to have to be inconvenienced, but I'd rather one witness be inconvenienced than 16 jurors and the Court that now, you know, has nothing -- well, I'm sure we can -- actually, we all have work to do,

so it's mainly the jurors. You know, we can fill up the next hour and a half working on other things. So that's not the big deal. So just, as I said, let's please try to have a full day going forward.

And, Ms. Weckerly, can you give the Court kind of a head's up of where we're going with the witnesses and --

MS. WECKERLY: You mean for the balance of the trial?

THE COURT: Yeah.

MS. WECKERLY: Okay. Well, we -- after we get through this week, which I've emailed everybody the --

THE COURT: Okay. So this week --

MS. WECKERLY: We're going to put on --

THE COURT: Obviously, I don't get the email, so --

MS. WECKERLY: Okay. This week we're putting on tomorrow the two doctors from the CDC, and I'm told they'll take over a day combined. Wednesday is Nancy Sampson who did the whole analysis with the times and the charts. So my -- you know, in speaking with everyone we all agreed that she'd probably take a day. Thursday morning the Court is going to hear the balance of the other bad acts hearing. We have two witnesses telephonically and one appearing live. The afternoon we have Rod Chaffee who I think will be a long witness. But if not, I'll bring --

THE COURT: Yeah, Mr. --

MS. WECKERLY: -- someone else in.

THE COURT: Yeah, I mean, have some -- again, you know, I don't want to inconvenience anybody, but one person inconvenienced is better than 16.

MS. WECKERLY: Okay.

THE COURT: And Mr. Chaffee is the one that got fired and had the --

MS. WECKERLY: Right.

THE COURT: -- threat and the bomb scare and --

MS. WECKERLY: Right.

THE COURT: Okay.

MS. WECKERLY: So we'll need to have like a little, from the State's perspective, hearing on what is admissible regarding his conduct and what isn't.

THE COURT: Okay.

MS. WECKERLY: Friday we have Ann Lobiondo who is also a CRNA and then the doctors, the quality care people. Next week we're planning on putting on all of the insurance people, including two experts on insurance billing as well as Tonya Rushing and all the representatives from the various insurance companies and the actual data input person. And then the next week will be Brian Labus and experts Miriam Alter and Dr. Cohan. And then if we get further --

THE COURT: And Dr. Cohan is going to say what?

MS. WECKERLY: He's -- he's looked at all the cases

and the epidemiology and also the effects on the various victims. But if we get -- if we can get through more than those three, I'll have other doctors at the end of the week.

THE COURT: And that's it?

MS. WECKERLY: Then it -- I mean, then it's just the -- yeah, then it's just the Philippines and the --

THE COURT: Right. Defendants. So then we still have Mr. Meana's deposition.

MS. WECKERLY: Well, right, which we can throw on, I guess, whenever.

THE COURT: Right. That's ready and waiting. And then the coroner from the Philippines?

MR. STAUDAHER: Yeah.

MS. WECKERLY: The coroner is here. She went to the Philippines --

THE COURT: Okay.

MS. WECKERLY: -- but she's local.

THE COURT: Okay. So the coroner from the autopsy, and then the medical records, you just got the -- everything to comply with the requirements. You're just going to put that in, and is there anything else from the Philippines?

MS. WECKERLY: The --

MR. STAUDAHER: The death certificate is here.

MS. WECKERLY: The death certificate --

THE COURT: Right.

MR. STAUDAHER: And the autopsy report.

THE COURT: That's just an exhibit.

MS. WECKERLY: And the detective goes to the Philippines on just sort of chain of custody.

THE COURT: Right. The -- the detective who is fluent in --

MS. WECKERLY: Right.

THE COURT: -- in Tagalog; correct?

MS. WECKERLY: Right.

THE COURT: And goes to translate --

MS. WECKERLY: But he's --

THE COURT: -- for the coroner.

MS. WECKERLY: -- short.

THE COURT: So he's short. Okay. So that's everybody on the Philippine Mr. Meana situation; correct?

MR. STAUDAHER: Correct.

MS. WECKERLY: Yes.

THE COURT: And then what else is there?

MR. STAUDAHER: We have two other people. One from the American Association of Nurse Anesthetists who is coming in, but we'll work that in as far as the scheduling is concerned. And the other one -- I just lost it. Oh, the person for -- who is the guardian for Ms. Grueskin to come in and talk about her situation, so --

THE COURT: Okay.

MR. STAUDAHER: But that -- that should be the balance.

MS. WECKERLY: That's it.

THE COURT: Okay. And then does the defense still anticipate two weeks for the defense case? Maybe one, and that includes, Mr. Santacroce, your case as well?

MR. SANTACROCE: Yes.

MR. STAUDAHER: I think they had -- had joint --

MR. SANTACROCE: Right.

THE COURT: No, I know. I'm just -- so that's --

MR. STAUDAHER: And we told them that if they needed for scheduling purposes to call one of their experts out of order in our case in chief, we can interrupt our case in chief --

THE COURT: Okay.

MR. STAUDAHER: -- to do that to accommodate them, so --

THE COURT: Okay. So minimum four weeks. And is any of the Metro people going to testify about the search warrant or all of that? So I didn't hear -- I didn't hear that part, so --

MS. WECKERLY: He'll be -- he'll be a quick witness.

THE COURT: Yeah. So that's another day. Anybody else from law enforcement besides this detective?

MR. STAUDAHER: Possibly Levi Hancock, but I think

we can get most of what we need through --

THE COURT: Is that an FB -- I'm not familiar.

MR. STAUDAHER: He was -- like, for example, on the --

THE COURT: He's an FBI agent?

MR. STAUDAHER: -- statement that we --

MR. WHITELY: No, Metro.

THE COURT: Metro?

MR. STAUDAHER: -- were just going over with Linda Hubbard, I mean, he and -- and Mr. Whitely were both there for it, but I'm not sure Mr. Whitely was here for the entirety of the -- of it. So he needs to go back and listen to it to make sure.

MR. WRIGHT: It was a tag team.

MR. STAUDAHER: Yeah.

THE COURT: Well, Mr. Wright, it's always a tag team. I mean, that's what they teach. No, I don't know what they teach. It's always a tag team. I mean, that's --

MR. WHITELY: Not if I can help it.

THE COURT: That's -- I've never seen one that didn't involve two officers hardly ever, if ever. Okay. Well, I'm just wanting a heads up. So okay, then. We'll see everyone --

MS. WECKERLY: Well, I mean -- well, I'll speak to defense counsel, but once we kind of set those experts' times

and days, they're all flying from out of state. So it's not like we can just get a witness here once -- you know, once we get out of the --

THE COURT: No, I'm good on the out of state people. I'm just saying on some of these filler people, you know, if local people have to sit in the hall and then come back the next day, I would rather do that than have --

MR. STAUDAHER: Sure.

THE COURT: You know, especially -- well, we're all done with the CRNAs; correct?

MS. WECKERLY: One more.

THE COURT: Okay. And what about the GI techs?

MS. WECKERLY: We're done with them.

THE COURT: Okay. You know what I'm saying? I mean, on the local people I'd rather they sit out in the hall and have to come back than, you know, we have these days that were, you know, an hour and a half, two hours early. That's all I'm saying. I get it for the out of state people that, you know, obviously we're -- you know, sometimes they're going to take over a day.

Oh, the woman, the safekey mom, her -- the last day of school is tomorrow, so she'll be able to stay late on the days we have the out of state people. If we -- we've had to end at 5:00, and I know at least -- I can think of at least one, maybe two, that had to stay over at additional expense

for the State and so forth.

So at least on those people we have to go not three hours late, you know, not two and a half hours late, but if we have to go a little bit late on those out of state experts, both sides, we will go late so that we can save either the State or the defense the expense of having to keep them here another night and changing their tickets and all of that stuff.

Okay. Well, I'm hearing actually from what you've told me five weeks. But maybe -- I don't know. And maybe consider this, too. On some of these things, I mean, so far, no, there really hasn't been anything. But maybe on some of this stuff if you can enter into some stipulations on --

MS. WECKERLY: Okay. If you want --

THE COURT: -- the foundational --

MS. WECKERLY: -- to stip to the health report.

THE COURT: -- things or whatever. Huh?

MS. WECKERLY: The Health Department report.

MS. STANISH: All right. Well, how about you guys not doing that 404B stuff so we're not here for another six weeks.

MS. WECKERLY: We'll all talk and see if we can pinpoint how much time on these -- some of these witnesses so we can maybe stack two experts on the same day or something.

THE COURT: Right. And like I said, on those

people, after the safekey mom's issue, if we have to run late on those days, then we're going to run late on those days.

MR. STAUDAHER: Was she the only one that had a strict --

THE COURT: She was the only one that had a strict 5:00. Some people may have, you know, issues as they come up. We're just trying to deal with all the juror issues as they come up. Like another guy has a VA thing tomorrow, but I think he can get him -- he can get that done during the time the other juror is at the graduation. And so I think he'll fit into the --

THE MARSHAL: He's going to try and go first thing in the morning --

THE COURT: Okay.

THE MARSHAL: -- and see if he can -- if the line is short enough to where he can get it handled. If not, he's going to take care of it --

THE COURT: Okay. Otherwise, he's going to go at lunch, but that may take a little bit longer. But he has to do whatever it is at the VA tomorrow, so we said he could do that.

MR. SANTACROCE: I hate to keep bringing up Pomykal, but have we --

THE COURT: Yes.

MR. SANTACROCE: -- reached any decision with her?

THE COURT: If you'd like to -- I was going to give you guys copies of the unofficial transcript so you can look at them, and then I'll read it over and if you want to make argument off that or whatever, either side, you can.

MR. STAUDAHER: Okay.

THE COURT: And we'll do that, I guess, first thing in the morning.

(Court recessed for the evening at 3:55 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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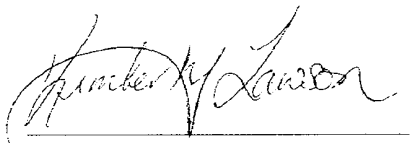

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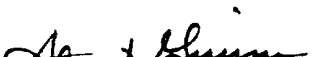

CLERK OF THE COURT

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 28

TUESDAY, JUNE 4, 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
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I N D E X

WITNESSES FOR THE STATE:

E X H I B I T S

STATE'S EXHIBITS ADMITTED:	**PAGE**
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LAS VEGAS, NEVADA, TUESDAY, JUNE 4, 2013, 9:30 A.M.

* * * * *

(Outside the presence of the jury.)

THE COURT: All right. If everyone's ready?

MR. WRIGHT: No.

THE COURT: What's wrong?

MR. WRIGHT: I'm barely halfway through the notes that were produced this morning, and my suggestion is putting Langley on the stand and going through the notes outside of the presence of the jury. I think these are her notes.

MS. WECKERLY: They are.

MR. STAUDAHER: Yeah.

THE COURT: Okay.

MR. WRIGHT: And I'd -- I mean -- or I'm going to do it in front of the jury and it's going to be a long, convoluted process.

THE COURT: Okay. Let's back up. You were provided with notes this morning from the next witness; is that what you're telling me?

MR. WRIGHT: Yes, but they just received them. I'm not --

THE COURT: Okay. They just received them. How many pages of notes? What are we talking about?

Mr. Staudaher, tell us what you've got and what you did with it and when you got it.

MR. STAUDAHER: We received, I believe last night when -- at around 9:00 or so Detective Whiteley met the investigators at the airport to pick them up and take them to their hotel room. We were aware that they had -- at least one of them had -- notes were previously produced from the other one that we had in our possession, but this particular witness we did not have any, and there were some notes available. She brought those with her, they were copied, they were scanned and sent; but apparently, in the form they were sent last night late it was difficult, if not impossible, for counsel to open them.

So this morning when they arrived physically here we made copies of those, provided them to counsel, and they've been going through them, as have we.

THE COURT: Okay.

MR. STAUDAHER: So it's probably -- I haven't counted the pages, but it looks like there's probably 30-plus pages or 40 pages.

THE COURT: Okay. And the notes are of what? Notes she took contemporaneous with the investigation?

MR. STAUDAHER: With the investigation, yeah, that's when --

THE COURT: So as she's there, she's making notes of her observations, or what?

MR. STAUDAHER: Combinations of that. I think part

-- in part some of the observations -- there was communication apparently from them back to CDC as they went through getting, you know, telling them their findings, what's going on, what they're doing, getting advice on where to go from there as far as the investigation was concerned.

Now, all of this was condensed into their report, essentially, but these are clearly handwritten notes of her contemporaneous observations and so forth at the time, which may be, you know, additionally some information that is not directly contained in the report.

To that degree I think counsel is certainly entitled to them, and we provided them as soon as we had access to them ourselves.

THE COURT: And we didn't know about these before?

MR. STAUDAHER: We knew about them this weekend and we attempted to get them this weekend, but with the time change and everything it was -- they were not able to be sent here in advance, and we got them last night was the first time we had access.

THE COURT: Okay. But before this weekend you didn't know about the --

MR. STAUDAHER: Not --

THE COURT: -- all these notes and --

MR. STAUDAHER: -- notes from her.

THE COURT: Okay. And my understanding is you have

two witnesses here today?

MR. STAUDAHER: Yes.

THE COURT: Can we maybe do the other witness first, then? Here's the thing --

MR. STAUDAHER: That's fine. I don't --

THE COURT: -- as you know, we're late. I mean, I agree, Mr. Wright needs time to look at the notes. That's, I think, a fair request. And I think, you know, he's had -- because a juror -- two jurors were late, one had a babysitting issue, the other juror had to go to the VA and he left the VA around 9. He's been in contact with my bailiff. We were kind of, you know, my bailiff was, you know, kind of rushing him to get here, so I'm reluctant now that we rushed the jurors here, the lady with the babysitting issue had to find a babysitter at the last minute, the gentleman who was at the VA, I'm reluctant now to say, okay, we rushed you here, sit in the back for another hour.

So if we can get started, that would be the Court's preference. Whether you want to put on the other witness and get through that person and then we'll have -- you know, as I said, I wanted to break around 1 to accommodate a juror who has to go to her child's graduation.

So, you know, it would be my preference to start now, you know -- if we take a longer lunch that's fine -- to give Mr. Wright the time he needs that will actually be

accommodating to one of the jurors. That would be my preference. So could we start with the other --

MR. WRIGHT: That's fine.

THE COURT: -- either start direct on this juror (sic), -- I don't know how long that's going to take; that might take a while, or start with the other juror [sic] and let Mr. Wright and Mr. Santacroce do their cross of the other juror. However we do it, I want to get, you know, with a few, you know, bathroom breaks or whatever, I want to get us to 1:00 and then maybe take an hour and forty-five minute lunch or whatever to give Mr. Wright the time he needs to review the records that were produced. So --

MR. STAUDAHER: That's fine. However the Court wants to do it. We can start --

THE COURT: Okay. Well, I --

MR. STAUDAHER: -- with the second witness, that's fine, or, you know, that would be -- I think that would be probably the most --

THE COURT: All right. Let's do that, then. Can we do that?

MR. WRIGHT: Yes.

THE COURT: All right.

MR. WRIGHT: Can we -- why don't we take -- I mean, these came out in different page orders and things --

THE COURT: Okay.

MR. WRIGHT: -- Margaret to mine. Why don't we take one set of these, give them to Gayle Fischer Langley, ask her to put the copy in the logical, correct order.

MS. WECKERLY: I'll have her do that while the other one is testifying.

MR. WRIGHT: Right. Right.

THE COURT: Okay. She can work on that in the hallway.

MS. WECKERLY: Sure.

MR. WRIGHT: The --

MS. WECKERLY: Oh, you don't want --

MR. WRIGHT: Right. I've only got one set --

MS. WECKERLY: Okay. That's okay.

MR. WRIGHT: -- okay.

MS. WECKERLY: I'll use my set.

MR. WRIGHT: Okay.

THE COURT: Okay.

MR. WRIGHT: Yeah, but --

THE COURT: And then if they're in order --

MR. WRIGHT: -- let her put them in order.

THE COURT: -- if you want to make another copy in the back or whatever we need to do --

MS. STANISH: Right. And maybe have her --

THE COURT: -- to get this moving, we'll do that.

MS. STANISH: -- maybe have her put a -- just

handwrite a page number on the top so we can refer --

MS. WECKERLY: Okay. And then --

MS. STANISH: -- to some with her.

MS. WECKERLY: -- I can also on the break have her stay if you have questions about the order or anything like that, you know, when we're on the lunch break.

MR. WRIGHT: Okay.

MS. WECKERLY: We'll have her explain --

MR. WRIGHT: Yeah, she can put one set -- just the whole order --

MS. WECKERLY: Okay.

MR. WRIGHT: -- chronologically.

MS. WECKERLY: That's fine.

THE COURT: Right. If you need to talk to her over the lunch break, you can certainly have her -- you can use the courtroom, you can use the vestibule --

MS. STANISH: Sure.

THE COURT: -- or whatever you need to do.

MR. WRIGHT: Okey-doke.

THE COURT: So all right. Having said that, can we bring the jury in and get started?

MS. STANISH: Yes.

THE COURT: All right.

(Pause in the proceedings.)

THE MARSHAL: Ladies and gentlemen, please rise for

the presence of the jury.

(Jury entering at 9:53 a.m.)

THE MARSHAL: Thank you, everybody. You may be seated.

THE COURT: All right. Court is now back in session. The record should reflect the presence of the State, the defendants and their counsel, the officers of the court, and the ladies and gentlemen of the jury.

And the State may call its next witness.

MR. STAUDAHER: State calls Dr. Melissa Schaefer, Your Honor.

THE COURT: All right.

THE MARSHAL: Will you step right up there for me, please. Remain standing. Raise your right hand and face that young lady to the left.

MELISSA SCHAEFER, STATE'S WITNESS, SWORN

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

THE WITNESS: My name is Melissa Schaefer, M-E-L-I-S-S-A, S-C-H-A-E-F, as in Frank, E-R.

THE COURT: All right. Thank you.

Mr. Staudaher?

MR. STAUDAHER: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. STAUDAHER:

Q Dr. Schaefer, what do you do for a living?

A I am a medical officer at the Centers for Disease Control and Prevention in Atlanta, Georgia.

Q And how long have you done that job?

A Since 2009. So almost four years now.

Q I'm going to take you back in time a bit. Would -- but before we get to an investigation that I want to ask you some questions about, could you go through a little bit of your training and background that led you to be in the position you are today.

A Sure. So I'm a physician. I got my medical degree from Northwestern University in Chicago in 2003; and then I did an emergency medicine residency at UC Davis in Sacramento, which was a three-year residency, and got board certified in emergency medicine; and then moved on to do a fellowship program at the Centers for Disease Control and Prevention.

Q So when you say "fellowship program," what is that?

A So it was a two-year fellowship, or training program. Essentially in epidemiology or public health.

Q So that was an area that you had interest or --

A Yes.

Q -- how did you get into it in the first place?

A Yeah. So it was an area I had interest and basically wanted to move from kind of direct patient care one-on-one to, you know, a bigger impact in healthcare; and so that was, to me, public health and seemed like a great opportunity.

Q Now, you mentioned that you did a residency in -- in the emergency room or emergency medicine?

A In emergency medicine, yes.

Q Did you actually practice in that capacity for any length of time?

A Following my residency, no. I was -- it was a three-year residency, so I'm working as a physician in the hospital training in that field.

Q So you did the training you -- in that specialty area, and then when you finished you went to the CDC?

A Yeah. So I did the training in that field. I completed the series of exams in order to get board certified or recognized as certified in emergency medicine, and then went after that to do the program at CDC.

Q And in that program at CDC, what kind of training does that entail?

A So it's a two-year training program. They take, you know, physicians, nurses, PhDs; you apply, you go through an interview process, and then you get accepted or rejected into the program. And then you get -- you choose amongst

different divisions or locations at CDC or as a CDC person in different state health departments. And then depending on the specialty of where you end up, you work within that division and that field with that group.

Q I'm going to take you back in time a little bit now to the beginning of 2008 -- January 2008. You know why you're here today, correct?

A Yes.

Q Were you part of an investigation related to a potential hepatitis C outbreak at the time at the Southern Nevada Health District -- a call that came in from them and related to that issue?

A Yes, I was part of that investigation.

Q Can you tell us how it was that you became involved and then how you ended up getting out here?

A Sure. So the Southern Nevada Health District contacted CDC, and so that would have been my supervisor as well as Dr. Langley's supervisor to talk about, I think they had two cases of acute hepatitis C virus infection in patients who had a common exposure at a clinic, and then within a day of that phone call, I think had identified a third patient, which was unusual, and so wanted to discuss it with CDC and get some assistance. So -- sorry, go ahead.

Q I'm sorry. Go ahead. I didn't mean any --

A So that call would have come in to our

supervisors, and then they eventually pulled us in.

Q Now, when you say two cases, that doesn't sound like a lot, but what's the issue?

A So Southern Nevada Health District, I think, typically reported zero to four cases of acute hepatitis C virus infection per year. And so then, you know, a couple-day time period they had two acute cases reported to them, and these people -- and I'd have to look at -- at their notes or whatever, but I don't think had any traditional risk factors for hepatitis C virus infection in that six-month period before they had symptoms. And -- but they had both gotten a procedure at the same clinic around the same time period, and so that was a red flag.

Q So you're -- I mean, were you part of this initial phone call?

A I don't think I was on that -- I can't remember if I was on that initial phone call or if it was an email. I don't recall exactly when I was pulled in. I know I was on a call before we came out, but I think our supervisors were more the first -- the first point of contact for this.

Q If you know, in relation to the call that came in from Nevada, how quickly or how soon thereafter did that third case come into -- into play?

A I think it was the following day, yeah.

Q So after --

A I think it was the --

Q -- that third case came into play, was there some plan to put into motion for you-all to come out and help with the investigation?

A Yeah. So at that point they issued an invitation for us to do an Epi-Aid investigation, or basically have a team from CDC travel to Las Vegas to work with the Health Department to do a field investigation.

Q Okay. You mentioned the term "Epi-Aid" --

A Right.

Q -- what does that mean?

A Essentially -- in order for CDC to go anywhere, we need to get an invitation from the Health Department, and we're giving aid in an epidemiologic investigation, so it's an Epi-Aid. We will send a team to work with the Health Department to do the investigation.

Q Moving kind of into the future of your investigation, at some point do you have to generate a report as a result of being called out to help with the community investigation?

A Yes.

Q And did you do that in this case?

A Yes, we did.

Q And what was the title of that report?

A It's a trip report. Sometimes it's called an

Epi-2, but it -- a trip report is essentially what we refer to it as.

Q Okay. So "trip" does that mean the trip that you went out to investigate?

A Right. So we took a trip to Las Vegas, so it's the summary of our investigating in Las Vegas. Some of these investigations you don't have to travel for, but we did, so we call it a trip report.

Q So if it's referred to as "trip report" or Epi-Aid report" or "Epi-Aid trip report," is it the same thing that we're talking about?

A Yes.

Q Okay. You come out to Las Vegas -- did you come out by yourself or with anybody else?

A I came out with Dr. Fischer or Langley -- she was Dr. Fischer at the time, but Dr. Fischer or Langley.

Q Okay. So her name is changed but --

A Yes.

Q -- she's still the same person?

A Same person. Yes.

Q So you come out with her. Anybody else that accompanied you from CDC?

A No.

Q So just you two. How does it go when you get out here to Las Vegas?

A So -- I should say that we had supervisors back in Atlanta, our home team, who we were in, you know, daily contact with who were helping to supervise and frequent contact -- working on the investigation with us, but as far as traveling to Las Vegas, it was Dr. Langley and I.

So we arrived in Las Vegas and went to the Health Department and interest -- an entrance meeting with folks from the Health Department, folks from the Bureau of Licensure and Certification. I don't recall who all was at this meeting, but basically the public health group to talk about why we were there, what we were going to do, how we were going to work together to do it.

Q Do you remember when -- what day that was --

A I think it was --

Q -- when you first came out?

A -- January 9 is the day we arrived, I think.

Q Okay. So you get the call from -- obviously before that. Do you remember what day the call came in?

A I think we've said January 2 in the reports that we've generated. That sounds right.

Q That's about right?

A I think so.

Q Okay. So a call comes in around the second of January, and then on the 9th you're actually physically out in Las Vegas?

A Correct.

Q Is -- you mentioned that beside you and Dr. Fischer Langley or -- or Langley, I guess is what it is now --

A Yes.

Q -- that beside you actually physically being here, working with the local -- local entity that does investigations, you were in communication back with your -- sort of the mother ship or the -- or CDC?

A The home team, yes.

Q How does that work when you -- when you're in an investigation, how and why do you even communicate back and forth?

A So whenever we do an Epi -- an Epi-Aid, essentially you have the field team, which was Dr. Langley and myself, and then you have the supervisors which are back in Atlanta. And so those are the folks that are supervising us as we're doing the investigation, so we're doing, you know, daily calls back with them to say here's what we accomplished today, here's what we saw, here's what we found. They give feedback on, okay, you need to X, Y, and Z tomorrow, or we agree with your plan or look more into this.

So they, you know, are employees at CDC that have been there longer than us. I'm in a training program, so they're part of supervision for us.

Q So do you rely on their aid as well, as far as

how -- areas to go in your investigation, looking at things that you may have missed, that kind of thing?

A Yeah, so we, you know, obviously we were talking to them before we come out to get a game plan together for what we're going to do when we arrive and, you know, relying on their experience from prior outbreaks and, you know, looking at literature ourselves; and then as we're talking each day of, you know, here's what we did today, going through the game plan, moving forward.

Q Now, it seems -- and please explain to us if you can -- when you go to do an investigation for an outbreak or for a restaurant or whatever the issue is that you're trying to help with the local entity that has called you in, are they all different or do they pretty much follow the same pattern?

A Well, so I guess I should -- should qualify by saying I was an EIS officer and am currently employed in the division of healthcare quality promotion.

Q And before we go any further, "EIS" means what?

A The epidemic intelligence service. So that's the two-year fellowship program I mentioned. I'm sorry.

Q Okay. Sorry, I didn't mean to interrupt you.

A No. No. So I am in the division of healthcare quality promotion. So we focus on patient and healthcare worker safety. So we got involved in this because it looked like it was an outbreak tied to a healthcare setting. And

then Dr. Langley was an EIS officer in the division of viral hepatitis. And so since we had cases of acute hepatitis C virus infection, we thought we were looking at an outbreak of hepatitis. That's where they got involved.

So we're working together bringing different areas of expertise to the table. So I wouldn't necessarily do a restaurant investigation. That would be other folks.

Q And I just used that as an example, I'm sorry.

A Yeah, I know, but -- right.

Q So if I understand you correctly, because of the type -- the type of facility that might be involved, the actual infectious agent and so forth, that's what sort of picked, so to speak -- although CDC decides who actually goes that goes to the calculus of what -- I mean, who actually is going to come out to do the investigation?

A Yeah. So when Southern Nevada Health District had this issue, they're calling, and that call is going to go to the division of viral hepatitis and to our group because of those factors. And then we're the folks that are going to go to assist if we're invited.

Q So you complemented each other, then, in your areas?

A Yes.

Q Was that the plan to have some complementary sort of investigation going on?

A Yeah. Yeah, and that's -- that's how we've historically done it and, you know, even in my time since then, if there is a hepatitis outbreak that looks like it's linked to healthcare, our groups work very closely together.

Q Okay. So you come out together -- all right. Do you arrive on the same plane?

A Yes.

Q Are you from the same location --

A Yes.

Q -- when you -- when you start out?

A Yes.

Q Okay. So you get here, what's -- what happens when you first arrive in Las Vegas?

A So we went to the health department and that's where we had that entrance or the first meeting with us, the Board of Licensure and Certification, which are the regulatory folks, and the health department. And that's where, you know, everyone was there at the health department to talk about what brought us there and what our plans were moving forward for this investigation.

Q Okay. So you all meet -- did you know at the time how close in proximity this clinic was to the health district itself?

A I think they mentioned that it was within walking distance, so yes.

Q So did you actually walk there?
A We did.
Q Okay. So you know how close it was?
A Yes.
Q At the time that you're at the -- the health district and you're going through the meeting and talking about it, is -- does anybody ever call over to the clinic to let them know you're going to come over there?
A Yes.
Q So you just didn't show up on their front door. You at least called over and said, hey, we're going to come over or we'd like to, something along those lines?
A I did not call, but yes, someone called.
Q Okay. So after the call is made, what do you do?
A We walked to the clinic.
Q So you come over there; when you get to the clinic, roughly what time of day was it, if you can recall?
A I don't recall. It was -- it was afternoon, it was after lunch, it was probably getting later in the afternoon toward when the clinic I think was wrapping up for the day. It was later in the --
Q So they were --
A -- afternoon, so --
Q -- near the end of their schedule you think --

A I believe so --

Q -- or close to it?

A -- yes.

Q When you get over there, what do you do?

A So we had --

Q Before we go there, who is accompanying you physically over to that location?

A So it was myself, it was Dr. Langley from CDC, it was Brian Labus from the Southern Nevada Health District. I believe we had folks from the -- the regulatory folks from Board of Licensure and Certification, although I'm not 100 percent, but I know for certain Dr. Langley and Brian and I were there.

Q So you go over. What do you do?

A So we had an entrance meeting with the folks at the -- the ambulatory surgery center or the clinic to tell them this is why we're here, this is what our concerns are, and this is our plan for an investigation here.

Q So do you tell them that we're going to come back tomorrow or the next day or -- or some other time? Or how does that -- I mean, what kind of information do you give them about how you're going to conduct your investigation?

A Yeah, so we, you know, had a meeting with a couple folks while they are basically saying, you know, we had these reports of acute hepatitis C infection. They had

procedures at your facility, so we're planning to do an investigation here. We'll be here for several days on site to look at your records, to look at procedures while you're taking care of patients to try to figure out how or where these people got their infection and make any recommendations to stop transmission if it occurred here.

Q And you mentioned records. Why would records be important to look at?

A So we look at medical records of patients and -- to verify their infection, to see if they were infected before they actually had the procedure there, and also to look at what procedure they had and look for commonalities amongst the cases. You know, did they all get the same medicine? Did they all have procedures on the same day? Did they all have the same healthcare worker? You know, looking for common things that could have resulted in transmission.

Q You typically start your investigation with a, sort of a paper review like that, or how do you -- how do you go about it?

A I mean, it can vary; you have to be flexible. But typically, yes, we will look at medical records to, again, get at some of those commonalities which can help direct our observations. You know, if we all -- if we know that all the patients had the same procedure with the same healthcare workers, then we're going to want to make sure to observe that

healthcare worker if we can, those kinds of things.

Q So it gives you a roadmap as to how to do your observational [inaudible] investigation?

A Yeah, it can inform how we, you know -- making sure that we check the right boxes for observations, yeah.

Q So if -- and let's go back. You're -- you're over at the clinic, you come later in the day, you meet and have -- and have this sort of general meeting; you know who you met with at the clinic?

A So I know we met with Ms. Rushing, Tonya Rushing, I think her name is. I think Dr. Cliff Carrol was there as well. And then there may have been one or two nurses or a nurse manager there. I don't recall names, but I know for sure that at least Ms. Rushing and Dr. Carrol were there.

Q So -- but a small group?

A Yes, we were in --

Q Two to four --

A -- Ms. Rushing's --

Q -- people?

A -- office, so, yes.

Q And now, her office -- was it located on the ground floor, or was it up higher?

A No, it was upstairs.

Q So you come in and -- I mean, when you walk into the facility, they -- did they know you were actually walking

over to come see them?

A Yeah. So I believe it was Brian Labus who had called to tell them that we were coming over. And I don't recall the specifics that if they met us there or if they told us where to go, but I know we ended up in -- in, I believe, her office.

Q So that -- you come in however you come in and you end up at -- on one of the higher floors --

A Yeah.

Q -- to talk with Tonya and Clifford Carrol and whomever else was there?

A Correct.

Q Now, when you are up there, you're doing this discussion. I mean, how long does this conversation take place? Do you tell him anything about what you found, what you're there for, any of that?

A You know, I don't recall all of the details of the discussion. We obviously told them that we were looking into these case -- reports of hepatitis C virus infection in patients who had procedures at their facility, and told them that we would be conducting an on-site investigation, and I don't recall any, you know, the specifics of -- of any more of that, really.

Q Now, that day after the meeting, what do you do? Do you -- do you leave? Do you come back? I mean --

A So, I think on that day we went back downstairs to just do kind of a walk-through to, you know, take a look at the layout of the facility, how things were set up. And I believe we did one observation of a procedure that day, I think. I think it was the last case of the day, you know, since we were there and wrapping up. I think we went in, I think, and did one observation that day.

Q Okay. But then you left?

A Correct. I think they were closing up. I don't remember if we reviewed any records or if they were going to pull them for us for the next day, but yes, I think then we left.

Q So you say, "the next day." Is it the next day that you come back?

A Yes.

Q How many days were you there in the clinic after you started actually reviewing things?

A So I think we were in Las Vegas for nine or ten days and would have been at the clinic pretty much all of those days. I'm trying to think if there was one day that they were closed on, like, a Sunday, but I think we were pretty much there every day.

Q So on -- and that includes the weekends?

A Yeah. Yes.

Q Okay. So if you start on a Wednesday or a

Thursday or whatever it is, you would continue to go through the following weekend into the next week?

A Right.

Q When you are there on the weekends, procedures going on, or are you doing chart review?

A I don't remember honestly, for the weekend. I think we probably did chart review. I don't know that they had any cases going on on Saturday. I think it was just a chart-review day, but I -- I don't remember.

Q Let's walk through your -- your first couple of days. What is the main emphasis? You mentioned chart review to get your roadmap --

A Right.

Q -- and how long did you do that before you were actually down looking at procedures and so forth?

A Well, so when we're doing chart review, we have what we call an abstraction form, which is essentially a form that we develop that's standardized to make sure that when we're looking at the medical records, we're all documenting the same information systematically for each record.

So, you know, you complete this form and it will have fields for, you know, procedure information, meds they received, personnel that took care of them, so that we're -- we're collecting that systematically.

And so we were looking at records for those three

cases we knew about, and essentially looking at the days they had procedures, looking at the records of all the other patients that had procedures on those days to see is there anybody else who is infected that we don't know about, any other cases we haven't heard about yet, or anybody who had their infection before they came there that could have been a source for these patients, for their infection.

So again, collecting that information for everybody on those days is what we're looking at.

Q When you -- when you say you're looking at the records, and you said some of the information that you're actually looking for, is there anything specific that you're looking for in the record? Not just the -- the healthcare worker, or, you know, the type of procedure they had, but I mean, is there something that you can glean from the records that gives you an idea that there may be something to focus on specifically?

A Well, so again, we're looking at commonalities and so -- I guess I should go through, you know, when you were doing the hepatitis investigation there are certain ways you can get hepatitis, and so we're focusing on, you know, how hepatitis is transmitted in what we're observing or looking for.

And then when we're looking at the records, again, like I said, we're looking for commonalities. Did these

people have the same scope used on all of them? Did they all get a biopsy? Did they all get the same medication? Did they get re-dosed with their medication? What time of day did they have their procedure and in what order? Who was -- who was the healthcare worker, you know, caring for them? Was there the same worker for everybody? Did they get, you know, blood-glucose monitoring? I mean, we're looking at, you know, common links amongst everyone that could explain how transmission might have occurred.

Q Now, is it sufficient to just use the chart work to -- to look for those commonalities to figure it out, or do you have to actually -- have to actually do observation as well?

A You have to do both, yes.

Q And did you do both in this case?

A We did.

Q So after that period of chart review, whatever it was, is that primarily when you started doing the observations in conjunction with the continuation of that chart review?

A Correct. I mean, we were doing chart review throughout our time there, but yes, we were -- then had moved on to do observations.

Q And you said you focused on the two -- two days when you had patients that were infected, correct?

A Yes.

Q And when you looked at that, you said you looked at all of the patients on those -- on those two days?

A Correct.

Q Now, did the clinic staff help pull those records for those dates for you, or did you just wander through the medical records unit and just do it yourself?

A No, they pulled the records for us.

Q So you relied on them to help you at least to categorize things to --

A Yes.

Q -- to look --

A Yes.

Q -- at?

A Yes.

Q How many people were assigned to that chart review during the process and how many people were assigned to do observation? Did you do combinations?

A Yes, we did combinations. As far as chart reviews, so Dr. Langley and myself, and then I believe there were some folks from Southern Nevada Health District that helped as well. I can't recall exactly how many. Maybe two or three people. But that's why we have a form that we all use so that everybody is collecting things the same way.

And then the same with observations. Dr. Langley

and myself, Brian Labus from Southern Nevada, the Board of Licensure and Certification. The regulatory folks were doing their own investigation, but they were there reviewing their own records and doing their own observations in parallel with us.

Q So even though there are other people there like the Bureau of Licensing and Certification, and maybe Brian Labus with the Health District, and maybe anybody from his -- his unit, and then, obviously you and Ms. Langley -- or Dr. Langley. I assume you talked together at some point; is that right?

A Yeah. So we -- the clinic gave us a conference room that we were all -- had a table where they brought all the records and we were all able to gather in, you know, each day to do the record review and abstraction, to -- to have meetings with each other to talk about things we were seeing or doing.

So we were pretty much together, you know, the whole time other than when, you know, if we were separated for some observations.

Q So are you at least aware of what's going on with other portions of the investigation at the time?

A Yes.

Q And when you find something in a chart or something -- somebody observes something, do -- do you point

it out to each other --

A Yes.

Q -- so that everybody else can look and try to see the same things?

A Yes. We discuss as we're going, you know, what we're seeing, what we're finding; and I think as I mentioned, you know, Dr. Langley and I are doing, you know, daily calls back with this home team at CDC, so she and I are staying at the same motel, you know, meeting together to cover the day's events as well.

Q Now, the -- during the time that you're there, the -- the volume of patients coming through, was there anything about that that struck you?

A I mean, it seemed like they were very busy. It was a two-procedure room clinic and patients were moving through pretty quickly.

Q Something you noted, though?

A Yeah.

Q Okay. Was that something that went into your analysis that -- of actually the volume of patients kind of going through? How did that --

A I mean, we recorded the number of patients seen each day. And as I said, we, you know, focused on primarily these two dates where we had -- where our patients had their procedures. So obviously, we had the list of all the patients

seen on those days.

Q On those days?

A Correct.

Q The days that you were actually there observing, did you record anything related to that as well?

A I don't think so, no.

Q You just noted it?

A Yes.

Q Okay. Now, you mentioned the -- the chart review. Did -- when you were going through the chart review, did you know -- did anything start sticking out in your mind or -- or as you're looking at it, is that something that either you wanted to follow up on or something that seemed a bit odd? Anything like that as you go through the charts?

A It was -- it was hard for us to actually get an order that patients went in for their procedures. They had two procedure rooms, but there was no room number or delineation documented, so it wasn't possible for us through the record to tell which patient was in which room.

So then we were looking at times recorded, and that was also challenging because there seemed to be some overlapping times where maybe a healthcare provider was documented in two places at the same time. And so I think we were challenged even -- and I think we mentioned this in -- in our, you know, our report of trying to get the correct order

that everybody was in for their procedures.

Q Generally, did you feel that after you looked at all of the different sources that you had the general order correct?

A Yeah. I mean, we did the best we could based on the times to try to get a general order.

Q Was -- so is it fair to say that -- that accurate documenting in the record was important for you?

A Sure. Yes.

Q If you had learned that it was completely fabricated or portions were completely fabricated, would that have been a concern?

A Yes.

Q Specifically the anesthesia records in the case, did you review those?

A Yes.

Q Why would you have need to even look at those records?

A I mean, again, it's trying to get an order that patients were in. We also were looking at the anesthesia records to see what medications patients received. They get, you know, an IV to sedate them for their procedure, so looking to see what medications were administered, who administered it, how many doses were administered. So trying to -- to glean that.

Q That kind of information, does that relate to direct modes of transmission that you were familiar with?

A Right. So, you know, one of the -- I'd say the most frequent or one of the most frequent mechanisms of transmission when we see hepatitis in a healthcare setting is from unsafe injection practices or mishandling of medications.

Q Okay. So that was one area you were looking at?

A Sure.

Q To the exclusion of all others or -- or how did it work? I mean, how do you decide what to focus on or what to do as far as your investigation?

A So again, it's, you know, knowing how the virus is transmitted, knowing kind of the history of outbreaks and mechanisms of transmission and possibilities, and so we tried to make sure we covered the bases to look at all those possibilities.

Q So when you move to your observational sort of aspect of it -- I know you're still continuing with the chart review, but when you move to the observational part, what kinds of things were you looking for or looking at?

A So we're looking for opportunities of -- of blood exposure and shared equipment or shared medications between patients. So, you know, we asked do they do any finger-stick testing for diabetics, for blood-glucose monitoring, you know, that they could share equipment. They

didn't do that there, so that was not an issue.

We looked at, you know, the medications that folks are getting. They're all -- or for the most part all getting an IV and getting medication for sedation and getting, you know, some of them are getting saline to flush. So we're looking at how those meds are handled and administered.

They're getting an endoscopy procedure, which is why they're there, so we're looking at the scopes that are used to see if there's any scope in common and how it's reprocessed to make sure that's done appropriately. Some of them are getting biopsies, taking tissue, you know, from their colon or from their esophagus, and so we're looking at that process.

I mean, I think those are some of the -- the main things. We're looking at, you know, there's been reports of a health -- healthcare workers being infected themselves with hepatitis and transmitting to patients through theft of narcotics and -- and misuse of that. So we're looking did any of these patients get narcotics and is that a possibility.

Q Okay. Did you also decide whether they got narcotics or the like? And just sticking with that one part for just a moment, are we talking about, like, a physician or healthcare worker that might be stealing the medication and using it?

A Correct.

Q And then maybe contaminating because that --

that supply because they are in fact infected -- infected themselves?

A Correct.

Q And then that is used to -- another -- for another patient and then infects that patient?

A Correct.

Q Did you look at the aspect of that in the practice?

A We did.

Q In doing so did you -- do you look at things like where the medication is stored, who has access to it, that kind of thing?

A Correct.

Q Again, did you look at those -- all of those aspects?

A Yes.

Q Any issue there with regard to that -- that sort of narcotic medication that was available at the clinic?

A No.

Q Now, you had mentioned flushes and IV's and the like. Were there specific areas of the practice where things were done that you focused on, meaning, like, a preop area, a postop area, a procedure room, things like that?

A Yes.

Q Can you tell us about that, how you kind of

walked through that?

A So patients get an IV placed in order to give them their medicine. So in some instances a nurse would place the IV in this preop area, so the patient would be changed in their gown and they would go and sit in this area to get their IV placed. And so typically we were told that when the IV is placed, if it's placed by a nurse in that preop area, they'll flush it with saline; and essentially, that's just to keep the line open so that it doesn't clot off by the time they go back for their procedure to get their medicine.

And so we did observe -- did some observations in that area. They had -- I think they were 20 cc vials of saline that are multidose saline vials that they did use for multiple patients. And so the practice would essentially be to place an IV, to draw up, you know, 1 or 2 cc of saline or 1 or 2 ml of saline and go ahead and inject it into that IV to leave it open. And then the patient would go, you know, for their procedure when they were called.

Q So what would be the issue there? What would you be looking at?

A So we're looking to see, you know, is there any possibility for contamination of that vial since it's used for multiple patients; but because you don't typically for the -- for this short waiting time need to give an -- another flush or another dose of saline, they didn't have any reason to go

back into the vial for the patient to get a second dose.

So essentially they would take a new needle and a new syringe, draw up those 1 to 2 cc, give it to the patient, discard the needle and syringe, and then the patient is waiting for their procedure and then the vial is hanging out for the next patient.

Q Okay. Did you observe anything amiss there at all?

A Not that I can recall, no.

Q Okay. Would you have noted it had you --

A Yeah, it --

Q -- seen something?

A -- would have been in our report.

Q And it does not -- it's not in your report?

A It's not in our report, no.

Q As far as the -- I mean, you mentioned multi-use of saline bottles; that's a known use for those kinds of bottles, correct?

A If they're labeled multi-use, which means they have some type of preservative in them, yeah, they can be used for multiple patients assuming that you are safe about it.

Q Did you ever see a breach in the sense of -- and I'm talking about the preop room there -- any of that, meaning that anybody took a used syringe and tried to go back into a bottle even?

A No, I did not.

Q You -- and I assume you interviewed people and the like as well?

A Right.

Q And it was important for your investigation?

A Right.

Q Any indication from any source that there was reuse of that medication, meaning multiple syringes going in and out of those bottles?

A No.

Q So also I assume that you look at the people that would be administering that medication?

A Right. And so that was typically the nurses that were doing that. Actually, I think it was pretty much always the nurses out there that were doing that. We were told that the nurse anesthetist, if they placed an IV, they didn't typically use flush because if they're placing the IV they're going to give the sedative for the procedure at that point.

So, you know, we did look at the saline flush, and as I said, you know, we looked at patients on, you know, that were on those two days, and there wasn't, like, a common nurse that gave saline flush to all of our cases.

Q In fact, on the 25th was there even a nurse involved in the saline flush for one of the patients?

A No.

Q Okay. So there's a --

A Well, so -- so I should -- I should clarify. You're talking about the patient who had the -- the acute hepatitis C infection?

Q That's correct.

A Yes. There was not a -- a nurse that was documented as admin -- as putting the IV in for that patient.

Q Who -- it was a CRNA?

A Correct.

Q Okay. So no nurse involved in that patient at all?

A Well, there may have been a nurse in the procedure room --

Q Well --

A -- but as far as placing the IV, no.

Q I misspoke. And that's what I was referring to was --

A Yes.

Q -- related to the IV placement.

MR. WRIGHT: Can I have foundation on this?

THE COURT: Well, yeah --

BY MR. STAUDAHER:

Q We're talking about the 25th of July, correct --

A Correct.

Q -- that date --

A 2007, yes.

Q -- and the source patient on that date is the one we're talking about?

A Well, I was talking about the -- the case patient, but it's also true for the source patient as well.

Q Okay. So on the case patient, which was the -- do you remember the name of the case patient at that time?

A I don't. We try not to bring back names to CDC of patients.

Q Eventually was that information -- I mean, those -- those patients, did their blood samples go off to CDC?

MR. WRIGHT: The foundation I wanted is just how she knows this. Or -- read it?

THE COURT: Did you --

MR. STAUDAHER: Oh --

MR. WRIGHT: Looked at it? Interviewed the people?

THE COURT: Okay. How --

MR. STAUDAHER: That's fine. We'll go --

THE COURT: -- did you glean this information?

THE WITNESS: Through a review of the medical record.

BY MR. STAUDAHER:

Q Okay. So you actually physically put your eyes on the medical records and could see that kind of stuff?

A Yeah, and I can refer to our trip report if --

if we need to to --

Q Sure. Go ahead, if you would.

A So this was the -- the Epi-Aid 2 or the trip report that you mentioned.

MR. STAUDAHER: And just for Counsel, as she goes through this, this is State's Exhibit 92.

THE COURT: And that's --

MR. STAUDAHER: It starts with Bates No. 1 -- or 4199.

THE COURT: -- and that's been admitted, correct?

MR. STAUDAHER: Yes, it has been.

THE COURT: All right.

THE WITNESS: So this is on page 13 of that report. It's tables 1 and table 2 that I'm referring to. Do I --

MR. STAUDAHER: Let me --

THE COURT: He's putting it --

MR. STAUDAHER: -- go to it.

THE COURT: -- up -- oh.

THE WITNESS: Okay.

BY MR. STAUDAHER:

Q And just -- if we have to at any point -- and these are new, so I don't know if they work the same as 2.2, but you can just draw with your fingernail --

A Oh.

Q -- on the screen, and then you just tap down

here and it goes away.

A Okay.

Q All right? So if you have to clear it, you can do that, okay?

A Okay. Thank you.

THE COURT: So he's going to put it up, and then it -- the report will --

THE WITNESS: I'll draw?

THE COURT: -- appear on the --

THE WITNESS: Okay.

THE COURT: -- monitor.

BY MR. STAUDAHER:

Q Okay. And you said page 13, correct?

A Yep, so table -- if you bring it up just a little bit so you can see table 1 and 2.

Q Okay. I can zoom in on that a little --

A Okay.

Q -- if we need to. I'll try to -- okay.

A So this is our case patient 1 who had their procedure, as you can see, on July 25, 2007. They had a colonoscopy. The IV was started by one of the nurse anesthetists -- nurse anesthetist 4. And then, if you look down on table 2, this is the patient who we ultimately linked as the source patient, who also had their procedure on July 25, had their procedure before our patient. He became

infected and had their IV started by nurse anesthetist 4.

So this information was obtained from a review of the records at the clinic.

Q So in this case both the source patient from the 25th -- the source patient and the infected patient had their IV started by the nurse anesthetist?

A That was what was documented, yes.

Q And it was nurse anesthetist 4; do you know who that was?

A That was Mr. Lakeman.

Q Okay. Ronald Lakeman?

A Yes.

Q So no -- no nurse involved -- and when I say "nurse," because obviously he's a nurse too, but no preop nurse or anybody involved in that -- in the IV insertion or any saline flush or anything like that?

A Based on documentation it -- no.

Q Okay. Anything else I missed that you wanted to point out or no?

A I think this is it for the --

Q Okay.

A -- for that question.

Q And we can come back to it if we need to.

A Okay.

Q Now, let's move forward. So we're talking about

the preop area that you looked at, the commonalities in people and whether or not even a nurse was involved in the IV, correct?

A Correct.

Q The next area, as we understand, was a procedure room?

A Correct.

Q Did you -- what did you do as far as either observational work there or -- or work to try and determine where there might be a potential source of infection?

A So the procedure room is basically where they're having their procedure, so they go into the room; and essentially what I did was, you know, kind of put myself in the corner of the room so that I could, you know, as unobtrusively as possible observe what was happening to, you know, when they -- from when they wheeled the patient in to when they wheeled the patient out. And basically kind of stationed myself in there for a while to watch multiple procedures.

Q Okay. Any issues there?

A Yes.

Q Okay. So that's where you -- is that the first time that you actually saw something in the clinic that gave you some concern?

A Yeah, I think so.

Q Besides -- I'm not talking about the charts. I'm talking about observational things.

A Yeah. Yes.

Q Okay. So -- so walk us through what you see.

A I mean, I think the main thing we saw there is they're using -- the medicine that they're using to sedate people or make them go to sleep or sleepy for the procedure is a medication called propofol. And propofol is -- in a vial it is labeled for single-patient use, and the clinic's practice was to use those vials for multiple patients.

Q Now, are you personally -- I mean, as a physician familiar with that drug?

A Yes.

Q Is that in your stint in the ER that you used that drug or were familiar with it there?

A I did use it in the ER, yes.

Q You said that it's single patient use only; is there a reason why?

A It doesn't have a -- it doesn't have a preservative or a bacteria static -- a preservative that essentially makes sure that bacteria can't multiply in there. Yeah, they call it milk of anesthesia because --

MR. WRIGHT: Say that again?

THE WITNESS: Milk of anesthesia.

MR. WRIGHT: Okay.

THE WITNESS: -- because it's -- it looks like milk. It's a white, opaque liquid, and, you know, there's concern for bacterial growth that can happen in there if it's, you know, used serially for multiple patients going in and out of it over, you know, a prolonged period of time.

BY MR. STAUDAHER:

Q And that's just bacterial infection, correct?

A Right.

Q But are -- is it -- do I understand you correctly that the bottles themselves say single patient use only on them --

A Yes.

Q -- or something to that effect?

A Yeah. Yes.

Q And is that generally known?

A Yes.

Q So at this point you're familiar with the medication, you know kind of how it's supposed to be used, and you're not seeing it used in that manner?

A Correct.

Q What else, if anything?

A I mean, I saw some lapses in hand hygiene, or, you know, not looking like they were cleaning their -- the nurse anesthetist was cleaning her hands appropriately, you know, when she should have. Saw the propofol being used for

multiple patients. Saw some recapping of needles, which can put the healthcare worker at risk of a needle disk injury.

Q But that would be a risk from basically an infected patient to the healthcare worker --

A Right. Right.

Q -- not the other way around --

A Right.

Q -- correct?

A But we're looking at kind of everything, so...

Q Everything? The hand washing and hygiene issues, did those -- I mean, this -- this agent -- this infectious agent hepatitis C is a blood-borne pathogen, correct?

A Right.

Q Is that a concern that -- I mean, obviously it's not the best thing, but is that a concern for the transmission of just hand-washing issues?

A No, not particularly.

Q So at this point, though, if I understand you correctly, the use -- the multiple use of this single-use medication was a concern?

A Yes.

Q Now, you mentioned the CRNA -- you said female, Are you actually observing this person yourself?

A Yes.

Q Do you know who that was?

A That was Ms. Hubbard.

Q And tell us what you observed during the time that you're in the room with these multiple bottles.

A So --

MR. WRIGHT: That's foundation. Just a date, if you know --

MR. STAUDAHER: Oh.

THE COURT: Right. If you know --

MR. WRIGHT: -- like, where it is in your report?

THE COURT: -- which particular date --

THE WITNESS: Can I look at my notes to see if I --

BY MR. STAUDAHER:

Q Sure.

THE COURT: Sure.

BY MR. STAUDAHER:

Q If you need to refresh your memory, go ahead and do so.

A -- if I made any notation of that. So I don't recall the date. I don't have it documented. It was while we were obviously in Las Vegas, so during those nine or ten days.

THE COURT: Do we need a -- I'm sorry, do we need a break, or do we need more notepads?

UNIDENTIFIED JUROR: No, we need pens.

MR. STAUDAHER: New pens?

UNIDENTIFIED JUROR: And paper.

MR. STAUDAHER: Okay.

THE COURT: So stop us and we'll get that to the jurors --

THE WITNESS: Nope, no problem.

THE COURT: -- and --

All eyes are on the bailiff.

MR. STAUDAHER: Both of you need new ones?

THE COURT: Three new notepads?

UNIDENTIFIED JUROR: No, just two.

THE COURT: Just two? Does anyone need new pens? Two new pens -- oh, three new pens?

(Pause in proceedings.)

THE COURT: All right. Everyone good to go? All right. Mr. Staudaher, perhaps if you would recall your last question you could state --

MR. STAUDAHER: If I -- I'll try to the best of my ability if I can do so.

THE COURT: State it again.

BY MR. STAUDAHER:

Q We were -- I think we were talking about in the procedure room watch -- or seeing multiple vials and I asked you who it was, you said Linda Hubbard, and I think we were at the point where you were trying to discern in the scheme of this -- this ten days that you were there, do you remember

roughly where it was in that time period?

A It would have been toward the beginning of, you know, the first half of that because I think we did -- but I can't give you the exact dates. We did some chart review, then we were doing some observations, and then we made some recommendations to fix some practices. So this was obviously before they had fixed the practices.

Q Okay. So let --

MR. WRIGHT: And -- and she -- she indicates -- just for the record, you looked at what when you were trying to find the date?

THE WITNESS: Oh, I was looking at the notes that I had provided. I don't know if they're an exhibit or not, but --

MR. WRIGHT: Okay.

BY MR. STAUDAHER:

Q They're not.

A Okay.

MR. WRIGHT: May I approach?

THE COURT: Sure.

MR. WRIGHT: Just --

THE COURT: Just so Mr. Wright can --

MR. WRIGHT: -- I've got a stack --

THE WITNESS: Yes, sir.

MR. WRIGHT: -- so I just want to be --

THE WITNESS: Sure. So it's this -- you have the right stack, and so I was looking here on page 3, and then again on page 23 where it says Hubbard and perhaps some handwritten notes.

MR. WRIGHT: Okay. You have the same stack that I do?

THE WITNESS: Yes, sir --

MR. WRIGHT: It's to 32?

THE WITNESS: -- I believe -- this is what they've provided, so --

MR. WRIGHT: Okay. Thank you very --

THE WITNESS: -- let me just make sure.

MR. WRIGHT: -- much.

THE WITNESS: Well -- yep to 32.

MR. STAUDAHER: Okay. May I proceed, Your Honor?

BY MR. STAUDAHER:

Q So anyway, we're talking about Ms. Hubbard, your observations of her --

A Right.

Q -- and the fact that there appears to be multiple -- or use of one bottle for more than one patient; is that --

A Right.

Q -- correct?

A Correct.

Q Okay. Walk us through what you observed with her and how she handled the propofol.

A So I watched multiple cases in succession with Mrs. Hubbard, and so would see her basically take out a new vial of propofol and a new needle a new syringe for the patient and draw out the medication to get to the patient, and then that case would be over, needle and syringe discarded.

And then the next case she'd take a new bottle of propofol, open it up and give it to the patient, but knowing that that first vial of propofol didn't use the whole thing and so that's still sitting there with some medication in it. So now we've moved into a second vial, a new vial and drawn some up.

And then we go to the third case and we draw up another bottle of propofol. So now at this point, I think we have three or -- she may have had to redose in there, so four bottles of propofol, that have been partially used on this procedure table. And so as cases are going on, there are multiple, partially used vials of propofol.

And then, I think by the fourth case she drew up propofol from one of those open vials, and then -- and I just have to refresh my memory here.

MR. WRIGHT: Are you -- identify what you're looking at --

THE WITNESS: So, I'm sorry --

MR. WRIGHT: -- just for the record.

THE WITNESS: -- I'm looking at page 23 --

MR. WRIGHT: Thank you.

THE WITNESS: -- of those notes that's walking through -- so -- yeah, so -- for the fourth case had a new needle and syringe for that fourth patient and drew out propofol from one of the open vials and then got out a new needle and a new syringe and drew up propofol, kind of pulling contents from a couple of those vials, and then got another syringe and needle to -- to finish off the vials.

So throughout these series of cases had multiple open bottles of propofol and then after a while drew up to get enough in one syringe from multiple vials. I'm sorry, this sounds very convoluted. I don't know how to explain it better.

BY MR. STAUDAHER:

Q It -- was it essentially pooling of the -- of the --

A Yes.

Q -- propofol?

A Right. At a point --

Q So --

A -- pooling to get a sufficient dose, so taking contents from more than one to get that dose that you need.

Q So if I -- and I just want to clarify this, if I

can. If I understand you correctly, one partial bottle may have sat there for quite a long time being unused; is that correct?

A Well, I don't know what quite a long time is --

Q Well --

A -- because procedures were --

Q -- I know that you're talking about the speed of the procedures, but at least it's there for a few patients; is that right?

A Yes.

Q Okay. And then at some point that bottle may be accessed one, two, three, four patients down the road --

A Right.

Q -- to then giving a dose to that fourth patient --

A Yeah, to finish --

Q -- or something like that?

A -- off the vial, yes.

Q So and then even some of these multiple bottles were drawn up and pooled together --

A Yes.

Q -- so the contents of one, two, three, four bottles might end up in one syringe?

A Right.

Q Was that a concern, that kind of activity?

A Yes. I mean, along the same lines if they're using propofol for multiple -- where she's using propofol for multiple patients and then some of these vials are sitting open for some period of time, and then we're pooling. So if one vial gets contaminated, you can perpetuate if I go into the next vial and don't use all that -- like, you can move from vial to vial.

Q Was that something that you had noted in the literature in the past of a mode of transmission or infection, where people have been using bottles in that way, pooling and the like?

A As far as viral hepatitis transmission, is what you're --

Q Well, anything at first or -- first?

A Yeah, I mean, we get concerned about bacterial transmission; but certainly, if you are reusing a needle and -- so, again, so say -- I've drawn up propofol, I administer it to the patient. You can get backflow of blood into that syringe. If I reuse that syringe to go into a vial, I'm essentially putting that blood into that vial. And then if I use that vial for other patients, it can be the source of -- of transmission.

Q Now, did you observe her using -- reusing syringes --

A No.

Q -- at the time? So just reusing the propofol or combinations thereof on different patients?

A Right. So it appeared that each time she was entering a propofol vial, it was with an unused -- so a new needle and a new syringe for each patient and that she would discard used needles and syringes between patients.

Q Did this appear to be a common practice with her, at least during your observations?

A Yes.

Q Did you ever observe this in anybody else that you observed if you -- if you did so during the time you were there?

A I don't think so because I think that was the day, you know, we basically met with the facility and said, you know, you can't keep doing this. You can't use these vials for more than one patient; and so subsequent observations, they were dedicating them for an individual patient.

Q Did you ever talk to Mrs. Hubbard about this?

A I did.

Q What was her response?

A That, you know, she wouldn't do it anymore.

Q But she acknowledged she had been doing this?

A Yes.

MR. WRIGHT: Where --

MR. STAUDAHER: I'm sorry.

MR. WRIGHT: I'm sorry. It?

THE WITNESS: Yeah, sorry.

BY MR. STAUDAHER:

Q Doing it, are we talking abut --

A That she had been using the propofol for multiple patients. I also mentioned concerns about walking around with an uncapped needle or recapping. Just some of the things that I observed -- hand hygiene, or cleaning hands. Just kind of recapping any concerns I had with the practice to make sure she knew not to do that.

Q Did you disseminate this information to other members of your team?

A Yes.

Q Were you on the lookout there for that kind of, sort of activity with other CRNAs that you may have been observing?

A Yeah. Yes.

Q Do you recall observing anybody else doing anything like that?

A I don't recall, no, because Dr. Langley was observing in the other room, I think. Mrs. Hubbard was the main person I observed with the multi-patient use of propofol. And then, like I said, we told them they couldn't do that and so the clinic stopped doing that.

Q Did you ever interview or talk with any of the other CRNAs beside Mrs. Hubbard?

A Yes.

Q And who else did you speak with?

A Mr. Lakeman. And I -- I mean, I -- I probably talked to Mr. Mathahs at some point in the mix, not a, you know, one-on-one interview, but we're there for nine days. I'm sure I said hi to the other ones.

Q And before we get to Mr. Lakeman, I just want to make sure I'm clear on this. Were you -- for the time you were there -- you knew these samples were eventually going to go off to be tested at CDC, correct?

A The patient?

Q Patient samples.

A Yes. We -- so the blood samples from the patients were going to CDC, yes.

Q Okay. Did that happen during the time that you were actually doing your investigation? Did you get any results back from CDC about that at that time?

A I don't think we did at that time because that testing takes a little while.

Q Eventually you are a part of a couple of reports beside your trip report, correct?

A Correct.

Q What were those reports?

A So we did a report in the MMWR, which is the Morbidity and Mortality Weekly Report.

Q And anything else?

A And we did a publication in a peer-reviewed journal, Clinical Infectious Diseases or CID.

MR. STAUDAHER: Your Honor, may I approach?

THE COURT: You may.

BY MR. STAUDAHER:

Q I'm going to show you what has been previously marked as State's -- looks like 20 of these were stipulated to, but I'll -- I'll check with counsel, but it's the MMWR report which is listed, as he said, at 164; and the major article, which was the CID report, is the -- is that Clinical Infectious Diseases?

A Correct.

Q Which is listed as -- identified, in other words, State's 165. Can you tell us if you're familiar with these reports --

A Yes.

Q -- and if in fact you were part of the -- either the authoring of them, the writing of them, or the investigation of them?

A Yes. I am familiar with these reports. And yes, I was a co-author. Dr. Langley is the lead author for both of these, but I did contribute and was approved the final

content and submission for publication.

MR. STAUDAHER: At this time I'd move for admission of State's 165 --

THE COURT: Any objection to those?

MR. WRIGHT: No, is it 164 or 165?

MR. STAUDAHER: 164 is the one that we have up there.

MR. WRIGHT: That one is good.

MR. STAUDAHER: And 165 is the clinical infectious disease report.

THE COURT: Any objection Mr. Santacroce?

MR. SANTACROCE: No.

THE COURT: All right. Those will be admitted.

(State's Exhibit 164 and 165 admitted.)

MR. STAUDAHER: And if we need to refer to those at any time, just let us know. We can provide those to you.

THE WITNESS: Thank you.

BY MR. STAUDAHER:

Q Do those summarize not just your findings at the time you were there at the investigation, but incorporate information from the genetic testing that was done later on as well?

A Yes. I'd consider the CID report, or the clinical infectious disease, as kind of the final, the one that came when -- the latest in that, so that would be the -- the -- the --

Q Can you explain to us what the MMWR report is. What does that stand for?

A So it stands for Morbidity and Mortality Weekly Report. It's essentially, you know, a CDC publication that's freely accessible on the website that we summarize, you know, public -- you know, public health information. Sometimes you write up, you know, outbreak investigation or, you know, surveillance data. Whatever can be --

Q So is the -- is it fair to say the chronology of these reports is that your trip report was first in line?

A Correct.

Q And has information up to a certain point, correct? And then the MMWR report comes out after that?

A Yes. Correct.

Q And that has a little bit more information --

A Correct.

Q -- or the same?

A I mean, maybe a little bit more. Again, I have to compare to see by the time -- because we have drafts of the trip report and so I -- and I apologize. I can't recall if in the trip report we had any of that detailed molecular testing. I think we referenced some of that in the MMWR. And then the case count with the molecular testing is kind of from the CDC side finalized in this CID article.

Q So the CID article is last in line and includes

the -- at least the genetic testing information; is that correct?

A Yeah, so the CID article was published in 2010.

Q Okay. Now, Ron Lakeman?

A Yes.

MR. WRIGHT: What do you call the final one?

THE WITNESS: So the -- the CID article --

MR. WRIGHT: CID article?

THE WITNESS: -- yeah, and so if you look at the bottom-right corner, that's when it was published, which is 2010 Volume 51, the 1st of August; and then if you look at the MMWR, that was published on May 16, 2008. And then our trip report. We had, you know, drafts and so I think the drafts that you all have is from May 15.

Q Okay. And -- ID stands for clinical infectious disease?

A Correct.

Q Is that a journal?

A Yes.

Q Peer-review journal?

A Yes.

Q Now, Ron Lakeman, let's move to him.

A Okay.

Q Was he actually working at the clinic when you were there?

A No.

Q How was it that you were able to make contact with him?

A I looked -- I Googled him on the Internet.

Q So you were able to talk to him over the phone, or did you travel to him? I mean, how -- how did that work?

A No. So he was -- and I don't know how -- maybe the clinic told us. I can't recall how we found this out, but that he was current -- currently living or working in Georgia, and I'm, you know, live in Atlanta, Georgia. And so since he was one of the nurse anesthetists working on days where we had transmission of hepatitis, we felt like we should probably touch base with him as well since we couldn't observe or interview him during our investigation.

Q In fact, he was the only CRNA working on both days, was he not?

A I don't recall if Mr. Mathahs was working in July, but I know Mr. Lakeman was working on both days, correct.

Q And if I -- and I -- we've got a chart with all the names and so forth. I'll represent to you that Mr. -- Mrs. Hubbard and Mr. Lakeman were working on the 25th --

A Okay.

Q -- of July and that Mr. Mathahs and Mr. Lakeman were working on the 21st of September.

A Okay. Thank you.

Q Does that sound familiar?

A Yes. I mean, that -- that sounds right, but --

Q So let's -- let's talk about your communication with Mr. Lakeman. Walk us through how that goes.

A So I think I mentioned before, you know, CDC can't, you know, start doing investigations independently without kind of the invitation or the knowledge of the Health Department. So since Mr. Lakeman was working in Georgia, we went ahead and contacted the Georgia Health Department to tell them about the investigation we'd done in Nevada; that this is one of the healthcare workers that was there on those days.

He's currently working in Georgia, and that we wanted permission to follow up with him to ask some questions about practices at the clinic and also to make sure that his current practices were okay because if he -- if there had been anything unsafe in Nevada, we didn't want to perpetuate it in Georgia. And so we communicated with them, and they said go ahead and so I did.

Q So you talk with him on the phone --

A Yes.

Q -- right? Tell us -- well, did you take any notes of your conversation with him?

A I did.

Q In relation to the call itself -- I mean, you're

talking on the phone with him during this -- I mean, did you record the call or anything like that?

A So did not tape-record the call.

Q Okay.

A Wrote down, I think some notes and then kind of cleaned them up to -- 'cause, you know, jotting in margins and stuff, so then clean them up and then, you know, basically, as I hung up and -- and so those notes are in -- in that same document where I asked to review my notes before --

Q Sure.

A -- they'd be in there.

Q So I'm just trying to get the timing of that. So you're taking notes as you're talking to him, and then you do some cleanup of those notes based on what he said after you hang up the phone?

A Yeah.

Q So we're talking about the same day, basically about the same time of the call?

A Yes.

Q Okay. Tell us what it was that you asked him and what he said on the phone.

A So can I go ahead and refer to those notes?

Q Sure.

A So this is the same thing that we looked at before, I don't remember what exhibit, and it's page -- let me

just find it for you. It's page 8. CDC notes, page 8 is --

MR. WRIGHT: Thank you.

THE WITNESS: -- is where I have those.

MR. SANTACROCE: My notes aren't marked, so just take a look at --

THE WITNESS: I'm sorry, sir.

MR. SANTACROCE: -- those?

THE WITNESS: Yes.

MR. SANTACROCE: Mine aren't Bate-stamped so --

THE WITNESS: Do you --

THE COURT: Do you want to --

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

THE COURT: -- come up, Mr. Santacroce --

MR. SANTACROCE: Yes.

THE COURT: -- and have a look at what she's looking at?

BY MR. STAUDAHER:

Q So go ahead, if you would.

A So essentially, you know, asked where he was currently working to get that information. I think basically he called, said who I was, said where I was calling from, you know, said -- we told him that we had been doing this investigation and wanted to follow up to get some information. Got a little bit of information about where he was working now, what he was doing there currently in current practice,

and then went through his recollection of how things were done at the clinic while he was working there and what his general kind of M.O. or practice style was while he was working at the clinic in Las Vegas.

Q Okay. So what did he say? What did you ask and what did he say?

A So, you know, we talked about the vial sizes so, you know, as a nurse assistant since 1985, is what I have written here.

MR. SANTACROCE: I'm going to object to her reading from the notes. If she wants to refresh her recollection, that's fine --

THE WITNESS: Okay.

THE COURT: Okay. Read it over to yourself.

MR. WRIGHT: Can we approach for a moment?

THE COURT: Sure.

(Off-record bench conference.)

THE COURT: Ladies and gentlemen, at this point I need to instruct you that anything that Mr. Lakeman said during this interview is only to be considered as evidence against Mr. Lakeman, and of course the weight or value that you give to this, just like any other evidence, is strictly up to you, the jury.

All right. Go on, Mr. Santacroce.

I'm sorry. Mr. Staudaher.

MR. STAUDAHER: That's fine. Go ahead.

THE COURT: It's an uncanny physical resemblance.

BY MR. STAUDAHER:

Q Okay.

A So apologies, I guess. I'm summarizing --

Q Okay.

A -- the conversation. So went through, you know, how long he'd worked at this facility and at the Southern -- or the clinic that we were looking at in Las Vegas, and he'd worked there for about three-and-a-half years; and basically walked through, you know, what his recollection was as far as the propofol vial sizes they were using there. And he, you know, kind of reiterated what we had already learned, that they typically use the 20 as well as the 50 cc vials, so larger vials.

We asked -- because we had difficulty in figuring out, you know, which room patients were in because it wasn't, you know, a room assignment -- you know, asked about the general practice. Did a nurse anesthetist typically stay in one room? Would they ever swap rooms? Would they ever take meds from one room to the next? And he indicated that, you know, typically the -- he or the nurse anesthetist would stay in one room throughout the day. Occasionally they would swap rooms at lunch or to -- to relieve each other, but the meds were supposed to stay, you know, in the room. They, you know,

didn't mention bringing them back and forth.

I brought up the reuse of syringes to access vials of propofol which were used for other patients, which had been observed by my colleague at the clinic, to find out if that was something that he did. And he said that yes, that was something that he did. He would essentially take a new needle and a new syringe to draw out propofol for a patient, and if they needed more medication, would reuse the syringe to get more for that patient. And then that vial could be used for subsequent patients, but that he never reused the same needle and syringe on other patients.

And then he also shared -- I followed that up by asking if that was his current practice in Georgia because if it was, we would obviously be concerned. And he said that, no, he did not do that currently. That it was the policy where he was working that the propofol and the Lidocaine were dedicated for each patient for their procedure in Georgia, and then anything they didn't use was wasted and discarded.

And then, you know, he expanded on some concerns that he had about other practices at the clinic, and specifically mentioned concerns that the single-use biopsy equipment was reused between patients. That the -- the automated reprocessor that they used to reprocess the scopes was often broken, and so he didn't feel that they were doing appropriate reprocessing between patients, often just washing

with soap and water instead of doing a high-level disinfection; that they would reuse the sheets between patients. Wouldn't change the bedding. And I think those were, you know, the main -- main crux of concerns and conversation.

Q Now, when you first started talking to him on the phone, did he express some concern that you might be recording the conversation?

A Yes. He asked if I was -- if I was recording the call, and I said I was not. So, yes.

Q Did you indicate to him that you would be taking notes though of the conversation you were having?

A Yeah. So I indicated that, you know, I was taking notes, but that -- you know, we're doing a public health investigation. This wasn't a criminal investigation at the time. And so, you know, I said, I'm not going to be writing down your name if we refer to you in a report.

And as you'll see in, you know, the trip report and stuff, we refer to them as, you know, nurse anesthetist 1, 2, 3, 4. So I said to him that that's how we would refer to him and, you know, would appreciate his candor in sharing information.

Q By the way, which CRNA is he in the -- in the report?

A He is CRNA 4 in the report.

Q Now, as far as that was concerned, at the time you're going through your investigation in Las Vegas, do you know that this is ever going to become a criminal matter?

A No.

Q So you believe you're just going through the process of doing an epidemiologic investigation?

A Right. And, you know, we -- we, you know, rely on the healthcare workers to, you know, give us information; and obviously, sometimes they want to tell us things that they don't want their employer to know or others to know. And so that's, you know, why I mentioned we're not going to put your name in a report so that you can feel a little bit more comfortable about what you share.

Q Now, as far as your conversation with him about the recording, did he also ever mention to you anything about denying --

MR. SANTACROCE: I'm going to object as to leading.

BY MR. STAUDAHER:

Q -- did he ever talk to you --

THE COURT: Well, try not to lead. Overruled.

BY MR. STAUDAHER:

Q Did he ever talk about --

THE COURT: Was there anything --

MR. STAUDAHER: Yes.

THE COURT: -- else mentioned about -- about --

THE WITNESS: Yes. So he asked if I was recording, I said not -- I was not, and he agreed to talk to me, but said that he would deny, you know, saying these things if it came down to it.

BY MR. STAUDAHER:

Q Now, when you said -- and I want to flesh out a couple of things that you mentioned. You said that he said the CRNAs generally stayed in the rooms and would swap at lunch or whatever; is that correct?

A Yes.

Q Any talk about he would -- if he went into a room if there would ever be open bottles of propofol? Anything along those lines?

A Yeah. So he, you know, indicated that if there were, you know, syringes on the table, he wouldn't use those; but if there was a partially used vial of propofol, that he -- he would use contents from that vial but would always, you know, wipe the top with alcohol and use a new needle and new syringe to draw up the dose for his patient.

Q Okay. So he would use open bottles of propofol drawn up by somebody else, or at least opened by somebody else?

A Correct.

Q Did he mention that he would go into the rooms at lunches and breaks, things like that?

A I mean, you know, again, all I can say is that, you know, they typically stayed with one room, but they would occasionally swap rooms at lunch or for a break.

Q When he talks about the using of the same syringe into -- and I'm talking about when he's describing taking the -- the syringe on a patient, going into a bottle with a new syringe, going into the patient, that he would go back into the syringe -- or back into the same bottle with the same syringe, and that that bottle might be used on a new patient, correct?

A Correct.

Q Did that give you concern?

A Yes.

Q Okay. Why?

A You know, that has been tied to other outbreaks of hepatitis. You know, essentially, I think as I said before, you know, when you have your needle and syringe and you -- and you put it into the patient's IV, you can get backflow of blood into the syringe. And so if you go back into a medication vial, even if you changed the needle, you can introduce that blood into the vial. And then now you've essentially got a bloody vial or a vial that has blood and virus. If that person happened to be infected, that can be a vector of transmission for other people.

So even if I use a new needle and syringe for the

next patient, I'm drawing up fluid that's been contaminated with some other patient's blood and can infect them.

Q Is that in the literature a known, direct transmission cause --

A Yes.

Q -- for hepatitis C?

A Yes.

Q So you sought -- you at least get him to admit this to you over the phone?

A Yes.

Q Did you ever hear the word, "double-dip," anything like that?

A Yes.

Q Did he use that?

A Yes.

Q Those were his words?

A Yes.

Q Can you describe what he was saying when he used those words?

A So essentially you're going back into the vial. So, you know, like, when you take salsa and a chip and you eat it and then you double-dip, you go back into the dip with that chip that you have bitten into. You're putting your mouth bacteria into that bottle of dip for other patients. So I take my needle and syringe, I inject it into a patient. I

double-dip, I go back into the vial with that same syringe. I've contaminated the medication or the dip or whatever you want to call it, and then I'm using that for other patients.

Q Did he ever indicate to you that he was aware of the risk of that process?

A So he mentioned that he -- you know, I said this is not safe and he acknowledged that, you know, it was not the safest practice, but that he would keep pressure on the plunger to prevent -- to try to prevent backflow of anything into the syringe from the patient.

Q So just so I'm clear on that. You questioned him about the risk, the safety of the practice; he acknowledged that?

A Yes.

Q That it was not a safe practice?

A Yes.

Q But he says that he does this pressure -- was it negative pressure, positive pressure, no pressure, what kind of pressure?

A Well, he'd keep pressure on the plunger to try to keep anything from getting sucked back into the syringe, was, I think, the intent.

Q Okay. So he's even using the same needle?

A I don't recall if he was using the same needle or not, and it's not in my notes, so I can't speak to that.

Q But at least he's doing this thing -- funky thing with that -- with the plunger.

MR. SANTACROCE: Objection to the characterization --

THE COURT: Yeah, that's sustained.

MR. STAUDAHER: Okay.

MR. SANTACROCE: -- funky thing.

MR. STAUDAHER: My words, I'm sorry.

BY MR. STAUDAHER:

Q -- doing this --

THE COURT: Yeah, that's sustained.

BY MR. STAUDAHER:

Q -- this process of holding the plunger or some something to prevent that from occurring?

A Well, presumably, yes.

Q Well, did he say that or just that he thought that that would --

A No, he said that that -- you know, that he would do that.

Q Did he indicate why he was doing -- I mean, he's not doing it in the current place he's working, right, when you're talking to him? Did he indicate why he was doing it back then?

A I don't think I specifically asked why he did it back then. He was not doing it at this current place because the facility practice was that they had dedicated meds for the

patient so there was no sharing.

Q Was there ever any concern on his part about waste or about things along those lines --

A I mean --

Q -- supplies, costs, things along those lines?

A Yeah, he mentioned that the owner was concerned with waste.

Q Now, you had mentioned --

MR. WRIGHT: Can we approach the bench?

THE COURT: Yeah. You know what? Actually, I was going to call for a break in five minutes. Let's just take our break now, ladies and gentlemen. We're just going to take our morning recess about 10 minutes.

During the morning recess you're reminded 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 the case, person, or subject matter relating to the case. Don't do any independent research. Please don't form or express an opinion on the trial.

Notepads in your chairs and follow Kenny through the rear door.

(Jury recessed at 11:09 a.m.)

And, ma'am, during the break do not discuss your testimony with anyone else. Okay.

THE WITNESS: Can I use the bathroom, then?

THE COURT: Yes, you're free to take a 10-minute --

THE WITNESS: Okay.

THE COURT: -- break as well.

THE WITNESS: Thank you.

THE COURT: Just don't talk about your testimony.

THE WITNESS: Fine.

THE COURT: All right.

(Outside the presence of the jury.)

THE COURT: I think I know what you're --

MR. WRIGHT: Your Honor --

THE COURT: -- going to say, but --

MR. WRIGHT: -- well, I -- I'm going to say it.

THE COURT: -- say it anyway.

MR. WRIGHT: We approached the bench during the examination when the inter -- when she started to testify about Ron Lakeman, this telephonic interview. And I asked the question that -- who is this admissible towards, and the answer was, Mr. Lakeman only. The Court asked if I would like an instruction to that effect. The answer was yes. The Court so instructed. The prosecutor stated that this is not a Bruton issue, and there would be nothing about --

MR. STAUDAHER: I didn't think there would be a Bruton issue. I thought --

THE COURT: Well, you --

MR. WRIGHT: Well, he --

THE COURT: -- Mr. Staudaher --

MR. WRIGHT: -- he intentionally elicited a Bruton --

THE COURT: -- yeah --

MR. WRIGHT: -- issue.

THE COURT: -- to be fair to Mr. Wright, you deliberately -- there was no contemporaneous objection; however -- which I would have sustained,-- but the only point of that testimony wasn't against Mr. Lakeman. The only point of that testimony to me was to show it was, you know, Dr. Desai or his management was directing Mr. Lakeman to do these things because certainly, you know, unless you're going to say, well, somehow it minimized Mr. Lakeman's culpability or something like that, but then, Mr. Santacroce could have tried to get that in as opposed to -- to you getting it in.

I would note that there was no contemporaneous objection --

MR. WRIGHT: But --

THE COURT: -- it was -- they answered the question, then you said, can we approach the bench.

MR. WRIGHT: Well, correct. What am I supposed to do? The cat's out of the bag --

THE COURT: Well --

MR. WRIGHT: -- jump up and say take it back? I was told at the bench there was no --

THE COURT: You were -- I --

MR. WRIGHT: -- Bruton issue, and they --

THE COURT: -- I agree.

MR. WRIGHT: -- would not elicit what he then intentionally elicited.

THE COURT: I -- I agree with you, Mr. Wright. He said you can -- approach the bench. I said it was admissible against Mr. Lakeman. You asked for a limiting instruction. I offered one. You said yes. State didn't oppose the instruction. Mr. Santacroce didn't oppose the instruction and wanted to make sure we added the weight or value and I did. And I gave the instruction. And Mr. Staudaher said that there was no Bruton issue. I think that's exactly what he said or what I heard, that there would be no Bruton issue.

So that is what happened at the bench. And so, Mr. Staudaher, what would you like to say?

MR. STAUDAHER: It was -- the -- and again, maybe it was not the smartest thing to do, obviously, but it was meant to get the information out that there was a reason that he did this and it was cost savings, not necessarily --

THE COURT: Yeah, but --

MR. STAUDAHER: -- cost savings --

THE COURT: -- why --

MR. STAUDAHER: -- directed at Mr. -- or Dr. Desai, but just that there was a reason why he did this then and not

where he is now. It was not meant to elicit a statement by Dr. Desai or anything along those lines.

THE COURT: Well, right, but if it's --

MR. STAUDAHER: That's what Bruton is --

THE COURT: -- if it's --

MR. STAUDAHER: -- the statement --

THE COURT: -- no, if it's costs -- well, yeah, it's a statement and he said it was cost saving. So who does that implicate? You know, Mr. Lakeman is not worried about the bottom line. It's Dr. Desai and management that's worried about the bottom line. So the inference is against Dr. Desai.

Now, to be fair, Mr. Santacroce may have wanted to get that in too, you know, under kind of a completeness idea -- I don't know if he would have or not -- to minimize his own client's culpability. For example, well, he's doing it, but he's only doing it because he was told to do it by superior people in the office, physicians who really, you know, should be -- have some kind of supervisory role over the nurse anesthetists who are not physicians. I don't know if it -- Mr. Santacroce would have gone there or not.

Mr. Santacroce, is that something -- someplace he would have gone?

MR. SANTACROCE: I have no idea where I'm going.

MR. WRIGHT: Well, he can't in a joint trial.

THE COURT: No, I know.

MR. WRIGHT: He can move for a severance.

THE COURT: I'm just -- I'm just saying, here is what I think we should do: I'm going to remind the jury, again, anything that was said by Mr. Lakeman is only evidence against Mr. Lakeman to the extent they choose to consider it and that it cannot be considered against Dr. Desai. And I think if I give the instruction again that will be remedied.

MR. SANTACROCE: I think that prejudices my client by repeating it twice, the -- that you got to hold it against Mr. Lakeman. I mean, that prejudices him if you give the instruction twice.

THE COURT: Well, I don't really see the prejudice, but Mr. Wright, do you want the instruction again?

MR. WRIGHT: No, I want -- first, I ask for a mistrial, is my motion. The witness stated that it was the owner who was cost conscious. Not management --

THE COURT: Yeah, the owner.

MR. WRIGHT: -- and there isn't no -- there's no question in here, nor have I been arguing about --

THE COURT: That he's not --

MR. WRIGHT: -- who the owner is.

THE COURT: -- the -- the --

MR. WRIGHT: So it might have well said, Dr. Desai. And so that is out. I move for a mistrial based upon it.

THE COURT: Mr. Staudaher, response?

MR. STAUDAHER: Well, first of all -- and again --

THE COURT: Ma'am, I need you to -- wait -- right. Just wait out and the bailiff will get you when we're ready for you.

MR. STAUDAHER: It was elicited to give his reason why, not the statement. There was no statement that came in by him, or was elicited and technically --

THE COURT: Well, it's -- of course it's a statement whether it's a quote, Dr. Desai --

MR. STAUDAHER: It's not a -- he didn't say in his -- even -- that came out here that he was instructed by anybody. It was -- it could have been his -- based on what we have right now out before the jury, it could be his determination that you've got to save costs and that he wanted to save costs. That's it. There's no statement.

THE COURT: No, he said the owner wanted to save costs. So I mean, I think your spin is a little -- frankly, no disrespect, your spin is a little incredible. To say it wasn't a statement, well, how did he convey the information? It came through his statement. Whether she made a direct quote or not a direct quote, it was pretty close to a direct quote.

Mr. Lakeman said something like, the owner was concerned about costs, which is completely credible that Mr. Lakeman said that because we've been sitting here for four

weeks hearing witness after witness tell us that Dr. Desai was concerned about costs. In that view -- in that regard, I think it's kind of cumulative to -- you know, I don't know the great prejudice here that Mr. Lakeman said that when, again, we've heard witnesses come in and say Dr. Desai was concerned about costs; Dr. Desai was concerned about the propofol.

So, I mean, it's not some new thing the jury is just hearing from this gal from the CDC. It's something that every other -- I mean, like I said, we've been sitting here for four weeks and basically hearing that Dr. Desai was concerned about costs. That he was extremely frugal. That -- pardon the colloquial word, he was a cheapskate.

MR. WRIGHT: I brought all that out, frugality, cutting chux in half. All of that. None of that had to do with what -- telling somebody to reuse syringes.

THE COURT: Okay. First of all --

MR. WRIGHT: And this is the precise issue in the case. On --

THE COURT: -- Mr. Wright, to be fair to the State, that was not the testimony. The testimony was not, Dr. Desai told me to reuse syringes. The testimony was the owner was concerned about costs or something to that effect. So --

MR. WRIGHT: So -- which caused him to -- what -- the questions were, why did you -- why would you use this syringe again and reenter and use this little negative-pressure thing?

That's the -- that's what she was testifying about. And the answer was because the owner is cost conscious.

THE COURT: Janie, play it back. Can you play that little bit back? Because, you know, I reprimanded the State for putting a spin on it that I felt was inaccurate. Let's hear what -- exactly -- the way I heard it was, you know, why would you do this, whether it's reusing the propofol or the things, and he said because the owner was concerned about costs or something to that effect.

Owner -- the word was used, I heard it. I agree. So yes, it's against Dr. Desai, but I think it's cumulative to the -- the way I heard it, it's cumulative with everything else we've been sitting here for days and days and days.

MR. WRIGHT: But it's not cumulative that he was cost conscious causing the reuse of syringes to --

THE COURT: Well, let's hear -- okay. Mr. Wright --

MR. WRIGHT: -- there is no evidence of that.

THE COURT: -- you saying what you remember and the State saying what they remember, and me saying well, I remember something else is silly when we have a tape of what was exactly said. We can all sit here and watch the tape and we don't need to spend time quibbling back and forth over each other's memories.

Janie, can you queue that up?

THE COURT RECORDER: I found it but I'm not sure if

I can play it yet. Do you want to take a break while I do that?

THE COURT: Yeah, I -- I for one need a break. So if you folks need a break --

MR. WRIGHT: Yep.

THE COURT: -- do it right now and we'll come back and Janie will find it and she, of course, may need a break. A quick break.

(Court recessed from 11:19 a.m. to 11:27 a.m.)

(Outside the presence of the jury.)

(Audio/video playback, not transcribed.)

THE COURT: All right. That was the right part. I mean, basically, the question wasn't, you know, why is he reusing the syringes or why is he reusing the propofol. The question was, well, did he say anything about waste. And then the answer was he said that the owner was concerned about waste, was essentially what I heard. So I don't think it's as bad as being directly on the propofol or the -- the needles and the syringes.

I mean, yes --

MR. WRIGHT: It's not bad --

THE COURT: -- it follows --

MR. WRIGHT: -- to directly ask the precise question to elicit the answer which is improper and a constitutional violation after there's a statement that it's not going to

happen?

THE COURT: All right. Mr. Staudaher, anything else you want to say in your defense?

MR. STAUDAHER: No. That it was just not intentional to elicit a statement by him. I know that that's -- it -- I just was trying to get that cost as an issue out of that. That's what I said.

THE COURT: I mean, look, A, it was somewhat exculpatory as to -- as to Mr. Lakeman, although I do not believe that that was the State's purpose. I think the State acted improperly in eliciting the testimony. Now, whether you were having a, you know, brain moment that you weren't thinking clearly, or you were acting deliberately in contravention of your representations at the bench, I don't know.

I'm willing to give you the benefit of the doubt; however, either way, this -- I think, Mr. Staudaher, you acted inappropriately after the representation you made at the bench, but like I said, I'm going to give you the benefit of the doubt that you just weren't thinking and you just, you know, want to -- I get it, you know, you're just dotting every I and cross every T and eliciting every single piece of information you can. I get it.

That's what you folks are doing, and so I'm going to give you the benefit of the doubt that that's what you're

doing here as opposed to, you know, you -- you know, look, I don't think you thought, okay, well, I said I wasn't going to do it, but now I'm going to do it and this is admissible -- this isn't admissible against Dr. Desai but it's prejudicial against him, so I'm going to pull this out. I don't think that's what you're doing.

The bottom line is Mr. Wright has requested a mistrial. I don't think that the State's error rises to the level warranting a mistrial at this point. I would just caution you, Mr. Staudaher, to be mindful in the future, and if there's any doubt, approach the bench and say this is what I want to ask, can I ask that, you know.

Or, you know, you've been a little leading and you know, I think this is obviously a very intelligent witness; you could have been asking more open-ended questions, was anything else said. And then, I think if she blurted that out, then certainly there could be the accusation on some kind of misconduct by the State, which is kind of where, you know, the record is right now.

Again, you know, I don't think that you deliberately walked down that road and felt that you were violating what you had represented at the bench. I really think that it was more, you know, you just -- and this has been the practice throughout the trial. You know, you're just eliciting all the information you can get and you're crossing every T and

dotting every I and think that's what you were doing here, as opposed to some kind of wilful misconduct, which I don't find that.

I don't think that, you know, the testimony was overly prejudicial, which would warrant a mistrial. And I think -- again, I think it's cumulative of everything we've heard from, you know, all of these other witnesses, over and over and over again. So to isolate this and say, oh, well, Mr. Lakeman saying this is much more prejudicial than what's been said, I get it, Mr. Wright. You're saying, well, now, we've put it directly in context with the reuse of the propofol and more significantly the reuse of the syringes.

So yes, I get it it's more damaging. But clearly the inference throughout this whole trial with all of the other nurse anesthetists who have been saying he's cheap and blah, blah, blah, has also concerned reuse of the propofol and the concern over the propofol and, you know, I just don't find that this kind of stands alone. I think it goes -- you know, goes hand in hand with what we've already heard.

So I don't think that a mistrial is called for at this point.

Now, with respect to --

MR. WRIGHT: Can I just --

THE COURT: -- a further instruction --

MR. WRIGHT: -- okay, but before we --

you described yourself as being the gestapo of the preop?

A Yes, I did.

Q And am I correct in understanding that you are a people person?

A Yes.

Q And you're assertive?

A Yeah.

Q And no -- no bars back, if you see a problem in that clinic, you're going to say something?

A Yes, ma'am.

Q And you're going to do something?

A Yes, ma'am.

Q And you've already discussed that. And is it a -- is it a fair statement to assume that other people in the clinic were aware of your assertiveness?

A Yes, ma'am.

Q And your gestapo technique?

A Yes, ma'am.

Q And as I understand it, you were selected to be the new charge nurse at -- of Shadow Lane and were actually in training for that position by the time the CDC got there?

A Yes, ma'am.

Q And am I correct in assuming that you were selected precisely for your gestapo technique and care of patients?

A Yeah, I would assume so. Yes, ma'am. That's what I felt because I paid attention to details.

Q And are you aware of -- in your observations, were other nursing staff attended to detail?

A I would say maybe 50 percent of the staff.

Q And I -- and I kind of get the impression that a number of nurses who come to the clinic, like yourself, have a lot of experience in working in hospitals?

A Yes, ma'am.

Q And before you came to the clinic you had, what, 26 years --

A Yeah, 20 plus --

Q -- in nursing?

A -- years. Yes, ma'am.

Q And many other experienced nurses who were also in hospital settings came to the clinic because they wanted set hours; is that a fair statement?

A Yes.

Q So unlike a hospital setting where you are working into the wee hours of the morning or weekends, the clinic offered experienced people a set -- set schedule and free weekends; is that fair?

A We were a lot of old, tired dogs that did -- wanted our weekends and not being on call. Yes, that's why. That's why I specifically went there.

Q You're not an old, tired dog while you're in the clinic, are you?

A No, not at all.

Q I -- there was something else that you mentioned on your direct exam that I found striking. The fact that you brought humanity to the preop area.

A Yes, ma'am.

Q And, you know, I watch a lot of medical shows on T.V., and am I right in assuming that nurses in a medical setting in general do precisely that, bring humanity to the medical setting?

A That is correct.

Q And am I -- is it correct to assume that that's the case because nurses spend the most time with patients?

A Yes, but can I explain?

Q Yeah, please.

A At the clinic things were so crowded in the waiting areas, people went through so fast, there were ancillary personnel that had a lot of contact with patients who didn't necessarily -- weren't trained to have a lot of contact with patients. So when I used that term I meant that because I could talk to people, because I -- I felt like I breached that little part of it being cold and clinical, especially in that setting, and that was one of the things I prided myself on in being able to do.

Q And the preop area, if we look at -- if we divide the procedure between preop, procedure room, recovery room, the preop is the one area of those three where you -- you have patient/staff contact with somebody while they're still alert?

A Right.

Q And perhaps frustrated because they've had to wait --

A Right.

Q -- perhaps they didn't have to wait --

A Right.

Q -- correct?

A Well, that's -- what everyone knows when you walk into a place, your first experience is what you judge the rest of it on. So when you walk in the door and they bring you to the back, to the preop area, it would be the first person that they're actually getting to the -- in the facility and is going to give them the impression of what the facility would be.

Q Okay. Correct. And then the other two -- the other two areas, the procedure room, the recovery room, they're pretty much under sedation and if there is contact with staff, it's rather minimal because they're under anesthesia?

A Right. And the fact that people are under

anesthesia. I myself have even experienced that, that you don't always have the perception of what's actually going on.

Q So that humanity is truly in the preop area?

A Yes.

Q And the -- let's focus a bit on the preop area. The -- approximately -- I understand you had at times a lot of patients and some were frustrated -- how much time would you generally spend with the patient in the preop area?

A Generally, the one-on-one it would only take me about five to ten minutes total to start an IV --

Q Mm-hmm.

A -- which is what preliminary initiated the contact and what was the purpose of the interaction. And during my conversation and starting the IV, that's when I would do some of my preop assessment also. But there are times that sometimes patients would be waiting longer in preop, waiting to go to a stretcher, then go into the procedure rooms because if a patient took longer than say another, too many polyps or other things in the procedure that were going on, it would back the whole system up.

So sometimes I can have a good 30 minutes, 40 minutes with a patient, but that wasn't the usual but it did happen.

Q So usually five to ten minutes?

A Ten minutes, yeah.

Q And during the five to ten minutes you are also assessing the patient?

A Talking to them, asking them did you drink all your prep last night? Did you make sure you didn't have anything to eat or drink? You know, anything else going on this morning? You know, was it rough? Was it hard? You know, that kind of thing.

Q Would you determine whether they had dentures?

A That was one of the things we checked off, yes. All the questions I was asking, though, would also be asked again by anesthesia when they interviewed the patient. So we did ask the same questions a lot twice, but if you asked it in the preop you're already asking the things to see if they go to the next step. If someone was confused about the prep, you have a discussion with them, see what happened and what was the question because if they didn't take the prep right or they didn't take it when they was supposed to, they wouldn't be ready for the procedure, so...

Q The -- I want to talk to you -- going back to your gestapo technique. Do you mean gestapo with respect to cleanliness?

A Rules.

Q And --

A To rules.

Q -- okay.

A To -- that's, like, been my thing all along in nursing for my 30 years now, is that I -- I've always been involved in any unit that I've ever worked at in terms of policies, procedures, knowing the regs, and knowing -- I was never satisfied with just somebody telling me this is how it had to be. I'd always know the rules of where I was going to be working.

Q And is that a part of why you were selected to be a charge nurse?

A I don't know the reasons.

Q Okay.

A I can't answer that.

Q Did you feel like you were going to be a good charge nurse because of that?

A Yeah, I've -- I definitely felt I was going to be able to do well because of that.

Q And the -- would your gestapo technique include correcting staff --

A Yes.

Q -- if you observed -- please let me finish first.

A I'm sorry.

Q You know how we have to play this stacking question/answer thing, okay? Yeah, you drink it -- water, and I'll ask the question, okay?

I -- you -- if you saw a staff member doing something that you thought was contrary to a rule, or jeopardized a patient, what would you do?

A If I was in the preop area, I would tell them to stop right there. Don't get the wrong impression, when I say gestapo, I don't mean that I was ugly to people --

Q Mm-hmm.

A -- because I was not. I was able to speak to people, but I would stop a staff member right there and I was never embarrassed to tell people, no, you can't do that. No. If a -- if a tech was carrying -- for example, if a tech was carrying a scope to hang it up to start a procedure and I would see the scope brush the ground or touch even the side of the bed or something, I'd say, Go get another scope and -- go do it quickly, but --

Q And on that topic, and I'm glad you raised that, isn't it the case that you observed both Dr. Desai and Dr. Carrol do exactly the same thing if they saw a scope touch the ground, touch the railing -- the gurney, they -- those two doctors would direct the GI tech to return the scope?

A Yes, ma'am.

Q And you saw that when you were working the procedure room?

A Yes, ma'am.

Q And I -- clarify for us again the time frame.

You were -- give me a chronology of your work --

A From May 1st of 2006, when I was hired, to December of 2006, my exclusive job was to be in the procedure room. That's where I was trained mostly, and that's where I stayed. After that part I had some illnesses that I was out some time, and back and forth in between those times. When I came back, they had rearranged where we -- so we actually then had a preop area and I wound up going into the preop area, and that was my primary place except for early in the morning when I'd start the cases. Because I was an early person, I'd do two or three cases and then I'd go into my preop area or when I would give lunch relief.

Q Educate us -- describe for us, please, your observations of the cleanliness of the procedure room.

A The procedure room was clean for the most part. It got wiped down at the end of the day, and we tried to get everything that we could in as far as walls or anything like that -- as clean as any other hospital or clinic I've ever worked at. If there were spills or something that happened during the day, one of us would get something -- it was usually me or the tech going to get something to clean it, which would be the sanitary wipes or the spray or something and clean it up.

On the top of the monitor and where the scopes were placed, those were cleaned between the procedures. There

would be a chux pad down for the procedure, and then anything they used for the procedure, those were taken all out and cleaned between and the new stuff setup. That was the tech's responsibility.

The scope room, which I didn't have much to do with, was very small and sometimes that bothered me that it's -- I didn't know how we could get so many scopes cleaned and as fast as we needed to move them.

Q Do you recall how many scopes were there at the time you were?

A I do not have any number.

Q Did you spend a lot of time in the cleaning room?

A Actually, no, because that was something that was designated. We weren't even told what the procedure was. I did not learn the procedure of how the scopes were cleaned until after the CDC came, and then I made it my point to ask questions.

Q And I -- I'm assuming that when you were going to be taking over as charge nurse, you would have eventually been trained for that or --

A I had actually attended one training from the company that provides the machines -- the Medivator machines, which is the high-level disinfectant, and I had just attended one in-service on that. But prior to that it was not felt in

the clinic that the nurses needed to actually know the one, two, threes of the processes. That was Jeff Krueger's responsibility.

Q And I know I'm kind of jumping around here, but -- well, I won't jump that far. Let me stick to the procedure room, okay?

Was there also a nightly cleaning crew that would come in and clean the facility?

A Yes, ma'am.

Q And the -- did -- were you a bit of a stickler about staff members eating or drinking food in the procedure room?

A Yes, ma'am. I absolutely was.

Q Tell us about that.

A At varying times in the morning sometimes the anesthetist would walk in with their drinks or their lunches or whatever and put them in the procedure room, and I would ask them to leave or, No, you can't do that. And most of them would ignore me, but I would then report it, specifically with Mr. Vinny Sagendorf when he started working there. He would eat his breakfast every morning on the counter in the procedure room, and that was totally inappropriate.

Him and I would have verbal volleys about it, and he would call me names and I would report it back up to Jeff Krueger and Katie Maley and that kind of thing. So even had a

discussion, I think, with Mr. Lakeman about it at one point. But it was totally inappropriate to have any kind of food or drink in those rooms.

Q Is this considered a sterile environment?

A It's not a sterile environment, it's a clean environment. But more the fact that whether the food particles -- it's a health hazard for the workers themselves to have food and drink in there. It's kind of stupid for them to do that. And then dirt and filth can be left behind, insects attracted, and then it's a health hazard to the patients.

Q All right. And as far as the gurneys being cleaned between procedures, did you observe whether that was done?

A Yes, ma'am. I actually did it myself. We have solutions and wipes. Mostly at the time we had a spray solution. You would spray the mattress down. It had what they called a kill time, which is the amount of time that the chemical has to stay on the mattress in order to kill all the -- and different products have different kill times for different bugs, so you would leave it on for two minutes or so, whatever the kill time was; some were 30 minutes.

We had different products and I can't say which product we had there because of -- every product is different wherever you work, so -- and then you would wipe it down and

then it would air dry, and then we'd put sheets on it.

But at the end of the day all the gurneys by the techs were supposed to be -- the mattresses pulled and flipped so that you cleaned both sides of the mattresses and the gurneys too. Wipe them down with the same disinfectants, and then they air-dried overnight.

Q And did -- at this time did -- at -- while you're at the clinic, do you have the work ethic that you do not like to see staff sitting around doing nothing?

A That is correct because I don't sit around and do nothing.

Q The -- back to the procedure room. The -- I want to talk about your -- well, let's first start with what you first do when a patient is brought into the procedure room. What do you first do?

A Introduce myself to the patient and the first thing I would do is hook the patient up to the blood-pressure machine and hit start, put the oxygen on the patient, make sure the patient's hooked up to the monitor and, depending upon where anesthesia was in their discussion,n, turn them on their side -- to the appropriate side for the procedure. And then the next thing I would do is go --

Q Okay. Stop.

A -- oh.

Q Sorry to interrupt you. I just wanted to

clarify something that you mentioned there. While you were doing that, hooking the patient up to the monitor, is that happening simultaneously with, generally speaking, with the CRNA doing their assessment, their interview of the patient?

A Right. The anesthetist would be talking to the patient also. And actually it was kind of common -- well, it wasn't common courtesy, but it was expected in the procedure room that I didn't ask any of my questions until the CRNA either took a -- stopped a moment or whatever so we were kind of competing to talk to them; but the priority was to the anesthetist to get their questions answered, and then we could talk to the patient and ask any of our questions.

Q And the -- did you observe the CRNA when they're doing that assessment taking notes, writing something down?

A They would mark on their sheet, whatever it was, that they were asking questions about.

Q And we've heard a lot about clocks and monitor time and did -- you said -- did you use the -- the vitals signs for the start and stop time?

A For -- for my practice at the clinic I would always go by when I hit the monitor for the first blood pressure was my time in.

Q Mm-hmm.

A That's why it was the first thing that I did.

Q Mm-hmm.

A And the time out was the time out of the last blood pressure that they took.

Q Mm-hmm.

A And that's the way I did my practice.

Q And to -- in your mind, did that accurately reflect the length of time that the patient was in -- undergoing the procedure from the start of the anesthesia assessment to the end of the procedure?

A Yes, ma'am.

Q And the EKG things that are put on, those little sticky things --

A Mm-hmm.

Q -- did those remain on the patient after the procedure?

A Most of the time.

Q Why is that?

A Well, if we put the patient out in the holding area and there was some irregularity or something else we wanted to monitor for them, it was easy to hook them back up.

Q When did those typically come off?

A When the patient's IV was coming out in post-op or sometimes when the patient got up to get dressed.

Q Okay. Let me take you back into the procedure room. You've already described for us the initial part of prepping the patient -- oh, I did want to ask you this:

When -- once a person is taken off the monitor, is there any cleanup done on the patient? Because I imagine this could be a messy procedure at times?

A Yes. Depending upon -- and that was one of the things that I was a stickler about because we didn't always have the biggest sheets or blankets, and I felt that the patients moving out of the room needed to be covered --

Q Mm-hmm.

A -- on their bottoms or their bodies or whatever for modesty purposes, but also, sometimes there was a little soilage at the back after a colonoscopy or even on their face when they do an upper endoscopy, and we would grab a four-by-four or whatever appropriate towel or whatever we needed to and clean and stick a new chux underneath the patient.

Q So you -- the patient was -- was the patient draped during the procedure for the most part?

A I always tried to make sure the patient was draped.

Q And the -- is -- let's move now to the point of the procedure where the patient is put under anesthesia. Is the doctor always present when that occurs for the most part?

A Yes, ma'am.

Q And the -- how -- I know you're not an anesthesia -- an anesthesiologist or a CRNA, but could you

tell us what you would observe when the CRNA administered the propofol? How quickly would the patient typically nod off?

A Instantaneously. Propofol is very quick acting.

Q Have you ever observed that while the patient is under anesthesia that they move?

A Not usually with propofol when you're fully under anesthesia. When the propofol is wearing off, a patient will move.

Q Have you ever had to -- did that -- did you ever have to assist in cases where the patient is moving around, the procedure is about to end, what would you do?

A Well, I wouldn't say it would be at the procedure about to end. I would say sometimes a patient in anesthesia gets really relaxed and they can turn. Specifically, they will turn off of their left side, which is, you know, how we needed them to be. So my job usually, what I did was to stand at the foot of the bed next to the technician or the physician to make sure that the patient didn't roll off of the gurney.

Q And --

A Because if your legs got crisscrossed you could pretty much pull yourself off.

Q I see. And was that something that would occur regardless of who the doctor was?

A It happened occasionally and yes, it didn't

matter which doctor that was.

Q The nature of anesthesia?

A Exactly.

Q When the procedure is underway, describe for us the lighting conditions of the room.

A The monitor was the only thing on that gave any kind of light, and some of the time there may be -- we would actually have to turn on a light to see anything else that we needed to. The nurses -- we were not at the foot, close to the foot of the bed, we were a few feet away because iridescent lighting like that was what we had to stand under so that we could see and chart. So we weren't actually there. So in the darkness of the room I wouldn't actually be able to see everything that's going on on either side. I could see the patient and I could see the monitor and the computer that was on, but it was dark in the procedure room.

Q Is it the case that the pace in the procedure room is slower because the staff members are focused on the procedure?

A Mm-hmm.

Q You have to answer yes or no.

A Yes, ma'am.

Q Thank you. Could you observe, given the conditions of -- the lighting conditions and your distance from the CRNA, could you observe what the CRNA was doing with

the syringe and vial?

A No.

Q And I know this is like gigantic, but I got to carry a 16-ounce water bottle. If this is a vial, and, I guess, you know, imagine it to be much smaller, when a CRNA is drawing from the vial, do they pretty much keep it upside down and cover the vial?

A I can't say.

Q You can't even say that?

A No, I can't say --

Q Okay.

A -- it's -- it's not a picture that I have in my head or a memory.

Q When you -- when you draw from the saline in preop, do you turn the bottle upside down?

A Yes, ma'am.

Q And you do that so that there's no air --

A Yes, ma'am.

Q -- getting into the vial?

A Yes, ma'am.

Q And going back to the propofol now, would you observe propofol vials being thrown away even though they had some small amount of propofol still in it?

A I can't say what was in the propofol. I've seen it. I can say that I saw -- I heard bottles being thrown away

during procedures. I can say that I empty needle boxes with propofol bottles containing propofol in it.

Q Okay. Fair enough. I know I -- and I -- as I understand it you didn't work recovery room too often?

A No, I did not.

Q All right. Then let me -- oh, I -- let's see. Let me jump now to, I guess, the fall of 2007. My understanding is you were out on medical leave in the September '07 time frame?

A Actually, I went out in August and came back in October.

Q And by the way, when you were on medical leave periodically, did Dr. Desai pay you while you were on medical leave?

A If I had sick time I used my sick time. The last time I was on medical leave for that extended period of time I received a check in the mail for one of -- what would be one of my 80-hour weeks.

Q So you got -- even though you burned off your medical leave you were paid --

A Right.

Q -- timewise?

A One -- well, one time I was --

Q One time?

A -- yes. It did not replace the whole --

Q Sure.

A -- that I didn't have stuff for, but I did get something that did help.

Q Good. In the -- and so I understand you were out on medical leave and you returned in the fall of 2007, correct?

A Yes, ma'am.

Q At this time frame am I right to understand that another clinic is going to be opening?

A Yes, ma'am.

Q And it -- does that account for why they were doing some personnel shifting with the supervisors?

A Yes, ma'am.

Q And so Jeff Krueger was going to relocate?

A I don't remember exactly how all of us were going to -- how it was all going to rearrange, but the one point of it was that Jeff Krueger was too -- going to be pulled too thin to monitor three endoscopy centers.

Q And so you -- you're -- you were going to eventually assume the charge nurse position for Shadow Lane and he would do other supervision elsewhere?

A Yes, ma'am.

Q The -- do you know who was going to be the charge nurse at the new facility?

A No, I don't remember that.

Q And do you recall when you were back from sick leave in the fall whether or not there were any inspectors prior to -- in the 2007 -- towards the end of 2007, do you recall whether there were any inspectors that came in to review the -- the clinic? Were you --

A AAAHC, which is the ambulatory care center, did come before I came back in the -- the time frame --

Q Oh.

A -- that I was gone. They came, like, in September or the beginning of October.

Q And do -- was that in -- in conjunction with the expansion of the clinic to --

A No, that --

Q -- relocate?

A -- was the regularly scheduled --

Q Oh.

A -- every -- I can't remember if it's three or four years -- I believe it's three. In order to have an ambulatory care center, you have to be certified with either JCAHO, which is the hospital-based accrediting and regulations, or you can do AAAHC, which is just for ambulatory care centers, and that was the facility's certification and it was just the regular time for them to have their evaluation.

Q Had you had any experience previous to '06 when you came to Las Vegas with Ambulatory Surgical Centers?

A Yes, ma'am.

Q And were those in connection with hospital settings?

A Yes, ma'am.

Q The -- I understand you were just in training to take over the charge nurse position and you never actually assumed it because the clinic was closed eventually, correct?

A Yes, ma'am.

Q Could you tell us what kind of training you did have to begin that process?

A Well, one of the things was that I was sent to a class -- well, actually they came to us, but the usual class, I sat in on a class where the techs were being trained how to do the cleaning in the room with the scopes. I attended that class which was like a -- it was the first part of a couple of hour different schedule trainings. Kind of going over on how they expected the cases to flow, which you kind of pick that up anyway if you were familiar and had worked at the clinic, you knew how things were supposed to flow and how many cases we did and what the doctor's -- expectations for each individual doctor were for their patients and what things they wanted in the room.

Getting to know some of the policies as far as personnel goes. How we train them. How we hire and fire. But mostly at that point it was still just going through the

day and making things better. Some things had changed from prior to my sickness to then. At the same time Dr. Desai was out as I was out and Dr. Carrol was assuming more responsibilities, and he was changing numbers and how fast we go through patients and those expectations.

So that's kind of the stuff that I was learning at the time.

Q And Dr. Desai was out the same time you were out; do you know why?

A Yes, he had a stroke.

Q And then do you -- can you estimate if you know when he returned to the clinic?

A He and I returned the same week.

Q Oh, all right. Do you know when that was?

A The week after the -- well, I believe it was the 21st of October week, I believe. Somewhere around there.

Q And so you were working towards under -- get -- understanding the administration policy of the practice and making improvements along the way?

A Yes, ma'am.

Q Now, did you -- I know I'm kind of jumping around here -- in connection with your concern about unprofessional conduct of a staff member, did you ever observe any unprofessional conduct on the part of Rod Chaffee?

A Yes, ma'am.

Q Would you please describe what you observed? I don't want you to tell me about what you heard from other people, just what you eyeballed. And before you do that, can you tell -- set a foundation for me when this occurred?

A This would be early on of when I was there, back when I was still in the procedure room. So we're talking about the time frame of May 2006 to Christmas of 2006, when he was still training me and things like that. Unprofessionalism in that -- one thing that he would do sometimes is he would -- if he didn't have a strip on a patient when the patient went to leave the room -- and when I mean "a strip," I mean an EKG strip -- he would pull it off the monitor and maybe use it on that patient; but if he didn't have one, he would go into this drawer where he had several of them stored, and then he would just put an EKG strip on a patient's chart.

Q Did you put a kibosh on that?

A I didn't have the power at that time to do much about it, other than tell him that's wrong, I completely disagreed with it, and report him to my two supervisors.

THE COURT: Are you saying he used EKG strips from other patients?

THE WITNESS: Yes, ma'am.

THE COURT: So patient A had an EKG strip in the drawer, and then patient B came in and if they didn't have a new one for patient B, he put patient A's strip on patient B's

chart?

THE WITNESS: Yes, ma'am. I'm saying that.

BY MS. STANISH:

Q Did you observe any other unprofessional conduct on his part?

A He told a nurse -- another nurse and myself --

MS. WECKERLY: Objection. Hearsay.

MS. STANISH: Oh.

THE COURT: Well, I'm not sure if it's being offered for the -- don't --

MS. STANISH: I can --

THE COURT: -- if it's offered for the truth, I mean, if it's verbal...

BY MS. STANISH:

Q The -- let's start with a foundation.

A Okay.

Q First, tell me when and where your next observation occurs?

A Would be in a procedure room. He was talking to another nurse and I between patients, and he made the words to the effect that he could blow up this place, that he hated Dr. Desai and he could blow up this place. And at that point I reported it to my supervisor then, and was like, Okay, this ain't happening, so...

Q And when it -- when did that occur?

A I can't even give you a date on that. I -- I'm a -- I don't know when Rod's last days were. Well, it was that day, actually, but -- it's hard for me to give time frames other than when I know I was there because I was out sick so much and when I would come back, people and things had changed, people had left and coming back and forth, so that's why.

Q And then there came a time when he was no longer working there?

A Correct.

THE COURT: And you reported that incident to your supervisor that day?

THE WITNESS: Yep, immediately --

THE COURT: Immediately?

THE WITNESS: -- and --

THE COURT: And by "supervisor" who are you talking about?

THE WITNESS: I called Jeff Krueger and Katie Maley, and Tonya Rushing was notified and the police were called.

THE COURT: Okay. Did they interview you?

THE WITNESS: The police?

THE COURT: Yeah.

THE WITNESS: No.

THE COURT: Okay.

BY MS. STANISH:

Q By the way, can you estimate for us how many people were employed by the various clinics? I recall you saying you did some research before applying there. Do you know how many people were employed by the various clinics?

A No, I can't say that. No, because when you say "various clinics", I have no idea how many people were employed at the gastrology side where they had the offices versus where we were. I know Shadow Lane Endoscopy had about 40 employees total.

Q I see. And did that include doctors, or are you just focusing on --

A Staff.

Q -- staff? Okay. Now, I want to move you to the 2008 time frame when you learned about the clinic having the -- being the center of a hepatitis outbreak.

A Yes, ma'am.

Q I know you survived Katrina, but this was a bit of a different sort of hurricane; fair enough?

A Just as devastating, but, yes, ma'am.

Q And it was devastating.

A Yes, ma'am.

Q Was it devastating for the patients who contracted the hepatitis C?

A I was horrified that that --

Q It was devastating for the staff?

A Yes, ma'am.

Q Were you there when the CDC arrived?

A Yes, ma'am.

Q And the -- in fact, you were being -- this was when you were being trained as charge nurse, correct?

A Yes, ma'am.

Q The -- tell me what your contact was with the CDC?

A I did not have a lot of contact when they came there.

Q Okay.

A They already were interceded by other employees at the front desk, which is where most people would enter to come -- conduct business with us. Anytime anything -- anybody, any kind of survey or anybody would come, we were supposed to call Tonya Rushing immediately and let her know that someone was there.

So that happened and the next contact that we had was that Tonya had a staff meeting with us, instructed us to cooperate, that there's been a cluster of hepatitis C outbreak, that all the patients had had procedures at Shadow Lane, and that we were to cooperate fully and do whatever they asked us to do.

Q And was the main objective of the clinic to figure out what went wrong?

MS. WECKERLY: Objection. Calls for speculation.

THE COURT: State your question again.

BY MS. STANISH:

Q Was the objective of the clinic to find out what went wrong?

THE COURT: Yeah, I don't think she can answer. I think that -- she'd have to speculate about what --

BY MS. STANISH:

Q You were at --

THE COURT: -- other people wanted to do.

MS. STANISH: Thank you.

BY MS. STANISH:

Q You were at a meeting with Tonya Rushing, correct?

A Staff meeting. Everyone, yes --

Q Staff meeting?

A -- ma'am.

Q Who all was there?

A Everyone. Jeff Krueger, Katie Maley, Tonya Rushing, all the staff technicians and nurses that were there that day. I can't recall specifically everybody there, but it was -- everybody that was there was pulled to the side away from patients and told us -- told that.

Q To -- told what?

A To cooperate fully with the CDC, and that there

had been a cluster of hepatitis cases and they had all had procedures at our facility.

Q It was important to you personally to find out what went wrong, correct?

A Absolutely.

Q And in fact, you assisted Dr. Carrol in his mission to do that, correct?

A Yes, ma'am.

Q You helped Dr. Carrol review the patient -- the various patient files in an effort to find out what went wrong, correct?

A I was approached by Jeff Krueger that Dr. Carrol had requested -- since I was not there during the time of the infection in September -- that he wanted me to take the time to go over the charts and see what my opinion of the situation was. So I was actually taken out of doing patient care -- and in order for me to be taken out of patient care it was something very serious -- so they took me out of patient care, put me in a room, and brought me all the charts.

Q I see. Oh, I just want to touch on a few things that I forgot. I'm going to jump around even more.

Training. As a nurse you have to have continuing education, correct?

A Yes, ma'am.

Q And explain to us what that involves.

A It -- it's the Board of Nursing is requesting you to continue some sort of training, either in general nursing or whatever area you want to. I usually try to select the area that I'm working in. So I might seek out something on endoscopy if it was endoscopy or if it was OB -- OB or whatever. Or if it's something new. To medicine sometimes they offer CEUs, and that's continuing education credits. We have to have 30 every 2 years from Nevada.

Q And would the --

A Four years, sorry.

Q -- I'm sorry?

A It's -- it's 30 for 4 years for Nevada.

Q And would the clinic pay for the training?

A No, ma'am.

Q Oh, you had to pay for those continuing --

A Yes, ma'am.

Q -- units that were outside the clinic?

A Yes, ma'am.

Q By -- offered by private organizations?

A Yes, ma'am.

Q And were there in-house, in-services?

A We had in-house, in-services, yes. They were usually related to the yearly things that we needed to do for safety and infection control. Shadow Lane would hire an outside company to come once a year to do that, and usually I

would attend more than one in a year -- calendar year -- just because of the way it fell, and other -- trying to get other people to attend.

A physician is also -- and the CRNAs are supposed to attend those. We also had to do CPR and ACLS -- advanced cardiac life-support training.

Q Do you know if the doctors had to be certified for that cardiac arrest --

A Intubation?

Q -- correct. If you know?

A I can't recall.

Q All right. You had mentioned some training on the Medivator. Is it the case that while you were there that the representative of the manufacturer would hold a periodic training on how to use a Medivator?

A Yes, ma'am.

Q And was that primarily for the GI staff?

A The techs, yes, ma'am.

Q I see. Almost done. I could be done, in fact. Hold on.

A Take your time.

Q I have no further questions. Thank you, ma'am.

THE COURT: All right. Thank you, Ms. Stanish.

Redirect?

REDIRECT EXAMINATION

BY MS. WECKERLY:

Q Good morning.

A Good morning.

Q You mentioned early on in the -- well, in your direct and your cross-examination that it was important to you to bring some humanity to the patient's experience when coming to the clinic?

A Yes, ma'am.

Q Did you feel you were limited at all in your ability to do that?

A Yes, I did.

Q Okay. How so?

A I did not feel that the patient's privacy in -- as a whole was taken into account. We were in such a small area, a curtain doesn't prevent other people from hearing what's going on. So even patients changing behind a curtain doesn't offer them much comfort when you put a -- then you walk them down a hallway to the preop area, basically totally naked in a -- in a gown.

Then when a patient would be on a stretcher, not all of us are made the same size, so one sheet that was supposed to be -- it's a smaller sheet -- used to throw over a person is not necessarily enough to cover someone.

A lot of times the anesthetists were very abrupt with patients. At first I attributed it to the fact that we

had so many people cranking out of that place that nobody had time to be nice. Some of it I attributed to the fact that I was in a different place that I wasn't used to working, and I just felt sometimes that people were very rough with patients in how they talked and abrupt, instead of being compassionate and nice, which is what I was used to doing.

Q And -- and so for your -- your role when you were in preop or in, you know, your sliver of the -- of sort of the whole process, that's -- that's what you would do -- you would try to maybe be -- bring some humor or talk to them, the patients, in a friendly way to kind of make it an easier process?

A Right. I would try and -- not intentionally, but it's just my way of trying to make people laugh. And, you know, like, one of the things that used to bug me is that -- we had put -- Dr. Desai and Katie and Tonya had purchased these chairs to go in the preop area and they are very -- were very narrow chairs. And we had three of those, and any big gentleman or any lady with large hips is not going to fit in there. And so I didn't want patients to be embarrassed -- I didn't want to be embarrassed for them -- so we had a fourth chair in there, so when it was said that I'd -- there might be four patients in there, yeah.

There was two reasons why people would sit in that chair -- that fourth chair. One, it was an armless chair that

didn't move, so that larger patients didn't have to be embarrassed in trying to squeeze in the little chair, and the other part was, is that if the techs accidentally moved the patients too quickly into the preop area and I didn't have one of the three chairs open, I would have them sit in that chair because I didn't want half-naked people having to walk all the way back to the front and have to wait there. It didn't make any sense, so --

Q Was bringing in that chair your doing when you took over --

A Yes, ma'am.

Q -- kind of preop? And so there were -- I mean, not -- there were measures you took that were within your control to make it a better process?

A Yes, ma'am.

Q Did you -- when you were working in preop, did the CRNAs come into preop and talk to their patients at all?

A Sometimes if we -- it depended upon the flow of the -- how things were moving. It was very -- it was like a dance, I guess you could say, that if another one got tied up and they had a -- anesthesia had a patient in a procedure room waiting for a procedure and the doctor and anesthetist were busy in this room doing a procedure that was taking too long, the anesthetist could very well come out into the preop area and do the preop interview on the patients in the preop area.

So it was just a way of kind of saving time.

Q And how frequent would that be?

A A few times a week, probably.

Q Now, Ms. Stanish talked to you quite a bit about your observations of the procedure room and the wipe down that occurred between patients and the kill time on all -- on the, I guess, on germs or whatever that would be on the gurneys. My understanding from your testimony is that you were in the procedure room from May of '06 to 12 of '06, and then, maybe in the morning or to cover at lunch later on?

A Correct.

Q So those observations that you were discussing with her about the -- what occurred in between or the turnover, would that be in that May '06 time period to December '06?

A I would say that would be my whole history there.

Q Okay. Were you, like -- I mean, when you -- in '07 when you would start the morning and then you would do the lunch hour, were you able to observe the procedure room, you know, throughout the day or just those --

A Just the times that I was in there.

Q The -- you were -- you went to a class, I guess, on the proper cleaning of the scopes?

A Yes.

Q Yeah. And that was in -- after the CDC came?

A Actually, yes. It was scheduled before then, but it was -- we usually got the Medivator people to come about every six months based on how often the techs were hired. That was a class the techs had to go through, but usually the nurses never did. Because I was supposed to be charge, that was the first time I was ever learning how all that happened and --

Q For your future --

A Yes.

Q -- position? And did it seem to you that there was a lot of turnover, or the scopes kind of were in constant rotation?

A The scopes were always in constant rotation. I did have concern. That was something I watched. We would have to write the scope number on the nurse's note, and even though the scopes could rotate between the two rooms, I would question them if I thought in my mind, and as fast as things were going, that maybe scope 006 came back to me too quickly. So I would ask the technicians, Is this one really back so soon? Show me -- you know, has it been cleaned? How long has it been out, you know, so that I would check back and see.

Q So you were kind of keeping track of that when you were in the procedure rooms?

A As good as I could. I mean, it wasn't a ledger

or anything --

Q Right.

A -- because everything was too fast.

Q Was that easier to do when you were there all day, or, you know, I mean, in the --

A Yes.

Q -- when you did the first couple cases in the morning, you might not know that, right?

A Right. Right.

Q Now, it sounds like food in the procedure room is something you really didn't like?

A No.

Q And that you weren't shy about expressing your opinion that that was totally inappropriate?

A Nope. I certainly did.

Q And you -- did I hear you say that you discussed that with Mr. Lakeman as well?

A Yes.

Q What did you see him do?

A Well, it wasn't that I discussed it with him like he did it, they all kind of had bottles of water stashed different places in the room, so that kind of was something -- and I could live with that because even JCAHO says in a hospital a nurse can have something as long as it's a closed container, you know, on her work station.

No, I spoke to Mr. Lakeman because Mr. Sagendorf was blatantly, not only doing it, but taunting me --

Q So it was like an actual -- a pretty big disagreement you had?

A Yeah.

Q And what was Mr. Lakeman's take?

A Well, everybody kind of was like, Well, it's not really a big deal, you know; and I'm like, It is a big deal. I just didn't feel it was given this importance by Mr. Lakeman. The reason why I went to him is because we did have a rapport, and then also, he kind of was -- I don't know if it was official or anything, but we all kind of thought he was over most -- or could talk to the CNAs about their behavior.

Q But in your opinion, it wasn't taken seriously or --

A No, it was not.

Q -- you were sort of, you know, come on, lighten up or --

A No.

Q What was -- I mean, in general what was the nursing staff's relationship with the CRNAs?

A The nursing staff, I felt, were tolerated by the CRNAs. In this clinic the CRNAs had the last word. The nurses didn't necessarily have as much to input anything on except to chart in the room, and that was not the role that I

was used to having.

Q And would it -- would it be acceptable for a nurse to correct a CRNA?

A Not at that clinic.

Q Now, when Ms. Stanish asked you about how you charted your times when you were in the procedure room and you ran it -- your start time was the initial calculation on that blood-pressure monitor?

A Yes, ma'am.

Q And so whatever time that is, that's what you write down as your start. And you -- you said -- your answer to her was, well, my practice was to do it this way and the end time is the last reading from that monitor; is that fair?

A Yes, ma'am.

Q And that was your practice. Are you aware of whether or not that was everybody's practice?

A That was not everybody's practice.

Q What were some of the other practices you were aware of?

A Well, first of all, Mr. Rod Chaffee had his little draw of EKG strips that he used. I don't know the specifics and I don't remember what the calculations were, but I know there was something as far as you're supposed to add, subtract or whatever is how they were in recovery. And I refused to do that, so that's why I wound up never working

recovery because I felt like I was making up numbers and I wouldn't do it.

Q So was there like a formula in recovery and you were --

A I believe so, but I -- I can't remember it because I didn't participate. I knew the way that I could practice what I needed to practice was to go by my first blood pressure and my last blood pressure. I knew that's when the patient was in the room.

The other complicating part about that was I was always taught that when you do a procedure everybody uses one time.

Q Mm-hmm.

A It would usually be the clock in the room -- on the wall. At the clinic we had several times. We had the CRNA's watch. We had the blood-pressure machine. And then, the physician's charting was done in a computer. And even though we tried to keep the time set, the batteries would run out on the clocks on the wall, the time, you know, daylight savings time would go with the blood-pressure cuffs, the -- we would put their names in when the patient first went into the room on the doctor's charting -- computing -- computer, sorry, and so you might have several different times there.

So for me to be saying a no, ha, ha, if I ever had to explain myself, that my times are when I first put the

blood-pressure cuff on and got the first blood pressure and when I took the last blood pressure on the patient.

Q And that blood pressure time, would that be synchronized at all with the clock on the wall or the computer or the CRNA's watch, or was everybody kind of working from a different --

A Who knows.

Q -- point? Okay. Who knows?

A I -- who knows?

Q Now, you talked about Mr. Chaffee and this -- this drawer he had of strips?

A Yes, ma'am.

Q Are you -- is it possible to get that machine to just print out a strip in a certain time increment?

A I don't --

Q Like, can you get it to print, for instance, every 11 minutes or something like that?

A No -- well, you set it up when you're in the procedure that it's supposed to give you blood pressures every 2, 3, 4, 5 minutes --

Q Okay.

A -- but as far as to print a strip and then reprint it with different times, you can't alter that. It would be -- you would see one strip with the exact same times for another patient.

Q But -- I mean, I -- you know, based on what you observed with him, that some of those monitor strips that are in a patient's chart did not belong to that patient?

A Correct.

Q You were asked on -- on cross-examination about the AAAH --

A C, yeah.

Q -- C? Okay. And you weren't present when they were actually there because you were ill or you were on your --

A That time I was not, no.

Q So you don't know what they maybe observed or did or anything like that?

A All of that would be speculation.

Q Okay.

A Or rumor. I'm getting good at this.

THE COURT: You're getting -- I was going to say.

BY MS. WECKERLY:

Q You knew the objection it would draw. Last thing --

A Sorry.

Q -- last thing I just want to --

THE COURT: Feel free to object to the questions yourself.

BY MS. WECKERLY:

Q I want to talk about the -- the outbreak of hepatitis C, and you said it was -- it was devastating?

A Yes, ma'am.

Q And it's -- it's devastating that something like that could happen when everybody knows ways to prevent it; is that fair?

A Yes, it is.

Q And for you as a professional, I mean, it -- has it been costly for you?

A You're going to make me cry.

Q Oh, sorry.

A I couldn't get a job for a long time after because I had Endoscopy Center.

Q Now, do you need a minute or can I --

A I'm okay.

Q -- okay.

THE COURT: Well, we've got tissues already.

THE WITNESS: Thank you.

BY MS. WECKERLY:

Q Now, you mentioned that the meeting with Tonya Rushing, where she announces that the CDC is going to come in --

A Yes.

Q -- you know where I'm -- what I'm talking about? Now, you said all the staff was at that meeting?

A Yes, ma'am.

Q Were the doctors present?

A I can't recall. I know they knew about it --

Q Okay.

A -- but I don't think any of the physicians were there.

Q Okay. Were the CRNAs there?

A I can't recall.

Q Was Desai -- Dr. Desai there?

A No.

Q Now, you -- you assisted Dr. Carrol because you were trying to figure out how this could have happened, or if there was any kind of thing you could discover from looking at the patient charts from that day?

A Yes, ma'am.

Q And you actually didn't work that day, right?

A Right.

Q Did you notice anything about the -- the anesthesia times or the procedure times from your review of the charts?

A The anesthesia times go longer than what the procedure times are marked down in the blood pressures and the nurses' notes. There's different times everywhere.

Q Okay. So there was timing inconsistencies; is that --

A Yes, ma'am.

Q -- fair? And from -- do you remember what you told the Las Vegas Metropolitan Police Department was, at least at that time, your thought of how this -- how the disease got transmitted?

A Well, I did -- I couldn't understand how the disease had gone from one room to the other room. And I kind of felt like -- it was kind of a joke on my part, but nobody's taking it as a joke when I said it, that there was an outside force, that someone had arbitrarily done something and infected people is what I told the police department when they first came.

Q Sort of like a rogue employee or --

A Yeah, like I -- I couldn't -- none of it was making sense, what the CDC was telling me, what the State had published, what any of it -- didn't make any sense to me.

Q But that -- that theory of yours, did you discuss it with Dr. Carrol?

A Well, Dr. Carrol and I had several discussions about things, but we both felt that somehow this wasn't making sense. It -- the answers were not there for he and I.

Q And at least as to the idea that it was an outside force or a rogue employee, do you hold that opinion now?

A No, because the only person I thought could be a

candidate of that was not employed at the time. So that's not a possibility.

Q Thank you.

MS. WECKERLY: I have no other questions.

THE COURT: All right. Any recross, Mr. Santacroce?

MR. SANTACROCE: Yes.

RECROSS-EXAMINATION

BY MR. SANTACROCE:

Q The conclusions that the CDC raised and the Health Department did not sit very well with you, did it, or Dr. Carrol?

A Correct.

Q And you and Dr. Carrol had concerns as to how the disease could go from room to room, correct?

A Correct.

Q And you had concerns as to how the disease could skip over patients; isn't that correct?

A Correct.

Q You talked about an incident where you went to Ron about Sagendorf eating in the procedure room, correct?

A Yes.

Q And you went to Ron because he was a friend?

A Partially, and he also could speak to all the anesthetists.

Q And you wanted him to speak to the other

anesthetists?

A Yes.

Q Okay. You had a chain of command at the clinic, correct?

A Yes.

Q And your immediate supervisor was Jeff Krueger and Katie Maley, correct?

A Yes.

Q Did you go to them about it?

A Yes, I did.

Q Okay. And what was their response?

A They talked to Dr. Desai -- oh, this is what they told me, I can't speak for -- that they actually did it --

Q Okay. Don't tell me what they told you, just tell me if --

A Okay.

Q -- anything occurred/changed?

A No.

Q Nothing happened?

THE COURT: You're very good at this evidence stuff.

BY MR. SANTACROCE:

Q The fact is that it wasn't Mr. Lakeman you were concerned about eating in the procedure room, it was Mr. Sagendorf, correct?

A That's correct. That's what I said.

MR. SANTACROCE: I have nothing further.

THE COURT: Ms. Stanish?

RECROSS-EXAMINATION

BY MS. STANISH:

Q Could you please identify for us the names of the nurses, if you recall, that you believed shared your passion for meticulous care of patients?

A Lisa Falzone, Lynette Campbell -- I'm trying because I see faces and I don't have names --

Q Yeah.

A -- for them. So many people went through. Peggy Tagle wanted to do the right thing. Jeff Krueger, when he took care of patients shared the same thing as me. I can think of a lot of one-day people, but I don't know their names, so...

Q Okay. Fair enough. Thank you.

THE COURT: Nothing else?

MS. STANISH: I have nothing further. Thank you.

THE COURT: Ms. Weckerly?

MS. WECKERLY: Nothing. Thank you.

THE COURT: Counsel, approach.

(Off-record bench conference.)

THE COURT: We have a number of good juror questions up here. So I'm going to read them -- or ask them to you in

no particular order.

THE WITNESS: That's okay.

THE COURT: All right. How many open bottles or vials of saline were open and used at any given time in the preop? Meaning, how many bottles were open at any one time?

THE WITNESS: If I was in there it would be one --

THE COURT: Okay.

THE WITNESS: -- because I --

THE COURT: Did you observe, maybe what other nurses did or this, you know, condition if you came in, like, later in the day or --

THE WITNESS: There might be multiple bottles in there open, but as I said before, my -- my practice is to throw them all away and start with my own. So I would only work out of one until it was finished.

THE COURT: Okay. So if you came in and there was already an open bottle, you would discard that bottle and open another bottle?

THE WITNESS: Yes, ma'am.

THE COURT: And then your practice was to use -- completely empty a bottle, discard it, and then open a new bottle?

THE WITNESS: Yes, ma'am.

THE COURT: But other nurses sometimes would use -- have several open bottles going at one time?

THE WITNESS: Yes, ma'am.

THE COURT: Okay. Were the multi-use bottles of saline opened fresh every morning, or were partial bottles used from the prior day the next day?

THE WITNESS: I would always throw them away.

THE COURT: Okay. Do you know what other nurses did by your observations?

THE WITNESS: You know, when I would come in -- say, I didn't do the preop first thing in the morning, I was doing cases, there could always be open bottles of saline in the -- in the utility trays.

THE COURT: Okay. When reviewing patient files, did you notice any climb in the time for the procedures? Meaning, I guess, the expansion, you know, that it increased?

THE WITNESS: Some of the anesthesia times are longer than the actual procedure times.

THE COURT: Okay. Was that consistent throughout the files that you reviewed or did the time increase over time, if you will? Meaning, later files had longer times or earlier files had longer times, or any --

THE WITNESS: Nothing consistent.

THE COURT: -- any pattern like that? No.

THE WITNESS: Nothing --

THE COURT: Okay.

THE WITNESS: -- consistent that I can remember.

THE COURT: Have you ever observed anyone precharting at the clinic?

THE WITNESS: No, but can I explain that?

THE COURT: Sure.

THE WITNESS: I think some people misinterpret what precharting is in some ways. The charts, the way they were at the clinic, I could go and write in preop the patient's preop diagnosis on the nurse's notes because everybody knows that Ms. B. is coming in because she has heartburn. And I could fill out that Ms. B. has allergies on the nurse's note, but that's not considered precharting. I'm not charting what the event is. I'm not charting that I turned the patient and the patient was okay before the procedure even happened.

But there were parts on that chart that you could write in, and preop did do that sometimes to speed things along. You have to understand how many patients we've been moving through, to write down the preop diagnosis, the procedure they were having, and allergies before they even got into the room.

THE COURT: Like drug allergies, things like that?

THE WITNESS: Right.

THE COURT: Okay. And those were taken, I'm assuming, from the existing medical records?

THE WITNESS: A lot of times I always talked to the patient --

THE COURT: Okay.

THE WITNESS: -- because you can get discrepancies --

THE COURT: To make sure --

THE WITNESS: -- wrong paperwork, that kind of stuff.

THE COURT: -- okay. How long did Rod Chaffee work at the center? I mean, you probably don't know from --

THE WITNESS: That's a guess.

THE COURT: -- before you started -- was he already there when you started?

THE WITNESS: He was there when I started. He was one of the people that I was supposed to be trained by, and he was gone -- he was gone before the summer. I think he was gone, like, in the spring of 2007.

THE COURT: Okay. So how much overlap would you have had, you know, approximately?

THE WITNESS: A year.

THE COURT: Okay. And when you saw him taking, you know, EKGs from one patient, putting them on the chart of the other -- of another patient, who else would have been -- was present that would have also potentially witnessed that or seen --

THE WITNESS: I don't think anybody would have because it was usually at the end of the case, the room is dark, and the nurse is finishing up the stuff, so I can't say that a lot of people would have seen that.

THE COURT: Okay. And did you observe anyone else doing anything unprofessional?

THE WITNESS: Unprofessional in the care of the patients, I saw anesthetists and people sometimes be very abrupt with patients. Linda Hubbard and I got into a heated discussion one day. Sometimes the patients didn't answer the CRNAs quickly, appropriately, didn't understand, whatever, and so there could be, like, a confrontation between them. Like, I asked you -- if I asked you if you've taken medicine, did you take a medicine. That kind of thing. And well, I don't understand that kind of stuff.

Linda Hubbard got into an argument about it -- with a patient because the patient didn't want the blood-pressure cuff on a certain arm or -- or something. But she's like, doing this with the arm and trying to put it on roughly, and I'm like -- I had to stop what I was doing, walk over there, and say, Linda, go away. Let me take care of the patient. And she was still aggravated, and I -- you know, it was like -- at that point you say I'll report it, but you can't do anything about it right there, except advocate for the patient.

THE COURT: Mm-hmm.

THE WITNESS: Maybe one or two things like that. There's maybe some inappropriate conversations when patients were asleep about things that shouldn't be in a procedure

room, whether it was people's lives or comments about patients, but nothing that would hurt any patient.

THE COURT: Because they're asleep, so they don't -- they don't hear what's being --

THE WITNESS: Yeah, and that's --

THE COURT: -- said about them.

THE WITNESS: -- I mean, anybody who thinks that that doesn't happen is kind of silly; it does happen.

THE COURT: That's not unusual?

THE WITNESS: Yeah.

THE COURT: Okay.

THE WITNESS: Any hospital, any OR, any --

THE COURT: The staff is talking about the patient, like maybe their body or whatever. That kind of thing? Okay.

THE COURT RECORDER: She has to answer out loud.

THE COURT: Did you --

THE WITNESS: Yeah -- yes, ma'am.

THE COURT: -- was that yes? Yeah.

THE WITNESS: Yeah, I'm sorry.

THE COURT: For the record. In your training on the Medivator, was there anything taught on running one-time use bite blocks in the Medivator?

THE WITNESS: No.

THE COURT: Okay. You stated that only 50 percent of the staff was attentive to details. Can you elaborate on that

statement?

THE WITNESS: I would say that, just like I'm talking about about the blanket or the covering of a patient, a lot of people didn't think anything of pushing the patient out of the procedure room, across the room to where the preop area is and their butt was hanging out or their shirt was pulled down too far or -- it was just kind of -- and some of that was the techs who really weren't medical people, you know, so they would just push a patient out, and I'd be walking by and grab the sheet and pull them. That was one of my big -- big pet peeves a lot of times.

Or just being conscientious of the patient. I can't think of another one, but that was my --

THE COURT: Of those specific, okay. So, like a lack of concern about patient modesty and that sort --

THE WITNESS: Yeah --

THE COURT: -- of thing?

THE WITNESS: -- or, you know, when patients -- we had a lot of language barriers and sometimes I felt like people -- people, nurses, nurse anesthetists, would be impatient with language-barrier situations. We had interpreters. I also learned a little bit of really bad Spanish. And we -- that was fun. Peggy Tagle in one room going, se habla Espanol, and I'm in the other room saying the same thing and it doesn't sound like anything.

So the being impatient with patients who couldn't answer or couldn't understand.

THE COURT: Who weren't fluent in English and -- okay. And you had -- you said there were interpreters. Are those just Spanish-language interpreters or --

THE WITNESS: Oh, we never had official interpreters, which, kind of by the rules of the whole gambit is not --

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

THE WITNESS: -- okay.

THE COURT: -- yeah.

THE WITNESS: We had other employees who were there who spoke Spanish fluently, and if we could we would wrangle them in from their duties and say, can you please come help us ask all these questions.

THE COURT: And was that the primary language that you had difficulty with?

THE WITNESS: Yeah, we had Tagalog and we had --

THE COURT: I was going to ask.

THE WITNESS: -- a few others.

THE COURT: Mm-hmm.

THE WITNESS: But we always seemed to have somebody.

THE COURT: So you might have, if there was a Filipino Tagalog speaker, there might have been a Filipino employee who could translate?

THE WITNESS: Yeah, and we -- we would also pull from

the gastro center if it was something -- they might have somebody over there that could come across and interpret.

THE COURT: Okay. Were there specific -- or did you observe any specific thing that was going on that caused other employees at the center to be inattentive?

THE WITNESS: I'm having trouble understanding that. Like -- you'll have to elaborate.

THE COURT: All right. Well, I don't want you to speculate, but, you know, like, what would cause that essentially?

THE WITNESS: I -- my thought would be speed was the most overbearing thing of us having to do everything so quickly with the volume of patients to be inattentive.

THE COURT: Okay. And was there a specific area of the clinic that you observed this inattentiveness more than, you know, other areas of the clinic?

THE WITNESS: No.

THE COURT: All right. Ms. Weckerly, do you have any follow-up on those juror questions?

MS. WECKERLY: No. Thank you.

THE COURT: Mr. Santacroce, do you have any follow-up on those juror questions?

MR. SANTACROCE: No, Your Honor.

THE COURT: Ms. Stanish, any follow-up on those juror questions?

MS. STANISH: Can I think a bit? Nothing further.

THE COURT: All right. Any other juror questions?

Ma'am, there are no further questions for you. Thank you for your testimony. Please don't discuss your testimony with anybody else who may be a witness in this case.

THE WITNESS: Thank you.

THE COURT: Okay. And you are excused.

THE WITNESS: Thank you.

THE COURT: Just take a break before we move into the next witness. Ladies and gentlemen, we're just going to take our morning recess for about 10 minutes, or as long as you need. The morning recess. I say 10 minutes more for the benefit --

MS. STANISH: As long as you need?

THE COURT: -- of the lawyers, so I make sure that they're back.

During the recess you're reminded that you're not to discuss the case or anything relating to the case with each other or with anyone else; you're not to read, watch, listen to any reports of or commentaries on the case, 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.

(Jury recessed at 10:29 a.m.)

THE COURT: All right. And our next witness is pretty much the rest of the day?

MS. STANISH: Yes, I'd --

MR. STAUDAHER: That's what we've --

MS. STANISH: -- say.

MR. STAUDAHER: -- been told.

MS. WECKERLY: That's our understanding, but he is the only witness --

MR. STAUDAHER: Witness that --

MS. WECKERLY: -- we've got.

MR. STAUDAHER: -- we have.

MR. WRIGHT: And he'll take --

MR. STAUDAHER: The other witness that we potentially had --

MS. WECKERLY: Had a family --

MR. STAUDAHER: -- child had an --

MS. WECKERLY: -- in crisis.

MR. STAUDAHER: -- accident, apparently.

THE COURT: Okay.

(Off-record colloquy.)

(Court recessed at 10:30 a.m. to 10:42 a.m.)

(Outside the presence of the jury.)

THE COURT: For the lawyers' information. The jury is asking the bailiff, why do they have to ask the same question five or six times? So, you know, we don't have to

cover everything on redirect and recross that's already just -- I'm just conveying that to you. Obviously, the bailiff has no -- didn't respond to that, but that's what they said.

They also asked if we could start earlier and go later every day because they're basically getting sick of having the, you know, the length of the trial, and they're concerned that it's clearly taking longer.

So the bailiff just said he didn't think so, but he'd, you know, talk to the Judge or something like that. So my thinking is this, being aware of Mr. Wright's issue: maybe starting earlier, like 30-minutes earlier, so on Mondays -- because then you've had the two weeks of the -- I'm sorry -- two days of the weekend to prep, and then going later on Fridays starting June 5th because that is when our Safekey mom won't have the childcare issue anymore.

MS. STANISH: Can we get a --

THE COURT: So that way the late day, you've got two days, Mr. Wright. I know you objected yesterday to my suggestion of running 8 to 6 every day. If we do the Monday early start and the Friday late, then you've got the two -- two days there of the weekend, something like that, so...

And then, obviously if we have later starts for whatever reason, then we can -- after her -- the Safekey issue is resolved, we can go later on those days because our total

trial time for the day would be less.

MS. STANISH: Okay.

THE COURT: Because I think, Mr. Wright, correct -- your concern is not just prep time for yourself and your client, your concern, as you indicated yesterday, was your client kind of wears down having to sit here all day, as we all do. But -- okay.

So anyway --

MR. WRIGHT: But it's not only prep time, it's going over what happened during the day, and then getting ready for the next day. And that's why I had asked for the accommodation of short times to begin with.

THE COURT: Well, and --

MR. WRIGHT: And then you --

THE COURT: -- we've been --

MR. WRIGHT: -- and I -- and the bailiff can tell them -- why do they ask so many stupid questions?

MR. STAUDAHER: I think I would pass on that one.

THE COURT: I think -- I like it -- I like the -- I think the juror questions are good for the record -- or not for the record.

MR. WRIGHT: This People's Court horse crap that goes on in this --

THE COURT: Hey, you know what?

MR. WRIGHT: -- State, there's no --

THE COURT: I was opposed to juror questions when I was a DA because I thought, well, you know, they'll be sort of getting in the middle of what I want to do, but as a Judge I like them and I think that the questions so far have indicated that they're really paying attention and following the case and locking, questioning, about the defense that they're seeing, and, you know -- so I like them.

Bring them in. Plus, it gives me something to do.

(Off-record colloquy.)

MS. WECKERLY: Do you know when you're going to do the balance of the bad-acts hearing?

THE COURT: No. I mean, it's either going to be in the morning or it's going to be in an afternoon.

MS. WECKERLY: Right. But, I mean, will that be next week, or --

THE COURT: Yeah, I can do it whenever. I mean, it doesn't really matter to me. I'm here -- you know.

MS. WECKERLY: Okay.

THE COURT: I mean, it's -- I -- like I said, I'm here anyway. You folks are here anyway. So, you know, maybe what's convenient for the State or the -- you know, everybody, what's more convenient for the witnesses, as long as we do it, you know, either early in the day or at the end of the day.

MS. STANISH: It would be more convenient for me if you deny it.

THE COURT: And how -- what do we have, three, four people left?

MR. STAUDAHER: Three.

MS. WECKERLY: Three.

MS. STANISH: Three.

MS. WECKERLY: But two of them are telephonic.

MS. STANISH: Who is the third one? I know you have the two patients --

MR. STAUDAHER: Lisa Phelps.

THE MARSHAL: Ladies and gentlemen, please rise for the presence of the jury.

(Jury entering at 10:47 a.m.)

THE MARSHAL: Thank you. Everybody, you may be seated.

THE COURT: All right. Court is now back in session. The record should reflect the presence of the State, defendants and their counsel, the officers of the court, and the ladies and gentlemen of the jury.

And the State may call its next witness.

MS. WECKERLY: Vince Sagendorf.

THE COURT: Sir, just right up here by me, up those couple of steps, please. And then just face this lady right there, and she'll administer the oath to you.

VINCENT SAGENDORF, STATE'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: My name is Vincent William Sagendorf. First name is Vincent, V-I-N-C-E-N-T, William, W-I-L-L-I-A-M, last name is Sagendorf, S-A-G-E-N-D-O-R-F.

THE COURT: All right. Thank you.

Ms. Weckerly, please proceed.

DIRECT EXAMINATION

BY MS. WECKERLY:

Q Good morning, sir.

A Good morning.

Q How are you employed?

A I am semi-retired.

Q Okay. And what's the semi part? What do you do?

A I do vacation relief and holiday relief for CRNAs with a pain-management group.

Q And where do you work?

A Cypress Surgery Center.

Q Where is that located?

A It's located in Santa Maria, California.

Q How long have you worked as a CRNA?

A 43 years.

Q And where did you go to school for that degree?

A I went to Jersey Shore Medical Center-Fitkin Hospital.

Q And you've worked -- I -- obviously in California. How many years did you work in California as a CRNA?

A 42 years.

Q And did you work a portion of a year in Las Vegas?

A Yes, five months.

Q Five months. Was it at the Endoscopy Center of Southern Nevada?

A Yes.

Q Do you recall what your first day of work was?

A October 1, 2007.

Q And your last day?

A I think it was March 4th, 2008.

Q Okay. So you worked October 1st, 2007, to when the clinic closed in March of 2008?

A Yes.

Q Five months?

A Yes.

Q How did you get your job at the -- at the endoscopy center?

A I saw it online.

Q And you -- did you, like, send in an application?

A Yes, I did.

Q Did you interview with anyone in order to get the job?

A Yes, in July of 2007, I interviewed with Ms. Rushing and with Dr. Desai.

Q And tell us about your interview with Dr. Desai.

A It was very short. He asked me how many propofol cases I had done, I told him 5,000, give or take. He said, you have the job, go see Tonya.

Q Okay. So it was a brief interview?

A Very.

Q The discussion was, do you know how to use propofol, essentially?

A Yes.

Q And you'd done it thousands and thousands of times?

A Yes.

Q After you -- I assume you went and talked to Ms. Rushing at his direction after that?

A Yes.

Q How soon after you spoke to Ms. Rushing did you actually start working?

A That was -- when I talked to her it was in July, and then I had to apply for my licensure and send in all the application parts, and I started -- I got my license September, and quit my job in California and came to Nevada.

Q Okay. And what facility did you work at here? Where was it located?

A At Shadow Lane.

Q Did you ever work at Burnham or the VA?

A Not at the VA but at Burnham.

Q How frequently would you work at Burnham?

A I was there about four times.

Q Four times in the five months?

A In the five months.

Q When you -- when you came, who were the other CRNAs that were already working for the clinic?

A It was Vinny Mione and Linda Hubbard, Keith Mathahs, and Ralph -- I don't know his last name -- and then, Ron, who was leaving.

Q Okay. Was Ralph at Shadow?

A No, he mostly stayed at Desert Shadows.

Q Okay. And that's the Burnham one?

A Yes, the Burnham one.

Q Okay. So you worked with Linda Hubbard, Keith Mathahs, and Vincent Mione?

A Vinny Mione was also over at Burnham most of the time, but I did work with him a few times.

Q Okay. And I think you said Mr. Lakeman, as well?

A I only watched Mr. Lakeman do one IV, and then

that was the last I saw of him.

Q Okay.

A He was mostly over at Burnham.

Q He was over at Burnham during the time --

A Yes.

Q -- you started? When you were working, who -- which CRNA would you normally spend your workdays with?

A Linda Hubbard and Keith Mathahs.

Q And was there any -- like, in terms of your schedule, how were the three of you scheduled?

A Keith was part-time, so he would leave at around 12 or 1, and then Linda and I were full-timers, but we would switch off coming in at 10:00.

Q So one of you would come in when the clinic opened or...

A Yes.

Q And then the other would come in at 10?

A Right.

Q Now, when you -- when you and Linda would switch off like that, there would have been a time period when only one CRNA was present in the early morning; is that fair?

A No, it would be one of us and Keith Mathahs.

Q Oh, and Keith would be there early as well. And then was there a point in time when Ron Lakeman moved and wasn't working for the clinic anymore?

A He left two weeks after I got there, so that's about as much as I know about him.

Q Okay. And you said you've only seen him do one procedure?

A I saw him do one IV in the -- in the neck. It's a very difficult IV, so...

Q Other than that you didn't observe him at all?

A I never saw him.

Q When you started working at the clinic, who were the doctors that you worked with primarily?

A Dr. Carrol, Dr. Mukherjee, and Dr. Carrera.

Q When you -- when you first got to the clinic. Were you aware that there had recently been an accreditation or some sort of certification done?

A Yes, they had -- they had told me they had just passed AAAHC.

Q And did you make any observations as to the conditions at the clinic with regard to that type of certification?

A There were -- there were things that were -- were missed, very, very big things that were missed. There was a ventilator that all the hoses were dry-rotted on. I don't know how -- I don't even know if that thing ever got turned on. There were no suction cannisters or suction equipment at the heads of the recovery room beds, which is a

patient-care issue. There were -- they pushed the patients in feet first, which put them the farthest away from the equipment you would need if there was a situation.

Q Did you notice those deficiencies in the first couple days you were working?

A Yes.

Q And so notwithstanding this accreditation, you saw things that concerned you?

A Yes.

Q And those would be things related to sort of emergency measures that may have to be taken with a patient?

A Right, patient-care issues.

Q And were you particularly cognizant of those issues because of your -- your training as an anesthetist?

A Yes.

Q These were all, like, airway-type issues that --

A Exactly.

Q In the -- in an -- in the event of an emergency, you'd need that equipment?

A Right.

Q What did you do when you saw those things? Did you bring them to anyone's attention?

A I told one of the nurses -- I asked one of the nurses where the cannisters were, and she said that Dr. Desai didn't want to spend the money on them. They had put them

away. So I told her to get the suction cannisters and put them on the wall, and I would deal with it if -- if it came to that. I called Mr. Krueger and had him come and change the hoses on the ventilator because it was inoperable the way it was.

Q And did those -- did those issues get corrected?

A Yes.

Q What was the patient load like in your five months that you were there?

A Very heavy.

Q And by, Very heavy, how many procedures are you talking about?

A 70-75 a day in two rooms.

Q And did you have a lot of time in between patients?

A None.

Q Did you have a lot of time to take a break?

A You could -- you could take a break if it slowed down or if a patient didn't show up, but that's about it.

Q How many hours were you working in a day typically?

A 10.

Q And was that -- was the number of patients, to your mind, a potential danger to patient care? Were you concerned about it?

A Oh, yes. It was a factory situation. We'd just run them through.

Q During the lunch hour, how would you handle it with other CRNAs?

A Mr. Mathahs would usually -- when the 10:00 person got there he would relieve the other person to go to lunch at 11, and then -- then whoever came in at 10, he would relieve them before he went home at 12.

Q Now, during your time that you worked at the clinic, did you ever work with Dr. Desai?

A Three times.

Q Three times. And did anything unusual happen in those three times?

A Unusual in what way?

Q Did you -- was there anything that caused you concern with those three instances where you worked with Dr. Desai?

A Yeah, Dr. Desai tended to be very, very, very fast, and sometimes wouldn't wait for the patient to be totally asleep.

Q And --

A My first case was that way.

Q Okay. And did you tell him, look, the patient --

A Well, I said -- I said, whoa, whoa, whoa, as --

as I was trying to push the propofol in, and he went ahead and started. He had already inserted the scope.

Q And what type of procedure was it?

A It was a colonoscopy.

Q And so he inserted the scope prior to you anesthetizing the patient?

A Prior to the patient being asleep.

Q Beyond discomfort to the patient, Is there a, like, physiological concern there?

A Well, there is because the -- that area of the body is innervated by what's called the vagus nerve, so you can have a profound pulse drop by inserting that without proper anesthesia, without enough lubricant and so on and so forth.

Q The other two times that you worked with him, did he similarly do procedures quickly?

A Yes.

Q But it sounds like you -- I mean, you didn't -- over the five months you worked with him just a very small amount of time?

A Very.

Q The other doctors that you worked with, did they vary in speed with regard to how long it took them to do procedures?

A Yes.

Q And describe the doctors that you worked with in --

A Well, Dr. Carrol --

Q -- that variation.

A -- was very quick -- very quick, but he was very thorough. Dr. Mukherjee was a little slower than Dr. Carrol, and on down the line to the -- a doctor who had just gotten out of residency, he took the longest. And I forget his name.

Q You -- as you mentioned, you interviewed with Dr. Desai and you discussed whether you had used propofol?

A Mm-hmm.

Q Is that yes?

A Yes.

Q Okay. That's obviously the sedation that was primarily used at the clinic?

A Yes.

Q How would you go about getting the propofol in the mornings?

A In the morning it was in a lockbox with a log, and we would just go to the lockbox and unlock it and chart in the log how many bottles were there and then how many bottles we took each.

Q And how would those be distributed amongst the CRNAs?

A Well, it would be distributed on how many

bottles the CRNA might want.

Q And some was put in each room?

A Yes.

Q What size were the vials of propofol?

A They came in two different sizes, 20cc and 50cc.

Q And were both used?

A Yes.

Q What was the size of syringe that you used?

A 10cc syringe.

Q Did you ever use lidocaine?

A Yes.

Q How would you use it?

A Because propofol is acidic, it causes a burning when you inject it. So we would put 1cc of 2 percent Xylocaine in a syringe with the propofol, and that way you could administer it with less pain.

Q Okay. In the -- in the time that you worked at the clinic, was there a preop area where nurses would put in the heplocks?

A Yes.

Q Did patients ever come into procedure rooms without the heplocks?

A Yes.

Q What -- why would that occur?

A Nurses couldn't get the IV in.

Q Did the CRNAs ever do those first thing in the morning?

A Yes.

Q And you all knew how to do that, the -- put in a heplock, correct?

A Yes.

Q Now, you said that you used -- you used lidocaine, put a little bit in with the 10cc of propofol?

A Yes.

Q When you had a patient coming in, what type of preparation would you do in terms of the propofol in anticipation of the procedure?

A When I first got there, I would usually load 10 syringes.

Q All with lidocaine and --

A No --

Q -- propofol?

A -- no, 5 with lidocaine and propofol, and then the other 5 with just propofol.

Q And what was your thinking with that? Why did you do 5 and 5?

A I'd be ready for the first four or five patients because that's when it really got busy. And I'd have the lidocaine already in there; I wouldn't have to waste the time to do that.

Q Now, is -- am I correct in assuming that with a patient you use the lidocaine with the first injection of the propofcl?

A Right.

Q And so then you'd use the -- the second syringe would be just propofol?

A From then on it would be just propofol.

Q Now, how many syringes would you use during a typical procedure?

A Two, sometimes three.

Q Okay. At least two?

A At least two. Sometimes 16.

Q Would you use at least two syringes even for an upper endoscopy?

A That may take a little more.

Q Okay. For an endoscopy?

A Yeah.

Q It would take at least two and maybe more?

A Yeah.

Q Can you explain why that would be?

A Well, you're -- you're putting something down through the vocal cords.

Q Okay.

A Or into the stomach, excuse me. And that area is innervated with all kinds of -- with all -- nerve endings

for protecting the airway. And so the patients would start to buck or go into laryngospasm if you didn't have them sedated enough.

Q Would you use the first syringe, the one with the propofol and the lidocaine -- would you inject the whole thing at first and then move on to the other syringe, or how would that work?

A Depending on the age of the patient and the size and the debility of the patient, it would usually take one syringe given, you know, immediately, and then titrate the other syringes.

Q So one just to get them sedated --

A Yes.

Q -- and then others as needed as the procedure goes?

A Right.

Q And so you're using at least two, possibly more, for every procedure?

A Yes.

Q Now, as you're -- when you say titrating as you go, what does that mean?

A That means, I'm giving small amounts to maintain a smooth patient -- the patient's under and will wake up quickly at the end.

Q Okay. Now, you mentioned that you -- at the

clinic there were the 20cc vials of propofol as well as the 50s?

A Yes.

Q Did you use those vials on multiple patients?

A Yes.

Q And you're trained in universal precautions or aseptic technique?

A Yes.

Q And in your mind, what steps did you take to make sure you adhered to those standards?

A Well, I would never enter the propofol bottle without the syringe and needle being sterile.

Q Okay. So you never re-entered a propofol vial with a syringe you had already used on a patient?

A No.

Q Each time you drew it up with a clean needle and syringe?

A Right.

Q Okay. And in that manner you're able to maintain safe technique?

A Yes.

Q Now, when you were working with the other CRNAs, did you ever see propofol being moved from room to room?

A Yes.

Q Explain when that would occur.

A Usually at the end of the day, I was usually doing the last case for some reason, and they would bring me over bottles, half-filled, partially filled bottles of propofol in case I needed more at the end.

Q And these would be like the remnants of stuff they didn't use on prior --

A Right.

Q -- patients? Did you use those --

A No.

Q -- various vials?

A No.

Q Why not?

A Because standard of care says you never give anything that you didn't open and draw up.

Q And would that occur with all of the -- the CRNAs that you were working with at Shadow? Or do you recall?

A I don't know.

Q Okay. How about during the lunch period? You said you'd go over and cover the other CRNA's --

A Right.

Q -- room? Were there ever open containers of propofol or partially used --

A Yes.

Q -- in that instance? I mean, sitting there available for you to use?

A Right.

Q Did you use it in --

A No.

Q -- that instance?

A No.

Q Same reason?

A Same reason. I only give what I open and what I draw up.

Q Have you ever reused a syringe on a patient?

A No.

Q Not even on, like, one single patient you've never used a syringe twice?

A No.

Q Why not?

A Because it's the same thing. You're going back in with a syringe that's already been in the patient. When I empty a syringe, the syringe goes into the Sharps container; and I'd use another one, I'd draw up another one, and that way a sterility is maintained.

Q When you first started at the clinic, did anyone give you any instructions on the use of propofol at the clinic?

A That we weren't supposed to waste it.

Q Who told you that?

A Mr. Mathahs.

Q Keith told you that? And did he kind of orient you on the policies of the clinic?

A Yes, he said that Dr. Desai didn't want to see any propofol wasted, and -- I guess we'll get into the other thing here pretty soon.

Q Well, let me -- let me ask you, other than Mr. Mathahs; did you talk to anyone else about it?

A No.

Q And you -- I mean, you didn't waste propofol, correct?

A No.

Q When the other -- in the instances when the -- the propofol was brought from room to room, what did you do with the stuff that was brought over?

A If it was brought over and I didn't draw it up or anything?

Q Right.

A I'd throw it away.

Q Okay. In the time that you were at the clinic, which is October to the closing, do you remember any meeting about mixing propofol with saline?

A No.

Q Is that something you'd -- that would stick out in your mind, do you think?

A Yes.

Q And you don't recall any meeting like that?

A No.

Q When you started working at the clinic, were you, as the CRNA, required to document the time it took -- or the anesthesia time on a procedure?

A Yes.

Q In your previous work in California had you documented anesthesia time?

A Yes.

Q In California how did you calculate your time?

A When I started the anesthetic was the start; when I finished the case and -- and took the patient to the recovery room -- when I discharged the patient to the recovery room, that was the end of the anesthesia.

Q Okay. And would that be at least sort of roughly consistent with your face time with the patient?

A Yes.

Q When you went to the endoscopy center, did anyone tell you how to do anesthesia time at the center?

A They told me I was supposed to add 30 to 31 minutes to each case.

Q Who told you that?

A Mr. Mathahs.

Q Okay. And was that different than you had ever done anesthesia before?

A Oh, yes.

Q And in your conversations with Mr. Mathahs, was it clear this was for insurance billing?

A We knew it was, but it wasn't discussed in that way.

Q Okay. You didn't talk about it every day?

A No.

Q Was there any doubt in your mind that this was a way to sort of expand the time for anesthesia, and thus the billing to insurance companies?

A Not at all.

Q I mean, was this some foreign concept to you given your experience in working with anesthesia?

A No.

Q And as you sit here today, was that -- was that the correct thing to do in your mind?

A No.

Q Then -- but why did you -- why did you do it?

A I -- I was caught between a rock and a hard place. I had quit my job in California, I had an apartment in Las Vegas, I need to -- I needed to keep the job.

Q And the times, essentially -- the 31-minute times, did those correspond with the face time with the patient?

A Oh, no.

Q And why -- why was that? What was the discrepancy?

A Well, you -- there -- you couldn't keep it together -- you were doing 10-minute case at -- and then you had to put down 31 minutes, well, that next -- the next case got worse, then the next case got worse.

Q So those times were false?

A Yes.

Q Now, you were present when the CDC came into the clinic?

A Yes.

Q Did you know if they observed you or not?

A They did.

Q And -- they observed you doing a procedure?

A Yes.

Q Did you get any feedback from them, or did they ask you questions, or how did that go?

A No.

Q After the CDC came into the clinic, did you -- or were you aware of any change in policy regarding the administration of propofol?

A Yes, at one point Dr. Desai met with me out in the hall after I had talked to Dr. Carrol, and he was with Ms. -- Katie, the director of nurses, and he said that he only wanted to see one syringe opened at a time on the -- on the

counter.

Q And that was after the CDC came?

A Yes.

Q Now, other than -- than that last conversation -- and I guess in a -- well, let me ask it this way: Did you ever have any other conversations with Dr. Desai about the use of propofol?

A Yes. He called me into his office with Dr. Carrol one day and said that I was using too much propofol, and that I was only allowed to use one bottle of propofol from -- on each patient.

Q And one bottle, meaning the 50? Or meaning a 20?

A The 20.

Q And when was that meeting in your -- in terms of your employment?

A Toward the middle.

Q In the middle, so maybe December or --

A Yeah.

Q -- December? Okay. And so he calls you into his office and Dr. Carrol is present?

A Yes.

Q And he says he only wants you to use one 20 per patient?

A Yes.

Q After you had that meeting with Dr. Desai, did you adhere to that policy?

A No.

Q What did you do?

A I gave propofol to the patients because that's what they needed.

Q Okay. So you didn't follow the directive?

A No.

Q Thank you, sir.

MS. WECKERLY: I'll pass the witness.

THE COURT: All right. Cross? Who would like to begin?

MR. WRIGHT: Can we approach the bench?

THE COURT: Sure.

(Off-record bench conference.)

THE COURT: All right. Mr. Santacroce, why don't you go first.

CROSS-EXAMINATION

BY MR. SANTACROCE:

Q Mr. Sagendorf, I represent Mr. Lakeman here, and as I understand it your contact with Mr. Lakeman was minimal; is that correct?

A Yes.

Q I believe you said you only observed him do one IV to the neck and that was it?

A Yes.

Q Didn't work with him any other time?

A No.

Q I want to talk to you just a little bit about the procedures you used at the clinic while you were employed there, okay?

A Yeah.

Q In the morning you would check out propofol --

A Yes.

Q -- correct? And you would divvy that up between rooms?

A Yes.

Q And how many bottles of propofol would be in each room?

A Approximately 10.

Q And when you -- if you used all of those bottles, how would you get more?

A Either ask the nurse or go over to the lockbox ourselves and take it out, put it in the log.

Q But you would never go to the other room and swap propofol, correct?

A No.

Q Because it was important that you preserve the integrity of the propofol that you had; isn't that correct?

A Right.

Q So each CRNA would use the propofol that was allotted to them?

A Yes.

Q If they needed more they'd get more?

A Right.

Q You talked about a time when unused bottles of propofol would try to be cast upon you, correct?

A Mm-hmm.

Q And I believe you said that was Linda Hubbard that did that?

A Yes.

Q At least you said that in your Metro Police interview --

A Yes.

Q -- correct? And that was usually done at the end of the day?

A Yes.

Q And what would you do with unused bottles at the end of the day?

A I'd throw them away.

Q Would that be a procedure that most CRNAs would do?

A I don't know.

Q Well, you wouldn't -- in the morning you wouldn't see any unused bottles of propofol --

A No.

Q -- and you wouldn't check those out, correct?

A No.

Q So the presumption would be that they were thrown away at the end of the day?

A Yes.

Q The 50 bottle -- 50cc bottles of propofol -- let me go back. You said there was 20s and 50s, correct?

A Yes.

Q Was there a time when you only used 50s?

A Yes.

Q When was that in relation to your employment?

A When -- well, we ordered what was the least expensive at the time, so -- and then we tried to keep them in order of when they were, you know, use what was ordered the farthest away, you know, latest -- what was the oldest. We would go backwards. So we'd --

THE COURT: So you'd use the oldest first?

THE WITNESS: Right.

THE COURT: Closest to the expiration date?

THE WITNESS: Right. And if those were just 50s that's all we would use.

BY MR. SANTACROCE:

Q Okay. I'm not sure I understand. You said that you would use what was the least expensive?

A Well, there were different prices when you bought 20s or 50s, and sometimes the 50s, would be cheaper than the 20s.

Q Okay. And how do you know that?

A That's what Mr. Krueger said.

Q Who?

A Mr. Krueger.

Q Oh, okay. So Mr. Krueger said there was a cost differential between the 50s and 20s and -- you wouldn't do the ordering of those?

A No.

Q And none of the CRNAs would, right?

A No.

Q The ordering would be done by Mr. Krueger or somebody else?

A Yes.

Q And you were given whatever you were given?

A Right.

Q It would be the 20s or the 50s?

A Right.

Q Now, I want to talk about the 50s --

A Okay.

Q -- okay? 50s are a -- a multidose vial, correct?

A The bottle says, single-patient use only.

Q And what did you interpret that to mean?

A Since it was 50cc and it came with a spike, I interpreted that as a multi-dose vial.

Q So it could be used on more than one patient?

A Yes.

Q And you interpreted that because they came with a spike?

A Yes.

Q And they wouldn't come with a spike if you couldn't use it on more than one patient?

A Right.

Q And in fact, in your experience that's how it was in other facilities as well?

A All over the world.

Q Same way?

A Yes.

Q And in fact, you used those 50cc bottles on more than one patient?

A Yes.

Q But you testified that you use aseptic practices, and you didn't have a fear of contamination, correct?

A Right.

Q And you never used a syringe and needle on more than one patient; is that fair to say?

A Yes.

Q Okay. Tell me about the needles and syringes. Did they come together in one unit?

A No, they came packaged separately, 10cc in a paper -- paper package, so you just open it up -- open -- take the needle out of the package, screw it on.

Q And would you be wearing gloves when you do that?

A Not necessarily.

Q In fact, you rarely wore gloves; isn't that true?

A Yes.

Q So you would touch the needle with your bare hands?

A The cap.

Q The cap? And then pull the cap off?

A Yeah.

Q Okay. So we move along now in time, and you're starting to begin the procedure, okay? Did you -- you never began a procedure without a doctor in the room; isn't that correct? I mean, you never began administering anesthesia --

A Yes.

Q -- before a doctor came in the room?

A Yes.

Q That's correct?

A That's correct.

Q Okay. So -- and tell me the procedure how that happened. The doctor -- would the patient be there, the doctor would come in the room, what would happen?

A I would see the doctor come in the room; I'd start the anesthetic.

Q Okay. Would he tell you start it, or would you just start it because you knew he was in the room?

A I'd just start it because I knew he was in the room.

Q And you would never leave a patient that was sedated to go somewhere else in the middle of a procedure, would you?

A No, not me.

Q Okay. And you'd never leave a room for 30 seconds while the patient was sedated, would you?

A No.

Q Okay. You would stay with that patient until the procedure was done?

A Yes.

Q And either you or a tech would push him in the recovery room?

A Yes.

Q And in fact, your testimony was, at least to Metro, is that you actually went to the recovery room on at

least 60 percent of the time and saw the patients, correct?

A Yes.

Q And you would do what when you went and saw those patients?

A I would usually just walk by because I didn't have a lot of time; I'd make sure that their O2 sats were fine, and then I'd come back.

Q You'd make sure what?

A Their oxygen saturations were okay.

Q Okay. So it was your responsibility as the anesthetist to be responsible for that patient in the recovery room while they were coming out of the anesthesia, correct?

A Yes.

Q And if there was a problem in the recovery room with the anesthesia, who would the nurses come to?

A I went out one day when there was an alarm and I asked the nurse --

Q I'm not asking you about that. I'm asking you who would they come to if you had a -- if they had a problem with a patient?

A Probably come to me.

Q Okay. Who was in charge of the procedure room as far as your experience and knowledge and training went? Who was in charge of that procedure room?

A There was a tech in there.

Q Well, the tech wasn't in charge of the room, was he?

A Essentially -- essentially -- I wasn't in charge of the room.

Q Oh, absolutely not. In fact, in your testimony and to Metro you said something about captain of the ship. What did you mean by that?

A That's the doctor.

Q That's the doctor?

A Yes.

Q And the captain of the ship is a doctrine? Meaning, that doctor is in charge of that procedure room; isn't that correct?

A Yes.

Q And he's in charge of that procedure room until that patient is wheeled out to the recovery room, correct?

A Correct.

Q And then you're still responsible?

A Yes.

Q When the CDC came to the clinic you -- you said that -- well, let me ask you this: Did they talk to you about the procedures they observed you do?

A No.

Q You learned something wasn't right when -- after CDC had come there, though, correct?

A Oh, yes.

Q And what was that? And I'm talking in regard to the propofol.

A That there was a contaminated -- someone who had cross-contaminated it before I got there.

Q So you believe that there was a contamination of hep C before you got there?

A That's what was -- what we --

Q CDC --

A -- were told.

Q -- said?

A Yeah.

Q Okay. And so procedures changed as to the use of propofol after that, correct?

A Yes.

Q And the procedure you had been employing since 1970 was now suddenly passe and not to be used anymore, correct?

A Correct.

Q Okay. But for the past 40 years you had been doing it that way and so had everybody else around the world as far as you know?

A Yes.

Q Going back to the end of the day when you saw this propofol being offered to you, I think you said in your

interview you only saw that happen like five times; would that be fair to say?

A Say that again.

Q At the end of the day when Linda Hubbard tried to give you unused bottles of propofol, which you didn't take --

A Mm-hmm.

Q -- in your interview to Metro you said that you only saw that happen about four or five times --

A Yeah.

Q -- isn't that correct?

A Right.

Q Okay. So it wasn't every day?

A No.

Q And no one at the clinic -- no Dr. Desai, no Dr. Carrol, nobody told you to reuse syringes and needles; isn't that correct?

A Never. Never.

Q Okay. You never observed another CRNA leave a patient in the middle of a procedure, did you?

A Not that I recall.

Q Talk to me about bite blocks; are you familiar with that?

A Yes, well, bite blocks are a round-oval block of plastic with a hole through it which the scope would go

through on an upper endoscopy so that the patient would not bite onto -- onto the scope, nor would -- it would protect the teeth.

Q Is it single or multi-use?

A They're supposed to be single.

Q Well, did you ever see them being reused at the clinic?

A Yes.

Q Were they cleaned when they were -- before they were reused?

A Yes.

Q How about dilators?

A I'm not sure what you mean by "dilator".

Q Well, I'm not sure either.

A Oh, if it's a --

Q Except that I --

A -- if we're talking about an upper endoscopy and it's a -- it's a piece called a bougie, those are multi-use.

Q Well, somebody else told us that the dilator went through the scope; is that possible? A dilator through the scope?

A No.

Q No? Do you know what a dilator is?

A I know what a dilator is.

Q Okay. Tell me what it is.

A It expands whatever opening you want to -- you want to go into.

Q Okay.

A But to go one through the scope wouldn't dilate anything.

Q Okay. Well, let's forget I --

THE COURT: Except the scope.

BY MR. SANTACROCE:

Q -- said that because I might be wrong. Okay? But I'm relying on your expertise.

A The scope is the dilating instrument on its own.

Q Okay.

THE COURT: So you dilate whatever the part of the body is you're looking at, and then -- then you would stick the scope in and it's to give, basically, room for the scope?

THE WITNESS: Well, you could -- there was an old way of doing that, yes.

BY MR. SANTACROCE:

Q Well, I want to know what the way of the clinic was. Were you -- were you -- did you ever witness dilators being used?

A Upper endoscopy dilators.

Q Okay. Tell me what that does.

A Well, it dilates the -- a stricture in the esophagus.

Q Okay. But I mean, mechanically, a dilator looks like what?

A It looks like a long, red, pointed tube --

Q Okay.

A -- floppy tube full of mercury or full of lead, and they just -- they put Xylocaine and jelly on it and then they insert it and they go from smaller to larger --

Q Okay.

A -- in dilating the opening to --

Q And are those -- the purpose of the -- can they be reused?

A Yes.

Q So it's not a single-use thing?

A No.

Q And those were cleaned, as far as you knew, before they were used?

A As far as I know.

Q How about forceps and snares?

A Those are thrown away at the end.

Q At the end of what?

A At the end of the colonoscopies.

Q So they were used one time?

A Yes.

Q You mentioned that some of the doctors were slower than other doctors, correct?

A Correct.

Q And I think you mentioned in your interview Dr. Faris, by name?

A Mm-hmm.

Q You worked with him?

A Yes.

Q How slow was he?

A He was down the line. He would take a half-hour, 40 minutes sometimes.

Q So he would take a half-hour or 40 minutes for a procedure?

A Yeah.

Q Okay. So in those cases that he was the doctor and you billed 30 or 31 minutes -- or would you bill 40-45 minutes, depending on what he did?

A I would bill the longer time.

Q So every doctor -- and he wasn't the only one that took that amount of time, was he?

A No.

Q Who else?

A There was a Filipino doctor, out of residency. I don't remember his name.

Q How long would he take?

A He would take 45 minutes to an hour.

Q Okay. How about Dr. Carrera?

A Dr. Carrera was in the middle of the lot, he'd take 20-25 minutes.

Q Okay. And you talked about the billing time would be when you first contacted the patient but -- and when you ended contact with the patient, correct?

A Mm-hmm.

Q And I believe --

THE COURT: Is that a yes? You have to say yes or no for the record.

THE WITNESS: I'm sorry. Yes.

THE COURT: Because it's being taped.

BY MR. SANTACROCE:

Q And I believe you contacted the patients in -- sometimes in the preop area?

A Yes.

Q And you would talk to them?

A Yes.

Q And what would you get from them?

A I would -- I would ask them if they had had hepatitis C, diabetes, if they had had any heart attacks, strokes, or seizures, if they had had any major illnesses in the past. I think just -- things I should know about. Have they had any immediate bowel problems, and that would be about it.

Q And would you do that with every patient?

A I would try.

Q Okay. So that would start in the preop area?

A Yes.

Q But you wouldn't necessarily see that patient right next, would you?

A No.

Q They could be waiting in the preop area for a while?

A Yes.

Q But you still started your time with that person? I mean, that's what you said, it would be --

A Yes.

Q -- when you contacted the person, right?

A Yes.

Q Okay. Then they came in the procedure room, did the procedure, wheeled them to the recovery room, you went out and chatted with them -- or you didn't chat with them because they were under --

A Right.

Q -- but you went and observed their signs?

A I just -- I just made sure they were okay, yes.

Q Okay. And as you said, your liability continued until that patient was out of anesthesia, correct?

A Right.

Q Now, the -- when you came to the clinic you

weren't given any specific training, right?

A No.

Q You were expected to know how to do your job and you did it?

A Yes.

Q Were you given a policies and procedures handbook?

A No.

Q Nothing?

A No.

MR. SANTACROCE: I have nothing further. Thank you.

THE COURT: All right. Ladies and gentlemen, I guess we'll take our lunch break now. We'll be in recess for the lunch break until 12:45.

During the lunch 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; 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, 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.

If you'd place your notepads in your chairs, if you have any juror questions ready, hand them to the bailiff, and we'll see you back here.

(Jury recessed at 11:34 a.m.)

THE COURT: And -- and, sir?

THE WITNESS: Yes.

THE COURT: Please don't discuss your testimony with anybody else over the lunch break.

THE WITNESS: Okay.

THE COURT: Okay?

(Court recessed at 11:34 a.m. to 12:50 p.m.)

(In the presence of the jury.)

THE COURT: All right. Court is now back in session. And, sir, you are still under oath, of course.

And, Mr. Wright, are you ready to proceed with your cross-examination?

MR. WRIGHT: Yes, Your Honor.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. WRIGHT:

Q My name is Richard Wright. I represent Dr. Desai. I want to learn about your education, your training before your 43 years of being a CRNA, okay?

A Okay.

Q Tell the jury your educational background, training --

A I went to nursing school at Middlesex College. When I graduated from nursing school I immediately started

anesthesia school, was at Jersey Shore Medical Center-Fitkin Hospital for two years training in anesthesia.

Q Okay. And so the -- you then -- two years anesthesia school specialty?

A Yes.

Q And then you become what we've been calling a CRNA?

A Right. Once you take the national board.

Q Okay. And the national board is a national --

A Certification test.

Q -- certification. And so you then became certified right out of CRNA school?

A Right.

Q Okay. And then did you move to California?

A Immediately.

Q Okay. And in California tell us about your practice -- the type of CRNA practice.

A I worked in a general surgery hospital for 25 years doing general anesthesia, which was deliveries and neuro cases, et cetera.

Q Okay. What --

A And then --

Q -- kind of cases?

A Huh?

Q What kind of cases?

A Neuroanesthesia.

Q Okay.

A Obstetrics, et cetera.

Q Okay. And that was where?

A At Sierra Vista Regional Medical Center in San Luis Obispo, California.

Q Okay. So you had 25 years in CRNA practice in hospital setting?

A Right.

Q Okay. And then where did you go?

A Then in 1997 I joined Pain Management Practice, which was located in San Luis Obispo, and expanded to Santa Maria, California --

Q Okay.

A -- and I was there for 15 years and then I quit. I came here for the -- for the five months I was here --

Q Okay.

A -- I started back there in October 1 of 2008, exactly a year after I left -- after I started here --

Q Okay.

A -- and --

Q Did you -- did you return to the same company?

A Yes.

Q Pain Management Specialists?

A Yes.

Q And so that 15 years in California with Pain Management Specialists, was that a -- what type of clinic was that?

A It was a pain clinic.

Q And what is a pain clinic?

A Pain clinic, you have patients who -- failed backs, fail index surgeries who have nerve -- neuro problems, radiculopathy, diabetic problems, and we do blocks and implant stimulators and pumps to try and alleviate their pain.

Q Okay. And the -- and that would be -- those procedures would be done by a physician, and then you were the anesthetist present?

A Exactly.

Q Okay. And at that time in your career propofol was being used extensively?

A Yes, from 1984.

Q Okay. And then you came -- you were moving to Nevada?

A Mm-hmm.

Q I mean, is that why you --

A It was a test. I was here, I got an apartment with a seven-month lease just to see if it would work out for my wife and I to retire here --

Q Okay.

A -- and for me to work. And it didn't work out

because of this situation, and then my wife had constant nosebleeds here, so we -- I sent her back to California.

Q Okie-doke. And so you -- you on direct examination explained that you actually came in July in response to an advertisement or online or something?

A Yes.

Q Okay. Interviewed with -- did you interview with Tonya Rushing?

A Yes.

Q Okay. And then also Dr. Desai?

A Yes.

Q And he confirmed your experience in propofol and said you're hired?

A Exactly.

Q Okay. And you've done, like, over 5,000 procedures in the last 10 years?

A Oh, a lot more than that.

Q Okay. And at that point you then have to get licensed in Nevada --

A Yes.

Q -- correct? I mean, you spoke to them in July, started October 1st, 2007?

A Right.

Q And in the interim you have to get a nursing license and you have to get a anesthetist license?

A Exactly.

Q Okay. And so that required you submitting applications or credentials, et cetera?

A Mm-hmm.

Q And verifying to the -- and is that the State of Nevada, like, Board of Nursing?

A Exactly.

Q Same -- same board does nurse and anesthetists?

A Right.

Q Okay. And then by September you had your license?

A Yes.

Q Or licenses?

A Yes.

Q Plural. Correct?

A Correct.

Q Okay. And I'm only having you say it because we got to pick it up on a recorder.

A I'm sorry.

Q That's all right. And so you start October 1st, correct?

A Correct.

Q And you worked until the clinic closed in early March of 2008?

A Correct.

Q And when you started work as a CRNA, was this your first experience in a colon endoscopy clinic?

A Yes.

Q Okay. And no one had to teach you how to be a -- or how to administer propofol or anesthesia --

A Correct.

Q -- correct? And you're -- the methods that you utilized at the clinic here in Las Vegas were identical to the methods you had been utilizing throughout your career involving propofol --

A Correct.

Q -- correct? There wasn't anything that you saw being done differently?

A Correct.

Q Okay. And -- because -- and you explained that at the time you arrived, October 2007, 20s and 50s were being used?

A Yes.

Q And I'm talking about the size of propofol vial.

A Yes.

Q And you were familiar with each?

A Yes.

Q Okay. And you continued your existing practice, which would be to what we've been calling, prefill multiple syringes?

A Yes.

Q Okay. And so by prefilling you would take a new needle, new syringe, draw out, like, 10cc, correct?

A Correct.

Q Put the cap back on top of the needle, set it aside?

A Correct.

Q And in your practice, like at the Pain Clinic where you had come from, they used 50s -- 50cc vials?

A 20s and 50s.

Q 20s and 50s. Your practice there with the 50 would be to draw up 10 -- 10cc syringes -- wait a minute, did I get --

A Five 10cc.

Q -- that right? Five. I got that wrong. Five out of a 50, correct?

A Right.

Q Okay. And set them aside --

A Right.

Q -- correct? And never go back into the vial, whether it's a 20 or a 50, with any needle or syringe you had used?

A Right. I would only use sterile.

Q Right. Only a brand-new one?

A Right.

Q And anytime you used one, your practice was once I use it, toss it?

A Right.

Q And by "toss it" in the Sharps --

A Right.

Q -- box? And so the -- you were going along here -- you're -- Las Vegas, at the clinic, utilizing that practice, correct?

A Right.

Q Now, you've -- you've said on direct examination for the State that Keith Mathahs told you don't waste propofol, correct?

A Correct.

Q Okay. And of course, that -- that really did not change anything about the way you were doing things?

A Correct.

Q I mean, you didn't waste propofol previously?

A No.

Q Okay. And the -- the -- when was the first time you ever became aware that you shouldn't use a propofol vial, regardless of size, for more than one patient?

A From the day it came out it had it on it -- had written on it, for a single-patient use only.

Q Okay. Well, when did that come out?

A In 1984.

Q Okay. You're losing me on that.

A Okay. In 1984, that's when the drug came to -- came to the United States --

Q Okay.

A -- after 600,000 doses in Europe.

Q Okay.

A When we got the bottles, it read on the bottle, single-patient use only.

Q Okay.

A And on most of them, that point on because it was so utterly expensive at that time, everybody started multi-dosing the bottles.

Q Okay. Even though it said, single use?

A Even though it said.

Q Okay. And was -- does the -- does propofol have a, what I call a shelf life after the top is taken off and it's first opened?

A Six hours.

Q Okay. And did you equate that in any way in your mind with a, like a single-patient use or what they're talking about?

A I would not use anything that was more than six hours old, but the cases we were doing and the rapidity that we were doing them in, there was no way they'd be six hours old.

Q Okay. And this practice of using propofol on more than one patient, using aseptic technique, that -- that was what you had done throughout your career?

A Yes.

Q Everyone around you had done?

A Yes.

Q Everyone you talked to about it had done?

A Yes.

Q And the first time it came to a stop, the multi-use of propofol vials was when?

A It hasn't stopped.

Q Okay. Well --

A I'm sorry, but that's --

Q -- okay.

A -- everybody, you know --

Q Okay. Well, let me --

A -- the only place I know --

Q -- put it this way.

A -- that stopped it was Southwest.

Q Well, what happened when CDC came --

A Oh, then we -- we -- then we went --

Q -- in January 2008?

A Well, then we were opening only one bottle at a time and disposing if there was any left, including the syringe.

Q Okay. And so when CDC came, and it's of record in here that was January 8th of 2008.

A Okay.

Q So using that as a frame of reference, it was at that time the multi-patient use of propofol stopped --

A Yes.

Q -- correct?

A Yes.

Q And ultimately you lost your job here?

A Yes.

Q As everyone did because the clinics closed. You went back to the Pain Management Company --

A Right.

Q -- in California. What were they doing when you went back to work?

A The same thing.

Q They were still doing it the -- the old way?

A Yeah.

Q Not the CDC way?

A Right.

Q Okay. And the -- when the CDC arrived, you were present during a day of inspection --

A Yes.

Q -- is that correct?

A Correct.

Q And were you engaging in procedures when observers from the CDC observed your procedure?

A Yes.

Q Okay. And you -- do you know who it was?

A It was a young lady; I think she was a dentist.

Q Okay. And she watched an entire procedure, watched -- do you remember what doctor it was?

A No.

Q Okay. But whatever doctor, GI tech, nurse, present, it was an ordinary procedure in which they obviously had the consent of the patient --

A Yes.

Q -- but they watched it, right?

A Yes.

Q Okay. And then, was there any interview of you that took place?

A No.

Q Okay. And the -- do you recall a later interview in mid-January with someone from BLC? A different observer or interviewer?

A I don't remember that.

Q Okay. Do you remember by -- by mid-January after CDC had been there certain new rules applied in the clinic in Las Vegas, correct?

A Correct.

Q Involving CRNA propofol administration?

A Yes.

Q And the new rules was one propofol vial per patient? Or don't -- don't use more than -- I mean, maybe you need more than one, right?

A Yes.

Q That's why you're hesitating. Okay. The new rule was you can only use a propofol vial on one patient and it can't be used on any other patient?

A Yes.

Q Okay. And one needle, one syringe -- anytime it's used, toss it?

A Right.

Q Okay. Now, that was your practice anyway?

A Yes.

Q The only new -- the only new change that affected Vince Sagendorf was no more multi-use?

A Right.

Q Okay. And no more 50s in the clinic; do you recall that?

A I don't recall that, but --

Q Okay. And -- but whatever size vial after CDC came and the changes took place, that was to be used only for one patient and if there was some left in it, throw it out?

A Right.

Q Okay. Now, you explained when you started work -- let me strike that and back up a minute.

I'm talking about propofol use -- multi-use before the CDC visit.

A Okay.

Q You also went and interviewed at Southwest Medical Associates, didn't you?

A Yes.

Q Okay. And that is another clinic here --

A It's another clinic here --

Q -- in Las --

A -- with CRNAs giving all the anesthesia.

Q Okay. And that's an endoscopy center?

A No, it's a full-on surgical clinic.

Q Okay. Full -- what?

A Full-on, they do --

Q Full-on? Okay.

A Yeah. They do all types of surgeries.

Q Okay. Is it an ambulatory --

A Yes.

Q -- okay, full ambulatory surgery center?

A Exactly.

Q And you interviewed there?

A Yes, I did.

Q Okay. And there you observed -- and this was

before January 2008?

A Yes.

Q And they were utilizing propofol multi-use the same as everywhere else?

A Yes.

Q Now, when you started work -- how long was it before -- you started October 1st, Dr. Desai was not present --

A Right.

Q -- right? And you understand that he had a medical issue?

A Yes.

Q And he was out for approximately two-and-one-half months; is that correct?

A Yes.

Q Okay. Well, you're --

A I don't know.

Q -- hesitating?

A I don't know --

Q Okay.

A -- how long it was.

Q Well, the -- I got that -- did you look at your Metro interview?

A I did a little bit, yeah.

Q Okay. That -- you were interviewed by the

police --

A Right.

Q -- correct? And you testified at the grand jury, correct?

A Yes.

MR. WRIGHT: Page 64.

BY MR. WRIGHT:

Q I'm going to let you look at something and see if this refreshes your recollection.

A Okay.

Q So I'll -- I'll show it to you and you read it to yourself, and then I'll ask you a question.

A Okay.

Q You got reading glasses?

A Oh, yes.

Q Because we got these little tiny pages. Page 64. Read as much as you want, but down at the bottom -- and the highlighting is simply my own.

A (Witness complied.) Okay. I did say that.

Q Okay. And at the previous time -- you were in the grand jury, like, three years ago, okay?

A Okay.

Q And you were interviewed by the police five years ago.

A Yes.

Q You talked about Dr. Desai being back in mid-December.

A Okay.

Q Okay. And does that refresh your recollection?

A No.

Q Okay. Do you -- do you think what you said then was accurate?

A Yes.

Q Okay.

MR. WRIGHT: So I'd offer it as a -- what do you call it, prior recollection recorded.

THE COURT: All right.

BY MR. WRIGHT:

Q The -- so up until your first two and a half months, Dr. Desai was not there, correct?

A Correct.

Q Okay. And the -- when he does return you had, as best you can recall, three procedures with him -- cases?

A Yes.

Q Okay. And do you recall -- you testified on direct examination this morning that you recall one colonoscopy where Dr. Desai started before the patient was asleep --

A Yes.

Q -- using my layman's terms?

A Yes.

Q Okay. Do you recall that that was an upper endoscopy?

A No, that would be a -- a colonoscopy would be the lower -- the upper endoscopy, I think I recollect doing one with him who was the father of a physician who Dr. Desai said was in charge of us. A Dr. Kim or --

Q Okay.

A -- or Nim, something like that.

Q Okay. I don't think I asked -- I didn't ask my question --

A Okay. I'm sorry.

Q -- very clearly. I'm saying I think -- when you were interviewed by the police, okay --

A Yes.

Q -- back in 2008, you explained that the procedure in which Dr. Desai started before the patient was fully under anesthesia was an upper endoscopy; do you recall that?

A I don't recall it. I recall doing an upper endoscopy with him, where the patient did have a laryngospasm, but I thought the case that he started where I said, whoa, whoa, the patient is not asleep yet, was a colonoscopy.

Q Okay. Do -- the -- do you recall that you participated, like, in the first case where he came back to --

A Yes.

Q -- work?

A Yes.

Q Okay. And was that -- do you recall -- who else was present?

A Dr. Carrol.

Q Okay. And was this a first case to see if he had dexterity back?

A Yes.

Q Okay. And so you -- that was one of them where you participated with him?

A Yes.

Q Other you can recall is an upper -- or an upper and a -- you did an upper and a lower with him?

A Right.

Q Okay. And the -- the issues you pointed out when you came in and looked at the clinic, you talked about a couple of things that you thought weren't quite up to par, and I'm talking about a -- the cannisters weren't wall mounted?

A Right.

Q Okay. And the ventilator tubing needed to be replaced --

A Yes.

Q -- correct? And you pointed those things out --

A Yes.

Q -- correct? And they were corrected --

A Yes.

Q -- correct? Okay. Now, the -- did you have malpractice insurance?

A Yes.

Q Okay. And of course, I'm presuming you've had that everywhere you've worked?

A Yes.

Q Okay. And the -- the medical malpractice insurance is what we're talking about --

A Yes.

Q -- correct? And so that's in case any -- anything goes wrong, any untoward event, you have insurance so that you don't end up destitute, hopefully --

A Correct.

Q -- correct? If you have liability for it, right?

A Right.

Q And of course, that liability for it is the same thing Mr. Santacroce was asking you about -- that's Mr. Santacroce -- when he examined you and said when does your liability end.

A Oh, okay.

Q Right? Okay. And this -- the medical malpractice insurance, that -- that was provided by the

clinic --

A Yes.

Q -- correct? And you were actually employed by Gastroenterologists of Nevada?

A Right.

Q And they had paid for and got you your medical malpractice insurance?

A Yes.

Q Okay. And for you to be insurable you have to be a good CRNA, correct?

A Correct.

Q Now, the -- you indicated there was a meeting with -- or a meeting, I'm not sure if that's right. You were -- talked to Dr. Carrol and Dr. Desai?

A Right.

Q Okay. And I'm trying to put a time frame on that when Dr. Desai came back in mid-December and when this would have been in relation to your tenure there. And I'm asking because I didn't see anything about that meeting in your police interview or your grand jury interview -- testimony.

A I think that the meeting had to be during the time we were doing anesthesia because it -- I was called into the office for him and Dr. Carrol to tell -- and he said that I was using too much propofol, and that I was limited to one

bottle of propofol, 20cc per patient.

Q Okay. And so could -- well, during the time you were doing anesthesia was the entire time you were there --

A Yeah, well --

Q -- so that's not much of a limitation.

A -- it had to be some point in time, sometime in December, I would say.

Q Okay. When did you recall that?

A Well, I think -- I always said there was three meetings I had with Dr. Desai. One was when I was interviewed to be hired. Two was this meeting here that we're talking about. Three was the meeting after I talked to Dr. Carrol and Dr. Desai -- that's when he told me he wanted only one syringe opened at a time. Those are the only three times that I talked to Dr. Desai in the whole time I was there.

Q Okay. Well, I -- when you say you've always said three, you've always said three to who?

A To whoever asked me.

Q Okay. Well, I -- well --

A If the question --

Q -- did someone --

A -- never came up --

Q -- did someone ask --

A -- I wouldn't -- then I wouldn't have been able to answer it, so I'm not sure --

Q -- okay. Well, did -- who -all has asked you? Let me put it that way.

A Mr. -- the --

Q Whitely?

A -- the assistant --

Q Staudaher?

A -- yes.

MR. STAUDAHER: Yep.

BY MR. WRIGHT:

Q Mr. Staudaher?

A Yes.

Q Okay. Do you know Detective Whitely?

A Somewhat. It's five years.

Q Okay. And did you -- you told them about these three meetings?

A Yes.

Q Okay. And do you think -- I mean, I didn't see it, did you see it in your grand jury testimony or see it in your Metropolitan Police Department report?

A Not that I recall.

Q Okay. So that's -- that's what I'm getting at, when did you remember this? When it wasn't in 2008 report and it wasn't in your 2010 testimony, and now you'll come in here and remember it?

A I've always known about it.

Q Okay. Maybe no one -- maybe they just didn't ask you before?

A Well, that's possible.

Q Okay. Now that -- and then only have one syringe out --

A Yes.

Q -- okay? Do you think that was after CDC?

A Oh, yes.

Q Okay. So, I mean, at the -- I mean, that was in an effort to be more in compliance with the new CDC rules?

A Right.

Q Is that a fair --

A Yes.

Q -- characterization? The -- up until then -- your procedure, you would have multiple needles out?

A Yes.

Q Prefilled?

A Yes.

Q Okay. And your practice would be, after you've done everything, your preop -- interviewed them -- I'm all the way now to injection time.

A Okay.

Q You would inject, first, syringe with lidocaine --

A Exactly.

Q -- in it? And that would be like 11cc. 10cc of propofol and 1cc at the most of lidocaine?

A Exactly.

Q Okay. And then you would immediately toss it --

A Yes.

Q -- get out a new, prefilled, full one?

A Yes.

Q And put it right immediately into the heplock?

A Yes.

Q So that you had a syringe ready to --

A Yes.

Q -- inject more, if needed?

A Yes.

Q Is that right?

A That's right.

Q Okay. So that practice was to end, and it was to simply be you only have one needle out at a time?

A Right.

Q Okay. Now, you also stated, and I was a little unclear, on the upper endoscopy --

A Mm-hmm.

Q -- that you gave 200 to 300, at times 300 milliliters --

A Milligrams.

Q -- did I get those right -- milligrams? Okay.

And it -- if I understood you, you use more propofol for an upper than for a colonoscopy?

A Right.

Q Okay. And -- and is that right?

A That's true.

Q Okay.

A Because of the gag reflex.

Q Okay. So if -- I had understood propofol -- I mean, don't -- you start with a full 10, correct?

A Right.

Q And an upper, five minutes? I'm talking about the length of the procedure.

A Yes.

Q Is average?

A Yes.

Q Others are -- doctors are faster?

A Yes.

Q Some two to three?

A Right.

Q And I'm talking about minutes for the procedure --

A Yes.

Q -- for the upper, down the mouth.

A Yes.

Q You give a full 10 -- a person's having an

upper, I give a full 10. See -- 10 -- what are they?

A Milligrams.

Q Milligrams.

A 10cc --

Q Okay.

A -- which is 100 milligrams.

Q Okay. And all of that is charted, correct?

A Yes.

Q Okay. And so that when you do that, you jot it down, that's right on your anesthesia log, right?

A Right.

Q And then ultimately that's given to the nurse so it can go on the nursing chart, correct?

A I don't know about that.

Q You don't know that? Okay. But you document it?

A I document it.

Q Okay. So that you -- you want to know how many injections given and total amount of propofol --

A Exactly.

Q -- correct?

A Yes.

Q And so that's why when we look at anesthesia logs we might see 100, 40, 30?

A Yes.

Q Okay. And so that would mean one full one -- syringe --

A Yes.

Q -- 100 would be 10cc, and then the 30-40 would be additional doses out of the same syringe which you have left in?

A Yes.

Q Is that --

A Well --

Q -- in the heplock?

A -- it's another syringe.

Q Okay.

A Totally sterile that you've replaced the first syringe with.

Q Oh, right, I'm with you --

A Oh, okay.

Q -- but you've got -- I mean, on your charts if we looked at them, you'd have 100 written down first?

A Yes.

Q And that would be the first dose?

A Yes.

Q Okay. And so that one is empty and you tossed it?

A Yes.

Q Now, you got a new one out, aseptic, brand-new

needle syringe that you had already drawn and filled up, no lidocaine, and you insert it into heplock and then patient needs more you -- I hypothetically said you gave them 40.

A Okay.

Q Does that make sense?

A Yes.

Q And then you'd put down 40.

A Right.

Q Okay. And then if they needed more, 30, that would be a third dose. Each of those are written down --

A Right.

Q -- right?

A Right.

Q Correct?

A Correct.

Q Okay. And yours -- the totals on your uppers are going to all show more than for colonoscopy?

A Yes.

Q Okay. And the -- and that's because you need to be in a deeper sleep?

A Yes, gag --

Q Is it --

A -- reflex.

Q -- I -- okay. Well, in laymen's terms?

A Okay. That --

Q Do I -- once I get a 10, I mean, maybe I misunderstood testimony here in the courtroom.

A Mm-hmm.

Q I get a 10, I come in and I'm going to have a procedure and I get 10 and I -- I go to sleep --

A Right.

Q -- okay? If you immediately gave me a 20 -- 200, rather than 10, am I in a deeper sleep?

A Well, there's a situation called transient apnea, where the patient stops breathing for a short period of time when you give propofol, and so, if you're going to give 200, you're going to accentuate that -- that apnea phase and it's going to be even longer.

So --

Q Okay.

A -- because it lasts about 10 to 15 seconds, but --

Q Say that --

A -- it's expected.

Q -- again.

A It lasts about 10 to 15 seconds.

Q Seconds?

A Yes. And you'll --

Q The -- what the -- the sleep apnea?

A Yes.

Q Okay. But do you ever -- see, I -- I thought you put in 10cc and the person -- 10cc, one syringe, I thought the person was asleep. I mean, I'm talking about a standard weight/age or something.

A Right.

Q Not a big old fat alcoholic and not a little old skinny lady --

A That's our --

Q -- right?

A -- patients.

Q What?

A That's our patients you're talking about.

Q The standard -- if I give someone a 10, I thought they were going to be asleep for, like, five minutes?

A Well, you have to obtund reflexes also, and if you don't the patient will go into a laryngospasm, and then you have an even bigger situation on your hands. So that's why you would augment the propofol as the doctor was getting ready to insert the endoscope so you'd know, and it's -- that's intuition kind of thing, it's just --

Q Okay.

A -- something you learn over time.

Q Okay. So you'd give a -- do you ever start with more than a 10? Kind of like -- like in a clinic like you were working here in Las Vegas?

A Only if it was a general anesthetic -- for like an -- like an open-belly procedure -- a major surgery where you're going to put the tube in and so on. Then you are going to give 20 to 30cc to start.

Q Okay. But routinely, like, in the clinic --

A Routinely it's 100.

Q -- in Las Vegas you're going to start with a 10 tops?

A Yes.

Q Okay. And while -- while at the clinic in Las Vegas, you were never told, ever, at any time by anyone to reuse syringes or reuse needles?

A I was never told that.

Q Okay. And I presume if you were told to do that you wouldn't have done it?

A I'd ignore it.

Q And did -- you testified under direct and for Mr. Santacroce that the only time you would ever see propofol vials moving from procedure room to procedure room would have been on four or five occasions in your five months when Linda Hubbard, at the end of the day, came over and volunteered a half-used propofol vial --

A Yes.

Q -- correct?

A Yes.

Q And other than that during lunches, any other time, there was no shuttling of propofol vials back and forth?

A No.

Q Correct?

A Correct.

Q Okay. And there was never any moving of prefilled syringes around?

A No.

Q Correct?

A Correct.

Q It's -- you're saying no and there's a --

A I'm sorry.

Q -- double-negative so that's why I keep repeating it.

A I'm sorry. Correct.

Q Okay. Did you like to eat in the procedure room, breakfast?

A No.

Q You know who Janine Drury is?

A No.

Q A nurse, Janine Drury, did you happen to see her?

A Was she here earlier?

Q Yeah.

A Yeah, okay. I forgot her name.

Q Okay. Did -- don't you remember her getting on you for bringing breakfast into the procedure room?

A No.

Q No?

A No.

Q You're Vinny Sagendorf, right?

A Yes, I am.

Q I get these Vinny's mixed up. Okay.

Where you are presently working today you're on vacation/holiday standby?

A Yes.

Q Okay. So if a CRNA goes on vacation, you're called to fill in?

A Right.

Q That's the semi-retirement we're talking about?

A Right.

Q And presently at that facility they are still multi-using propofol vials?

A Yes.

Q Your interview of patients prior to sedation, that -- most of the time -- took place in the preop area, correct?

A Correct.

Q And -- because that was your practice?

A Yes.

Q So that you would go out before they're wheeled in on a gurney and talk to them, and you actually have the form on the back of your anesthesia log --

A Right.

Q -- all of the pertinent questions --

A Right.

Q -- correct? And your practice was also, after the procedure to go out to the recovery room and look at your patients?

A Yes.

Q And if it was too busy, sometimes you couldn't?

A Right.

Q Is that fair?

A Yes.

Q And you estimated at least 60 percent of the time you would make it out, if nothing else, to open the curtain, look in, check the monitors, and see that everything is all right?

A Exactly.

Q And that -- and you were continuing the practice you had had throughout your career?

A Yes.

Q Now, on the 50s -- going back to propofol vials --

A Yes.

Q -- you preferred the 50s over the 20s, correct?
A Yes.
Q And what -- what's the reason you like the big ones better than the little ones?
A Because you can use the spike and it's easier to draw the drug up.
Q Okay. And if you use the spike, you don't even put the needle on to begin with --
A Right.
Q -- you just draw it up into the syringe --
A And then --
Q -- and then put the needle on?
A -- then put a needle on.
Q Okay. When you would start the heplocks, what we called the --
A Yes.
Q -- heplock IV --
A Right.
Q -- that would be on occasion when a nurse couldn't do it or didn't do it, right?
A Right.
Q Or maybe first patients in the morning?
A Yes.
Q And you would flush the heplock? Would you flush the heplock?

A No.

Q Okay. You didn't flush the heplock?

A No.

Q Okay. When you -- I thought I read something about you flushing them with something called Xylocaine?

A Every once in a while you would use Xylocaine before you put the -- the heplock in --

Q Oh.

A -- to lessen the amount of pain the patient has, but inside the heplock is heparin, so you don't need to flush it. It will not clot.

Q Okay. So you didn't -- when you would start the heplock, you would be starting them in the procedure room?

A Yes.

Q Okay. And so you would just put it -- when you were interviewed and talked about using Xylocaine, is that lidocaine?

A Same thing.

Q Oh, same thing?

A Yes.

Q Okay. You were talking about not flushing them, but simply when you would put in the heplock?

A Yes, I would make a little wheel, a Xylocaine wheel, so that when I inserted the heplock it didn't cause the patient much -- as much pain.

Q Okay. What's a wheel?

A It's just a little bump.

Q Oh, it --

A A little -- a little round bump --

Q -- okay.

A -- of Xylocaine right underneath the epidural -- the epidermis, so that it just sits up.

Q Okay.

A It's like a pimple.

Q You indicated -- testified that there were 70 to 75 patients per day --

A Yes.

Q -- correct? Was that constant the time you were there?

A Yes.

Q Okay. And has Detective Whitely, the Metropolitan Police Department, or the district attorney's office, when you told them those numbers 70 to 75 patients a day --

A Yes.

Q -- in October/November/December 2007 --

A Yes.

Q -- have they ever showed you the true numbers for those days?

A No.

Q Would you be surprised to learn that there's, like, 53 procedures per day in November 2007?

A I'm surprised because the CDC told them to drop the cases down to 50 when they came --

Q CDC told who?

A Told Dr. Carrol.

Q Okay. CDC told Dr. Carrol to drop it --

A They said they were --

Q -- to 50?

A -- we were doing far too much --

Q Okay.

A -- for safety's sake.

Q Were you shown the statistics that for November it was 55 patients per day?

A I never saw any statistics there.

Q December 54 patients per day. You never saw that?

A No.

Q So when you told them during your interviews you saw -- it was 70 to 75 patients a day, every day, constantly, they just said okay, right?

A Yeah.

MR. WRIGHT: No further questions.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MS. WECKERLY:

Q Sir, when you were working in November and part of December, that was when Dr. Desai wasn't at the clinic, right?

A Yes.

Q So that was when he was out with a medical leave?

A Yes.

Q And the numbers then were, according to Mr. Wright, 50 or somewhere in there?

THE COURT RECORDER: He needs to answer out loud because --

THE COURT: You need to answer yes or no --

THE WITNESS: Yes.

THE COURT: -- out loud. I have people do that all the time, we forget, but --

BY MS. WECKERLY:

Q When -- when Linda Hubbard would, on those four or five times that you recall when she would bring leftover or partially used vials, was it just one vial she would bring over or more than one?

A More than one.

Q And, like, I mean -- I know it's hard to remember, but how many?

A Four or five.

Q Four or five? And these were the ones that you would discard --

A Yes.

Q -- because you didn't open them yourself? If your recollection is that -- well, you know you started on December 1st, correct, of --

MR. WRIGHT: October.

BY MS. WECKERLY:

Q -- or I'm sorry, October 1st of 2007?

A Yes.

Q And your recollection in your interview was that Dr. Desai came back sometime in mid-December?

A Yes.

Q So from your starting date of October 1st to the middle of December, he didn't run any meetings about -- for the CRNAs, right?

A No.

Q And no meetings about saline during that time period?

A No.

Q Mr. Wright brought up that you had interviewed with -- on the Southwest Medical Group?

A Yes.

Q When did you interview with them?

A Three weeks after I got there --

Q And why --

A -- after I started.

Q After you started at the endoscopy center?

A Yeah, I -- I went over there for a visit, and then I started taking the battery of tests.

Q And why did you -- why did you interview that soon into starting at the endoscopy center?

A I wanted to leave. The hours were incredible.

Q When you were working at the endoscopy center, did you have the opportunity to observe other CRNAs do their work in their procedure room?

A No.

Q Did you have any time where you could go hang out in another procedure room and watch Keith Mathahs or Linda Hubbard do a couple procedures, or were you busy in your room?

A I was busy in my room.

Q So you don't know how they might have used syringes, or how they might have administered propofol?

A No, I never watched either one of them practice.

Q Mr. Wright asked you on cross-examination about all the places you've worked and administering propofol, essentially in a multi-use fashion; do you recall that?

A Yes.

Q In any of those other places, did anyone ever limit you or instruct you that you should only use a certain

number of milligrams per procedure?

A Never.

Q But that did happen with Dr. Desai?

A Yes.

Q When you interviewed patients preprocedure in the preop area --

A Mm-hmm.

Q -- what percentage of time were you able to go out and do that?

A I had a couple of minutes.

Q But, I mean, like out of -- like, were you able to do that half the time or a quarter of the time; what do you think?

A About half the time.

Q Half the time?

A Yeah.

Q And how many minutes would it take to do that interview?

A About two minutes.

Q About two minutes. And when -- I think you said that you would go to recovery, maybe 60 percent of the time?

A Mm-hmm.

Q Is that yes?

A Yes.

Q And when you did that, were you able to stay

with the patient for an extended amount of time?

A No.

Q Was it just a walk-by?

A Yes.

Q Maybe a minute at most?

A At most.

Q So if you added that time -- those minutes -- into your anesthesia time for the actual procedure, it still wouldn't add up to 30 minutes or over, would it?

A No.

Q And on -- at least half the time you weren't able to do that at all; is that fair?

A Yes.

Q Thank you.

THE COURT: Mr. Santacroce?

MR. SANTACROCE: I don't have anything, Judge.

THE COURT: Mr. Wright?

MR. WRIGHT: No, Your Honor.

THE COURT: Counsel, approach.

(Off-record bench conference.)

THE COURT: Oh, I'm sorry. I thought we were done. No? Okay.

MS. STANISH: Oh, I'm done.

MR. WRIGHT: Are you going to ask any --

THE COURT: I am.

MR. WRIGHT: Oh, okay. I thought you were leaving.

THE COURT: All right. A juror would like to know, why did you leave the Center? I think you kind of touched on that already.

THE WITNESS: The --

THE COURT: The Gastro Center.

THE WITNESS: -- Gastro Center? The hours. The -- just, I -- it wasn't my kind of place to work.

THE COURT: Okay. How can you be responsible for a patient during a procedure and be responsible for patients in the recovery room at the same time?

THE WITNESS: We have nurses -- recovery room nurses, specially trained. If there's a problem that they can't handle, then they would come to us.

THE COURT: Okay. And that goes into the next question, which is, if there was an emergency in the recovery room, who would take over in the procedure room since no one else has your specific training to administer anesthesia?

THE WITNESS: That's always been a big question.

THE COURT: Did that ever happen where you had to run out into the --

THE WITNESS: It --

THE COURT: -- recovery room and you got a patient --

THE WITNESS: -- it has. It has. And I have to -- I

have to judge which is most -- if I have a patient who is slowly coming out of the anesthetic, then, yes, I can go over and administer emergency care, but I have to rely a lot on the nurses.

THE COURT: Okay. Did that happen to you at the Gastro Center on occasion?

THE WITNESS: No.

THE COURT: Never at the Gastro?

THE WITNESS: No.

THE COURT: So that's happened to you at other jobs where you've had to --

THE WITNESS: It's --

THE COURT: -- decide between --

THE WITNESS: -- yeah, there's always a --

THE COURT: -- somebody --

THE WITNESS: -- skeleton-type crew, where I might be alone or be the only anesthesia-trained person there.

THE COURT: But never at the Gastro Center?

THE WITNESS: No.

THE COURT: Okay. And was there a time you had to surrender your license?

THE WITNESS: I voluntarily surrendered my license on counsel's recommendation here in Nevada.

THE COURT: All right. And so you're not licensed in Nevada anymore?

THE WITNESS: Not anymore.

THE COURT: But you're licensed, obviously, in California?

THE WITNESS: Yes.

THE COURT: Now, did you have to kind of reobtain a California license once you moved back there?

THE WITNESS: No, I just never let it lapse.

THE COURT: Okay. And you've never asked for your Nevada license back?

THE WITNESS: I have, but that's been -- that's a whole 'nother story.

THE COURT: Okay. So you -- fair to say you haven't gotten it back?

THE WITNESS: I have not gotten it back.

THE COURT: All right. In the five months that you were there, did you receive any pay raises or bonuses?

THE WITNESS: No.

THE COURT: Okay. Now, did California take any steps against you, based on this, to suspend your license, or did you have a hearing or anything like that --

THE WITNESS: No.

THE COURT: -- in the State of --

THE WITNESS: No, I --

THE COURT: -- California?

THE WITNESS: -- I sent in the fact that I had

malpractice cases levied against me, but that I had not been -- that they were still under review or whatever --

THE COURT: Okay.

THE WITNESS: -- they do.

THE COURT: So you informed the licensing board and as far as you know they've taken no action?

THE WITNESS: No, they put me on a provisional for one year.

THE COURT: Okay. But were you allowed to keep working?

THE WITNESS: Yes, I was allowed to keep working.

THE COURT: Okay. Ms. Weckerly, do you have any follow-up based on those last juror questions?

MS. WECKERLY: No, Your Honor.

THE COURT: Mr. Santacroce, do you have any follow-up based on those last juror questions?

FOLLOW-UP EXAMINATION

BY MR. SANTACROCE:

Q When did you voluntarily surrender your license in Nevada?

A It was almost a week after we were -- after the CDC came out with the charges.

Q And you voluntarily surrendered because the nursing board said that they were going to take it if you didn't, correct?

A Well, I think that's what Tracy Singh said.

Q Okay. And that was your lawyer?

A Yes.

Q And did you advise California when you reapplied for your license that you had voluntarily surrendered your license in Nevada?

A No.

Q Okay.

THE COURT: Mr. Wright?

FOLLOW-UP EXAMINATION

BY MR. WRIGHT:

Q When -- you're -- you know that you started work October 1st --

A Yes.

Q -- and the incidents in which there were accidents, clusters, whatever the causation of hepatitis C predated your work --

A Yes.

Q -- correct?

A Yes.

Q And you -- you were lucky it took so long for Nevada to license you because you could have been working there in September, correct?

A Correct.

Q And had you been, it could have been a whole

different ballgame, correct?

A No.

Q No?

A I don't -- I wouldn't use contaminated propofols.

Q There's plenty of people who didn't --

A Yeah.

Q -- who still got in trouble --

A Well, I still got --

Q -- right?

A -- in trouble. I still got drug through the mud. I still got that black spot for -- for, you know, with joining the group and then having this happen.

Q Right. You had a hard --

A I couldn't -- I -- if it wasn't for the job in California, I wouldn't have been able to get a job anywhere.

Q Okay. If you couldn't have gone back there, you couldn't get a job as a janitor, correct?

A Exactly.

Q I mean, those are your words. I'm not being --

A Yeah. Yeah, I --

Q -- disparaging.

A -- because I don't know how to be a janitor.

Q Thank you.

THE COURT: Ms. Weckerly? Mr. Santacroce, anything

else?

MR. SANTACROCE: No.

THE COURT: Any additional juror questions for this witness before he's excused?

All right. Sir, thank you for your testimony. Please don't discuss your testimony with anyone else who may be a witness in this case.

THE WITNESS: Okay. Thank you --

THE COURT: And you're free --

THE WITNESS: -- all.

THE COURT: -- to leave. Thank you.

All right. Ladies and gentlemen, it has come to my attention that apparently the other witness that was scheduled today had some kind of a personal emergency, and I believe that's all the witnesses that were lined up for today. This last witness, I think, took less time than what was expected.

So there being no additional witnesses for this afternoon, we're going to have to take our weekend recess a few hours --

MS. STANISH: Ahhh. Sorry.

THE COURT: -- a few hours early. So we will reconvene Monday morning at 9 a.m.

During the weekend 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 the case, person, or subject matter relating to the case. Do not do any independent research by way of the Internet or any other medium, and please don't form or express an opinion on the trial.

Please all place your notepads in your chairs and follow the bailiff through the rear door.

(Jury recessed for the evening at 1:54 p.m.)

(Outside the presence of the jury.)

(Off-record colloquy.)

THE COURT: All right. Do you guys -- you don't need me for stipulating to the exhibits and whatnot.

MS. WECKERLY: No.

THE COURT: Do you need the court clerk to do that, or do you need to stay in the --

MR. STAUDAHER: I think that would be good to have her here so that --

THE COURT: -- okay.

MR. STAUDAHER: -- just as we go through them --

THE COURT: Sorry.

THE CLERK: I know.

MS. WECKERLY: We'll be quick.

MR. WRIGHT: Judge? Judge? Judge, while I remember, I want to offer K-1, which was --

THE COURT: Right. It was a statement, the --

mister, I forget his name.

MR. WRIGHT: McDowell -- Ralph --

THE COURT: Yeah.

MR. WRIGHT: -- McDowell --

THE COURT: Made to Mr. Mommett [phonetic] --

MR. WRIGHT: -- [inaudible].

THE COURT: -- his memorandum. I don't see how that falls within any of the hearsay exceptions --

MS. WECKERLY: No, me neither.

THE COURT: -- and so -- even a past recollection recorded, you can only read it, you can't admit the whole thing. Plus, he remembered everything that was, I think, in the exhibit. Once he had a chance to look at the exhibit, I didn't catch anything. Maybe one little point, but almost everything he testified to, so I don't see the reason to admit the exhibit, but we can certainly make it a Court's exhibit, if you would like, for Appellate -- well, actually, anything that's offered --

MR. WRIGHT: It's marked.

THE COURT: -- that doesn't go to the jury is still kept as a marked exhibit, it just doesn't go to the jury, obviously, so --

MS. WECKERLY: Sure.

MR. STAUDAHER: And the State -- I just -- just so the Court is aware of it before the Court leaves, because the

Court had requested this, the Health District report that you asked for --

THE COURT: That was given, I know, the other morning, but I have not had a chance to read it all.

MR. STAUDAHER: That's fine. I'm just saying --

MS. WECKERLY: It's --

MR. STAUDAHER: -- it's here --

MS. WECKERLY: -- long.

THE COURT: Yeah.

MR. STAUDAHER: -- and --

MS. WECKERLY: Just for scheduling purposes, and I'll certainly adjust this if it's not good for Defense counsel, but I was hoping that we could finish the balance of the bad acts hearing on Thursday? I don't know if that -- well, think -- is that okay with the Court if they think about it and --

THE COURT: So, like, Thursday morning?

MS. WECKERLY: Yes.

THE COURT: Okay. And then, how long do we think that's going to take?

MS. WECKERLY: I don't -- well, we have the two telephonic witnesses and one lay witness, I think two hours --

THE COURT: The only thing, I know you guys --

MS. WECKERLY: Or we could do it at the end, I mean --

THE COURT: -- aren't probably that familiar with

Court Call? A lot of times it's hard to hear, so that can, you know, like -- if we use the handheld mikes and talk really loud, so -- you know?

MS. WECKERLY: Okay.

THE COURT: We should be okay. All right. Well, I'll see you Monday. You guys can obviously stay here and do what you need to do. Bye.

THE CLERK: Did you say what time Monday?

THE COURT: 9 a.m. Monday. That's what I told the jury, right, 9?

(Court recessed for the evening at 1:57 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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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 27

FRIDAY, JUNE 3, 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.
Also Present:	NIA KILLEBREW, ESQ. Han Tieu, Interpreter

RECORDED BY JANIE OLSEN COURT RECORDER
TRANSCRIBED BY: KARR Reporting, Inc.

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I N D E X

WITNESSES FOR THE STATE:

E X H I B I T S

LAS VEGAS, NEVADA, MONDAY, JUNE 3, 2013, 9:07 A.M .

* * * * *

(Outside the presence of the jury.)

THE COURT: Do we have the witness in the hallway?

(Pause in the proceedings.)

MR. STAUDAHER: Would you like the witness to come forward, Your Honor?

THE COURT: Please.

Sir, you can just step into like the well of the courtroom there.

MR. STAUDAHER: We have an interpreter, also.

THE COURT: All right.

THE RECORDER: Can we have the interpreter's name.

THE INTERPRETER: Han Trieu; H-A-N T-R-I-E-U.

THE COURT: And you are interpreting from English into?

THE INTERPRETER: Vietnamese.

THE COURT: Vietnamese. All right.

THE CLERK: T-I-E-U?

THE INTERPRETER: T-R-I-E-U.

THE COURT: All right. And the name of the witness?

THE WITNESS: Nguyen Huynh.

THE COURT: And can you spell that for us?

THE WITNESS: N-G-U-Y-E-N H-U-Y-N-H.

THE COURT: Okay. N-G-U-Y-E-N. And the last name

again?

THE WITNESS: Huynh, H-U-Y-N-H.

THE COURT: Okay. H-U-Y-N-H. We've got that. All right. And it's my understanding, sir, that you were a plaintiff in various civil lawsuits relating to the -- your infection with hepatitis; is that correct?

THE WITNESS: Yes.

THE COURT: Okay. And that -- have all of those lawsuits been settled?

THE WITNESS: Finished.

THE COURT: I'm sorry?

THE WITNESS: Finished.

THE COURT: All finished. Okay. Now, as part of those settlements, my understanding is you may have signed confidentiality agreements.

THE WITNESS: Yes.

THE COURT: Okay. Where you agreed you would not disclose how much money you received?

THE WITNESS: Yes.

THE COURT: Okay. Because you cannot limit the rights of the State to call you as a witness or the defense in a criminal case to cross-examine you as far as is relevant, I must order that you're to answer any question that I deem relevant. Specifically, if they ask you, you must disclose the net amount of any settlement you received, meaning how

much you received. I don't care -- you don't have to disclose how much your lawyers got or how much any other plaintiffs that you know about got or what the costs were or anything like that, just how much money you wound up with. Do you understand?

THE WITNESS: Yes.

THE COURT: Okay. And then they can also ask, you know, how much you got from each plaintiff. For example, you know, how much did you get from the drug company or how much did you get from the pharmacy or what have you.

THE WITNESS: Yes.

THE COURT: Do you understand?

THE WITNESS: Yes.

THE COURT: And were you the only plaintiff or was your wife a plaintiff as well?

THE WITNESS: Only me.

THE COURT: Only you. Okay.

MS. KILLEBREW: Your Honor, for clarification, I believe Mr. Nguyen Huynh, his wife was also a plaintiff. They received recovery on loss of consortium claim.

THE COURT: Oh, she was. Okay. And, sir, do you know what your wife received on her claim?

THE WITNESS: Can you repeat that, please?

THE COURT: Do you know what your wife received as part of her settlement?

THE WITNESS: Yes.

THE COURT: Yes, Ms. --

MS. KILLEBREW: Your Honor, I'll represent to the Court that we did provide Mr. Nguyen with a net amount of all of the totals of [indecipherable]. He may not be aware of that. The number that we provided to him by my firm encompasses those net settlement amounts.

THE COURT: Okay. So any amount, if it went to you or it went to your wife, it's the total net that your household got, you and your wife together, which I believe you got that -- that number from Ms. Killebrew.

THE INTERPRETER: What was the name again? Sorry.

THE COURT: Ms. Killebrew, his -- his lawyer. Okay? Do you understand all that? And you are ordered --

THE WITNESS: Yes.

THE COURT: -- to answer the questions regarding that net amount.

THE WITNESS: Yes.

THE COURT: Okay. Ms. Killebrew, did I cover that to your satisfaction?

MS. KILLEBREW: Yeah. Thank you, Your Honor. I appreciate that.

THE COURT: Okay. State, anything else I need to cover with the witness?

MR. STAUDAHER: No, Your Honor.

THE COURT: All right. Sir, thank you. And you can -- you and the interpreter can return to the waiting area. Okay. Thank you.

THE WITNESS: Thank you.

MS. KILLEBREW: Thank you, Your Honor. May I be excused?

THE COURT: You are excused. Thank you.

MS. KILLEBREW: Thank you.

THE COURT: All right. Is that the only preliminary matter?

MR. STAUDAHER: I believe so, Your Honor.

THE COURT: All right. Well, go ahead, Kenny, and get the jury.

How did -- Mr. Staudaher, how is -- how are you guys spelling -- is it N-G-U-Y-N?

MR. STAUDAHER: Y-E-N, I believe.

THE COURT: Y-E-N. Okay.

(Pause in the proceedings.)

THE COURT: Well, maybe we can start -- before the jury comes in can you start --

MR. STAUDAHER: This is the --

THE COURT: -- the list of --

MR. STAUDAHER: This is how it's --

THE COURT: -- the stipulated --

MR. STAUDAHER: Yeah, this the --

THE COURT: -- exhibits.

MR. STAUDAHER: -- how it's spelled, I believe. The one name, which is believe is the last name, is N-G-U-Y-E-N, the what I believe is the first name, although I could possibly have those mixed up --

MS. STANISH: You do.

MR. STAUDAHER: -- is H-U-Y-N-H.

THE COURT: I'm not familiar with the Vietnamese system, but it could be like the Chinese where typically the family name goes first and the first name is said last. So it may be, then, the Vietnamese system that that Nguyen is his surname, but they say it like they do in Chinese, Nguyen Huynh, which would really be Huynh Nguyen if you, you know, switch it over as many Chinese people do when they come to the United States. Then they turn it over.

But in China you would be your family name first and then your first name after that, and there's usually something in the middle, too. And I'm not sure what that -- there's something also, a designation, I think, for the women in the family get one name and the men may get another name, and then there's the family name.

MR. STAUDAHER: Okay. Oh, did you want me to put the -- the --

THE COURT: But I'm not sure about the women and the male thing. That just may be certain families do that because

I have personal friends that their families do that. That's how I -- how I know that.

MR. STAUDAHER: And, Your Honor, I guess on the record today I want to make sure that we have -- we spent Friday going through -- or at least I -- counsel went through a lot of the exhibits that we had not completely worked on. And as of today it's my understanding that --

THE COURT: Wait a second.

MR. STAUDAHER: -- that the Exhibit -- State's 1 through 163 with the exception of 24, 25, 26, 43, 92, 162, 87 are -- I mean, 87 was admitted, but if there was an objection to it it was the, I believe, the affidavit. So there's at least an objection to that. The rest of them have been stipulated to with the exception of 24, 25, 26, 43, and 162, I believe.

As far as the exhibits 162, that's the Health District report that we still -- the Court still has to rule on. 24, 25, 26, and 43 I believe Ms. Stanish needs to review those with Nancy Sampson who is coming in this morning before those can be stipulated to, and then, obviously, 162 is the only outstanding one beside that, and 92, I think, as well.

Is that correct?

MS. STANISH: My understanding, and I don't have the numbers down pat, the documents that are set here and behind the clerk, these are foundational documents primarily. The

intention is not to give them to the jury, but should one of the parties need something out of it we can grab it. But my understanding is these are -- or was appellate exhibits.

MR. STAUDAHER: They're foundational documents for the charts that -- that have been stipulated to.

THE COURT: Right. But they're not actually going to go back to the jury. The -- the charts will be what goes back to the jury.

MR. STAUDAHER: Unless -- unless there is something that is needed from those.

THE COURT: From those, and then you'll refer to it specifically by the Bates number or we can make it a sub -- you know, let's say it's 161. We'll make it A, 161A or whatever so that that, then, will go back to the jury. Or it'll be clear for appellate purposes or something what page we're talking about. Okay?

MS. STANISH: And I'm not sure -- I don't think our list really identifies the cutoff, but we'll figure it out.

THE COURT: Okay. As long as we do it before, you know, in a month or two from now when we're actually done before it goes back to the jury.

All right. Bring them in.

(In the presence of the jury.)

THE COURT: All right. Court is now back in session. The record should reflect the presence of the State

-- everyone can be seated -- through the deputy district attorneys, the defendants and their counsel, the officers of the Court, and the ladies and gentlemen of the jury.

And, Mr. Staudaher, you may call your first witness.

MR. STAUDAHER: The State calls Mr. Nguyen to the stand.

THE COURT: Sir, right up here.

And would the interpreter like a chair?

THE INTERPRETER: Depends on how long, I guess.

THE COURT: Okay. You may want a chair and a sandwich, so the bailiff will assist you with a chair. Do you need a pad or --

THE INTERPRETER: I have one.

THE COURT: Okay. And for the record, the interpreter will be translating from English in Vietnamese; correct?

THE INTERPRETER: That's correct.

THE COURT: And from Vietnamese into English.

And, ladies and gentlemen, I don't believe we have any Vietnamese speakers on the jury. But I'll, just out of an abundance of caution, give the general instruction. You must rely on the translation as given by the certified court interpreter of the English translation of everything that is said.

All right. The clerk will administer the oath to

the witness.

NGUYEN HUYNH, STATE'S WITNESS, SWORN

THE CLERK: Thank you. Please be seated. If you could please state and spell your first and last name for the record.

THE WITNESS: Nguyen Huynh; N-G-U-Y-E-N first name. And last name H-U-Y-N-H.

THE COURT: All right. Thank you.

MR. STAUDAHER: May I proceed?

THE COURT: Mr. Staudaher, you may proceed.

DIRECT EXAMINATION

BY MR. STAUDAHER:

Q Mr. Nguyen, is it okay if I call you Mr. Nguyen?

A Yes.

Q Mr. Nguyen, I know that you have some understanding of the English language, but it's my understanding you feel more comfortable having an interpreter for this proceeding; is that correct?

A Yes.

Q It's going to be important because we're using an interpreter that even though you may understand some of my words that I say to you in English that you allow the interpreter to interpret that, and vice versa, your responses to the interpreter for us.

A Yes.

Q Sir, I want to go back in time a bit to 2007, September of 2007.

A Yes.

Q Did you undergo a procedure at the Shadow Lane endoscopy center in September?

A I'm sorry. Shadow Lane --

Q Shadow Lane endoscopy center in September.

A Yes.

Q Do you remember the date that that took place?

A It was either July or September. I can't remember.

Q If the record showed it was September 21st, would that refresh your memory?

A Yes.

Q Do you recall what kind of procedure you had there?

A Colonoscopy.

Q Now, before you had the procedure, let's go back a little bit. Did you -- how did you end up having the procedure? I mean, who was your referring doctor?

A Because I went to a checkup. Dr. Patel told me for my -- people my age should have a checkup to see if any cancer.

Q So this was just a screening or checkup

procedure? You weren't having a medical problem at the time?

A Yes.

Q When you go to have the procedure done, do you recall what time in the day it was?

A About 8:00 in the morning I went in, filled out some paperwork, and pay.

Q Then what happened after that?

A They asked me to lay down on a -- on a bed, and then they pushed me into another room. Then I waited and then finally they pushed me into a room to check my colon. When I went there the doctor told me that he was going to put me to sleep, and then after that he put me down to sleep.

Q Did you see any other person beside the -- the doctor or the person who put you to sleep?

A No, only one person, only one doctor.

Q So you didn't see the person who actually did your procedure itself?

A No.

Q When you woke up after the procedure, where were you to the best of your recollection?

A They pushed me back out to the initial room that I was waiting, the recovery room.

Q So you woke up and then moved back to the place you started?

A Yes. After when I woke up I was there.

Q Okay. When you were out in the area where you were at where you started, after you got your procedure done did you have anybody take care of you out there?

A It was a nurse.

Q How long were you out there, roughly, if you can remember?

A When I woke up they asked -- they asked me if I was okay. I say -- I say yes, then they say you can go home.

Q Did you go home after that?

A Yes.

Q Now, after the procedure took place, did you feel okay after that? Did you have any problems at all?

A I was tired.

Q And at some point down the road, did you suffer any sickness or illness?

A At that time, no.

Q Was there a time later on that you felt --

A Yes, I start to feel tired all the time.

Q Okay. Beside the tiredness was there anything else?

A Sometimes I feel like having the flu.

Q Okay. How long did that take or did that -- did that last?

A One or two days, then it -- when it stopped it

would come back.

Q As far as your -- I mean, at some point do you learn -- get a letter from the Health District saying you needed to be tested?

A Yes.

Q Did you go get tested?

A Yes.

Q And was this for hepatitis C?

A Yes.

Q What were the results of that test?

A After the blood test they say I have hepatitis C, and I have a live virus. And the -- the second time they check it they say the virus has increased, the count of virus has increased.

Q So you had an active infection?

A Yes.

Q Okay. I want to -- I want to stop there for just a minute and go back in time even further than your going to the doctor in the first place.

A Yes.

Q Had you ever been tested for hepatitis C, for HIV, for hepatitis B, anything like that in the past?

A I can't remember. I -- I had blood tests every year and I never have any problem. They always say it's okay.

Q So your blood tests every year, were those just checkup kind of things where you go in and get blood work as part of a checkup?

A Yes.

Q When you were -- when you -- I guess I should ask the question first. Are you married, sir?

A Yes.

Q And do you recall when you got married?

A 60 something.

Q When you were 60 or in the '60s?

A I was 18. I was joining the army, so I got married.

Q I'm going to go forward a little bit. Are you currently -- you're currently married?

A Yes.

Q In approximately 2002 did you get married to your latest wife?

A Yes.

Q At that time when you got married did you have to have any blood work done?

A Yes.

Q Did that include things like HIV, hepatitis C, hepatitis B, that kind of thing?

A I think so.

Q Do you remember at some point in the past

talking to the police in this case?

A Yes.

Q And I can show you a copy of the transcript, but would it refresh your memory to maybe look at a copy of the transcript on that issue?

A I don't need to.

Q Okay. In the -- in your interview with the police did you tell them that you had been tested --

MS. STANISH: Your Honor, may we --

BY MR. STAUDAHER:

Q -- for those types of diseases?

MS. STANISH: May we approach?

THE COURT: Sure.

(Off-record bench conference.)

THE COURT: All right. Mr. Staudaher, rephrase your question.

BY MR. STAUDAHER:

Q When you got married back in 2002, I think you said that you had to have infectious disease testing; is that correct?

A Yes, I tested. I was tested.

Q And those tests included HIV and the like; is that correct? Hepatitis and so forth?

A Doctor said we --

Q Well, let's not -- let's not get into what the

doctor said.

THE COURT: Don't tell us what the doctor said.

BY MR. STAUDAHER:

Q Just did you have the test, first of all.

A Yes.

Q Okay. At any time after you had those tests did you ever experience any signs or symptoms of hepatitis infection?

A No.

Q Were you ever treated in any way at that time for hepatitis?

A After I --

Q No, I'm not talking about after. I'm talking about back then when he got the results of those tests.

A You say when I received that letter?

Q No, when you -- back when you got married and you had to be tested, did you ever get treated for hepatitis infections?

A No, I was not sick.

Q Let me ask you some other questions. Have you ever had tattoos, thinks like that?

A No.

Q Body piercings?

A No.

Q Have you ever used IV drugs?

A No.

Q Have you ever -- and I know this -- some of these questions might be a little personal, but have you ever had multiple sexual partners?

A No.

Q Blood transfusions before 1984?

A No.

Q Have you ever had blood transfusions at all ever?

A No.

Q Have you ever worked in the medical field or around blood or blood products?

A No.

Q Have you had any surgeries in the past?

A I had a knee surgery once.

Q And was that in this country, the United States?

A Yes.

Q And do you recall roughly what year that was?

A It's been awhile. I can't remember. A long time.

Q Are you from the United States originally?

A No.

Q Where are you from?

A Vietnam.

Q When did you come to this country?

A 1980.

Q Did you have your knee surgery, obviously, after you came here in 1980?

A Yes.

Q Do you know how long you had been in the United States, roughly five, six, seven years, how -- how many years after you got here did you have your knee surgery?

A I came here in '89, and then '90, '91 I had surgery.

Q So in 1989 you came to the United States?

A No. 1980. I moved from Los Angeles.

THE COURT: So in 1989 did you move from Los Angeles to Las Vegas?

THE WITNESS: Yes.

THE COURT: And when you came from Vietnam in 1980 you went to California?

THE WITNESS: Yes.

BY MR. STAUDAHER:

Q And after you came to Las Vegas is when you had the knee surgery?

A Yes.

Q And no blood transfusion ever?

A No.

Q Have you -- you said that you have had blood

tests every year as part of a checkup, sort of medical thing; correct?

A Yes.

Q Is that for like a wellness check, like you go in for a physical kind of thing?

A Yes.

Q Okay. Have there ever -- to your knowledge has there been ever any issue with any of your blood work?

A Every time it's good.

Q So let's go forward in time now. We talked about the things before you went to the clinic and we've talked a little bit about after the clinic when you got the letter. When you got the information, meaning you were tested and you found out that you were positive for hepatitis C, did you go back to your doctor for treatment?

A Yes.

Q And what kind of treatment did you have?

A Okay. Dr. Patel refer me to a specialist in kidney -- or liver, I'm sorry, liver.

Q So did you have to have some medicine or treatment as a result of that?

A Yes. I went to take tests, and then the second time I had got test the virus count has increased.

Q Did they eventually have you go through some treatment for that?

A Yes.

Q And do you recall what that treatment was, what it entailed?

A 48 weeks. I had to have shot every week and also take five pills a day.

Q And that lasted for the whole time, the whole 48 weeks?

A Yes.

Q Now, during the time that you had the shots and the pills and you were doing that, how did -- how you were you feeling?

A When I have a shot I feel like I was dying, I was half dead.

Q And this was every week?

A Yes.

Q And it looked like I interrupted you. Were you going to say something else, sir?

A That shot was poisonous. I had hot and cold, and then I had to use electric blanket when I get cold and I was shaking. I couldn't eat. I feel like vomiting.

Q And this is for the whole time?

A Yes, 48 weeks. Yeah, I was dying.

Q At some point you stopped the treatment; is that right?

A I stopped after 48 weeks.

Q Do you still have the virus infection?

A Yes.

Q Do you get tested regularly for that?

A Six months, every six months.

Q Have you ever been shown to be -- have the virus cleared from your system?

A No, only increase, but not reduce.

MR. STAUDAHER: Pass the witness, Your Honor.

THE COURT: All right. Thank you.

Cross, Ms. Stanish.

CROSS-EXAMINATION

BY MS. STANISH:

Q Good morning, sir.

A Good morning.

Q Clarify for me, please. I understand you went through this 48 weeks of medication. How long after you had the colonoscopy in September of 2007 did you start that treatment?

A When I received the letter I went to have blood test. I went to see a doctor and then --

Q Excuse me for interrupting. Can you find out what he's --

THE COURT: Oh, what are you -- is that a card from your doctor?

MS. STANISH: May I approach, Your Honor?

THE COURT: Yeah. It might have the appointment date on it. Is that what --

THE WITNESS: When it first start, from this day to this day.

MS. STANISH: Okay. Your Honor, for the record, the witness has some notes with start and end dates.

Can I see that, please? Thank you.

THE COURT: Oh, I see. It's just a handwritten note. And for the record, the witness retrieved the note from his wallet in response to a question from Ms. Stanish.

MS. STANISH: I don't have a problem with him refreshing --

THE COURT: Okay.

MS. STANISH: -- his recollection on dates.

THE COURT: You can look at the note if that refreshes your memory on dates and things like that. Okay.

BY MS. STANISH:

Q So the question was, sir, when did you start taking the medication?

A From March 19, '09.

Q And then for 48 weeks thereafter; correct?

A Yes, and on February 19, 2010.

Q Is that when it ended, the treatment?

A Yes.

Q And you haven't had to take that kind of

medication since then; is that correct?

A No.

Q And did you provide the district attorney's office or the Metropolitan police with copies of your medical records?

A Yes.

MS. STANISH: Court's indulgence.

BY MS. STANISH:

Q Did you file lawsuits relating to the hepatitis C infection?

A Yes.

Q And were those lawsuits against the clinic itself? Were those lawsuits against the clinic?

A You'd have to ask my attorney.

Q I'm sorry?

A You'd have to ask my attorney.

Q Okay. Do you know if the lawsuit was against Dr. Carrera?

A I went to the attorney and he represented me and he sued the hospital or the clinic.

Q Do -- do you know if your lawsuits were filed against the manufacturer of propofol?

A Yes.

Q Do you know the name? Do you remember the name of the manufacturer?

A I do not.

Q Do you know if the lawsuits were filed against the distributor of the propofol?

A Yes.

Q Do you remember the name of the distributor?

A I don't remember.

Q Do you -- have you heard the name of a distributing -- distributor named Baxter?

A No.

Q How much -- are all of your lawsuits settled, by the way?

A Yes, finished.

Q And, sir, would you please tell us how much money you recovered, you and your family, how much money you recovered in those lawsuits.

A Yes.

Q Have you got to look at a note?

A Yes.

MS. STANISH: May I approach, Your Honor?

THE COURT: Sure.

MS. STANISH: Thank you.

THE WITNESS: 3,296,022.66.

BY MS. STANISH:

Q Okay. Keep that out, okay?

MS. STANISH: For the record, Your Honor, the

witness has the total amount of recovery which was over $3 million.

THE WITNESS: Yes.

MS. STANISH: And there is a break down --

THE COURT: From who --

MS. STANISH: -- according to who --

THE COURT: -- which defendant.

MS. STANISH: -- paid him.

THE COURT: Okay.

MS. STANISH: If he could just read it into the record. I suppose that would be the easiest.

THE COURT: Okay. If you could just tell us which defendant paid -- you know, paid how much.

THE WITNESS: I don't have each one of them.

BY MS. STANISH:

Q Well, I just -- the piece of paper you have there. Why don't you just read that.

A 17,200.

MS. STANISH: May I approach again, Your Honor?

THE WITNESS: NMIC, 144,346. Products --

MS. STANISH: Products.

THE WITNESS: Yeah, 2,401,908. HMO, 732,570.91.

BY MR. STAUDAHER:

Q And, Mr. Nguyen, this $2.4 million figure, that's against the product manufacturer; is that correct?

A Yes.

Q And do you recall that NMIC is the medical insurance company for the clinic?

A Yes.

Q And do you recall that the name Grear -- and for the record that's spelled G-R-E-A-R -- that that's the name of the pharmacist?

A I don't know. I can't remember. I don't know what Grear.

Q Okay. Just to clarify a couple points, sir. Were you approximately 29 or 30 years old when you moved to the United States?

A Yes.

Q And do I understand that you were in the military in Vietnam?

A Yes.

Q And was that -- what -- what service did you serve in?

A Navy.

Q U.S. Navy or a foreign nation?

A South Vietnamese.

Q All right. While you were in Vietnam did you have to get vaccinations?

A Once.

Q When you -- when you joined the Navy did you

have to get routine physicals?

A Yes.

Q And did you also -- when you -- as part of your routine physicals did you have to have blood drawn?

A Yes for both tests.

Q And was that an annual -- did you have to do that annually or every few years or so?

A Only when I first joined, first started, to know what kind of blood I had.

Q I'm sorry?

A To know what kind of blood I have.

Q Okay. And then you had to have physicals thereafter?

A Yes.

Q And did you have to have flu shots and vaccinations?

A Yes. U.S. Navy provided the shots.

Q I have nothing further. Thank you, sir.

THE COURT: Mr. Santacroce?

MR. SANTACROCE: I have no questions.

THE COURT: Mr. Staudaher.

MR. STAUDAHER: No redirect, Your Honor.

THE COURT: Any juror questions for this witness? No juror questions?

All right. Sir, thank you for your testimony.

Please don't discuss your testimony with anyone else who may be a witness in this case. All right. Thank you, sir, and you're both excused.

THE WITNESS: Can I go home?

THE COURT: You may go home, yes.

All right. State, you may call your next witness.

MS. WECKERLY: Linda Hubbard.

THE COURT: Counsel approach while the bailiff is getting Ms. Hubbard.

(Off-record bench conference.)

THE COURT: Ma'am, just right up here to the witness stand up those couple of stairs there, please. Put your bag down, and then I need you to face this lady right here who will administer the oath to you.

LINDA HUBBARD, STATE'S WITNESS, SWORN

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

THE WITNESS: My name is Linda Hubbard; L-I-N-D-A, last name is Hubbard, H-U-B-B-A-R-D.

THE COURT: Thank you.

Ms. Weckerly.

DIRECT EXAMINATION

BY MS. WECKERLY:

Q Good morning.

A Good morning.

Q Ma'am, how were you employed in 2007?

A I was employed at the gastro unit on Shadow Lane.

Q What was your job there?

A I was a certified registered nurse anesthetist.

Q And that requires school or training? Are you okay?

A Yes.

Q Okay. To be a CRNA requires you to get some formal training; correct?

A Yes, ma'am.

Q Where did you go to school to become a CRNA?

A I did my nurse's training at Cooper Hospital in Camden, New Jersey, and my anesthesia training at Nazareth Hospital School of Anesthesia for nurses in Northeast Philadelphia.

Q And after you got your training, did you work as a CRNA back east?

A Yes.

Q Where did you -- what state were you working in?

A I worked in New Jersey and Pennsylvania.

Q And where did you work when you were working in New Jersey? Where did you work as a CRNA?

A I worked at Helene Fuld Hospital, and then I worked at Hamilton Hospital, and then I went to Mercer Medical Center. Well, it was Mercer Hospital, and then it became Mercer Medical Center.

Q When you were working in those hospital settings, were you working as a CRNA in like a surgery type of setting?

A In the operating room.

Q Okay. And was it all kinds of surgeries that you would perform the anesthesia for?

A Yes, ma'am.

Q After -- after working in New Jersey where did you work?

A I came out here.

Q Okay.

A I worked there for over 30 years.

Q So quite a bit of time.

A Yes, ma'am.

Q And always in a surgical type setting in a hospital, or did you ever work in a -- in a clinic and outpatient setting?

A I worked in an abortion clinic down in Atlantic City for probably four or five years. And then I worked Tuesday afternoons for about a year at -- it was a private practice medical center, but we did like three or four

colonoscopies on Tuesday afternoons.

Q Okay. So before you came to Las Vegas you had some experience providing anesthesia for colonoscopies or --

A And we also did them in the hospital.

Q Okay. So you had that --

A We did them in the short stay unit in the hospital.

Q So you had actually probably quite a bit of experience working in -- providing anesthesia for a colonoscopy procedure. Is that fair?

A Quite a bit, yeah.

Q Did you also do endoscopies before you came out here?

A We did some, yes.

Q What year did you come out to Las Vegas?

A 2005.

Q And you worked at the Endoscopy Center of Southern Nevada?

A Yes, I did.

Q Was that your first job coming out here?

A Yes.

Q How did you go about getting the job?

A I answered an advertisement that was placed in the American Association of Nurse Anesthetist Journal.

Q And when you answered the ad, did you have to

send like your resume and your --

A We came out.

Q I'm sorry?

A We came out here for an interview.

Q Who interviewed you?

A Tonya Rushing --

Q And --

A -- and another woman. I -- I honestly don't remember what her name was.

Q So at least you were interviewed by Tonya Rushing, but you believe another woman was present?

A Yes.

Q How soon after your interview did you start work?

A It was probably the better part of two months because I had problems. I had never been fingerprinted in New Jersey to get a license, so I had to be fingerprinted and cleared through the Nevada Board of Nursing, and the fingerprints were taking time in Virginia, so I was here for probably the better part of a month before I actually started working.

Q What month do you think it was you started working at the center?

A I'd say August of 2005.

Q When you started working there, do you recall

what doctors were working at the clinic in 2005?

A I know Dr. Desai, Dr. Carrol, Dr. Carrera, Faris, Sharma. I think McKergy (phonetic) was there and Estasai (phonetic).

Q Do you recall which CRNAs were working when you arrived in August of 2005?

A Ron Lakeman was the main person that I worked with.

Q Okay. Was Keith Mathahs working there? Maybe not with you, but was he working at the clinic in 2005?

A He filled in for us when we wanted time off. He had officially retired, I think. I think I was his replacement.

Q Okay. Any other CRNAs that you remember back in 2005 when you started?

A Ann was there, Ann Lobiondo. And Vince Mione would come over once in awhile in the afternoon and help us.

Q And so was Ms. Lobiondo like in the regular schedule, or did she work --

A No, she was another one that kind of filled in every once in awhile.

Q So she and Mr. Mione came every once in awhile, and you primarily worked with Mr. Lakeman?

A Yeah. And then Ann came in for -- she was on the schedule for awhile, but --

Q That's okay. Just to the best of your recollection. Who kind of oriented you and showed you how things worked at the endoscopy center when you arrived?

A Well, when I -- when I went for my interview Ron gave me a copy of the anesthesia records so I could become acquainted with it as to where different things when on the record. And then he kind of walked me through a couple of cases before I started on my own.

Q Okay. And when he walked you thorough a couple cases was that you observing him doing cases?

A Yes.

Q And describe what you observed about him doing those cases. What did you see?

A It was nothing out of the ordinary. Made sure that the IV was working, put on all of the monitors that were there to be put on, the pulse oximeter, the EKG leads, blood pressure cuff, got a base reading on all of them, and finish talking to the patient as far as did he have anything to eat or drink or any of that kind of background stuff. And gave him some propofol and let him nod off to sleep.

Q Okay. Did you watch any subsequent procedures, or just one?

A It was -- it was probably a couple. I -- I really don't remember.

Q Okay. Well, we'll come back to that. When

you got to the endoscopy center in August of 2005, how would you describe the pace of it or the number of patients compared to the other places you had been?

A It was far more rapid turnover than what I was used to.

Q And when you say rapid turnover, how many cases do you think you did in a day in 2005?

A My myself --

Q Yes.

A -- or the clinic as a whole?

Q You yourself.

A Probably a good 25 or so.

Q And did that change at all over the years from August of 2005?

A It increased.

Q And when did you notice an increase?

A It's hard to say. I really -- you know, it was just a gradual kind of thing that we just kept doing faster and faster.

Q And what was -- what was the -- what was your work schedule? Did you work Monday through Friday?

A Yes, ma'am.

Q And what time did you typically start work?

A We started at 7:00 in the morning.

Q 7:00 in the morning. And I think you said

this, but you were at Shadow Lane; correct?

A Yes, ma'am.

Q Did you ever have to go over to Burnham or the VA?

A I never went to VA, and the only time I went to Burnham was after Dr. Carrol and I had a disagreement.

Q Okay. And that was the end of your employment?

A That was the very end of everything.

Q So primarily from 2005 through 2007 you're at Shadow from 7:00 to what time?

A Anywhere -- 6:00, 6:30, 7:00 at night.

Q And the -- and you're doing over 25 procedures a day?

A Yeah, and then it got up -- it probably got closer to 40 by the time --

Q Okay. When you were working there and you were dealing with that number of patients, was that a concern to you?

A In some ways yes because it seemed as though we really couldn't give the care to the patients that we should.

Q And did you -- I mean, did you ever express that to anybody?

A Not actually express it, but, you know, like

all the employees kind of agreed that it was a little bit of stretching ourselves.

Q Okay. Who -- who did you perceive to be your supervisor at the clinic?

A When it came to nursing kind of things, it probably would have been Jeff, and then Katie came onboard and she was kind of the overall supervisor type person.

Q And that's Jeff Krueger?

A Yes.

Q And Katie Maley?

A Yeah, whatever. I don't really -- I don't remember her last name either.

Q Okay. And so you said with nursing type things you would regard that as the supervisor?

A Yes.

Q Any other areas of your employment that you would consider someone else your supervisor?

A When it came to billing and all of the things that people were coming down, you know, making us change times on charts and this, that, and the other thing, it had to be Tonya.

Q Okay. While you were working at the clinic, did you ever -- were you ever restricted or told to restrict your use of supplies?

A Supplies as to --

Q Any kind.

A I would oftentimes be told that I shouldn't give anymore propofol because the case was just about over.

THE COURT: Ms. Weckerly, the jury needs a break.

MS. WECKERLY: Okay.

THE COURT: So we're going to take a break.

Ladies and gentlemen, we're just going to take a quick break until about 10:30. And 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 the case, 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, Ms. Hubbard, during the break, please don't discuss your testimony with anybody.

(Jury recessed at 10:14 a.m.)

THE COURT: And, ma'am, you can either sit there if you want to during the break. If you need to use the restroom or something you can leave the courtroom.

THE WITNESS: No, I might as well just sit.

THE COURT: Okay. That's fine.

THE WITNESS: My knees and hips aren't doing too well this morning.

(Court recessed at 10:15 a.m., until 10:31 a.m.)

(In the presence of the jury.)

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

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

MS. WECKERLY: Thank you.

BY MS. WECKERLY:

Q Ms. Hubbard, I think where we left off is we were talking about use of supplies at the clinic.

A Uh-huh.

Q And my question is do you recall any type of limitation or suggestions to limit your use of supplies while -- while you were there?

A Only that I would often give more propofol than what was deemed necessary.

Q Okay. And who -- how did that occur? What were the -- who was telling you that?

A The physician that was doing the endoscopy.

Q And was -- did it happen with all the physicians?

A Not all of them.

Q Which ones did it happen with?

A Dr. Desai, Dr. Carrol, sometimes Dr. Carrera got kind of upset.

Q Okay. Let's talk about Dr. Desai first. When did that circumstance occur with Dr. Desai?

A Usually after the scope had been passed as far up as he was going to go. And, you know, I just -- the patient would start moving or moaning a little bit, and I'd just go to give a little bit more and he'd say no, that he was just about done.

Q Okay. And what would you say?

A That the patient was waking up and was uncomfortable.

Q And was this a calm conversation to your recollection or was it tense or how would you describe it?

A Let's go middle of the road. It wasn't -- it wasn't super charged.

Q Okay. And how was it resolved? Did you end up giving more --

A Yes.

Q -- propofol?

A Most of the time.

Q Okay. How many times do you think that occurred with Dr. Desai?

A I really -- I don't know.

Q Well, was it something that happened once a week or once a day or once a year? How would you describe it?

A More than once a week.

Q More than once a week? Is that yes or --

A More than once a week.

Q More than once a week.

A Right.

Q Okay. And you said this also occurred with Dr. Carrol?

A Uh-huh.

Q Is that yes?

A Yes.

Q And sorry to --

A I'm sorry.

Q -- make you say that. It's just that we're recording --

A Understood.

Q -- and so we have to say yes or no. When -- when this happened with Dr. Carrol, was it through the -- the course of your employment there?

A Yes.

Q And was it the same type of circumstances, meaning did it occur at the same point in the procedure?

A Basically, yes.

Q And what -- what would you say to Dr. Carrol, was it the same thing?

A You know, it was -- it was basically the same thing. If the patient was reacting and then they were feeling

something, so they needed something else to keep them asleep a little longer.

Q Okay. And how was it resolved between yourself and Dr. Carrol?

A I gave him the propofol.

Q You gave him more propofol. And did the same thing happen I think you said with Dr. Carrera?

A Yes, ma'am.

Q And, well, actually let me back up. With Dr. Carrol how frequently would that occur?

A Probably at least once a week.

Q Once a week. Okay. Now, with Dr. Carrera, is it again the same circumstance?

A Yeah, only he took longer to do procedures. And it was really -- it was very hard to figure out when he was going to be done because he might put the scope back in further again.

Q And we'll talk about that in just a second. But what I -- what I'm understanding you to say, though, is there are times when the patient would be moving and you would want to give more propofol, and what would Dr. Carrera say?

A That it wasn't necessary.

Q Okay. And could you tell where he was at in the procedure at that point?

A Sometimes yes and sometimes no.

Q And so how would you resolve it between yourself and Dr. Carrera?

A The patient got more propofol.

Q And in his case, how often did that occur for you to have this issue?

A Probably about the same.

Q Everybody once a week?

A Yeah, it was at least once a week.

Q Now, in your work over the years there, it sounds like you worked with all of the -- the doctors at Shadow.

A All of the physicians that were at Shadow, yes.

Q And from your previous answers there's a suggestion that the amount of time each doctor took to perform a colonoscopy or an endoscopy varied; is that right?

A Correct.

Q Explain -- explain how it varied and, you know, what the -- I guess which doctor and how it varied.

A Well, it just depended upon the physician himself. Some were more -- I can't think of the word. But they were -- they were just inclined to do things more rapidly.

Q Who was --

A And it depended upon how well the patient's

colon was prepped --

Q Sure.

A -- or, you know, like -- there were a lot of different things that --

Q A lot of factors.

A -- weighed into the factors. Right.

Q But generally who was faster at doing procedures?

A I would say probably Dr. Desai because he had more experience doing them.

Q Okay. Was Dr. Carrol fast?

A Some days, yes.

Q And was Dr. Faris quick?

A No.

Q How about Dr. Carrera?

A Not usually.

Q When you first started working at the clinic, what was the drug that was used to sedate patients?

A Propofol.

Q And was any other drug used during your time there, or was it primarily propofol?

A I'd say probably 99 percent of the time it was propofol. There were very few people that had had problems with propofol in the past that we'd give some versed or sublimaze or something to, but that was -- it was like not --

I would say not even once a month.

Q Okay. And when you first started working in 2005, what was the size of the propofol vial that you would use?

A Probably the 20 ccs.

Q And did that ever change over time?

A It depended upon what we received from the company, at least according to what Jeff told me.

Q Well, what -- my question is, though, did you ever use anything other than a 20 cc vial?

A We had some 50s.

Q When did the 50s start to be used?

A I don't -- I really don't know.

Q Okay. Well, was it earlier in your employment or was it in 2007 do you know if 50s were used?

A It was kind of sporadic. They would -- you know, from what Jeff told me, it depended upon what the company had to send us.

Q Okay. So your recollection is sometimes you were using 20s, sometimes you were using 50s?

A Correct.

Q Now, in a typical -- well, let me ask you this. What size syringes, how many cc syringes were you using for administering the propofol?

A I think they were 10s.

Q Always 10 ccs?

A Yes.

Q Okay. And so how many syringes would you use on a typical endoscopy?

A Probably two.

Q Two? And did the first syringe, did you fill it solely with propofol, or did you mix it with lidocaine?

A I think most of the time there was lidocaine added to it.

Q Okay. And that was because it would sometimes burn?

A Propofol would burn.

Q Okay. So --

A We used small -- we used very small IV catheters. And if you don't have a lot of circulation there, then I understand that it burns quite a bit.

Q Okay. So you would use one -- one syringe with lidocaine, and then the second syringe, I assume, as the procedure was going on?

A Correct.

Q And that was for a typical upper endoscopy?

A Well, for an upper we probably would only use one syringe.

Q Okay. Just one? You wouldn't use more syringes for an upper?

A We -- if -- if it was deemed necessary, yes, but an upper procedure was usually not anywhere near as involved, as long as a lower.

Q Okay. And on a lower, or on a colonoscopy, how many syringes would you typically use?

A I'd say two or three.

Q Okay. Depending on the length of the procedure?

A And how big the patient was and how charged up they were.

Q Okay. So when you were preparing to do an upper endoscopy and you filled the one syringe with lidocaine and propofol, did you have a second syringe ready in case the procedure went longer?

A Yes, ma'am.

Q And if you didn't use that second syringe, what did you do with it?

A Saved it for the next time I needed it.

Q Meaning the next patient?

A Uh-huh.

Q Is that yes?

A Yes.

Q Okay.

A I'm sorry.

Q When you got propofol in the morning at the

start of the day and you were in your procedure room, what was your process for getting ready for the procedures that you were going to do that day? Did you prefill the -- the syringes?

A Yes, ma'am.

Q And how -- how did you go about doing that? Did you fill five or ten or how did you do it?

A Well, first we had to put the syringes together, and then I put lidocaine in five or ten of them. And it depended upon how much time I had.

Q Okay. And you'd put lidocaine in five or ten of them. Did you fill any more that were just filled with propofol?

A Yes.

Q And would that be the same number, five or ten?

A Probably.

Q And was the -- were you anticipating using one with lidocaine and one without on each procedure as you went through the day?

A Yes.

Q Now, in your experience can a 50 cc vial of propofol be safely used on multiple patients?

A When it's drawn under sterile conditions with clean needles and clean syringes, yes.

Q Okay. And by that do you mean a clean needle and syringe every time you draw from the vial?

A Correct.

Q Have you ever drawn from a 50 cc vial with a syringe you had used on a patient?

A Probably if it was the last little bit of propofol in the bottle and I didn't need that much and like we were approaching the end of the procedure, I'd say yes.

Q Okay. In those instances would you ever use that vial of propofol on a subsequent patient?

A No, because I was finishing the vial of propofol.

Q Okay. Why -- why wouldn't you use it on a subsequent patient? Is there a danger there?

A Well, yeah, and I would draw the rest of that propofol.

Q Okay. Well, let -- let me ask you this. According to your training, would it ever be appropriate to inject a patient with a syringe, use that syringe to draw additional propofol, inject the patient again, and then use that vial of propofol on a subsequent patient?

A No.

Q Why not?

A Because you're taking a chance of cross contamination between one patient and another.

Q Do you recall when you were working there any meeting about the use of saline with propofol?

A Just -- yeah, I did.

Q Okay. When -- when -- when to the best of your recollection was that meeting?

A It was late in the afternoon after a very busy day, and I don't -- I don't really remember when it was.

Q Was it towards the end of your employment there or do you think it was a year before the clinic closed or what do you think?

A I'd say probably a year or so before we closed.

Q Okay. So sometime maybe in early 2007?

A It could be. I -- I really -- I do not remember when it was.

Q Okay. Who -- do you remember who was there or who ran the meeting?

A I think most of the nurse anesthetists were there and maybe Dr. Desai. I'm not sure. I'm really not sure.

Q Okay. What was the meeting about? What was the -- what was the idea with saline and propofol?

A The idea was to inject saline after the propofol had been injected so that the propofol that was in the injection site would go into the patient's blood stream.

Q And so it was to get -- use the --

A To flush it out.

Q Use the saline to get that last little bit of propofol into the patient?

A Correct.

Q Because some might, I guess, get stuck or get left behind in the heplock itself?

A Uh-huh.

Q So to flush that last part through?

A Correct.

Q And do you recall whose idea that was?

A I really don't.

Q Okay. Was this a policy that you were directed to try and see if this worked?

A It was something we were to try, yes.

Q And who told you to try it?

A I don't know. I -- I really -- I guess it would be Dr. Desai. I -- I really don't know.

Q Did you try it?

A Yeah, we all tried it.

Q And did you think it worked?

A No.

Q Why don't you think it worked?

A There wasn't that much propofol there.

Q Okay. And so --

A It didn't really make a difference.

Q So it didn't reduce the amount you would use?

A No.

Q Do you recall how long you tried it, you personally before it didn't work -- or before you determined it didn't work?

A Maybe a week.

Q And did you keep up with it for several months, or did you just decide like this isn't working, I'm not doing it?

A I think it just went away.

Q No other meeting on that other than the one that you kind of --

A I don't think so.

Q -- vaguely recall? Okay. Now, you -- you said that it was -- that it's your practice or it was your practice to use a clean needle and syringe every time you went into a vial of propofol; correct?

A Correct.

Q Unless maybe it was the last little bit and you knew this was the last patient of the day. Is that fair?

A Or that the patient that was there, the patient that I was taking care of, maybe they just needed a little bit more and there was a little left in the -- in that vial of propofol.

Q Okay. Did you ever see ay CRNA use a different method than you, like reuse a syringe on the same patient?

A On the same patient, yes, but not on another patient.

Q Okay. Who did you see use -- reuse a syringe on the same patient?

A I think we all probably did.

Q Okay. Did you see Ron Lakeman reuse a syringe on the same patient?

A But he wasn't the only one.

Q Okay. Well, I'm going to ask you who else, but did you see him do it?

A Yeah, we all did.

Q Okay. And so you saw Keith Mathahs do that?

A Yes.

Q And you saw Vince Sagendorf do that?

A Probably.

Q Probably or you saw him?

A You know, when Vince Sagendorf came to work for us is when we were probably at the height of our numbers and we really didn't have a lot of time to see each other do anything.

Q Okay. Well, that -- that's why I asked. Did you have the opportunity --

A I probably -- say no.

Q Okay. And what about Vince Mione?

A Yes, for the same, you know, like for the end of the day last patient end of the case, yes.

Q Okay. Now, when you saw -- I want to talk about Mr. Lakeman. When you saw him do that -- do that method where he would resuse a syringe to access a bottle of propofol, do you remember what size vial it was?

A No.

Q Okay. Do you remember talking about this when you interviewed with the police back in 2008?

A No, I really don't.

Q Okay. Would looking at your interview refresh your recollection?

A No, because I have that and I -- I just -- I don't remember that.

Q Okay. Well, if I told you said it was from a 50 cc vial would that sound right to you?

A It could.

Q Okay. Well, I'll show you. This is page 23.

MR. SANTACROCE: I'm going to object. She said it wouldn't refresh her recollection.

THE COURT: Well, she can look at it and then see if it refreshes her recollection or not. If it doesn't, then Ms. Weckerly will --

THE WITNESS: No, I mean, these are the things --

THE COURT: -- move along.

THE WITNESS: -- that I've already read through.

BY MS. WECKERLY:

Q Okay.

A You know, I'm sorry, but --

Q No, I'm not asking you to remember.

THE COURT: And that's fine if it doesn't refresh your recollection --

THE WITNESS: I really --

THE COURT: -- then just tell us it doesn't.

THE WITNESS: No, it doesn't.

BY MS. WECKERLY:

Q Okay. Well, let me ask you this. When you were asked by the police back in 2008 if Ronald Lakeman re-accessed a 50 cc vial, did you -- did you tell them that? Did you say yes?

A I could have, but I -- I really --

Q Are you disputing what's --

MR. SANTACROCE: I'm going to --

BY MS. WECKERLY:

Q -- on the page?

MR. SANTACROCE: -- ask that she be allowed to finish her answer.

THE WITNESS: I don't understand. You know, I -- I

-- I understand what you're saying and I understand what those papers from the testimony says -- say that I said, but I'm also saying that it could have been the end of the case and the patient just needed a little bit more and there was a couple of ccs left in that bottle of propofol.

BY MS. WECKERLY:

Q Okay. Well, do you remember telling the police back in 2008 that you observed Ron Lakeman change a needle but reuse a syringe on a 50 cc vial and you were concerned about it?

A No, I really don't.

Q Okay. Do you remember telling the police --

MS. WECKERLY: And, again, this is on page 23.

BY MS. WECKERLY:

Q -- that you questioned him about this practice?

A I don't remember any of that.

Q Okay. And do you remember telling the police that that wasn't a practice that you would engage in?

A I know that it isn't a practice that I would engage in, but I don't remember. I really don't remember that whole incident.

Q Okay. And do you remember telling the police that you even talked to Jeff Krueger about it because you didn't want to do that practice?

A I don't remember that.

Q Okay. Are you saying you don't remember telling the police or you don't remember this incident at all?

A I don't remember that incident at all.

Q Okay. And this would have been kind of a big deal, right, because you just started work according to your interview on when -- when this occurred; correct?

A I don't know. I don't know when it would have happened.

Q Okay. Well, did you tell the police that when you first started working you observed Ron Lakeman doing this practice and you questioned him about it?

MR. SANTACROCE: Asked and answered.

THE COURT: Overruled.

BY MS. WECKERLY:

Q Did you tell the police that?

A I don't really remember.

Q Well, I'll show you your statement, this is the top of page 23, and you read through it and just answer if that's what you told them.

A But I've already read through this.

Q Okay. My question is is that what you told the police?

A I don't know.

Q Well, you can read it. Are you --

A I've read it.

Q -- disputing the recording?

MR. SANTACROCE: Objection. It's argumentative.

THE COURT: All right. Well --

THE WITNESS: I've read that and I just -- I really don't remember that happening.

BY MS. WECKERLY:

Q Okay. Well, it says in the transcript of your interview --

MR. SANTACROCE: I'm going to object as hearsay. She said she didn't remember it over and --

MS. WECKERLY: I'm impeaching.

MR. SANTACROCE: -- over again.

THE COURT: All right. Well, counsel approach.

(Off-record bench conference.)

BY MS. WECKERLY:

Q Did you tell the police, the only time I really saw this was when I first started working and Ron Lakeman was the nurse anesthetist that was breaking me into the job, into how to do the paperwork, how to position the patient, and do things on a rapid basis the way we did in the gastro unit. And I questioned him about changing the needle and he said that's the way it's done. And that's not my practice. It never has been my practice. And I talked to Jeff Krueger about it because I wanted him -- I didn't -- I

didn't feel right wasting 10 cc syringes every time I drew up 5 ccs of propofol. Do you recall saying that at all?

A No, I don't.

Q Do you recall being asked to identify what size vial it was, and you said it was from a 50 cc vial?

A No, I don't.

Q Okay. Do you recall being asked how he did it, like if it was with a spike or with a needle and you indicated it was with a spike?

A No, I don't remember that.

Q Okay. Do you recall telling the police, and then put another needle on and reinject the patient, and then after that was done, if he needed more, he would take that same syringe, put it back on the spike, draw up more, and get a clean needle. Do you recall telling them that?

A No. I've -- I've read through all of that and I really don't remember that whole thing.

Q Okay. And then you were asked if this was how he instructed you to do it, and you said it was -- it was --

MR. SANTACROCE: Your Honor, I'm going to object to her reading --

THE COURT: Yeah.

MR. SANTACROCE: -- the whole transcript. I mean, it's just hearsay when she said she doesn't remember.

THE COURT: All right. Ms. Weckerly, did --

Ma'am, did you read that whole transcript?

THE WITNESS: Yes, I did. I've got it with me, as a matter of fact.

THE COURT: Okay. Now, fair to say you did speak with the police and were interviewed. Do you remember that?

THE WITNESS: Yes.

THE COURT: Okay. And is it that you don't remember what you told the police or what?

THE WITNESS: I don't -- I really don't remember what I told them. I don't -- you know, I -- I think over that period of time I had been interviewed by the FBI and by the police on two days in a row.

THE COURT: Okay.

THE WITNESS: And I just -- I don't know.

THE COURT: Okay. Did you review both transcripts, the FBI transcript, or was there a transcript, and the police interview that --

THE WITNESS: From the police it was more of an overview kind of thing.

THE COURT: Well, I mean, was there --

THE WITNESS: But this one --

THE COURT: -- a transcript, you know, question, blah blah blah. You, answer, blah blah blah. Did you get that to review?

THE WITNESS: No.

THE COURT: You never got that?

THE WITNESS: I got it from the police interviews.

THE COURT: Okay. That's what I'm asking about.

THE WITNESS: Yes.

THE COURT: And then the FBI there wasn't a transcript --

THE WITNESS: No.

THE COURT: -- question, blah blah blah --

THE WITNESS: It was just like --

THE COURT: -- answer. It was --

THE WITNESS: -- paragraphs.

THE COURT: -- just like he summarized -- the FBI agent summarized the gist of the conversation --

THE WITNESS: Yes.

THE COURT: -- and that's what you got? Okay. And you're a little --

THE WITNESS: This was almost --

THE COURT: No --

THE WITNESS: -- five years ago.

THE COURT: -- I understand.

THE WITNESS: And I -- I really don't remember these things.

THE COURT: Okay. All right. Go on, Ms. Weckerly.

MS. WECKERLY: Okay.

BY MS. WECKERLY:

Q Do you recall telling Jeff Krueger, though, that you couldn't do it that way?

A I don't -- I don't remember that conversation.

Q Okay. Do you recall telling Mr. Lakeman you couldn't do it that way?

A No, I don't.

Q Do you recall telling the police that you expressed that to both of them?

A No, I just -- I don't remember that.

Q Okay. Do you remember asking Jeff Krueger to order you 5 cc syringes so you didn't -- so you could do it your way by drawing up each time without wasting any more propofol?

A The syringes I remember, yes.

Q Okay. And what was -- what was the reason, then, for wanting the 5 cc syringes?

A So that I wouldn't have to draw -- use the 10 cc syringe to draw up smaller amounts of propofol.

Q Okay. Do you remember having a conversation with Dr. Desai wanting you to do it the way Ron did it?

A No.

Q Okay. This is on page 25. Do you recall telling the police Dr. Desai wanted me to use, you know, to do it the way Ron did it.

A No, I don't.

Q You don't recall saying that?

A No.

Q Do you recall saying that you still didn't do it that way even though Dr. Desai wanted you to, you still did it your way?

A Yes.

Q You recall saying that part?

A No, I don't recall saying it. I'm sorry.

Q Okay. I'm confused. What part do you -- what part do you recall?

A I continued to draw the syringes up prior to the procedure and not to go back into the bottle of propofol if it wasn't like the very end of the case or the end of the propofol.

Q Okay. But you don't have a recollection of either telling the police that Dr. Desai wanted you to do it Ron's way or the actual event of Dr. Desai telling you that?

A No, I don't.

Q Is there any reason like why you'd have trouble remembering something that's kind of significant to your line of work?

A It's probably just time.

Q Just time? Okay. Do you remember telling the police that Dr. Desai actually observed you not following that method, Ron's method --

A No --

Q -- and him --

A -- I don't.

Q -- correcting you?

A No, I don't.

Q So you don't remember anything about syringe reuse with either Dr. Desai or Mr. Lakeman?

A No.

Q Okay. Or discussing it with the police?

A No, I didn't. I don't.

Q Would you agree with me that at the time you were interviewed this was sort of a big issue in the investigation of the hepatitis C outbreak?

A Yes.

Q Okay. And how syringes were used would be sort of an important piece of information concerning how those people might have gotten sick?

A But it wasn't the only way.

Q Well, no, I'm just asking you if the topic was important.

A Yes, it was.

Q Okay. And so would you have tried to provide accurate information to the police?

A Yes.

Q Now, the CDC came -- well, let me ask you

this. When you were working at the center from 2005 until it closed, did you ever see open vials of propofol being moved from room to room?

A At the end of the day, yes.

Q Describe what those circumstances would be.

A It would be the last case of the day. And if the person the other room would have propofol left that was just a small amount. Because the propofol isn't good after six hours, so there's no way you could use it the next day.

Q Okay. And so were you ever the person bringing propofol to the other procedure room?

A Yes.

Q Did you -- and you gave it to the other CRNA to use?

A Yes.

Q Did other CRNAs ever bring you partially open vials of propofol to use on your end of the day patients?

A Yes.

Q How often would this occur?

A Whenever -- every day.

Q Every day? Who were the CRNAs that you remember bringing you propofol at the end of the day?

A Ron, Keith, Vince, Ann.

Q And who did --

A Vinnie.

Q So all of them?

A Yeah.

Q And who -- who did you deliver the propofol to?

A The same.

Q The same? Everybody?

A Yes.

Q Did you see them use it?

A No.

Q Because you had to get back to your own cases?

A Yeah, I mean, either I would go back and clean my room out and get ready to leave because they were doing the last case, or vice versa, they would leave while I was doing the last case.

Q Did you -- you were present when the CDC and the Health District came to the clinic?

A Yes.

Q And do you recall if some officials observed you doing procedures?

A They stayed with me the first afternoon they were there. Dr. Carrera was seeing a patient over on the other side, and it took forever for him to get back over to do the last procedure.

Q And when they observed you, would they have observed you kind of pooling partially used vials of propofol?

A No.

Q No? You would never have more than one open vial out on your table?

A I was in the room that we worked from a drawer, really.

Q Okay.

A We -- and I had syringes that had already been drawn.

Q Right. But in the -- would they have observed you with partially, not syringes, but partially used vials of propofol?

A No.

Q You never had that happen?

A No.

Q You wouldn't redraw maybe one syringe from three different vials?

A Oh, no.

Q You never did anything like that?

A No.

Q Do you remember talking to them at all?

A Very minimal.

Q Okay. Do you remember telling them that you were told to reuse syringes but you didn't do it?

A No.

Q You didn't say that to them?

A No. The only -- the only time I remember them talking to me about syringes was on the exit interview that they had with us.

Q Okay. And so just to be clear, you never pooled vials of propofol; correct?

A No.

Q Okay. And you also never told them that you were told to reuse syringes; correct?

A No.

Q And you don't remember your interview with the police?

A No, I really don't.

Q Okay. Do you remember a meeting that took place where -- with Dr. Desai and Dr. Carrol after the CDC came to the clinic?

A I can't say I do.

Q Okay. Do you remember Dr. Desai ever asking you after the CDC came if you had reused syringes?

A No, I don't think so.

Q Okay. Do you remember telling that to the police?

A No.

Q Okay. Is that just another instance where you don't remember the event and you don't remember what you said in your interview?

A Correct.

Q Okay. Explain what happened between yourself and Dr. Carrol after the CDC came in and he wanted to terminate you. Do you remember that?

A Yeah, I was drawing the last of the propofol out of a 20 cc vial when he came in the room. And he evidently thought that it was from a patient prior to the patient that was in the room at that time. And he took me upstairs to Sonia's office -- to Tonya's office and he fired me.

Q So he was wrong about what he observed?

A Yes, he was.

Q Okay. Because he -- if he thought that you were pooling propofol after the CDC came in, that's something you wouldn't do?

A We were instructed to just use one 20 cc -- to use the 20 cc vial for the patient. And if we needed another one, you know, if we needed like 30 ccs, then we'd go to another 20 cc vial. And then when that patient left the room, that vial was to be thrown away.

Q Okay. And he thought that you did something other than that; correct?

A Correct.

Q He thought that you had used a partial vial and then were using that vial on a subsequent patient;

correct?

A Correct.

Q And you're saying that he was wrong in his observations?

A Correct.

Q When you went up to -- I think you said you went up to Tonya Rushing's office?

A Correct.

Q What was -- I mean, what was the outcome?

A He wanted me fired. She told me to go home.

Q So you went home. At some point you go to work. You get -- you don't really get fired; right?

A Correct.

Q You go to work at Burnham?

A Correct.

Q Who -- who do you have the conversation with so you know to go to Burnham? Who calls you or who --

A Tonya.

Q Tonya. So you report to Burnham; correct?

A Correct.

Q Once you're there, were you supervised?

A Dr. Mason sat me down before we started cases that morning and, you know, told me exactly the same things that I was told before about not using propofol between one patient and another. And I guess he kind of alerted the nurse

that was in the room and she kind of collected all my propofol bottles.

Q I'm not -- you know what, I'm not fully understanding that. Dr. Mason has a conversation with you.

A Correct.

Q And then you're in the middle of procedures and what -- what does the nurse do?

A Well, the -- the nurse was like hovering over me making sure that I didn't draw propofol form one bottle for another patient.

Q Okay. So the nurse would take them away?

A Yeah, at the end of the case she'd take my bottles away from me.

Q And did that happen every day you were working at Burnham?

A Yes.

Q How many days was that?

A I think it was -- I think it was two weeks.

Q At some point did you go back and work at Shadow?

A Yes.

Q How -- how long -- was it two weeks or do you think longer?

A I went back -- it was probably the two weeks before the clinic closed.

Q Once you were back at Shadow, did you use any 50 cc vials of propofol at that point?

A No, ma'am.

Q Do you recall telling the police that you actually used up the remaining 50s?

A That was prior to me going to Burnham, I think.

Q Oh, okay. So let me make sure I get the time frame correct. After the CDC came in, did you use 50 cc vials of propofol at the Shadow Lane clinic?

A There were like four or five vials left, and Jeff Krueger asked me if I wanted to use them. And I used them as 20 cc vials.

Q What does that mean?

A It was discarded at the end of the -- of the case. It was used for one patient only. It wasn't draw up five syringes and use them for whatever.

Q Okay. So you used them up, but only on one patient? Is that --

A One 50 cc at a time, yes.

Q And did Dr. Carrera ever see that?

A Yes.

Q What did he do?

A He got very upset that I was using a 50 cc. And I tried to explain to him that I was using it as a 20.

can't be put in a motion or anything like that. I'm just giving it to you as a courtesy. You know, you have to burn it or throw it away afterwards, and then I'm going to review what her answers were and decide and then we can have argument. Okay?

MR. SANTACROCE: And what are we going to do with the guy next to her that slept the whole afternoon?

THE COURT: Mr. -- first of all, I did not observe him sleeping. Kenny, who is shaking his head in the back of the courtroom, didn't observe him sleeping. I was watching him. He shuts his eyes and then he opens them right away.

So he's done that throughout, and he -- he's up on stuff. I mean, you can see. He laughs at the -- he laughs at all my good jokes. So, obviously, he's a very intelligent, very sophisticated -- no, I mean, he does. When somebody says something funny he -- he perks right up. So he's listening, he's just kind of resting his eyes.

MR. SANTACROCE: Maybe we can just be mindful of it.

THE COURT: All right. Well, I've been watching. I always -- Kenny -- you know, I always have a system with the bailiff. You know, if they have their eyes too closed, then I try to get like another juror to kind of nudge him. And Kenny even will go over and, you know, make sure they're not sleeping. And he opens his eyes. You know, I'll look for a minute or two and then he opens eyes, so I'm not even concerned about it.

MR. SANTACROCE: Okay.

MS. STANISH: And we're starting at what time tomorrow?

THE COURT: 9:00 with the --

MS. STANISH: 9:00.

THE COURT: -- the hearing.

(Court recessed for the evening at 5:07 p.m.)

- oOo -

ATTEST: I hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

JULIE POTTER
TRANSCRIBER

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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 25

THURSDAY, MAY 30, 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
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I N D E X

WITNESSES FOR THE STATE:

WITNESSES FOR THE STATE:

JANINE DRURY

LAS VEGAS, NEVADA, THURSDAY, MAY 30, 2013, 9:46 A.M.

* * * * *

(Outside the presence of the jury.)

THE COURT: This morning he may be coming through the door, and is as we speak -- where's Ms. Stanish?

MR. WRIGHT: Right behind me.

THE COURT: They're all here, so start as soon as you're ready. Is the witness here?

MR. WRIGHT: Yes. Sitting in the hallway.

THE COURT: Mr. Staudaher, do you want to just get the witness and bring him in?

(Witness resumes the stand.)

(Pause in proceeding.)

(Jurors reconvene at 9:50 a.m.)

THE COURT: 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.

And sir, you are still under oath. Do you understand that?

THE WITNESS: Yes, ma'am.

THE COURT: Mr. Santacroce, did you have any more questions for this witness?

MR. SANTACROCE: No, Your Honor.

THE COURT: All right. Ms. Weckerly.

RALPH McDOWELL, STATE'S WITNESS, PREVIOUSLY SWORN

REDIRECT EXAMINATION

BY MS. WECKERLY:

Q Good morning, sir.

A Good morning.

Q What is the entity that licenses CRNAs?

A I believe it's the same -- in the state of Nevada, I believe that the nursing board -- I think the nursing board does both, because they both -- they gave me licenses that looked exactly the same, so I assume it's them.

Q And each state has their own nursing board that licenses the profession?

A Yeah. Well, some states, I mean, I think all states have boards that license nurses. There are some states that do not license CRNAs. I don't recall what they are offhand.

Q Okay. And my recollection, from your testimony on cross-examination yesterday, was that the CRNAs from the endoscopy clinic voluntarily surrendered their licenses knowing that they were going to be taken if you didn't; is that fair?

A Well, I suppose you could use the word "voluntarily." So voluntarily under much --

Q Voluntary in quotes.

A -- under much duress, yes.

Q Right. And the -- to your knowledge, has anyone of the group petitioned to get their license back?

A To my knowledge, no. And I know I haven't.

Q Okay. And the nursing board is not -- it's not the CDC, right? That's a federal agency.

A Well, no. The nursing board is strictly, as I understand it, a state agency.

Q And it's not the Southern Nevada Health District; it's separate from that?

A No, no, no. I don't think so.

Q Now, you mentioned on cross-examination that towards the end of the existence of the clinic, that Linda Hubbard came over to the Burnham facility.

A Yes, I did.

Q So that was in the last few weeks or months that the clinic was open?

A In the twilight of the clinic, yes.

Q Were you in charge of observing her or supervising her?

A [No audible response.]

Q Sorry. But you have to say yes or no for the record.

A Oh, no. I'm sorry. No, I...

Q Did you see anyone supervising her?

A No. Probably because she would have been in another room and I wouldn't have been in there at the time.

Q But did you see any extra attention given to her or any extra observation just from your vantage point and your --

A I can't say. I really wasn't paying much attention, so.

Q Now, you were asked about this meeting where Dr. Desai meets with the CRNAs and proposes using the saline with the propofol. Now, I think you said -- were sort of discussing that this meeting took place in the last part of 2007.

A Yes.

Q Do you remember saying that?

A I guess -- it was at least within the boundaries of a year and a half, perhaps a year. I mean, it wouldn't have been far out. I mean, it was fairly close to -- the reason I know that is because sometime after that for some reason or other our bonuses were discontinued --

Q Okay.

A -- and -- okay. Go ahead.

Q Well, let me ask you that. When were your bonuses discontinued?

A Well, it was fairly close. I would say probably within -- within at -- for sure no more than six months. And

the reason I remember that is because after they were discontinued, I went to see Tonya Rushing at Shadow and I said, Well, you know, they started me out at a certain amount and plus bonus, and now without the bonus I'm back down to my original amount, so can I have a raise. So she gave me a raise, which effectively brought me up to the same level as if I had the bonus.

Q And when you got your raise, how -- when was your raise in relationship to the clinic closing?

A Oh, to the best of my knowledge, maybe no more than six months.

Q Okay.

A A few months. I mean, it wasn't -- I don't think it was as much as a year or anything.

Q And your recollection is that the meeting about the saline was around the time you asked for your raise, or before or after, or --

A I think the meeting about the saline took place before the announcement of the discontinuance of -- of the bonuses.

Q Okay. So it was before the bonus or before you got your raise?

A Yes.

Q And your recollection is that you got that at around six months at least before the clinic closed?

A Yeah, well -- yeah. Yeah, something like that.

Q Is it -- is it fair to say you don't have a pinpoint memory of when this was?

A It's fair to say that I don't have a pinpoint memory for just about anything.

Q Okay. You discussed yesterday on cross-examination that Mr. Mione would bring opened or partially used vials of propofol to your room to use, but you wouldn't use them.

A No.

Q And I think you were asked like what time in the day, the workday that that would occur.

A It probably would have been around the time that he was leaving.

Q And do you remember what hours he worked?

A Well, that varied. I mean, sometimes -- it was rare to work less than eight hours. I mean, and sometimes I'd finish first, sometimes he would finish first. I mean, assuming we stayed in our own rooms. But, you know, the average day would -- most of the time I don't think it would have been any less than eight hours. It frequently went well over that.

Q Do you know what time he started? Like what --

A In the morning?

Q Yeah. Mm-hmm.

A Well, we generally started at 7:30 in the morning. That was when the first patient -- I mean, I would be there maybe 6:45, 7:00, but the first patient was wheeled into the room at 7:30.

Q And so the last procedures of the day, when would they typically start?

A Well, it could -- well, that's -- it depends on how many patients were on the roster. I mean, I've seen patient, you know, procedures start as late as 4:30, 5:00 o'clock and, you know, there's a couple of times we ran over quite late.

Q So if he were doing this, or on the occasions when he did this, it would obviously be when you still had patients?

A Oh, yeah. Yeah.

Q Now, did it ever occur earlier in the day, where he would bring something -- would bring the partially used vials over to you?

A I can't honestly say that it didn't. But I mean, my memory tends to be that it was toward the time when he would be leaving and -- because if it were earlier in the day, there'd be no reason for him to bring it to me because he'd be using it himself.

Q There's a shelf life or a time when you can use propofol though, right? It goes bad?

A Well, once you pop that -- like I say, once you have popped that plastic cap and broken through that seal, regardless of whether [unintelligible] or sterile or what, it -- I haven't really read the literature in detail, but I suppose frequently you begin to see the thing look pretty yucky at about four hours. But like I say, my cutoff time was about an hour. I wouldn't even go anywhere near four hours.

Q So you couldn't have a vial, a partially used vial, assuming you used sterile technique, you couldn't use that like one from the morning in the afternoon?

A Well, no. I -- to just to look at it nobody would dream of using it, I wouldn't think, no. If it had been opened, you know.

Q Right. And if I understand you correctly, there was one occasion when you brought him an opened vial?

A Yes. Yeah, that I recall. Yeah.

Q When you would cover his room during the lunch hour, I think you said yesterday that there was -- there were partially opened vials --

A Mm-hmm.

Q -- is that correct?

A Yeah.

Q But you didn't use them?

A Most of the time I would clear out the space and just throw them away.

Q What would use instead?

A Mine.

Q And --

A Or I mean, if he had some there I would, you know, open his or -- I mean, if -- there was a couple of time I remember my bringing over a couple of unopened vials myself just to be sure that I had them, and not have to run back in case he didn't have them.

Q So you actually brought your own vials from your own room into his room --

A On occasion, yeah.

Q -- to cover him? On occasion.

A Or I would -- if I -- if I had reason to believe he had his own there that were unopened, I would use that.

Q The conversation that you had with Dr. Desai after the CDC outbreak --

A Yeah.

Q -- I think you said Dr. Mason was there.

A Yes.

Q And this took place at Burnham?

A At Burnham in Room C. Here's A, B, C [indicating].

Q Okay. And this was an only occasionally used room?

A Yes.

Q Was anyone else present?

A Dr. Desai, me and Dr. Mason. I don't believe. Just the three of us that I recall.

Q Okay. Was the room door open or closed, do you remember?

A It was probably closed. I don't think they wanted to invite anybody in to listen.

Q Okay. Was it a secret meeting?

A Well, I mean, I don't know that it was designed to be necessarily, but I mean, I think the purpose of them was to talk to me, not to anybody else.

Q And do you know why? Why would you be singled out?

A Well, I don't -- maybe they did this to the others too. I don't know. I mean, at the time I assumed that they were probably doing this to the others. Dr. Mason at the time made the statement as though --

MR. WRIGHT: I want to object to hearsay.

THE COURT: That's sustained.

MS. WECKERLY: Okay.

BY MS. WECKERLY:

Q As you sit here now, do you know why you were in that meeting?

A Well, I -- probably for the reason that, you know, Dr. Desai was to inform us of what was going on, and

then --

Q But didn't you already know by then?

A Yes, I did. But he --

Q Okay. He told you that there was an outbreak at Shadow, but you knew that, right?

A Yes.

Q And that there were a cluster of cases or at least more than one case, but you knew that?

A Yes.

Q And he said that if you had done something like that your license would be at stake?

A Yes.

Q I would assume you knew that?

A Yes.

Q And that if you did something like that you wouldn't be able to work anywhere in the world?

A Yes.

Q Did you know that?

A Well, not that I -- I've been to other places in the world and, you know, in some places you can work just about no matter what. But I mean, in general, yes, I knew that.

Q You knew there was a lot at stake; is that fair?

A Yes. Yes. That's the point, yes.

Q Okay. And you didn't need him to tell you that,

right?

A No.

Q Okay. He told you that people would be coming unannounced and they'd ask you questions?

A Yes.

Q Did you know that?

A No. Well, I might have surmised it, but I mean, I didn't know that specifically, no.

Q And then he told you that -- how to answer the questions, right?

A Yes.

Q And the answer was going to be one needle, one syringe, one vial per patient, then I throw everything out?

A Right. Yes.

Q Okay. Is there a reason why you would need instruction on how to answer investigators?

A Me? Well, no, because that's the way I do -- well, no, that isn't the way I did things. I mean, I was -- in other words -- okay. That was the new policy of the company.

Q Right.

A So having announced that that was the new policy of the company and him being the head man, it was probably appropriate that he came over and visited us. That was my impression, that we had an official visit after all this

broke, because that would be the appropriate thing to do.

Q Right. But you were the only CRNA there, right?

A In that meeting?

Q Yes.

A In this particular meeting, yes.

Q Yeah. And the memo had already come out, hadn't it?

A Yes.

Q So you're in this meeting that you think is -- now you think is about an official policy, but you were the only CRNA there?

A Yes.

Q And did it -- I guess, was there a reason why you would have trouble answering investigators that he would need to tell you how to handle the questions?

MR. WRIGHT: Objection.

THE WITNESS: No.

MR. WRIGHT: Calls for speculation.

THE COURT: Well, unless there's some problem he had himself, then he can answer.

Don't guess what they were thinking but, you know --

THE WITNESS: Oh. Well, could you rephrase the question?

MS. WECKERLY: Sure.

THE WITNESS: I'm sorry.

BY MS. WECKERLY:

Q Is there something like that about you that would make it hard for you to answer questions by investigators, where you'd sort of need coaching beforehand on what to say?

A Well, I hope not.

MR. WRIGHT: Objection. Objection to the question.

THE WITNESS: I don't think so.

THE COURT: Well, he said I hope not, so.

THE WITNESS: Yeah.

BY MS. WECKERLY:

Q I mean, you would be able to answer questions by yourself?

A Yes.

Q Okay. And the other thing he told you to say was multi-use vial, never heard of it?

A Well, what's that.

Q Or what's that actually. And that was going to be an answer that you were to use if someone asked you questions?

A Yes.

Q But you had heard of a multi-use vial?

A May I comment on that?

Q Sure.

A Okay. Up until yesterday, when I believe Mr.

Wright was questioning me, my first impression would have been, well, he's telling us to at the very least obfuscate the issue if not just outright misrepresent the issue. But in light of what Mr. Wright brought up there, I could see where now that would just be a nuance way -- or a very colloquial way of saying, well, no.

Q Okay.

A In other words, if you're -- because everybody obviously knows that we know what that kind of vial is to -- if I were to say, Well, what's that; that's equivalent, you know, in standard English to saying, Well, no, rather than --

Q And so it was in your view now today that it was just merely an announcement of a new policy?

A Well, yes, I guess you could put it that way.

Q Okay. Did you think that investigators who were investigating an outbreak that occurred several months earlier would be asking about a policy that just came into existence?

A Well, gee, that's a tough question. Say that again. I'm trying to --

MR. SANTACROCE: And I'm going to object to speculation anyway. He's speculating as to what they would do.

THE COURT: Well, I think it's only relevant as to -- what he thinks now in hindsight really isn't relevant. At the time what did he think, if he thought about that at all.

MS. WECKERLY: Okay. When you --

THE WITNESS: That's a very good point.

THE COURT: Thank you. The lawyers never agree with my point, so at least someone does.

BY MS. WECKERLY:

Q In your opinion, would investigators want to know about the current propofol policy, or the one that existed when the outbreak occurred?

MR. SANTACROCE: Again, calls for speculation.

THE COURT: Yeah. That's sustained.

BY MS. WECKERLY:

Q Let me ask you this: When you spoke to the police, you relayed this conversation, correct?

A Between Dr. -- you mean the one in the -- in the room that we're talk -- yes. Yes, I believe I did.

Q And do you remember how you characterized this information when you told it to them?

A I have my copy here, if you can tell me what page.

Q Yeah. It's at page 61.

A Sixty-one?

Q Mm-hmm.

A First interview?

Q Yes.

THE COURT: And just read that quietly to yourself.

THE WITNESS: Oh, okay.

MS. WECKERLY: And I'm looking at the bottom of page 60.

THE WITNESS: Sixty-one. All right.

Okay. You mean I actually talk like this? This is --

BY MS. WECKERLY:

Q You told the police before you explained this conversation, you said, There's something very important --

MR. WRIGHT: Objection. The question is did that refresh his recollection.

THE COURT: Right. And then --

MS. WECKERLY: Okay. Does it refresh your recollection as --

THE COURT: -- if it's -- as to what he said. And then if it does --

THE WITNESS: Yes. Yeah.

THE COURT: Okay.

BY MS. WECKERLY:

Q And you characterized it as what, the information before you said it?

A I'm not -- I don't understand.

THE COURT: I think your question's a little confusing.

MS. WECKERLY: Okay.

THE COURT: So maybe you can ask it a different way.

BY MS. WECKERLY:

Q Before you told the police about this conversation --

A Yes.

Q -- how did you describe it? What did you say about it before you explained it?

A What did I say about the conversation?

Q Mm-hmm. Did you say it was very important on page 61?

A Oh, yeah, I believe. Yeah, I believe. Yeah, I did.

Q Why? Why did you regard this conversation as very important for the police to know about?

A Well, for the very fact that it took place, that Dr. Desai was there and he made statements and the statements were not just statements in passing. They were in the wake of something really momentous that had happened. So and they -- they, you know, they had questioned me about other conversations I may have had, so I thought it was certainly important to bring this up.

Q And how did you characterize his statements to you? Those statements, how did you characterize them?

A Dr. Desai's statements?

Q Mm-hmm.

A You mean the word "ambiguous"?

Q Yes.

A Yeah.

Q They were ambiguous, right?

A Yeah.

MS. WECKERLY: Thank you.

MR. WRIGHT: Done?

MS. WECKERLY: Yes.

RECROSS-EXAMINATION

BY MR. WRIGHT:

Q And then you characterized it right after that, correct?

"I mean, basically what came out of -- the most important thing for me was, uh, just from now on don't use vials of propofol on more than one patient, because now this is the policy and they're going to come around and check, and when they check, they had better see you doing only what I'm telling you to do now," correct?

A Yes.

Q Okay. And that was talking about one vial, one patient, one syringe, throw in the trash --

A Right.

Q -- right?

A Right.

Q And why would they -- why would -- now, Dr.

Mason was the medical director of Burnham.

A Yes.

Q And he was present?

A Yes.

Q Okay. Did you think he was there in a secret meeting obstructing justice and telling you to lie to people?

A No.

Q Okay. And Dr. Desai is there. Dr. Mason's there. And why would they be talking to you? Well, what had just happened on January 30, when BLC came in?

A When BLC came in, you mean the meeting where the lady talked to me?

Q Right.

A Yeah.

Q What were you doing?

A I was in my room sitting at my table giving anesthesia.

Q And you were doing what with the propofol vial?

A Well, I was using -- I had maybe two or three opened, which on my -- in my workspace.

Q Okay. And she said, What are you going to do with those?

A Yes.

Q And you said, I'm going to use those on the next patient, right?

A What she did was ask me are you going to throw those away, and I said no.

Q Okay. But you were multi-using, right?

A Yes.

Q And she was writing like crazy, correct?

A Right.

Q And did you see the report that came out of that BLC visit that's called "The Trip Report," I think?

MR. WRIGHT: Is that what it's called?

MS. WECKERLY: It's not.

MS. STANISH: I don't think so.

MR. WRIGHT: Or is that --

MS. WECKERLY: That's the CDC report.

MR. WRIGHT: That's CDC. Was the --

MS. STANISH: The BLC report.

MR. WRIGHT: The BLC report.

BY MR. WRIGHT:

Q Did you see the BLC report that talked about the multi-use guy?

A If it's included within this big fat thing that came off of the CDC, then yes, I did, because I read the whole thing.

Q Okay. Well, it was talking about -- the BLC report talked about that incident that day, correct?

A The BLC report?

Q Yes.

A Well --

THE COURT: Did you see a --

MR. WRIGHT: Do you recall?

THE COURT: -- in some report, someone relaying the incident that occurred with you, whether it's the ABC report or the QRC report or whatever?

MR. WRIGHT: BLC.

THE COURT: In some report, did you see or do you remember seeing that incident relayed?

THE WITNESS: Yes.

THE COURT: Okay.

BY MR. WRIGHT:

Q Okay. And in the -- did you see the BLC report, Ralph McDowell multi-using propofol vials, plan of action, response by clinic, won't do that again? Do you recall that?

A No, I did not with my name, no. No.

Q Okay. It had a number that was attributed that you understood was you --

A Right.

Q -- in the BLC report; in other words, not -- like CRNA number such and such?

A Well, they were using those designations though.

Q In the BLC report. Okay.

A In the BLC report.

Q Right.

A Okay.

Q You saw yourself by number rather than name?

A I would -- what I saw I probably surmised was talking about me whether it used my name or not.

Q Okay. And it was known to management, Dr. Desai, Dr. Mason, that you had -- when BLC came in, you had been multi-using, correct?

A Yes.

Q Okay. And I understand it had not been communicated to you.

A The new policy, yes.

Q Correct.

A That's correct.

Q And thereafter it was communicated to you, right?

A That's correct. Yeah.

Q And then after those events BLC comes in, BLC report, BLC plan of correction, they then have a meeting with you, meaning Mason and Desai, correct?

A Yes.

Q And at that time, as your best understanding of the purpose of the meeting was to confirm that going forward you fully understood the policy, correct?

A Yes.

Q And that you would be implementing that for the protection of yourself and the clinic, correct?

A Yes. That's --

Q I mean, is that a fair characterization of that meeting?

A Yes.

Q Now, when Linda Hubbard came over towards the end to Burnham because of whatever transgression at Shadow Lane, she was in a different room, correct, procedure room?

A Yes.

Q And you understood through the gossip that she was there because of wrongdoing and to be supervised; is that right?

A That was my understanding, yes.

Q Okay. And who would be in the room with her when she is conducting procedures at Burnham?

A Well, it would probably have been -- I -- I don't know who was in there, but I would guess that it would be another anesthetist or perhaps the nurse administrator possibly.

Q Okay. And that would be --

A Possibly both.

Q And that would be Jeff Krueger?

A Yes.

Q Okay. And also would the doctor performing the

procedures be in the room?

A Oh, well, yes, of course.

Q And that would be whom?

A Well, whatever doctor was working that day. I mean, we had a variety of doctors that came through there.

Q Okay. Now, on the date of the saline flush efficiency report meeting, do you know what I'm talking about?

A The saline flush -- yes. You mean the one at Shadow about the --

Q Correct. All the CRNAs but one met.

A Yes.

Q And this is when the entire plan to save on propofol was explained by Dr. Desai?

A Yes.

Q Okay. Now, on the date, your written memorandum back in July 15, 2008, that's K-1, Proposed K-1 --

A In the latter part, yeah.

Q Okay. Latter 2007.

A Yes.

Q Okay. And do you recall when you told -- when you were interviewed by the metropolitan police department a number of years ago --

A Yeah.

Q -- they asked you, or you told them the date of that meeting? Do you recall that, what date you used? And

I'll point you through.

A No, I don't recall it offhand. Can you direct me to the page?

Q Yes, sir. Look at page -- I'm on the 7/16/08 statement until July 2008. I'm on page 32.

A That's the first meeting?

Q Yes. Yes, sir. Starting halfway down.

A All right. Okay.

THE COURT: Someone needs a break, so let's just while we're looking for that --

MR. WRIGHT: Okay.

THE COURT: -- go ahead and just take a quick recess.

And ladies and gentlemen, during the quick recess, you're reminded you're not to discuss the case or anything relating to the case with each other or with anyone else. You're not to read, watch, listen to reports of or commentaries on the case, person or subject matter relating to the case, and please don't form or express an opinion on the trial.

Notepads in your chairs. Follow the bailiff through the rear door. And I know there were complaints that the breaks are too short. The bailiff doesn't bring you back until he's aware that everyone's had enough time for the break, so.

I do that for the lawyers.

MS. STANISH: Thank you.

(Jurors recessed at 10:20 a.m.)

MS. STANISH: You can sit if you want. We're just standing because we're sick of sitting for 30 days.

THE COURT: When -- if you guys need a break, just take a break.

MS. STANISH: Thank you.

(Court recessed at 10:21 a.m. until 10:27 a.m.)

(Outside the presence of the jury.)

THE COURT: This is the juror with the kindergarten graduation and the school's over there. It's not far away.

(Pause in proceeding.)

MR. WRIGHT: Look at the top of 32. I told you the bottom.

THE WITNESS: The top of 32?

MR. WRIGHT: No wonder I couldn't find it.

MS. STANISH: That's why we need to someday get into the computer age, so we can look things up with a find function. Maybe next trial.

(Pause in proceeding.)

(Jurors reconvene at 10:32 a.m.)

THE COURT: Court is now back in session. And Mr. Wright, you may resume your cross-examination, or your recross-examination.

RECROSS-EXAMINATION (continued)

BY MR. WRIGHT:

Q Yes. Ms. Weckerly had asked you about the dates of the CRNA meeting with Dr. Desai, and then also I'm going to get to the dates of no more bonuses and you got a raise. Okay. So for the date of the CRNA meeting, to go back to your July 2008 interview with the police department, that would have been six months after the events, correct?

A When was the interview?

Q That would have been six months -- about six months after the event?

A Yes. Yes.

Q Okay.

A Oh, yes. Yes.

Q Okay. And so at that time, I asked you to look at page 32, at the top as to when you believe the meeting was.

A Yes.

Q And does that refresh your recollection?

A Yes.

Q And when was it?

A At the -- well, it would be the end of 2007.

Q Okay.

A Which is what --

Q And did you state, The end of last year, November, December? Look at the top of page 32.

A Yeah. Yes.

Q Okay. And it was fresher in your mind at that time than here today years later?

A Yes.

Q Okay. Now, when you -- when the bonuses got canceled --

A Yes.

Q -- and you got a raise, okay?

A Yeah.

Q Look at page 129 of your same interview, 129 of the big first day, and look down at the bottom.

A One, twenty-nine?

Q Yes, sir.

A Okay.

Q Read the bottom --

A Bottom paragraph?

Q Bottom paragraph, and over through the first half of the next page to yourself.

A Okay. Okay.

Q Okay. And does that refresh your recollection as to when it was?

A Yes. Well, I'm taking what I said there as pretty much the truth, yeah.

Q Okay. I mean, at the time you were being truthful about everything back then, right?

A Yes, yes.

Q And so it was in December 2007 --

A Yes. Right.

Q -- approximately, correct?

All bonuses had been stopped for CRNAs?

A Right.

Q And you understood, and I'm getting this from your interview --

A Yeah.

Q -- that there was too much grumbling about bonuses and who got what.

A That was my understanding. Now, this -- there was no meeting that this was announced at. I mean, this came to me through the atmosphere, you know, through the grape vine.

Q Okay. And so in lieu of bonuses, your salary was increased the equivalent of what the bonuses had been to 130,000?

A Yes. I was given a $20,000 raise, yes.

Q Okay. Now, one -- one final question. Look at K-1, Exhibit K-1 in your --

A This one here?

Q Yes, sir. You can put that away now.

A Okay.

Q K-1 is what you wrote out for your lawyer right prior to your interviews with the police, correct?

A Okay. Right.

Q Would you look at page 4 -- no. Page 3.

A Three?

Q Yes. I think there is a typo. Okay. But I want you to explain [inaudible].

A Okay. Where is that?

Q The time -- we're talking about anesthesia times, and what you called your force -- read that shortly sentence.

A Out loud?

Q Or to yourself.

A Yes. Yes.

Q Okay. Now, is that correct?

A Yes.

Q Okay.

A As I recall it, yes.

Q Okay. "Shortly after we were informed of the hepatitis C outbreak at the Shadow Lane facility --

A Yes.

Q "-- I was told that Time A, the anesthesia ending time." Look up above at what A is.

A Yeah. That must have been a confusion then, because A is not the ending time. A is the beginning time.

Q Okay. Didn't you mean D?

A Yes. Sorry. That is -- I hadn't noticed that,

but you're right. That's right.

Q Okay. So the -- why don't you take and put D where that --

A Is this the exhibit? Can I do it on the exhibit?

Q Sure.

A [Complies.]

Q Okay. And so it -- and now that reads correctly, this was the last anesthesia time change that was implemented, correct?

A That's correct.

Q And it said from now on, it's anesthesia time is going to be from the start time to -- wait. I'm not saying that right. State what the last --

A Well, A --

Q The final instructions.

A A is the time -- is the start time for anesthesia, when I come into attendance with a patient. B and C are procedure times. D is the anesthesia ending time.

Q Okay.

A Which would now coincide with C.

Q So from now on, procedure times are anesthesia times?

A Yes.

Q Okay. Thank you.

MR. WRIGHT: And no further questions.

THE COURT: All right. Mr. Santacroce, do you have any questions?

MR. SANTACROCE: Just a couple.

RECROSS-EXAMINATION

BY MR. SANTACROCE:

Q Mr. McDowell, you worked at the clinic from 2002 to 2008, correct?

A February of 2002 until closing time 2008.

Q So in that six-year period, you can only remember a couple of times where you brought propofol from your room to Mione's room when you relieved him for lunch; isn't that correct?

A When I relieved him for lunch; in other words, full -- full vials. Well, it -- whether it was a couple of times or more than a couple of times, I mean, it wasn't -- my -- again, it would depend on how much he had there. I mean, if I had some reason to believe that he didn't have enough and that I was going to need more, then I'd bring mine.

Q So would you go look in the room and see if he had enough?

A Well, I probably was just guessing based upon, you know, whatever at the time. But I did do that, yes, at times.

Q But it's fair to say that that was infrequent;

isn't that true?

A Probably, yeah, infrequent.

Q And in that six years you can only remember one time where you brought a used bottle to Mr. Mione at the end of the day when you were leaving; isn't that correct?

A That's all I can remember, yes.

Q I'm going to show you what's been marked as State's Exhibit No. 156. Can you read that? Can you see, is it on your monitor?

A Yeah. On this one? Yeah.

Q Yeah.

A It's a little blurry. I mean, one --

THE COURT: It's small.

BY MR. SANTACROCE:

Q Do you want me to zoom in on it?

A Yes, I think so.

Q Tell me when it's clear.

A Well, it's fairly clear. Now, what is it you want me to...

Q I want you to look at who the CRNA was. And I'll represent and show you that this is for the -- what's alleged to be the infection date is September 21, 2007. Do you see the CRNA column?

A CRNA column, yes.

Q And this is for the procedures at Shadow?

A Shadow.

Q Do you see your name anywhere on these procedures?

A No. No, I don't. Keep going. No.

Q So you didn't do any procedures at Shadow Lane on September 21, 2007, correct?

A Evidently not, no.

Q And I want to show you now what's been marked as State's 157. This is for the alleged infection date of July 25, 2007. And do you see the CRNA column?

A CRNA column. Mm-hmm. Yes.

Q Do you see your name anywhere on here?

A Keep going. More.

Q I'll get to the end here.

A No.

Q So you didn't perform any procedures on July 25, 2007, correct?

A Correct.

Q So you cannot testify as to what the CRNAs did or didn't do on July 25, 2007, or September 21, 2007, correct?

A At Shadow, no. Of course not, no.

Q And you can't testify whether propofol was moved from room to room on those dates, can you?

A At Shadow, no.

Q You can't testify as to what the injection

practices were of the CRNAs on those dates, can you?

A No.

MR. SANTACROCE: I have no further questions.

THE COURT: Ms. Weckerly.

MS. WECKERLY: No other questions. Thank you.

THE COURT: All right. I have a juror question up here. A juror wants to know, do you know if the propofol manufacturer had any kind of pamphlet that they sent expressing how they labeled their bottles or talked about single use versus multiple use?

THE WITNESS: There is a -- inside of each -- should I speak to the jury here?

THE COURT: Yeah. It's to them.

THE WITNESS: All right. Inside of each -- let's see. I'm trying to think. When the propofol comes in, say it's in a box with 24, there's usually a flyer in there which is -- gives a lot of information about the tests that have been done on propofol and the results, all the studies that have been done. And there's a lot of very small print that I rarely if ever read simply because I don't have the patience to read it. That's like reading the telephone book. So whether they talked about labeling on there, I really couldn't say.

THE COURT: Okay. And that packet -- that pamphlet you're talking about, that typically comes with all drugs,

correct?

THE WITNESS: Yes. It's a flyer. I mean, I wouldn't even call it a pamphlet. It's a single -- it's a single page thing that's about this long [indicating] when you unfold it.

THE COURT: And it talks about drug interactions --

THE WITNESS: Yeah.

THE COURT: -- and studies and things like that?

THE WITNESS: Yeah. All sorts of things that --

THE COURT: But you didn't read that in the --

THE WITNESS: No.

THE COURT: -- case of the propofol?

THE WITNESS: No. Well, I mean, I remember occasionally glancing at it, but the area -- basically what it said, that -- anything on there that interested me was stuff that I already knew.

THE COURT: Okay. And did you assume that the single use was because of a lack of preservative in the vial, or did you think about it at all?

THE WITNESS: Well, yes. I think -- you mean if the label was on there that way?

THE COURT: Right.

THE WITNESS: Yeah. Okay. Yeah, there was a very good reason for a label, for it saying single use patient over and above any considerations of contamination, which is what I've already explained to the -- to the counsels here who

questioned me.

And that is once that vial, once you remove the blue cap and you put anything through that rubber stopper, whether it be sterile or unsterile, then for reasons that I don't quite understand, I only know the results, that -- whether it's because air comes in contact with it or what, the solution begins to deteriorate.

And you can notice that -- you can notice after maybe four or five hours that it looks like something that you wouldn't want to inject into a patient. I personally drew the line at about an hour, which is way within the boundaries of safety. I mean, I certainly didn't wait until four or five hours and then sit there and look at it and wonder, well, should I give this or shouldn't I give it.

I preferred to err on the side of safety, so my cutoff time was about an hour. I mean, if something had been opened and I knew it was there for more than an hour, then I discarded it.

THE COURT: Okay. And it's a glass vial, so you can see the liquid in the vial?

THE WITNESS: Oh, yes. Yeah.

THE COURT: And you said it turned cloudy or what? I mean visually how could you tell it was past the expiration time?

THE WITNESS: Well, part of it was white and then

part of it looked like kind of a yellowish watery substance.

THE COURT: So it changed color?

THE WITNESS: Yeah. Yes.

THE COURT: Okay. And then another juror wants to know, when you worked at the Shadow Lane office, did you share bottles of propofol, or did you observe anyone else share bottles of propofol at the end of the day like you did, or like you observed at the Burnham office?

THE WITNESS: Share open bottles of propofol?

THE COURT: Right. From one CRNA to another --

THE WITNESS: Okay.

THE COURT: -- did you observe that, or did you yourself do that at the Shadow Lane clinic?

THE WITNESS: At the Shadow Lane clinic?

THE COURT: Right.

THE WITNESS: No. I never observed it and I never did it there.

THE COURT: Okay. And then Dr. Desai told you that, quote, you're the most expensive CRNA. What did you do to cut down on your use of propofol, if anything?

THE WITNESS: Probably nothing, because I -- what I was doing I considered to be a safe procedure and I continued doing that. Except for the trial use of the saline of course. I mean, which again, I -- I tried to use that. I couldn't convince myself after awhile that it was really working any

more than I could convince myself that a placebo I took was really working, so I simply discontinued doing that.

THE COURT: All right. Mr. Wright, do you have any follow-up to that last round of juror questions?

MR. WRIGHT: No, Your Honor.

THE COURT: Mr. Santacroce, do you have any follow-up?

MR. SANTACROCE: No.

THE COURT: Ms. Weckerly, do you have any follow-up?

MS. WECKERLY: No, Your Honor.

THE COURT: Do we have any other juror questions? No. All right. Sir, there are no other questions. Thank you for your testimony. Please don't discuss your testimony with anyone else who may be a witness in this case.

THE WITNESS: Your Honor.

THE COURT: Yes.

THE WITNESS: May I ask a question? If I don't ask you this, my wife is going to kill me. Am I finished testifying for this -- for this event?

THE COURT: He's excused.

And I don't believe the defense expects to recall you, so this should be it.

THE WITNESS: Okay. All right. Thank you.

THE COURT: Yes. Thank you.

THE WITNESS: Thank you, Your Honor.

THE COURT: You're free to leave. You're free to leave the jurisdiction --

THE WITNESS: It has been an honor participating in your court.

THE COURT: -- of the State of Nevada.

State, who is your next witness?

MS. WECKERLY: Peggy Tagle.

THE COURT: All right.

PEGGY TAGLE, STATE'S WITNESS, SWORN

THE CLERK: Can you please state and spell your first and last name for the record.

THE WITNESS: Peggy Tagle. It's P-e-g-g-y, T-a-g-l-e.

THE COURT: Thank you. Ms. Weckerly.

DIRECT EXAMINATION

BY MS. WECKERLY:

Q Good morning, ma'am. Did you work as a nurse at the Endoscopy Center of Southern Nevada?

A Yes.

Q Do you recall the year or the day that you started?

A August 9, 2006.

Q And how long did you work there?

A Until they closed and we got the letter for the termination day as March 7, 2008.

Q So a little over -- well, about two years, right?

A A year and a half.

Q A year and a half. What is your educational background that allows you to work as a nurse?

A I'm an associate's degree RN.

Q Where did you go to nursing school?

A Bremerton, Washington, at Olympic College.

Q And did you work as a nurse prior to coming to the Endoscopy Center?

A Yes.

Q Where was it that you worked, just briefly?

A The last one before then was I worked at St. Rose Dominican Hospital in the ICU.

Q And that's down in Henderson?

A Henderson.

Q Okay. Was that the only other place that you worked in Las Vegas prior --

A No.

Q Oh. Where else did you work in Las Vegas?

A I also worked at Sunrise Hospital. I worked at both of them at the same time.

Q Oh, okay. And at St. Rose it was in the intensive care unit?

A And so was at Sunrise.

Q For both of those places, I understand you were working at the same time, what was the total number of years that you worked at those two hospitals?

A St. Rose is 13 years, and I worked a year and a half -- a little over a year at Sunrise.

Q And can you describe how it was that you came to learn about the nursing position at the Endoscopy Center?

A It was -- I learned about it on a follow-up patient visit.

Q And you applied? Did you apply or did you call? How did --

A I was asked to go by and talk with the manager at the Endoscopy Center.

Q Do you remember that person's name?

A Not right offhand. I can't tell you.

Q Do you know the name Tonya Rushing?

A Yes.

Q And do you think that was who you interviewed with?

A That's who I interviewed with, but that wasn't who I was told to talk to.

Q Oh, okay. Jeff Krueger or Katie Maley?

A No, ma'am.

Q None of those. Okay. Well, let's move then to who you interviewed with. You interviewed with Ms. Rushing?

A Yes.

Q And I assume during the interview you explained your background and where you'd worked?

A Yes.

Q How long after your interview do you think it was that you actually started working?

A The next day.

Q So right away?

A Yes.

Q When you worked at the clinic, you're an RN, correct?

A Yes.

Q What areas were you -- over the time you were there, what areas of the clinic did you work in?

A Primary and the procedure room.

Q And did you work in the preop area at all?

A I did. Occasionally in the preop, occasionally in the recovery, occasionally in discharge.

Q Okay. But if I understand you correctly, the bulk of your time was in the procedure rooms themselves?

A Yes.

Q Do you have any recollection of like the percentage of time you were in the procedure room?

A About 80 percent of the time.

Q 80 percent. When you worked in preop, can you

tell the members of the jury what your responsibilities would have been as a nurse in preop on the few occasions when you did work there?

A You were the first nurse that actually would look at the chart. You would check the chart for -- first for a history and physical. You would check also the chart to see if there -- the preop was signed by the patient, and you would ask the patient what prep they did take and which one -- which procedure they were there to have.

Q And would you also administer their IV or their heplock?

A We would start their IV and have it ready for going into the procedure room.

Q And can you tell the members of the jury what process, what steps you went through to administer an IV?

A First you obtain your equipment. You need an -- which we had the equipment on a tray. It was -- we call it the IV tray. It was an open tray with pockets that held the equipment. You would need a tourniquet. You would need the IV injection, which is called an intercath [phonetic] or a Jelco.

You would need a 3cc syringe. And it had come with a syringe and a needle that was already intact, and they come prepackaged already. And you would need alcohol, a tourniquet, and you would need a two-by-two. And you would

need what's called a Tegaderm, which is a sterile dressing that goes over the top of it.

Q And a two-by-two is?

A A gauze.

Q Okay. And how would --

A And you would also need what's called a heplock that goes on the cap that the -- it's a little cap that goes on the end of the IV after you get it in.

Q And I assume the tourniquet goes around the person's arm?

A It goes on the arm. You clean the arm and you put the tourniquet on the arm, and you pick the best IV -- allow the IVs to dilate, and you pick the best site that would be proper for the procedure. You pick your inner cannular that you're going to use. You go ahead and get your saline drawn up in a 3cc syringe, have it ready for when you do get it in, so you can flush.

And soon as you get the line in, you remove the sharp part of the inner cannular and you put it in the sharp container that's near you, and then you will -- it's usually right in arm's reach so you're not having to go away from the patient, you're still holding on to the IV. You will take the heparin cap, put it on the end, and you would tape it securely.

And then you would take the alcohol prep and wipe the

end of the -- the end of the heplock and flush it with the normal saline. It flushes good, then you will continue to tape the needle down with the tape and put the sterile dressing over the top to keep it clean.

Q Now, it sounds like one of the last steps is to flush the heplock with the saline?

A Yes.

Q What size syringes, if you recall, were used for the saline flush?

A 3 cc.

Q 3 cc. And --

A They come with a pre-connected 22 gauge needle on them already, come from the factory like that.

Q The needle's on the syringe, but you have to draw up your own saline?

A Yes.

Q Now, the saline that you would use at the clinic, was that a multi-use saline container?

A It's a multi.

Q And so if you were practicing aseptic technique, could you access that saline more than once with the same syringe and needle?

A Not the same.

Q Okay. When you do the flush, have there ever been occasions where you would have to flush the heplock more

than once with saline?

A No, ma'am. If it cannot be flushed with once, then it's not ready to be used and you start all over.

Q Get all the stuff all over again?

A Get new stuff.

Q Okay. What's the purpose of doing the flush?

A It's to make sure that the IV can be -- medication can be administered, and it also clears the blood out of the IV. Whenever you start it, it has blood in it, because it backs up into the needle part that's put into the sharp container. And you want to clear the blood because it could clot off before you use it, and the saline keeps it, as we call, patent, ready to use.

Q So it -- in layperson's, it keeps the vein open for the medication?

A It makes the line ready to be used.

Q Okay. And as a nurse, you would have been trained and you were familiar with universal precautions that you should take with using injection needles or safe injection practices?

A Yes.

Q When you were in your training and in your work, have you ever used a syringe more than one time after you have tapped a patient with it?

A No.

Q And I think you said that the sharps container that you had put the used syringes and needles in was right in that little area?

A Yes, ma'am. It was a small box about four-by-four and maybe 6 to 8 inches high. It's a standard sharps container that we put the sharps in. And one thing I left out is -- that we do, I have to wear gloves to do it with.

Q Okay. And if I understood you correctly, if it doesn't flush or it doesn't work, you start all over again with all new materials?

A Right.

Q That was the procedure that you followed as an RN at the Endoscopy Center?

A Yes.

Q On the occasions that you were in the preop area, did you ever have the opportunity to see other RNs like yourself go through that process of administering the heplock into a patient?

A Yes. I trained.

Q Oh, okay. So you were the trainer. Did you ever see anyone violate these safety precautions of only using one syringe and one needle on a patient and then throwing it away?

A No, I didn't.

Q If you had seen something like that, what would you have done as the trainer?

A I would have stopped the nurse.

Q After the IV is administered, does that end the responsibilities for the RN in preop?

A Yes.

Q And where -- the patient after that goes into the actual procedure room?

A No, ma'am.

Q Oh.

A The tech would escort the patient to the stretcher that was in the recovery room waiting, because that would be an empty stretcher for the patient, and then they would roll the patient into the recovery room.

Q Okay. When you worked in the procedure room, which I understand is where you said about 80 percent of your time was spent?

A Yes.

Q So you were in the procedure room a lot during the years or year and a half that you worked there?

A Yes.

Q What were your responsibilities then?

A In the procedure room you also review the chart. Usually you had to wait for the nurse anesthetist to finish their review. And then you would verify with the patient,

with you looking at the patient, the name and their date of birth, and you would make sure that that was the information that was correct in the computer for the procedure that was going to be done, make sure that they had taken their prep and had followed the instructions on giving -- on the prep.

And then you would go to the computer and you would type in the medical record number that they had assigned them for that procedure, and you would type that in there. It would pull up their name. You make sure the spelling of the name was correct, their -- all information that was in there was correct, if the right prep was -- the right procedure was up there. Sometimes you would have to change it to the right one that was being done.

And then you would -- in the meantime, the GI tech would be putting the monitor on the patient, the monitor leads, and putting the cuff on the patients and the oxygen. And by that time you would have your first vital signs and you would record that on the preop paper.

Q So the chart that goes with the patient out of preop, the first person who looks at it in the procedure room is the anesthetist, the CRNA?

A I didn't catch what you said.

Q The chart that has the patient's paperwork on it, that goes from preop. But once they're in the procedure room, the first person who would look at it is the CRNA?

A Yes.

Q And then as the nurse, you get the chart after that?

A Right.

Q And I think you said that you pull up the patient's file on a computer?

A Yes. It's a computer that would be the one that the pictures that -- where the patient is being taken, the doctor is taking the pictures during the procedure. There's two screens in there. One screen is in front of the -- in the doctor where he's watching during the procedure, and there's a monitor behind him that actually records the pictures that is being taken.

And then the -- whenever he is completely finished with the procedure, then he would type up his report on -- with the heading of the -- that I had already put in there as far as the nurse, the doctor, the nurse anesthetist and the tech.

Q Was it always the case in your experience that the nurse would be the one to pull up the medical record or the file on the patient on that computer in the procedure room?

A It wasn't always.

Q What were the variations that you recall?

A When I first started to work at the clinic,

either the physician did it or the GI tech did it. We were having occasions where there was -- the errors was not caught that was typed in or mistyped or something, and in order to make sure that we were getting that, they put that on the RN too, put that in. And then there was still physicians that would enter some of the information.

Q So it used to be the GI techs did it, but then the policy was that the procedure room nurse would pull up the computer file?

A Yes.

Q But sometimes the doctors would do it themselves?

A Yes.

Q Do you remember which doctors it would be that would typically do it themselves?

A Dr. Desai would do it himself, sometimes Dr. Carrol would, and sometimes Dr. Carothers.

Q When they pull up the computer file, or in the instances where they did, that wouldn't -- I mean, would that impede your work, or it just meant the file is up and they could start taking the pictures that would ultimately go in the file?

A I'm not sure what your question --

Q Well, if they pulled it up, did you need to do anything to the file before the procedure started?

A Usually, no.

Q So once the procedure is going, what are your responsibilities, you know, once the patient is under the anesthesia and the procedure is started?

A I monitor the vital signs. I position myself so I can also see the EKG strip that was going across. I also watch the vital signs. I am standing where I can see where the pictures are being taken. Sometimes the pictures would not -- from where they took the picture, would not go to the monitor. I could call that to the doctor's attention. And mine was to primary fill out the chart and make sure that that was there. And I fill out all the lab sheets that went to the lab.

Q If there was a biopsy or something?

A If there was a specimen.

Q After the procedure is done and the leads are taken off the patient, is the procedure room nurse done with your responsibilities, or what do you do at the end of the procedure?

A After the end of the procedure, the nurse anesthetist would hand me their record of what they -- of where they charted and I would get the vital sign strip from the nurse anesthetist. Most of the time they would hand it to me. If they didn't, I would go over and get it myself. And I already have the rhythm strip from initially when we did the

first vital signs, I already had that on my chart.

And I would finish out finishing all my paperwork there, then I would take it out to the recovery room and one on one would give the recovery room nurse a nurse to nurse report on what went on in the patient.

Q Did you see the CRNAs come out at all into the recovery area?

A Occasionally.

Q And can you define occasionally? Like would that be an everyday occurrence, or less than that, or...

A I would say a rare occasion. Generally they are -- the other patient has already been rolled in and they start asking -- have already got the chart and start asking questions. If they have one that was a difficult case, they would follow them out to the recovery and check on them in between patients also.

Q But if I'm understanding you, more often than not another patient has come in while the first one went out to recovery?

A Yes, while I was giving them a report.

Q Now, did you work in recovery at all?

A I worked in recovery very rarely.

Q Okay. And in recovery, on the rare occasions that you did it, what were your responsibilities?

A Well, you would receive the report. Then you

would go check the patient and make -- and check, see what the vital signs. By that time the patient would be waking up. You would start talking to the patient and letting them know what was going on for them. As the recovery room nurse, you would also review the chart and make sure that everything was documented.

You would check the specimens and make sure that that was filled in, and that would be turned in to there. And if they had a specimen, there was a paper filled out to make sure that there was a return for the patient to get the results of that specimen when it would come in.

Q Now, when you were in the -- well, did you ever work in discharge?

A Occasionally.

Q And what was in that regard? Were your responsibilities to sort of let the patient know the results of the --

A Then you would repeat what the recovery room had notes, because sometimes some of the people are a little slower to be awake enough to understand what is being said. And in the recovery -- in the discharge area you also had the family member there. You would have the family member to come in with the -- if it was okay with the patient, and the family member would come in and listen to what you had for discharge instructions with the patient.

Q I want to go back to when you were in the procedure room, which is where you spent most of your time. When you were in the procedure room, did you have an unobstructed view of the CRNA?

A No. Most of the time their back was towards me.

Q Could you ever see their work area at all, what it looked like?

A When the lights were on you could see their work area.

Q Okay. Did you -- when you were in the procedure room, were they -- I mean, were they something that you paid a lot of attention to, or how would you describe where your attention was focused during the procedures?

A During the procedure my attention was either focused on filling out the chart, I would glance up at the monitors, the vital sign monitor, the screen and the monitor where it's being recorded, and continue filling out my paperwork.

Q Did you ever see the vials of propofol that they used on patients?

A I see the propofol when we hand it to them that morning, and occasionally I will see a bottle or two sitting on the table ready for them to use that's still capped.

Q Okay. So it would already still be in its packaging?

A It wouldn't be opened.

Q Did you -- I mean, could you see them in during procedures drawing up propofol to administer to a patient, or was your view obstructed by that?

A I could see that they were in the act of drawing it up, but I could not actually see the draw-up myself.

Q During your time at the center, what hours did you typically work?

A I worked -- when I started to work there, I worked the late shift and that was only for about three months. Then I went to the 7:00 to 3:30 shift, and I worked that until the close.

Q And as 7:00, I would assume you were the -- one of the first nurses there?

A Yes.

Q What time did procedures usually start?

A At 7:00. So we would always get there usually around 6:30 in the morning to make sure that everything was ready to start at 7:00.

Q When the procedures started at 7:00 in the morning, would both rooms be going at the same time?

A Yes.

Q And were there two doctors or --

A It would be two doctors and two nurse anesthetists and two procedure room nurses. There would be

one in each room.

Q Had you ever worked there when there was just one doctor in the morning?

A Yes, I had.

Q In those instances how would the work flow go?

A There would still be two nurse anesthetists. One would be in each room. And they would stay in their room, and it would just give it a little slower for waiting on the doctor to finish in the other room before they could come into this room.

Q So the doctor would go back and forth between the procedure rooms?

A Yes.

Q Did you ever see the CRNAs take like a lunch break or anything like that?

A Yes. The CRNAs did take a lunch break.

Q What happened in terms of covering the procedure rooms on those occasions?

A There were a large amount of procedure -- the time, there was actually a third CRNA that would come in about 11:00 o'clock in the morning, and one of the CRNAs that come in at 7:00 to start their procedures would go to lunch. That one would relieve them for lunch. The other CRNA that was still there from 7:00 o'clock would -- when the first one come back from lunch, would relieve the second one that had been

there since 7:00.

And sometimes they either -- the three of them stayed there all day and they would rotate through the rooms, or the second one that was staying for the late lunch waiting on the other one to come back, they would go home early.

Q And do you have any recollection of what they would do when there was just two CRNAs for the whole day?

A When there's two CRNAs for the whole day, one would go to lunch, and during that time the CRNA that was left on the floor would actually have to cover both rooms. They would do one procedure, then walk to the other room and do the other procedure, and back and forth until each one was relieved for lunch.

Q Did you ever see the CRNAs take a break other than lunch? I mean, did they ever step out of their rooms just for a couple minutes?

A I would say occasionally they stepped out for a few seconds, but I don't know where they went.

Q When you were working, did you ever see them pre-fill syringes of propofol?

A I didn't see it.

Q Did you know where they threw the propofol away?

A No, ma'am.

Q Were the nurses in charge of taking any waste or any discarded sharps or vials of propofol out of a room in

between procedures, sort of like cleaning up the room, or was that the GI techs who did that?

A Well, I understand that the propofol, since it was in a glass bottle, it had to go in the sharps container. And the sharp containers were like a 13 gallon trash can with the sharps. So they didn't remove them out until they're full, and then you close them up according to protocol.

Q But were you ever responsible for taking those out?

A No, ma'am. I never took them out.

Q For the nurses, how were lunch breaks done?

A They would actually, the first nurses that come in, in the morning, they would actually make a list of who had to go to lunch at which time. And there would be a nurse that would have to come in to the procedure room where I was and actually relieve me to go to lunch. And as soon as I come back, either I relieved the other procedure room nurse, or I went -- they told me to go back in there, they had someone to relieve them.

Q Have you as a nurse ever left in the middle of a procedure, or maybe not in the middle, but after a procedure had started?

A Not after it had started. I have left before the doctor had arrived.

Q Okay. So the patient might be in there but the

doctor isn't in there yet?

A That's right.

Q And you might have left or gotten called somewhere else?

A Yes.

Q In those instances, would another nurse come in and take your place?

A Yes.

Q Have you ever gone into a procedure room while another nurse is finishing up a procedure?

A Yes, I have.

Q Was that pretty common, because you're all moving around quite a bit?

A Well, when we were there, we wait -- whoever's doing the case and if the case had already started, in other words, the doctor had already started the procedure, that nurse has to stay until that procedure was complete. And --

Q How would -- oh, go ahead.

A And then, then you would take the next patient.

Q Okay. So I mean, a doctor wouldn't leave in the middle of a procedure?

A No.

Q How would you describe the pace of work at the clinic while you were there?

A Continuous.

Q Were there a lot of patients?

A Well, I can't judge. To me it was a lot.

Q And was that based on, you know, your comparison in the intensive care unit?

A It's a different type of nursing.

Q Do you have any estimate or recollection of how many procedures might have been done in each room each day, or did you keep track like that?

A I did not keep track of it.

Q You know that the primary anesthesia used at the clinic was propofol?

A Yes.

Q Have you -- as a nurse, are you allowed to administer that?

A No.

Q You said though, that you checked it out in the mornings?

A We would check out a box of it, which come in a 25 vials in a box, to the nurse anesthetists, each nurse anesthetist.

Q And so in your experience, if you were the person who was checking out the propofol in the morning, would each CRNA come and check some out from you?

A We would actually take the book with them and -- to them and a lot of times one CRNA would sign for both, both

of the 25s, and hand the other one to the other.

Q Okay. Do you remember how big the -- or the volume of the vials of propofol were?

A When I first started to work there, you had one that was about that high [indicating], and then you got one about this high [indicating].

Q Okay. Smaller to bigger?

A Yeah. Two sizes.

Q Two sizes, but the first --

A And then it changed just to the small size.

Q Okay. So it went small, then there was a time when there was bigger ones, and then small again?

A It was both of them at the same -- at first. And then they got away with the big one, it was just the small one.

Q Okay. And do you know when that change was, when it -- that last one, when it went back to just small?

A I don't recall exactly when [unintelligible].

Q If you were the person who checked out the bottles of propofol in the morning, what would happen to the bottles that -- or the vials that weren't used at all during the day and weren't opened?

A I was not there at the close, so I cannot tell you. I do not know what they did with them.

Q So you never were the person who received them

back or anything like that?

A No.

Q During your time in the -- at the clinic, had you worked with Dr. Desai, or did you have the opportunity to work with Dr. Desai?

A Yes, I did.

Q Did you work with him pretty frequently?

A If he was doing procedures.

Q Okay. Did you have the opportunity to observe how he did procedures versus other doctors?

A And what do you mean by that?

Q The length of time of the procedure, or any different he'd have for doing the procedure.

A I never worked in a GI clinic before, so I basically went with what I could see. I didn't see anything that was initially unsafe to it. I do not know what is the standard time period for a colonoscopy. I seen that he was a little -- when I was recording the times, was a little faster than some.

Q Okay.

A And but that's as much as I can give you on that.

Q Okay. Did you ever work with Linda Hubbard?

A Yes, I did.

Q Did you ever witness an argument between Linda

Hubbard and Dr. Desai?

A Yes, a heated discussion.

Q A heated discussion. And do you remember approximately when that was in relationship to the date you started work?

A No. I cannot tell you.

Q Was it towards the end of your employment, or...

A I can't -- I really can't. I remember the occasion, but I cannot remember exactly when it was.

Q The heated discussion, where did it take place?

A It was in the procedure room while the patient was still anesthetized.

Q Were you the assigned procedure room nurse on that occasion?

A At that time, yes.

Q And would there have been a tech in there as well?

A Sometimes techs were not in there, and I really don't recall if there was a tech in the room or not.

Q What do you remember about the heated discussion?

A I don't. I remember they were talking back and forth, but I do not recall what they were talking about.

Q Do you remember giving a deposition in this case?

A Yes.

Q Well, in these -- do you remember describing the situation as Linda Hubbard wanting to give more propofol to a patient?

A I reviewed my deposition, yes, that's what I was -- I had swore to.

Q And I would assume that was your best recollection at the time?

A That's the best that I could recall. I can't remember any of the other.

Q What was Dr. Desai's response to her wanting to give additional propofol to the patient?

A That's been six years ago. I cannot recall the -- recall of it.

Q Okay. I'm going to just show you the page in your deposition and see if that refreshes your recollection.

MS. WECKERLY: And this is page 258.

MS. STANISH: Of which volume?

MS. WECKERLY: When --

MS. STANISH: Oh, yeah. There's two. Okay.

MS. WECKERLY: Yeah. But it's numbered all the way through.

MS. STANISH: Right. You're right. I'd forgot about that.

MS. WECKERLY: May I approach the witness?

THE COURT: Mm-hmm.

BY MS. WECKERLY:

Q Now I'm showing you page 258. And you've seen this document before; is that fair?

A Yes.

Q Could you just read at the top there for me, please, to yourself, and then just let me know when you're done.

A Okay.

Q Does that refresh your recollection as to what Dr. Desai said to Linda Hubbard about her wanting to give additional propofol?

A I would say that's what it was. I could remember it better then than I can now.

Q Okay. And do you -- what did you say that his response was at that time?

A That he was in charge and that -- I don't remember the words exactly. That he was in control and that she was going to do what he told her.

Q Okay. And do you remember what her response was back at the time?

A I only read that part. I'm sorry.

Q That's okay. I'll come back up there. It's the same page, for counsel. I should have let you read more.

A Well, basically that she screamed back at him

and that it -- she was wanting to give the patient more propofol and he -- and the patient started thrashing on the table and he said he was coming out with the scope.

Q Was there a point when the two of them left the room and you couldn't hear --

A After the patient was taken to the recovery room they both left for a few minutes.

Q Okay. And then I assume you don't know what if anything was said at that point?

A I do not.

Q Okay. I'm going to show you a couple of patient charts, and I'm starting with State's Exhibit 12.

MS. WECKERLY: And this is -- I'm going to be referencing, for counsel, Bates No. 3131 and 3191. May I approach the witness, Your Honor?

MS. STANISH: Pam, what patient is that?

MS. WECKERLY: Oh, I'm sorry. Rodolfo Meana.

MS. STANISH: Okie doke.

BY MS. WECKERLY:

Q Ma'am, I'm showing you State's Exhibit 12. And there's numbers at the bottom of these pages. The first one I'm showing you is Number 3131. Do you recognize what that document is?

A That is the computer generated report of the physician that he finishes when the procedure is over.

MR. SANTACROCE: I can't hear. I'm sorry.

BY MS. WECKERLY:

Q Can you speak up just a little bit?

A It is the procedure report, is the report that is completed by the doctor on the computer when he finishes the procedure.

Q And the next page I'm showing you is Bates No. 3191. Do you recognize what that document is?

A Yes.

Q What is that?

A That is the endoscopy procedure nursing record.

Q And was this one that you -- you would have filled out, correct?

A Yes.

Q And this is your signature at the bottom here?

A Yes.

Q Okay. Now, that screen in front of you is going to show these documents so you can look at them. Is your screen on?

A Yes.

Q Okay. The first one I'm showing you is Bates No. 3131. And this is what, the --

A That is the procedure report.

Q Okay. And when it says -- whoops. When it says providers, can you --

Can you tell us who the providers are that are listed on this report?

A Dr. Desai, Linda McGreevy [phonetic], which is an RN. Keith Mathahs is the nurse anesthetist.

Q Okay. And I'm going to -- just to compare, now I'm going to show you the other document I showed you, which is the procedure room nursing record, correct?

A Yes.

Q And that's Bates No. 3191, for the record. And in this area here, the providers are listed for the same procedure, correct?

A Right.

Q And who are they?

A That's Desai and myself and Monica, which is the GI tech, and Keith Mathahs.

Q So looking -- looking back at the first one, which is 3191, we have Desai, and then we have Linda McGreevy instead of you. Do you have any idea --

A I -- best -- when we reviewed this before, it is that I trained her and it could have been at that time period of the training.

Q Okay. Is it also possible that you might have been called out during this procedure, or you think it was training?

A I would have to look at the -- it's looking at

the procedure. And if you'll look at the preop, whenever she would come in there, you'll see that it's her signature on the page before that. So I would most likely say this is the time that I was training her how to do it.

Q And the fact that there -- usually we have a -- there's a GI tech listed on this record, correct, usually?

A Right.

Q But it's -- but there isn't one listed here. But there is a GI tech listed on the nursing record.

A Sometimes the GI tech comes in after the procedure is started, then we cannot get the GI tech on the report.

Q On the initial note?

A Right.

Q So it looks at a minimum like this note was started before the GI tech came in the room?

A We do the top part of it. That's what we were putting in the computer of what they're there for, what would this come in for, a colonoscopy. That's what we'd make sure it's in there. And we put the providers and we put which office they come from, and then the rest of it's done after the procedure is complete.

Q Okay. And so I mean, on this one you could just write it in because at some point a GI tech showed up?

A Yes.

Q Now I'm going to show you, this will be State's 11. And this is, for counsel, Sonia Orellana Rivera. And ma'am, this is State's Exhibit 11, and Bates No. 3467. Would this be the same doctor's note that you just described?

A Yes. That is the post procedure record where he did that. And I do the top part. I put the colonoscopy, the doctor's name, the nurse and the nurse anesthetist, and which office they come from.

Q And again, on this page it looks like there's no GI tech listed.

A No.

Q And on the nursing record, what --

A The nurse anesthetist had got -- missed off on that, but it does have the GI tech and the KM stands for Keith Mathahs.

Q Okay. And this is record, or Bates No. 3512, for the record. So ma'am, looking at this record in State's 11, which is Bates No. 3467, it would have been your responsibility to fill out the initial part of this document; is that right?

A Yes.

Q And you would have listed the providers?

A Providers. I would have listed the colonoscopy, then I would list Dr. Carrol, myself and Keith Mathahs, and the referring MD, from which office, like Shadow Lane office

and the doctor who referred the patient.

Q Okay. And this one again, there's no GI tech. Is it the same situation, you think?

A That was not uncommon for the GI tech to come in later.

Q And then I'm going to go to the nursing record which you just looked at, which is Bates No. 3512. And again we have a listing here of the providers, but it doesn't have the CRNA's name on this list; is that fair?

A That's right.

Q But you said you did note it somewhere else on your record. Can you circle --

A If you look over -- pull it over so the -- there it is. That KM, where the propofol was administered by, and it was KM would be Keith Mathahs.

Q Do you -- and we looked at this one. This is your actual record, right?

A Yes. That is my note.

Q Is there any reason that you can think of why you wouldn't have noted his name? Do you think it was just a mistake or...

A Well, a lot of times we would fill in who was coming in the room, and if they're switching, rotating the nurse anesthetists, we have to wait for them. And I probably went ahead and was able to get it into the chart upon the

computer, but I missed putting it on there.

Q Okay. But you did note it on the --

A Yes.

Q -- on the -- where you would have said who's administering the medication?

A Yes.

Q And the last one I wanted to show you, and this is Gwendolyn Martin's file for counsel. And ma'am, just once again, this is State's Exhibit 9, and we're looking at pages 3763, which is again, the doctor's note, correct?

A Yes. That's the procedure note.

Q Okay. And this has Linda McGreevy's name, who you recollect you might have been training?

A Yes. I did train her.

Q And the nursing note is you.

A Yes. I did the nurse's note.

Q And on this note it has everyone filled out on the nursing note, who the providers were?

A Yes.

Q And for the record, that's Bates No. 3777.

And putting this on the overhead, this is Bates No. 3763. You would have either supervised or filled out this nursing note because you were supervising Ms. McGreevy?

A Yes. I would have her to there and I would stand beside her to talk her through how to fill it out.

Q And this one on this page is missing the GI tech, but as you said, it wasn't unusual for them to --

A I don't recall, but I think a lot of times the GI techs did not come up on the -- if I remember right. But the main ones that we had to get was the doctor, the nurse and the nurse anesthetist, and then the GI techs showed up on our written part.

Q And on the written part, there's your name and Dr. Carrera --

A Dr. Carothers, and C Smith is the tech that come in, and Keith Mathahs is their CRNA.

Q Okay. Were you present when the health department and the CDC came into the endoscopy center?

A I was present with inspectors, but I don't know which was which.

Q Okay. But you remember some officials coming in?

A Yes.

Q Do you remember whether or not they observed Linda Hubbard?

A I know they were in the room whenever she was in the -- doing a procedure, yes.

Q Okay. So you would have seen them and her at the same time, or them --

A We were doing a procedure and she was the nurse

anesthetist in that room at that time.

Q Thank you.

MS. WECKERLY: I'll pass the witness.

THE COURT: All right. Cross.

CROSS-EXAMINATION

BY MS. STANISH:

Q Good morning, ma'am.

A Good morning.

Q My name's Margaret Stanish. I represent Dr. Desai.

A Okay.

Q I want to touch on a -- let me start with this. You were trained as a nurse in Washington state, correct?

A Yes.

Q And did you hold any jobs up there as a nurse?

A As an LPN.

Q Oh, as an LPN. In what kind of setting was that, ma'am?

A I was -- well, I was doing my RN and I was -- I had got out of the Navy, and I had two months before I moved to Texas as a graduate nurse, so I worked in a nursing home.

Q I see. And then you came to Las Vegas and worked in the hospitals, as you described?

A No, ma'am.

Q Oh, more. Okay. What else?

A I went to Texas. I went to Big Spring, Texas. I worked at the VA and I -- after I got my RN, I worked at the VA for over a year. Then I went to Arlington, Texas. I went to -- I worked in the ICU at the Arlington, Texas, which was a 12-bed ICU. And then I was reactivated to active duty and went back into the military as an officer, and went up to OI, officer indoctrination school in Newport, Rhode Island.

And then I was stationed at Portsmouth, Virginia naval hospital, which I worked at the ICU there. And then I was medically discharged from there and I went to Gold Beach, or Gold Beach, Oregon. I worked as the night supervisor at Gold Beach, Oregon before I come to Nevada.

Q So before you came to Nevada you had a total of how many years in the nursing profession?

A I started in -- I got my LVN in '79. I got my RN in '89.

Q Okay. I'm not going to do the math, but that's a lot of years, correct?

A Yes.

Q And fair statement that it was busy at the gastro center, correct?

A Yes.

Q Were you able to, in your opinion, do a good job while you were there?

A I always tried to give 100 percent.

Q Let me start with touching on a few matters in the preop room. You've already described in some detail your heplock procedure, so I'm not going to drag -- put you through that again. But I did want you to clarify a point for me. In your practice, would you sometimes pre-fill the saline syringes, have, you know, two or three of them ready to go?

A When we would start out the procedures in the morning, as we're getting -- opening up at 7:00 o'clock, we would fill three to five syringes ready to go.

Q And when you did that, ma'am, where did you place those syringes before using them?

A I kept them in my pocket.

Q And I assume the needles have caps on them?

A Yes.

Q And the tray, is there actually a tray by the patient when you're -- to set up?

A No, ma'am. We carry the tray around. It was -- it looked similar to a utility tray that a housekeeper would put their supplies in, the different supplies there. Except instead of utility stuff, we put the IV equipment.

Q I understand. So it's something you can carry around if you want?

A You carried it from one patient to the other.

Q And that reminds me. The room that you're in, the preop room, how many patient chairs are there?

A Three.

Q And are those chairs separated by a curtain?

A Yes.

Q So there's some privacy between the patients with the curtain?

A Yes.

Q In your experience in nursing, is it unusual when you have a number of patients getting prepped or awaiting a procedure, that they are put in an area with simply curtains separating them?

A Yes, ma'am. They -- I've had that as a patient and also as a nurse.

Q You and me both. The -- in preop, were -- you did some charting obviously, correct?

A Yes.

Q And would you explain to us in the preop area, what was your charting duties in preop?

A Mainly the charting duty that we did was you would fill out when you put the IV in and the size of gauge of the IV that you put in.

Q And just to go before you insert the IV, are you doing any kind of evaluation of the patient?

A As a nurse, when you walk in and I first see you, I'm already evaluating you from the minute that I put eyes on you.

Q And I don't even know that. What are you looking at when I'm sitting there waiting for you to do something?

A Well, I was trained when you walk up to a patient, if they can respond to you, you're already checking their alertness and you're checking their breathing. You're watching their chest rise and fall. You're looking at the color of the patient. And whenever you shake their hand or touch them, you're already feeling are they clammy, are they dry or are they warm, cold. You're already assessing that patient.

Q And as part of your charting duties in preop, would you record your observations?

A There is a column there that you do, do the initials of the initial -- it was an initial thing.

Q And is that something that you would fill out before the patients would come into the room?

A Come into which room?

Q I'm talking preop now. Is --

A It's not before the patient comes in the preop. The techs bring them into the preop to us.

Q And just to be clear, so the patient -- you would not fill out your evaluation of the patient until they are in the room?

A That's right.

Q And when you trained new nurses, would you train them to do that, or is that something they already knew how to evaluate patients?

A Well, if they -- that's part of the nursing school. That is part of your training, is whenever you're going through nursing school, when you start to assess and how many times do you assess. You assess, you see something could change, you reassess. You're constant reassessing that patient until they're out of your sight.

Q Now, we know this is a busy facility. Is the volume of patients impairing your ability to do your job in the preop area?

A No.

Q Why do you say that?

A It takes five seconds to assess a patient. It actually takes longer to document it on the paper than it does to actually assess somebody.

Q Fair enough. Thank you. As part of your assessment, did you have to determine whether the patient complied with the prep instructions?

A We would ask them did they -- what prep did they take, and with their answers, if they said they were just NPO, nothing by mouth that morning. And then we would ask them and what procedure are you taking this morning, and they would tell us that they were doing an upper GI or an EGD. And then

if they had told us that they had done a bowel prep, we also asked them what bowel prep did they take and how much did they take, and when was the last time they ate any food or drank any water.

Q If you -- at that stage, if you had determined based on your conversation with the patient that they did not do the appropriate preparation, what would you do?

A I would go to the physician and the nurse anesthetist and let them know that the patient did not do the prep, and most of generally all the time they would have us -- if it's an upper GI, sometimes they would have them, since they did drink that morning, they would have them to go out to the waiting area and wait for three hours so their stomach would empty before they could do the procedure for safety. If it was a colonoscopy, they would have to be rescheduled, because they did not take the prep and the bowel is not clean.

Q And if you recall, I know this was a while ago, was there -- can you estimate for us how often you had to cancel appointments at that stage?

A No, ma'am, I cannot.

Q All right. Fair enough. Now I want to move you into the -- well, let me ask you while we're still talking preop, was there any limitation, any limitation from management that you should not -- that you should limit your use of syringes?

A Not to me.

Q And had you ever heard of any policy coming down that syringe use should be limited?

A [No audible response.]

Q I'm sorry?

A No.

Q Now I want to move you into the procedure room. From 2006 to closure you were there, so approximate what, 2 1/2 --

A A year and a half.

Q Pardon me?

A A year and a half.

Q Okay. During your year and a half there, did you ever have to work on cases where the patient elected not to have any anesthesia for a procedure?

A Yes.

Q Tell us about that.

A There was, in the year and a half that I was there, I would say at least 10 to 12 patients actually come in, they opt not to have anesthesia for one reason or another. And the procedure, the doctors would encourage them to have anesthesia for it, but they were set that they were not.

And they were explained to at that time that if it come to any time that they were to become uncomfortable with the procedure, they needed to stop, then they would have to

stop and they would have to go either reschedule or have to administer anesthesia, and they did verbalize they understood that.

Q All right. And could you explain to us -- you've already over-viewed for us on direct exam what occurs in the procedure room normally. What would be different -- what would be different in the procedure room when you had patients who elected not to have anesthesia? Who was doing those?

A They were mostly on colonoscopies, and they were braver than me.

Q You got that right.

THE COURT: On that note, let's take a break. Ladies and gentlemen, we're just going to take a quick recess. We're going to take a little bit of a later lunch, around 1:00 o'clock today to -- for juror accommodation.

During this real quick break you're reminded not to discuss the case, read, watch or listen to any reports of or commentaries on anything relating to the case, and not to form or express an opinion on the trial. Notepads in your chairs. Follow the bailiff through the rear door.

(Jurors recessed at 11:52 a.m.)

THE COURT: And ma'am, if you need a little, you know, restroom break, you can take that, but don't discuss your testimony with anybody else. Okay.

THE WITNESS: Thank you.

(Court recessed at 11:53 a.m. until 12:00 p.m.)

(Jurors reconvene at 12:06 p.m.)

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

CROSS-EXAMINATION (continued)

BY MS. STANISH:

Q We left off at the very interesting topic of what's different in the procedure room when you have a patient who elects not to have anesthesia. Explain to us what the various roles would be of the people in the room.

A Well, the only subtraction is the nurse anesthetist is not in the room.

Q Will they be on standby somewhere?

A If they leave the room, I don't know where they go. And so as the RN, I actually monitor the vital signs and the airway of the patient, and make sure that there is no drop in the pressures. If there is any drop in the pressures during the insertion of the scope, I do call that to the physician's attention, or if there's a change in the EKG itself.

Q And am I right to assume somebody has to hold down the patient, or what's going on with that?

A Strangely to say, the patient lays on their left side and they're very calm. The ones that I've seen that went

through it without anything, they didn't move, they did not flinch. It was like it was drinking water for them.

Q All right. Now, I don't want to have that drink of water. I just want to go back a bit to your training. And I understand you also fulfilled the role of trainer for new staff nurses, correct?

A Yes.

Q Where did you first learn about aseptic technique?

A Nursing school.

Q And the -- when you -- when you are training other nurses, do you generally have to train them on aseptic technique, or is that something that they -- you expect them to know?

A First question, no. You shouldn't have to train them, but if you see that there is a problem, then you do. You're not only a nurse, but you're an educator when you're the preceptor.

Q Preceptor. And in your role as preceptor in the gastro center, did you ever have to correct any staff member on how to use correct aseptic technique?

A [No audible response.]

Q I'm sorry. You got to speak louder.

A No, ma'am.

Q Are you all right?

A No, ma'am.

Q You don't want water either now after [inaudible.]

A No. I drink my water.

Q The -- is it a fair statement that your colleagues, fellow nurses were experienced and did -- were experienced and knew what they were doing?

A Yes.

Q With respect to going back to the procedure room now, let me just skip over some of this. Let me talk about your -- when working with Dr. Desai. You -- how would you describe his procedures --

Well, let me back up to say this: Prior to working in the gastro center, had you any experience with providing nursing services during colonoscopy or upper endos?

A No, ma'am.

Q And so this was your first experience?

A Yes.

Q And you observed the various doctors and how they did their procedures, correct?

A Yes.

Q And you observed how my client, Dr. Desai, did his procedures, correct?

A Yes.

Q And did you note differences on how the various

doctors did their procedures?

A There's always a little bit of variance and differences, but basically it was done the same.

Q And with respect to Dr. Desai, you would describe his procedure to be quicker than some of the doctors?

A Yes.

Q And when -- in your experience, did -- did you observe doctors having difficulty inserting scopes in patients at times?

A Yes, there was times.

Q And does that occur -- did that occur in your -- based on your observations, is that something that most of the doctors would encounter during the procedures?

A Occasionally every doctor had difficulty.

Q And what would happen in those instances?

A Well, if you were having a -- and the patient is sedated, sometimes we can -- you could put your hands on them and they're doing the scope, the colonoscopy, that's where the difficulty come in.

And people have different things that are wrong with them. They have scar tissue. They have other things that are going, and you have to go through these different areas and sometimes just putting your hands in certain places on the stomach can help put the scope through without causing damage.

Q And who would -- who would primarily assist the

doctors in, you know, pressing on the stomach to help the procedure move forward?

A Usually the GI tech.

Q The -- am I right to understand that you only had recalled this one instance with Dr. Desai having this encounter with Ms. Hubbard that you described?

A It's the only one I recall.

Q By the way, educate me on this if you will. Based on your observations, have you ever witnessed, besides this one instance and besides the 10 to 12 strong souls who chose to opt out of anesthesia, have you ever seen patients move about while they're under anesthesia?

A Yes.

Q Would you please elaborate on that.

A Well, some patients you can't just look at their size of how much anesthesia they need, and some people have different tolerances to the medicine. And regardless if they're there and everyone is still different, and some patients do move under anesthesia and we have to keep them safe.

Q So even though they are asleep, they're moving; is that what you're saying?

A Some of them do. Some do. Some lay there like nothing and others, they move through the whole thing.

Q And when these patients are moving through the

whole procedure, does the attending staff do anything differently?

A We will make sure that the patient is staying on the stretcher, and we will put our hands on them and sometimes have to hold to make sure that they're not bouncing off. Because the stretchers are kind of narrow, and so we want to make sure that they don't come off from them.

Q And am I right to assume that one of the guardrails is down so the doctor can do the procedure, so you have to be mindful of a moving around patient; is that correct?

A Correct.

Q And are you positioned in the room so that if needed you can move to that station and -- to protect the patient?

A If I am needed, I will leave my paperwork and I will walk over about 8 to 10 feet that I will assist them to hold the patient to keep them safe.

Q In the procedure room, we're dealing with colonoscopies here, so I can -- I imagine it's a dirty business so to speak; fair statement?

A Well, there's other jobs that are dirtier, but it is dirty sometimes. It can get that way.

Q And educate us a bit. Is -- is the colonoscopy procedure room considered a sterile environment?

A No, ma'am. It's considered clean.

Q And educate us a bit about the difference between sterile and clean.

A Sterile is absolutely no germs, everybody would wear a mask, everybody would be covered and so we're not breathing on the patient. Clean is that you would wear protective equipment, but you would go ahead and like you'd wash your dishes, your dishes are clean. They're not sterile.

Q And when you're in the procedure room, is the room cleaned in between patients?

A The floors are not mopped, if that's what you're saying. But the tables and the equipment that is used is -- while we are doing -- everybody had their different tasks, and there would be a GI tech that would change out the equipment for us while we were doing -- taking the patient to recovery. There was actually a GI tech that was assigned to change out the equipment. That would include the scope and the blue pads and all that was needed for the next procedure.

Q And when you're in the procedure room, if you observed a GI tech not properly clean the areas of the room that you described, what would you -- what would you do?

A It did happen, and I approached the GI tech and educated him on how the proper procedure was and told him what needed to be done, and assisted him in cleaning it at whatever it was.

Q And if -- did -- based on your observations, did you observe that some staff members were disgruntled while others were diligent?

A Disgruntled, what do you mean?

Q Well, lazy, how about that?

A Well, in all forms of wherever you work you have your worker bees and you have your ones that do so-so, and you have the ones that you need to pump up to do a better job.

Q In your encounters and observations of Dr. Desai, did he treat people who the -- what you described as people who needed to be pumped up versus the worker bees, did he treat them differently?

A I don't see that per se was treated differently. But yes, if you are -- as a leader or a supervisor, sometimes you have to do things a little more rough or sound a little more rough than others and to get them to do what you need them to do.

Q And based on that explanation, is that what you observed Dr. Desai to do while you were employed at this -- at the gastro center?

A I would say that would be the easiest way to describe it.

Q Did Dr. Desai ever tell you to do something that you considered to be unsafe?

A The only encounter that we had that we had a

disagreement on is the way I was putting the patient names in the chart at the beginning of there. But I also followed up on that with my chain of command, and I went back to Dr. Desai and informed him of what I was told why we were doing it that way and we had no more problem.

Q Dr. Desai respected you as a professional?

A The way he come across to me, yes.

Q Vice versa?

A As far as I know, yes.

Q I meant you towards him.

A For me towards him?

Q Yes.

A Yes.

Q And did you feel that way about the other doctors in the gastro center?

A Yes.

Q Did you feel that way about the other RNs in the gastro center?

A Yes. I treated them as professionals.

Q When the outbreak occurred, when you were notified that the clinic that you worked at was the site of a hepatitis C outbreak, what was your reaction?

A I was at home. And when we heard about it, it was whenever I got my call that it was closed. I did talk in depth with my husband back and forth, and we just kind of

threshed it out and we had our comments at that time.

Q Were you surprised by it?

A Yes.

Q Why? Why were you surprised by it?

A Because I did not see any reason how anyone could transmit it, hepatitis from one person to the other until the things come out and to -- about the reuse of syringes and stuff.

Q Okay. I'm not sure I understood something you said and I want to follow up on it. You were there when the CDC inspectors were present, correct?

A I was there whenever we were told the inspectors were in the facility. I do not know if they were the CDC or what their title was, but we had two different inspections while I was there and I was told that they were inspectors.

Q And that's what I wanted to follow up with you on. You were there when there were two inspections going on?

A Yes.

Q And so one of those is obviously the CDC visit, correct?

A Yes.

Q What is -- can you tell us, give us a little foundation if you can recall, when was the other, the second inspection that you referred to while you were there?

A Well, there was one inspection that we were told

that we would be having strange people coming into the clinic that were inspectors, and that I would say that was the latter part of the summer of 2007 to the first part of September, October, somewhere in that time period they were there. And then the second group come in, I think it was in January of 2008.

Q And January of 2008, were the health inspectors in connection to the hepatitis C investigation?

A I really don't know which one was which.

Q And the other one you said occurred in the latter part of 2007, and you called them --

A Well, it was right at the end of summer to the first part of the school year, somewhere in that time period. So I don't really recall exactly, but it was hot. It was the end of August or September, October, right in that period.

Q All right. And you've said those were strange people. By that did you mean strangers as opposed to some weirdoes?

A Well, they were people that were not commonly in the unit and in there that was going to be watching us do procedures and stuff, and that they were letting us know that it was okay for them to be in there. Normally we would not allow strangers in the procedure room.

Q Do you know what the purpose of that inspection was?

A No, ma'am.

Q Do you know what agency or business those inspectors were from?

A No, ma'am.

Q And at -- at this time frame in 2007, was it your understanding that gastro center was going to open a new facility?

A Yes.

Q Do you know if this inspection that occurred in the hot months of 2007 had anything to do with the expansion of the organization?

A I do not know why they were there. I didn't know if it was a yearly or if it was for the opening, or what exactly why they were there.

MS. STANISH: The Court's indulgence.

THE COURT: All right.

(Pause in proceeding.)

MS. STANISH: For counsel, I'm referring to page 458 of the deposition.

MS. WECKERLY: Thanks.

BY MS. STANISH:

Q Ma'am, if you would just review your deposition to yourself. I'll draw your attention to page 458, kind of at the top. But if you need to read a bit before it or after to give it context, feel free to do so.

A [Complies.]

Q Does reviewing that document refresh your memory on the 2007 inspection?

A As I documented there, that I thought that was the time before the accreditation for the opening of the other one and they were just inspecting, or according to the inspectors for that, I think that's what was told to us.

Q So they were inspecting the Shadow Lane facility in anticipation of the --

A Opening the --

Q -- opening --

A -- Spring Valley.

Q I meant to follow up on this earlier. With respect to the encounter with Ms. Hubbard and Dr. Desai, was Dr. Desai -- did he instruct Ms. Hubbard not to give anymore propofol because he was about to end his procedure?

A At this time I do not recall exactly what the conversation was over.

Q Is that something that you would observe between doctors and CRNAs, communicating on when to -- communicating that hey, I'm about to end the procedure, don't give anymore?

A Not all of the physicians did communicate on their completion or not.

Q Would there be communications though, about not to give additional propofol because they were -- the procedure

was about to end?

A The only one I do recall is doctors telling him that he would be on his way out whenever.

Q And when -- let me see if I can find that real quick. After they had their meeting, their meeting between Ms. Hubbard and Dr. Desai, they came back and went right back to work as normal?

A Yes, ma'am.

Q Is it a fair statement to describe Ms. Hubbard as somebody who would express her opinions loudly?

A She will on occasion.

Q And speaking of the other personnel, can you tell us who Rod Chaffee is?

A He was one of the nurses at the facility.

Q And can you give us a bit of foundation for that? When did he work there?

MS. WECKERLY: Can we approach, Your Honor?

THE COURT: Sure.

(Off-record bench conference.)

THE COURT: All right. Go on, Ms. Stanish.

BY MS. STANISH:

Q What was Mr. Chaffee -- is that how you pronounce it?

A I think that's the way he pronounced it.

Q What was Mr. Chaffee's position in the clinic?

A When I started there in August, he had just come back from leave from where he had lost his wife, and he within a week or so there that he told us that he was going to be --

MS. WECKERLY: Objection. Hearsay.

MS. STANISH: I don't want you to -- just if you --

THE COURT: Don't get into anything --

MS. STANISH: Right. I just want you to describe your observations of him.

BY MS. STANISH:

Q So he was there when you were hired, correct?

A A week after.

Q And he -- he was a nurse?

A Yes.

Q And did you observe him conduct himself in a way that you thought was unprofessional ever?

A I thought it was unprofessional that he was having the emotional breakdowns in front of the patients and talking to the patients about what happened with that. But other than patient care, it did not interfere with any patient care.

Q And when -- foundation-wise, do you know when it was he -- you said he would break down?

A He would break down in uncontrollable emotional state.

THE COURT: Are you talking about crying --

MS. STANISH: Crying?

THE COURT: -- weeping? What do you mean?

THE WITNESS: Crying, weeping, just --

BY MS. STANISH:

Q Would he do this in the procedure room?

A I did walk in on the procedure room that he was in that state when I -- he had relieved me for lunch and I come in to relieve him to go back.

Q And can you estimate for us time-frame-wise when this incident occurred?

A That was the beginning of my employment there.

Q So that would have been in around August--

A About early -- I started on August the 9th, so August, September, October, right in that area.

Q And did you observe him breaking down and crying and such in other areas of the facility?

A I saw him doing it in the recovery room when I would come out to give report.

Q And was it the same thing, that he would be emotional in front of the patients --

A Yes.

Q -- and talking to the patients?

A Yes.

Q About his emotional issues?

A Yes.

Q Did there come a time when you observed that Mr. Chaffee no longer worked at the clinic?

A Yes.

Q Can you estimate for us what that time period was?

A I can give you the date.

Q Pardon me?

A I can give you the date.

Q Give it to me.

A April the 19th of 2007.

Q If I ask you why you remember that, could you tell us without getting into hearsay, what other people told you?

A No. I can tell you why. Because that's the day my mother had her stroke.

Q Oh, I'm sorry. Thank you. That is memorable.

Going to the time frame when the inspectors came to the facility in early 2008, do you recall attending a meeting where you were informed that there was a suspected outbreak and that inspectors were going to observe?

A Yes.

Q And can you tell us who attended that meeting?

A The medical staff attended. We were called to Tonya Rushing's office and was informed at that time.

Q And what was the -- what was the -- what was the

purpose of the meeting? Was there any instructions given to you?

A The purpose of the meeting was to inform us that it was under inspection, that they were inspecting and that we were going to have to all submit lab samples to -- have blood draws.

Q Did you have the understanding that you were -- you had to cooperate with the CDC or the inspectors?

A If they had asked me.

Q And they did in fact -- you were actually observed by inspectors, correct?

A No, ma'am. I didn't say that.

Q Oh, okay.

A I said they were in the procedure room. They -- their backs were to me, so I wouldn't say they were observing me.

Q Okay. You -- describe where you're standing relative to the inspectors, please.

A They were between me and the stretcher of the patient, for the patient.

Q All right. So you couldn't see what they were doing, they were not watching you?

A No, ma'am.

MS. STANISH: The Court's indulgence, please.

THE COURT: That's fine.

(Pause in proceedings)

MS. STANISH: I have nothing further. Thank you.

THE COURT: Okay. Mr. Santacroce, do you have any questions?

MR. SANTACROCE: Yes.

CROSS-EXAMINATION

BY MR. SANTACROCE:

Q Good afternoon, ma'am.

A Hi.

Q I represent Ron Lakeman. Do you know Mr. Lakeman?

A Yes.

Q Worked with him in the past?

A Yes.

Q I want to go back to your testimony about what you did in the preop area. I believe you testified that you worked in the preop area for a period of time, correct?

A Yes.

Q And you also testified that you trained other nurses in that area?

A Yes.

Q Did you train a Lynette Campbell?

A I don't remember all the nurses, sir. I might have, but I don't remember.

Q Okay. And you trained them -- what did you do

as far as training them?

A I showed them the paperwork of what the questions we would ask the patients, whenever and how we would review the chart, and showed them that -- and far as skills, the nurses come in with the skills.

Q So you wouldn't train them as to the administration of heplock or flushing saline, would you?

A No.

Q They would be expected to know that?

A Yes.

Q You testified as to what your procedure was in administering the heplock and the saline flush. And I believe you testified that you flushed the heplock with saline, correct?

A Right.

Q That saline was multi-dose, correct?

A Yes.

Q And that saline was used on other patients, correct?

A Yes.

Q You testified that you carried your supplies in a utility box.

A Yes.

Q So you would carry that from one patient to another within the preop area?

A Yes.

Q And what was in the utility box?

A In the utility box you had the 30 cc vial of normal saline that you needed to pull up for the flush. You would have the syringes in their prepackaged package that's the syringe and the needle together. You would have a tourniquet. You would have alcohol preps. You would have the heparin lock, the little cap. It's in its prepackaged there.

You would have your Tegaderm, which is the sterile dressing that you put over the top of after you make sure that it's working. And you would have your tape. And then you would have an -- and on the wall in different areas you had gloves so you can get your gloves to put on.

Q And would you wear gloves every time you administered a heplock?

A Yes.

Q So you wouldn't carry the gloves in the utility box?

A No.

Q Now, the 30 cc bottles of saline, I believe you testified that you would flush 5 cc?

A Three.

Q Three? So that one bottle could be used theoretically on ten people?

A Right.

Q When you used the needle and syringe, would you put that back in the utility box until you could dispose it, or would you dispose it right away?

A You dispose it right away.

Q So there were sharps containers located throughout the preop area?

A Yes, sir. And there is also a sharp container, I don't remember if it was on the tray or that we carried it. There's one of the small ones that is about 4-by-4 inches and about 6 inches tall. That's a small one that we would carry, and so we could just, when there was not a sharps containers within arm's reach.

Q And that sharp container would be also in the utility box?

A I don't recall it being in there, but we would take it with us so we would have a place to put the needle so we're not carrying sharps across the room.

Q Okay. Now, you testified that when you would insert the heplock there would be some sort of blood backflow; is that correct?

A Yes. It's in the Jelco. There's a little splice in the Jelco, and with the blood backflash that's into that, you can tell that you're in. And then you insert the cannula all the way, and then you hold your finger over the tip end where the tip of the cannula would go into the vein so

it's not bleeding back all over you or all over the patient until you can get the heplock. And then you, with the manipulation, you would hold it with your finger and your thumb. You could hold the hub of it and hold your finger down here, that way you're not bleeding back and getting everything, and put the cap on.

Q But the tip of the cannula would come in contact with the blood?

A The tip of the cannula is in the patient and you're to push in your finger over the end of the patient. Here's your vein here. You put your cannula in on this part, and you put your finger down here because that's where the end of the cannula, even though the hub is back here [indicating]. So you're not bleed -- so you're holding the vein so you're not bleeding back all over the patient and yourself.

Q Okay. Did that ever happen?

A Sometimes they still bleed out a little bit, but we had -- a lot of times we would put a blue pad underneath them so it would catch that blood, so it's not going out and contaminating. So when the patient leaves, we always move the pad and everything. I forgot about the blue pad. But we put a blue pad under.

Q You forgot about what?

A It's a Chux. I don't know what you want to call it; blue pad, Chux, granny square. I've heard all kinds of

things call it. But it's a safety pad that goes underneath, and you have the patient and lay their arm on that. And then if it does bleed back, it will bleed on that pad that's disposable.

Q And what would you do with the pad?

A The pad goes into the trash.

Q Now, the reason for those aseptic practices is what?

A Prevent contamination to the patient or yourself.

Q Or other people?

A Yes.

Q And you recognize that that is a potential mechanism for transmitting disease?

A Yes.

Q Are you aware of the CDC study in 2008 that identified an outbreak of hep C due to saline flushes?

A I did not hear about that.

MS. WECKERLY: I'm going to object. That assumes facts not in evidence.

MR. SANTACROCE: I asked her if she heard of it.

THE COURT: Say again.

MS. WECKERLY: Okay.

THE COURT: Wait. I asked Mr. Santacroce to repeat his question.

MR. SANTACROCE: I asked if she had heard of the CDC study which identified an outbreak of hep C through saline flushes.

THE WITNESS: I did not hear of that.

THE COURT: That's sustained.

BY MR. SANTACROCE:

Q Did you train Jeff Krueger?

A No.

Q Do you know Jeff Krueger?

A Yes.

Q And would it be fair to say that Mr. Krueger also flushed the heplocks with saline?

A Yes.

Q So basically, your observation of the technique most of the -- not all of the nurses used the flush in the preop area?

A I would say all the nurses, because that was one of the protocols, was to make sure that the heplock was patent before we sent the patient into the procedure room.

Q Now, you also testified that you, if not you, the nurses would in the morning take flats of propofol into the procedure room, correct?

A Yes.

Q You would check them out to the CRNAs; is that fair?

A Yes.

Q And these flats contained 25 bottles of propofol approximately?

A Twenty-five come in a case, yes.

Q And you would check out a case in the morning to each CRNA?

A Right.

Q And the CRNA would sign your book?

A Yes.

Q And those bottles of propofol in the morning were unopened bottles, correct?

A Right.

Q And each flat went into each procedure?

A Yes.

Q So the CRNA in Room 1 would use that flat of propofol and the CRNA in Room 2 would use his flat, correct?

A Right.

Q You had testified in the procedure room that you didn't really see the CRNAs do their procedures; is that fair?

A Right.

Q And that was because your back or their back was turned to you?

A They were -- I was -- it was their back towards me, because they were at the head of the patient by the patient. I was at least 8 to 10 feet away under a little

spotlight.

Q And would that be the procedure for most nurses?

A Yes.

Q In the same position?

A Yes. Because we would dim the lights when the procedure was being done, and there was a very small dim light that we could get under to see our paperwork. Otherwise we could not see what we were writing.

Q So you can't testify as to how the CRNAs administered the propofol?

A No.

Q You testified that the CRNAs would stay in their own rooms throughout the day except for lunch breaks and a possible potty break; is that correct?

A Right.

Q And when there was three CRNAs, one would relieve the other one for lunch. When there was two CRNAs, one of them would relieve the other one, correct?

A Right.

Q As far as you know, when they relieved the other one, they would still use the propofol that was in that particular room, correct?

MS. WECKERLY: Objection. Calls --

THE WITNESS: I do not know.

MS. WECKERLY: -- for speculation.

THE COURT: Well, she said she doesn't know, so.

BY MR. SANTACROCE:

Q Okay. You don't know?

A I don't know.

Q Now, I want to talk to you a little bit about the dates for -- of the infection, where it's alleged that the infection occurred. And I'm going to show you what's been marked State's Exhibit 156. Let me know when you -- is that visible to you? Can you read that?

A When you're moving it, I sure can't.

Q No, I know. I'm sorry. Okay. How about now?

A All right.

Q Let me see if I have that one right. Hold on. Maybe I'm going to have to adjust it a little bit. Bear with me. Okay.

A What form is this?

Q This is a form prepared by the State.

A Oh.

Q Okay. And it's an exhibit that's already been admitted into evidence. Now I should ask you a couple questions about it. Do you see on the top line it has patient, and then as you go across it has doctor, the nurse, technician and the CRNA, correct?

A Yes.

Q And on this September 21st date of 2007, you'll

notice that the first patient of the day Dr. Carrol did, and it purports to say that you were the nurse in that room; is that correct?

A Yes.

Q And Keith Mathahs was the CRNA?

A Yes.

Q And in fact, you did one, two, three, four, five, six, seven, eight, nine, ten procedures before we get to Kenneth Rubino, correct?

A Okay. I can't count them, but okay.

Q Okay. Well, you see where Kenneth Rubino's name appears?

A Yes. I got that.

Q You were the nurse that was in the room when Dr. Carrol performed the procedure, correct?

A Yes.

Q And the CRNA was Mathahs, correct?

A Yes.

Q And then it says Linda McGreevy was in the room for one procedure. Were you also in the room? Because I believe you testified you were training her.

A But that was that chart that we seen, it looked like that I was training her that day.

Q Okay. And the CRNA was Keith Mathahs.

A Then we would be in the same room.

Q Okay. You and Keith worked together most of the time, correct?

A We worked together, but I wouldn't say most of the time.

Q Well, on this particular day?

A On that day, yes, I worked with him.

Q Okay. And then the next one down is Rodolfo Meana, and you saw his chart.

A Yes.

Q And the district attorney showed you that chart, right?

A Yes.

Q And you were the nurse and Keith Mathahs was the CRNA, correct?

A Right.

Q Then we go down a couple more and there's two names for nurses there, a Sherry -- can you read that? I can't read it.

A Where are you talking about?

Q Number 27. Patient 27.

A Okay. It's someone I was training, because if there's two of us in there, there was -- I was training somebody.

Q Okay.

THE COURT: Mr. Santacroce, I'm going to stop you

now. We're going to take our lunch break.

Ladies and gentlemen, we'll be in recess for the lunch break until 2:30. During the lunch break, you are reminded that you're not to discuss the case or anything relating to the case with each other or with anyone else. You're not to read, watch or listen to any reports of or commentaries on the case, person or subject matter relating to the case. Don't do any independent research by way of the Internet or any other medium, and please do not form or express an opinion on the trial.

Notepads in your chairs. Follow the bailiff through the rear door.

(Jurors recessed at 12:57 p.m.)

THE COURT: And ma'am, don't discuss your testimony with anybody else during the lunch break.

(Court recessed at 12:58 p.m. until 2:34 p.m.)

(Outside the presence of the jury.)

MR. WRIGHT: Judge, I think Ralph McDowell took Exhibit A1 when he left.

THE COURT: Oh, he did?

MR. WRIGHT: So I replaced it with an identical one.

THE COURT: Okay.

MR. WRIGHT: And put a D where the A was. I had had him correct it.

THE COURT: Okay.

MR. WRIGHT: And so I gave it to the clerk, because we can't find it and he had it last.

THE COURT: He asked me. He said, What do I do with this? He tried to hand it to me and I said, Leave it there for now.

MS. STANISH: Oh, and he took it probably.

THE COURT: So maybe that meant take it with you when you go.

Tell Kenny to bring them in.

MR. WRIGHT: Yeah, but there was with his own stack of papers.

MR. STAUDAHER: Yeah. That was his perception of what she said. [Inaudible.]

MR. WRIGHT: He brought his own interviews.

THE COURT: Does anyone -- well, never mind.

(Pause in proceeding.)

(Jurors reconvene at 2:36 p.m.)

THE COURT: Court is now back in session. And ma'am, obviously you're still under oath. And Mr. Santacroce, you may resume your cross-examination.

MR. SANTACROCE: Okay.

CROSS-EXAMINATION (continued)

BY MR. SANTACROCE:

Q When we left off we were looking at the September 21, 2007 patient chart prepared by the State, and we

left off with this patient right here, Patient 23. And it showed that there were two nurses in the room at the time of that procedure, Cathy Stedner [phonetic] and yourself, correct?

A Right.

Q And I believe you testified that you were training her?

A Yes.

Q And tell me again -- now, you told me about the preop area and how you trained RNs in that area. How did you train an RN in the procedure room?

A I would show them that after the nurse anesthetist got finished with the chart, I would show them the process of going over and introducing yourself to the patient, then asking the patient what they were there for, which procedure and what prep did they take. And then I would ask them what their name was, full name and their date of birth.

And by that we could double-check and make sure we had the right patient with the right chart, because some of the names are duplicate, especially some of the Hispanic names. You would get Juan Garcia, and there might be three or four of them, but the way you could tell them apart was by their birth date.

Q Was there anything else you would do to train them?

A I would show them then how to enter the information into the computer, and then I would show them how to fill out the paperwork that was required of us, as well as the lab forms.

Q And the State showed you Exhibit Bates No. 3468, which is the patient file for Sonia Rivera. And I believe they showed you this document.

A Yes.

Q Correct?

A Yes.

Q Now, what would you show the nurse trainee regarding this document? I presume this is where you typed in the information in the computer, correct?

A That's not the same document.

Q Oh, okay. Let's see.

MS. WECKERLY: It was a page before.

BY MR. SANTACROCE:

Q This one?

A That one. I would show them how to type in the -- do -- it either gave you the option of doing a colonoscopy or EGD, and this one had a colonoscopy. Then I would show them how to put -- first I would verify if the name was spelled, and you would put the medical record number in over -- it's on the far right.

Q You can write on that screen. You can just use

your fingernail.

A Right here is the medical record number. And then their date of birth is what we would verify on that. This one actually has a Social Security number. We would also verify that if they had one. Not all of them had Social Security numbers. And then I would show her how to put the doctor's name, the nurse's name and the nurse anesthetist in that, and which referring clinic and doctor.

Q And all this would be done in the procedure room --

A Yes.

Q -- before the procedure started?

A Yes. Yes.

Q And then turning to Bates Stamp 3510, I believe you were shown this document as well; is that correct?

A Okay. This here is the -- I can't see the whole form, but it looks like the preop.

Q Maybe that's the wrong one. I think it was this one --

A No.

Q -- 3513?

A That's not it.

Q Okay. We'll get to it eventually. This one?

A That one.

Q Okay. Would you show the nurse trainee anything

to do with this form?

A Yes. This here is our nurse procedure record. And I would show her that we would fill in the physician, the nurse's name, the tech, and where this is missing is the nurse anesthetist. And then we would go ahead and put the propofol there in the milligrams, but we would leave the milligram off until the case was finished.

Q Okay. I need you to mark it with your fingernail what you're talking about.

A We would fill in the propofol and the mg, because that's how it comes, and then we would put by, we could go ahead and put that on there until it was finished, then we would finish it out when the case is over.

Q Okay. When you say you'd finish it out when the case was over, what would you do when the case was over?

A When the nurse anesthetist would hand us their record, it would show us the amount of propofol that they gave, and we'd put that amount in. And we -- when the nurse anesthetist comes in, we'd put their initials because they are the ones that are administering it.

Q Okay. Anything else on this form you would fill out?

A Yes. It's at the bottom.

Q Okay. Tell me about it.

A All right. I've got my signature here and

you -- if you roll it up, I'll show you more. Okay. The procedure --

Q Hit the -- yeah. Good deal.

A The procedure starts from the EKG strip that we get with the -- and the first vital sign.

Q Okay. Stop right there and tell me about the procedure time. Is the patient in the room at this time?

A Yes. The patient is in the room and hooked up to the monitor, and has his EKG strip as well as his vital signs taken. That's the time that we start.

Q And where do you get that 10:44 time from?

A It's from the rhythm strip as well as the vital sign strips, we print them off and they're on the chart. They're stapled into the chart.

Q Okay. All right. Go ahead.

A And the end time is also from the vital signs strip. The vital sign strip will show the first time -- the first vital signs that was taken, and this is the last one before we take to the recovery room.

Q And the patient is still --

A And then --

Q -- still in the procedure room at this time?

A That's when we ended and disconnected --

Q Okay.

A -- and took the patient to the recovery room. I

do the nurse's notes. We went ahead and positioned her if we did no biopsies on her and she didn't have any problems with the procedure. If there was any complications with her heart rate dropping or anything else that come about, that's where we would put it, right there.

Q And that -- this is your particular note, correct?

A Yes.

Q And so you trained every nurse that you trained in the procedure room the same way?

A Yes.

Q Okay. Going back to the patient list here, I'm going to step over here because I can't read that. So when you're in the room with Cathy Stedner, okay, it looks like you had her for two procedures, correct?

A Yes. And then she just put her name in and I would have her for the whole day. So obviously she did not put my name in the rest of the day after I showed her how.

Q Okay. So where Cathy Steedner appears on Patient No. 28, it looks like, in between the two green strips there --

A Yes.

Q -- would you have been in the room with her on that occasion?

A Yes. I would be in the room with her.

Q You started out with McGreevy. Do you see that earlier in the day?

A Yes. I see that she was there.

Q And I believe you were training her also?

A I trained several of the nurses.

Q Okay. But on this particular day, I believe you testified that you were training McGreevy too; is that correct?

A I do not know the dates that I trained the nurses.

Q So you can't tell me if you were in the room with Ms. McGreevy during these procedures or not?

A No, sir, I cannot tell you for sure without looking at when they were there and what days that I did train them. I'm sure it's documented somewhere where they come in.

Q Okay. But where your name appears and where your name and Cathy Steedner name appears, we can be certain that you were in the room at that time on those procedures, correct?

A Yes.

Q Now, I'll represent to you that the different colors of the strips, the first one Kenneth Rubino, he appeared to be the source patient for this day, that's why he's in orange. Then there's a yellow strip there which could not be genetically linked to Mr. Rubino. Then there's green

strips, and these were people that have been alleged to have gotten hepatitis C from the clinic on that day. So do you see all of those?

A Yes, I see them.

Q It appears that you were in the room with Kenneth Rubino, correct?

A Yes.

Q During that procedure with Mr. Rubino, were you cognizant or conscious or aware of any unsafe practices by anyone in the room during that procedure?

A I do not recall any.

Q If you had recalled some, would you have reported them or taken some action?

A I would have went to my chain of command.

Q Who is your chain of command?

A It was Jeff Krueger was the charge nurse. And then it was Katie -- it started with an M.

Q Katie Maley?

A Maley.

Q So you would have reported anything abnormal to them, correct?

A Yes.

Q But you don't recall that happening with Kenneth Rubino, do you?

A No.

Q Let's go on to the next patient, 55C. It says Linda McGreevy, but I believe you couldn't testify whether or not you were in the room with that one, correct?

A No. I could not.

Q The next one down is Rodolfo Meana. You were the nurse, Keith Mathahs was the CRNA?

A Yes.

Q Were you cognizant or aware or conscious of any unsafe practices that occurred in the procedure with Mr. Meana?

A No.

Q Going down to Sonia Orellana, you were the nurse, Keith Mathahs was the CRNA?

A Yes.

Q Same question. Were you cognizant or aware or conscious of any unsafe practices that occurred in that procedure room with Ms. Orellana?

A No.

Q How about with Gwendolyn Martin? You were also the nurse, Keith Mathahs the CRNA.

A No, I did not see anything.

Q So all of the procedures you did on September 21 were basically the same thing you had observed throughout your career at the endoscopy center; is that correct?

A Yes.

Q And nothing out of the ordinary or unusual?

A No.

Q And during those procedures we just went over, you stayed in the room throughout those procedures; is that correct?

A Yes.

Q And it's fair to say that Mr. Mathahs was in the room during those procedures?

A Yes.

MR. SANTACROCE: I have nothing further. Thank you.

THE COURT: All right. Redirect.

REDIRECT EXAMINATION

BY MS. WECKERLY:

Q Ma'am, do you have any independent recollection of September the 21st, 2007?

A No.

Q And so when you were asked about the procedure on Mr. Rubino, are you basing your answer on the totality of your work experience, or because you actually remember what procedure you did in that procedure room on September the 21st?

A Work procedure.

Q Okay. So on like over the course of my employment, I don't remember seeing anything dangerous; is that fair?

A That's fair.

Q Okay. Not because you go, oh, my gosh, Mr. Rubino, he was this tall, I remember his procedure and this is what happened?

A No. I do not remember.

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

THE COURT: Overruled.

BY MS. WECKERLY:

Q And if I understood your testimony on direct and cross-examination, you trained several nurses.

A Yes, I did.

Q And do you independently remember if September the 21st was a day you were training?

A I do not.

Q And I believe your testimony on direct was when we see your name in the nursing record but not on the doctor's chart, that's a likely explanation for that?

A Yes.

Q Okay. Because you maybe would have the trainee do the computer part, but you were the person in the room?

A Yes.

Q But as you sit here today, I would assume you don't know for sure whether or not you were training without looking at the documents?

A I do not.

Q Thank you.

THE COURT: Recross?

MS. STANISH: No, Your Honor.

THE COURT: Mr. Santacroce?

MR. SANTACROCE: No, Your Honor.

THE COURT: All right. We have a juror question up here. A juror would like to know, was the sharps container in the preop area portable, or was it attached to a wall?

THE WITNESS: Both.

THE COURT: So there were two?

THE WITNESS: There was a portable one that we could take to the -- there was one close to one of the chairs that was up on the wall. And two of the chairs, you had to have somewhere to put the sharps without carrying them across the room, so you used a portable one.

THE COURT: Okay. And did you ever see a heplock being reflushed between the preop area where it was installed and the procedure rooms, flushed with saline?

THE WITNESS: It was flushed once.

THE COURT: Just once. Okay. Was that always done when it was, for lack of a better word, inserted or installed?

THE WITNESS: Once it was installed, you -- because it does have the blood flush where it -- a backflash on it, and you want to make sure the blood is flushed out of the

cannula, as well as that it's going, that it's in the vein.

THE COURT: State, any follow-up?

MS. WECKERLY: No, Your Honor.

THE COURT: Defense, any follow-up?

MR. SANTACROCE: No.

MS. STANISH: No, Your Honor.

THE COURT: Any additional juror questions for this witness?

All right. Ma'am, there are no further questions for you. Thank you for your testimony. Please don't discuss your testimony with anyone else who may be called as a witness in this matter. Thank you. You are excused.

State, call your next witness.

MS. WECKERLY: Anne Yost.

MS. STANISH: Your Honor, may we approach as the witness is on her way?

THE COURT: Sure.

(Off-record bench conference.)

ANNE YOST, STATE'S WITNESS, SWORN

THE CLERK: Please state and spell your first and last name for the record.

THE WITNESS: First name is Anne, A-n-n-e. The last name is Yost, Y-o-s-t.

THE COURT: All right. Ms. Weckerly, go ahead.

DIRECT EXAMINATION

BY MS. WECKERLY:

Q Ms. Yost, did you live in Las Vegas in 2007?

A I did.

Q And during that time period, how were you employed?

A In 2007, in July for three days I was employed at the Endoscopy Center of Southern Nevada.

Q And how are you -- what was your job there?

A I was a registered nurse.

Q Where had you gone to school that allowed you to work as a registered nurse?

A The College of Southern Nevada.

Q And when did you graduate?

A 2007.

Q And so was the endoscopy center your very first job?

A It was.

Q How did you go about getting the job?

A I'm not sure where I saw the ad for it, but then I interviewed with Katie Maley, the director of nursing. Then right after that, I started a week later.

Q So pretty quickly after your interview you started?

A Yes.

Q And I think you said at the beginning of your

testimony you worked there three days?

A Three days.

Q In July of 2007?

A Yes.

Q Do you know the three days, or you just know it was July?

A It was the 2nd, 3rd and 5th.

Q So kind of spanning the holiday?

A Right.

Q When you first got there on your very first day of work, what happened? Tell us how you went into the facility and what they did with you on your first day?

A Basically just some quick first name introductions with everybody there, showed me around the place, showed me what this room is this, this room is that. Then I was taken into the procedure room, and then mainly the rest of the day I spent my time there.

Q Okay. And you're an RN, correct?

A That's correct.

Q And you -- was the job that you were hired for to be a circulating nurse, you know, in different parts of the facility, or did you know exactly what you were going to be doing when you got there?

A I wasn't sure exactly where I would be. I knew it wasn't going to be the preop area, but then they put me

into the procedure rooms.

Q Okay. And on the procedure rooms, or when you were there on your first day, did you follow anyone around, or did anyone train you or kind of orient you to how they do things?

A Yes. I shadowed a nurse when I was there.

Q Do you remember that person's name?

A Unfortunately, no.

Q Okay. When you shadowed though, that nurse, was it a female?

A It was.

Q What did that person show you how to do?

A Basically how to do the charting, some of the billing, and how to discuss things with the patient.

Q Okay. What -- how were you trained to do the charting?

A The charting was basically from -- it kind of varied. From time to time there would be some precharting done; as in the preop nurse would do a little bit of the charting, and that would already be on the chart. And then from there we would just take over, or that -- rather the nurse teaching me would take over and show the rest of the charting. Sometimes the charting would start from point blank, when the patient came in, and then go -- fill out from there.

Q And on your days there, what part of the facility were you stationed in? Were you in the preop or the procedure --

A Always the procedure room.

Q In the procedure room?

A Mm-hmm.

Q And so if I'm understanding you, sometimes you -- well, you'd get charts from a nurse who was working in preop?

A Right. It would just arrive with the patient on the gurney, or they might just hand it to you real quick.

Q And when you looked at those charts, you said there was some precharting. In what manner did you see the precharting? Like what did you see?

A Just a couple of things checked off for the procedure room that should have just been in the procedure room, charted there. There'd have been a couple things would be checked off.

Q Would they be like patient vitals or observations of the --

A More observation.

Q And would the observations be oriented to the procedure?

A Yes.

Q So they were checked off before the procedure

occurred?

A Yes.

Q And then when you receive it, you're in the procedure room, what did you do when you saw the chart that had stuff checked off that was, I guess, supposed to be checked off by you?

A If it did match what the situation was, I would leave it. If it did not match, I would correct it.

Q Okay. Was there anything in terms of the charts that you remember that had to do with timing or filling in times?

A Yes. There was -- it's kind of complicated to discuss it. But basically the nurse training me said don't -- make sure that your time does not overlap the preop nurse's time. So let's say that nurse had written that she finished at 9:45, make sure that you don't write that the patient came in at 9:44, even though the patient might have been there at 9:44.

Q Okay. So make sure that your --

A Make sure that you're at 9:46.

Q Okay. So there was no overlap?

A Correct.

Q And I mean, did you do that? Did you do that kind of timing, or fill in your timing to make sure there was no overlap?

A I made sure that I did it correctly. Like when the patient came in the room, that's the time I put down.

Q And is that how you were trained to do it?

A It's just --

Q I mean in nursing school.

A In nursing school, yeah. Yes. In nursing school we were trained that when the patient comes in the room, that's the time that you start.

Q Okay. Did you ever see, I guess, not a vital, but like a, you know, the patient is alert or the patient is oriented sort of observational categories on a chart?

A Did I see that?

Q Mm-hmm.

A Yes.

Q And did you ever see those filled in when you were the person that was supposed to be making the observation?

A Yes.

Q In those instances, how did you handle that in your three days there?

A At one point I told the nurse I didn't like it, that that's not the way I was trained for it to be done. So like I said, if -- I made sure that it did match my situation, and if it didn't I corrected it.

Q And was this -- was the charting unique to one

case, or did it happen on all three days that you were working there?

A It was really sporadic. Like I said, sometimes we'd get a little bit of precharting. Sometimes they wouldn't have done that at all, it was the correct way. It come in the correct way.

Q Were you ever asked as the procedure room nurse to chart for a nurse in recovery?

A I was encouraged to do that, yes.

Q And did you do that?

A No.

Q What -- do you remember what types of things you were being asked to chart for the recovery room nurse?

A I believe it was the same sort of observations that we had made in the -- in the procedure room.

Q Now, you said that you talked to someone in during either your first, second or third day about being uncomfortable with this method.

A Mm-hmm.

Q Do you remember who it was that you talked to?

A I don't.

Q It was just one of the nurses training you?

A Right.

Q Were you -- were you worried about your professional license with this?

A I was, and that's why I resigned my position.

Q Now, before you resigned, and we'll come back to that, did you in the three days that you were there, how would you describe the business of the facility? Were there a lot of patients, a few patients? What was your observation?

A The waiting room was almost always jam packed full of people. Sometimes there were people standing, not even seated it was so full. Patients were rapidly going into the procedures and back out.

Q When they were in the procedure room and you were training, you were the -- obviously training as the procedure room nurse; is that yes?

A Yes.

Q Okay. Did you -- were you able to keep up with the patients as they moved through the procedure room?

A I was not. No.

Q And what happened in those instances when you couldn't keep up?

A What I -- well, I was trying to do it correctly every time, and the nurse would get frustrated with me and she'd say, Hurry, hurry up, faster, faster. The physicians would say, Why aren't we ready for the next patient. And so it was real frustrating.

Q When you were in the procedure room, how long -- do you remember how long the procedures were lasting, or do

you have any recollection of that?

A Some of them would take about -- it seemed like it, about seven minutes. It was really rapid. And others would take 45 minutes.

Q And then there -- was there a turnover time between patients in the rooms? Were anything -- was anything done to the rooms?

A No. There would be a patient, that patient would leave and the next one would come in.

Q Was there any cleaning or anything between people?

A No.

Q Are you aware of the drug propofol?

A Yes.

Q And were you aware at the time you worked there that that was used to sedate patients?

A Yes. It was what was on the counter, yes.

Q From your vantage point in the procedure room, were you able to see the person administering the propofol?

A Yes.

Q And I guess, how would you explain where you were situated in relation to the patient and the anesthetist?

A It was pretty much all in front of me. The patient would be in the gurney sort of in front of me to the right. The CRNA would be to my left of that gurney. They

would reach over to the right and administer the propofol.

Q Could you see the CRNA's like work area or what they were working from?

A I could see when they would administer to the patient. I could see what they were drawing from to the left on the counter.

Q How about them actually drawing medication up, could you see that?

A I could see them draw it up, yes.

Q Okay. What did you -- what did you observe about the CRNAs and the medication?

A Basically there were -- at any given time there were two vials on the counter that were drawn from.

Q For a single patient?

A Yes.

Q So there'd be two -- well, were they like partially used vials?

A Yes.

Q And they would draw from both for a single patient?

A I don't know if they would draw from both of those for a single patient. They would draw from perhaps one for the single patient.

Q And did you see what happened to those vials?

A They -- the whole time the vials would either be

up on the counter or in a drawer, so.

Q Would they ever be moved when the next patient came in?

A No. They were still there.

Q Could you see if they were drawing up from the same, like from a previously used vial?

A That's what it looked like, because they were always the same two vials there.

Q And did you see that all three days that you worked there?

A Yes.

Q Could you tell whether or not syringes were being reused or changed between draws -- well, I'll ask that first. Between draws?

A That I couldn't see because the CRNA's body obscured my view.

Q Okay. How about between patients, did you see anything that looked like there was a change of a syringe between patients or anything like that?

A That I couldn't see, yeah.

Q Could you tell what the size of the vial was?

A It was a larger vial that's commonly seen with multi-use.

Q Now, during the procedure, I assume you were present in the room, the doctor was present, and a tech was

present?

A Mm-hmm.

Q Is that yes?

A Yes.

Q And the CRNA was present?

A Yes.

Q Did you ever see the CRNA leave during a procedure?

A Yes, I did.

Q On how -- on the three days you were there, how many times did you see that?

A I don't know how many times exactly. It was rather infrequent, but I did see it.

Q And this would be when the patient was unconscious?

A Yes.

Q How long would the CRNA be gone in those instances?

A I'd say no more than 30 seconds.

Q So just very, very briefly?

A Yes.

Q When you were there those three days, did you have any opportunity to work in the recovery area after, after the patient had their procedure?

A No.

Q Did you view it at all?

A Yes, I did.

Q Did you ever see doctors or CRNAs in that area the three days you were there?

A No, I didn't.

Q Now, you -- you weren't there long. Why did you resign?

A I resigned because I was taught in nursing school that precharting is not something that you do. It's unethical. It's also something that could cause you to lose your nursing license.

Q And how did you go about resigning? What did you do?

A I typed up a letter, addressed it to Katie Maley, and I spelled out that I was resigning because of the precharting issue, I felt it was unethical, that I could lose my nursing license because of it, and then I faxed it over to her.

Q Did you ever contact the nursing board?

A Yes.

Q How long after you left did you contact the nursing board?

A It would have been within two months.

Q And did you -- I mean, do you file a complaint with them, or what's the process?

A I did. I let them know what was going on, what I had seen. They said that I needed to have specific names of people to address. Because I didn't work there very long, I only had people's first names, because that's how we knew each other. So there wasn't any particular name I could point to and say that person did this. So it didn't go much further.

Q Right now are you -- are you still working as a nurse?

A Yes.

Q And you live out of state though; is that correct?

A Correct.

MS. WECKERLY: I'll pass the witness.

THE COURT: All right. Cross, Mr. Santacroce.

MR. SANTACROCE: Yes.

CROSS-EXAMINATION

BY MR. SANTACROCE:

Q Good afternoon, Ms. Yost. I represent Ronald Lakeman. You don't know Ron Lakeman, do you?

A No, I don't.

Q Back on January 3, January 2nd, 3rd and 5th, you never worked with Ronald Lakeman; isn't that correct?

A Not that I recall.

Q Who did you work with as far as the CRNA goes?

A I don't see him in here.

Q Was it a male?

A It was.

Q You gave an interview to the metropolitan police department; isn't that correct?

A Correct.

Q And you told the metropolitan police department that you never saw any reuse of syringes; isn't that correct?

A Correct.

Q You also told them that you never saw propofol go from room to room; isn't that correct?

A Correct.

Q You also told them that you never saw a CRNA go from room to room; isn't that correct?

A Hmm. I'm not sure.

(Pause in proceedings)

BY MR. SANTACROCE:

Q I'm going to direct your attention to page 13 in your interview. I'd ask you to take a look at that.

A Okay.

Q Does that refresh your recollection?

A Yes.

Q You were asked did you ever see a CRNA go from room to room. What was your answer?

A In that, no.

Q Pardon me?

A In that copy, no.

Q In this copy. Is there a different copy?

A I know that I did see them go -- I mean, I know what I said there, but I did see them go from 30 seconds out of the room.

Q Okay. This interview was given on March 29, 2008.

A Mm-hmm.

Q Would it be fair to say that the events were fresh in your recollection at that time?

A Sure.

Q And your answer was that -- "Did you ever see a CRNA go from room to room?" You said, "No. He was in the same room that I was in all day."

A Okay.

Q Is your testimony different today?

A Yes.

Q And how is it different?

A Because I saw them leave the room for about 30 seconds.

Q What would they do in that 30 seconds, if you know?

A That I don't know, because I didn't leave the room either, so.

Q And how often would that be that they'd leave

the room for 30 seconds?

A It had been rarely.

Q Rarely?

A Yes.

Q You talked about precharting and you said it was sporadic. That means sometimes it was done and sometimes it wasn't done, at least that's my interpretation; is that yours?

A Yes.

Q And the times that it was done it matched what you had visibly observed, no problem, correct?

A Correct.

Q And when it wasn't what you had observed, you would change it; isn't that correct?

A Correct.

Q Now, when you saw these vials of propofol on the counter, you testified that they were large vials?

A Yes.

Q In your nursing experience, would 50 cc be what you saw?

A Roughly.

Q And you saw a couple of the vials on the counter?

A Yes.

Q But you couldn't testify as to whether the CRNA used one bottle on multiple patients or not?

A Correct.

MR. SANTACROCE: I have nothing further.

THE COURT: Ms. Stanish.

CROSS-EXAMINATION

BY MS. STANISH:

Q Good afternoon, Ms. Yost.

A Hello.

Q My name's Margaret Stanish. I represent Dr. Desai. Isn't it the case that you did not see Dr. Desai in the clinic while you were employed those three days?

A That's correct.

Q And clarify something for me, ma'am. Your -- you're in the procedure room. Are you there as an observant -- observant -- are you observing, or are you actually participating in the procedure?

A The majority of the time I was shadowing. By the third day I was doing more of the actual job that I would have been doing in the procedure room as an RN.

Q All right. And do you recall, in the three days that you were there, and my understanding is Dr. Desai was not in the procedure room; is that correct?

A That's correct.

Q Do you recall the doctor or doctors who were in the procedure room on those days?

A I don't recall their names now.

Q Fair enough. And do you recall that during while a patient was under anesthesia they sat up in the bed?

A Yes.

Q Tell us about that.

A It was very rare, but I think it was probably at least a couple times the patient sat completely up in the bed. It kind of surprised me, because I figured they'd be under sedation. So they would just sit up, but they were just -- they were not coherent. So they would sit up and the CRNA would do something, a real quick movement, and then the patient would calm back down and lie back down.

Q Were you given any training on that day regarding the effects of anesthesia, when somebody's given anesthesia that they can still move?

A No.

Q Did you get any explanation -- without telling me who said what, were you -- did somebody explain to you what was going on?

A Yeah. The nurse that was there with me said sometimes that happens.

Q Did you ever have to do anything to help, you know, still a patient, keep them still?

A No. The CRNA pretty much took care of that really quickly.

MS. STANISH: I have nothing further. Thank you.

THE COURT: Redirect.

MS. WECKERLY: Just one question.

REDIRECT EXAMINATION

BY MS. WECKERLY:

Q Ms. Yost, do you remember being asked about what the CRNAs would do in terms of room coverage for a lunch break?

A Yes.

Q What would they do, in your observation?

A When one would go to lunch, we would get another CRNA that would take their place.

Q And in that instance, would one CRNA cover both rooms while the other was at lunch, or am I misunderstanding you or...

MR. SANTACROCE: Objection. Leading.

THE COURT: Overruled.

BY MS. WECKERLY:

Q You can go ahead.

A Pretty much what I saw was just one was covering for the other. They weren't -- I didn't see them leave to go to the other room.

Q And do you remember whether or not you explained them going back and forth between rooms over the lunch period in your interview with the police?

A I don't recall.

MS. WECKERLY: May I approach, Your Honor?

THE COURT: You may.

BY MS. WECKERLY:

Q This is page 13. You can [inaudible] as much as you want [inaudible] this last half here.

A Okay.

Q And this -- sorry.

A It's okay.

Q This interview that you did with the police was back in May of 2008; is that right?

A That's correct.

Q So a few years ago, but closer in time to when you worked there; is that fair?

A Yes.

Q Because that was about a little less than a year after you went there. And having read that, what is your recollection about lunchtime and the CRNAs?

A I'm going to say I don't recall at this point, but if that is what I said back then, then that is accurate.

Q Okay. And what you tell -- I'm going to come back up there just to make sure --

A Okay.

Q -- I'm reading this right. And this is the bottom of page 13. The detective asked you, "What about lunch?" And you say, "Lunch, that's true. During lunch they

would replace with somebody else." And then the detective asked you, "Okay. And would it be the CRNA from the other room, do you know, or," and this is you. You said, "Yeah. It was a female. They would bring the female from the other room over and she would replace him for lunch." And then the detective says, "And she would go back and forth between the rooms?" And your answer was --

A Yeah.

Q -- affirmative, correct?

A Correct.

Q Is it fair to say, you know, right now all these years later you don't have a good memory of that?

A I don't have a recollection, yes.

Q Okay. Thank you.

MS. WECKERLY: I have no other questions, Your Honor.

THE COURT: All right. Mr. Santacroce.

RECROSS-EXAMINATION

BY MR. SANTACROCE:

Q So you're saying that your testimony as to that was accurate in the interview?

A Yes.

Q But you're saying your testimony as to the CRNAs leaving the room in that interview was not accurate?

A Correct.

Q And this person that you saw relieve for lunch

was a female?

A I believe it says in there, the documentation, that the female is the one that replaced the male.

Q I'm asking you what you saw.

A The female --

Q You said you saw a female CRNA relieve another one for lunch; is that correct?

A Relieve a male. Relieve a male CRNA for lunch.

Q Is that correct?

A That's correct.

MR. SANTACROCE: Nothing further.

THE COURT: Ms. Stanish.

MS. STANISH: Nothing further, Your Honor.

MS. WECKERLY: I just have one more question.

FURTHER REDIRECT EXAMINATION

BY MS. WECKERLY:

Q Do you remember if you mentioned that the CRNAs left while a patient was unconscious during your interview --

MR. SANTACROCE: Objection. Outside the scope.

BY MS. WECKERLY:

Q -- back in 2008?

MS. WECKERLY: He just asked it.

BY MS. WECKERLY:

Q Do you remember if you talked about that in 2008, in your police interview?

A I'm sorry. I'm confused now.

Q In your -- when you were interviewed by the police, do you recall if you mentioned observing the CRNAs leave for that 30 seconds or a short amount of time during that interview?

A I don't believe so, but I believe during the grand jury testimony I did.

Q Let me show you your interview. This is page 14, at the top.

MS. WECKERLY: May I approach?

THE COURT: You may.

BY MS. WECKERLY:

Q If you could just look at the top of page 14 of your police interview.

A Okay.

Q And having looked at your interview, does that refresh your recollection as to whether or not you had mentioned the CRNAs leaving when the patient was already unconscious?

A Yes.

Q And you actually did mention that in your police interview?

A Yes.

MS. WECKERLY: Thank you.

THE COURT: Anything else?

FURTHER RECROSS-EXAMINATION

BY MR. SANTACROCE:

Q Is that the 30 seconds you were talking about?

A Yes.

MR. SANTACROCE: Nothing further.

THE COURT: Ms. Stanish, anything else?

MS. STANISH: No, Your Honor.

THE COURT: Ms. Weckerly?

MS. WECKERLY: Nothing. Thank you.

THE COURT: Any juror questions for this witness?

All right. Ma'am, there are no further questions. Please don't discuss your testimony with anyone else who may be a witness in this matter, and you are excused.

State, call your next witness.

MS. WECKERLY: Lynette Campbell.

LYNETTE CAMPBELL, STATE'S WITNESS, SWORN

THE CLERK: Please state and spell your first and last name for the record.

THE WITNESS: Lynette Campbell. L-y-n-e-t-t-e. Campbell, C-a-m-p-b-e-l-l.

THE COURT: All right. Ms. Weckerly.

DIRECT EXAMINATION

BY MS. WECKERLY:

Q Ms. Campbell, how are you employed?

A I work at Valley Hospital.

Q And what do you do for Valley Hospital?
A I work in the nursery.
Q Are you a nurse?
A Yes.
Q Are you a registered nurse?
A Yes.
Q Where did you go to school to become a nurse?
A At CCSN.
Q Do you recall the year that you graduated?
A May of 2007.
Q After you graduated in May 2007, where did you work?
A At the endoscopy center.
Q Do you remember what month it was that you started working there approximately?
A July, I believe.
Q Okay. And that would be July --
A Of 2007.
Q Okay. When you got the job there, what was the process? How did you go about getting your job?
A I interviewed. I believe it was with Katie first, and I think I spoke to Jeff, and then I was hired.
Q And do you know how long it was between your interview and your actual first day of work?
A No.

Q Was it a long period of time?

A No. It was short.

Q When you got to the endoscopy clinic, where were you assigned to work primarily?

A In the beginning, I was in the preop room.

Q How long were you assigned to preop, how many like weeks or days or...

A Probably weeks.

Q And did you also work in the procedure rooms at some point?

A Yes.

Q And how about in recovery?

A Very little in recovery.

Q When you worked in preop, do you remember if someone trained you to do the preop duties?

A Yes.

Q Do you know who that was?

A Mainly Janine and Jeff.

Q Would that be Janine Drury?

A Yes. I forgot her last name.

Q And Jeff Krueger?

A Yes.

Q What were the duties of someone who was working in preop?

A To get the IVs inserted in the patients before

they had their procedures.

Q So you were the first contact the patient had, I mean, other than a tech bringing them back to you?

A Yes.

Q When you were in preop, you were the one placing heplocks or IVs in people?

A Yes.

Q What was the -- well, let me ask you this: In your training to become a nurse, was that something that you learned how to do?

A Yes.

Q And in your nurse training, did they teach you universal precautions or aseptic technique?

A Yes, both.

Q Did you apply those principles to your work when you were putting in those IVs or heplocks at the endoscopy center?

A Yes.

Q Just briefly, will you go through the steps that you go through in order to put in an IV?

A Put on gloves. Place a tourniquet. Find a good vein. Wipe it down with alcohol. Insert the cannula. Take off the tourniquet and take out the needle, attach the heplock, and then tape it down and flush it out, and throw away the sharps in the sharps container.

Q Now, when you would flush the heplock --

A Mm-hmm.

Q -- what was -- what substance did you flush it with?

A Saline. Normal saline.

Q And how much did you use?

A It would vary. At times we had preloaded 10 milliliter wrapped syringes, and just put all of that in. If you didn't, it went in the sharps container.

Q And the other kind, or the other one?

A And then the other kind you drew up yourself. They weren't 10 mil syringes, but I don't remember what size they were. I would guess either 3 or 5, and they're individually wrapped. You put a needle on them, draw them out of a little bottle of saline and use that.

Q Now, you said at some point when you worked there, there were actually preloaded saline syringes?

A Yes.

Q And those had the saline already in them, if I'm understanding you correctly?

A Yes.

Q And you'd just put those -- or flush the heplock and put the whole unit into a sharps container?

A Yes.

Q In the instances where you didn't have the

preloaded kind and you had to draw up your own saline, where was the saline that you used in the preop area?

A It's in a little tray that was kept at the sides on the chairs.

Q And was that saline container multi-use? Was it used on multiple patients?

A Yes.

Q What steps would you have to take to make sure that could be used safely on multiple patients?

A You'd wipe off the top with alcohol prior to each use. You've got a clean needle each time that's being discarded afterwards.

Q Did you ever flush a heplock with a needle and syringe and go back into the saline bottle --

A No.

Q -- to draw out more saline?

A No.

Q Would you ever do something like that?

A No.

Q Why wouldn't you do something like that?

A Because there's a chance of contamination then.

Q Are you trained in nursing school to only use one needle and syringe for the flush?

A Yes.

Q Have you ever deviated from that practice?

A No.

Q Have you ever used a needle and syringe on one patient and used that same needle and syringe on a subsequent patient?

A No.

Q You know at this point that you were the procedure nurse on several patients that were treated on September 21, 2007?

A Yes.

Q In your recollection of your work at the clinic, did you ever reuse a needle and syringe?

A No.

Q Did you ever draw up -- or remove a needle and draw up additional saline to administer to a patient after you'd already used that syringe on somebody else?

A No.

Q Did you use a single needle and syringe every time and a new one every time you drew up saline or flushed a heplock?

A Yes.

Q In addition to working in preop, I believe you said you worked in the procedure room and then maybe just a little bit in recovery?

A Yes.

Q Okay. When you were in the procedure room, what

were your responsibilities?

A Mainly chart work.

Q Charting what's going on in the procedure?

A Yes.

Q What was your impression of the volume of patients when you were working either in preop or in the procedure room?

A It was heavy.

Q Did you have trouble completing your paperwork?

A In the procedure room?

Q Yes.

A At times.

Q When you were in the procedure rooms, did you have the opportunity to observe the CRNAs at all?

A Somewhat.

Q Did you -- did you know that the drug they were using to sedate patients was called propofol?

A Yes.

Q Did you ever see more than one vial of propofol out that a CRNA was using?

A Yes.

Q Did you ever see propofol being moved from one procedure room to another?

A Yes.

Q Describe that. How would that occur?

A On breaks, at lunch, at the end of the day if one room needed more and the other room was done, they would share to get them finished.

Q Did you ever see syringes being reused?

A No.

Q Now, when you worked in -- I think you said you worked briefly in recovery?

A Yes.

Q Out of the time you worked there, what percentage of time do you think it was that you were in recovery?

A Maybe a couple of days.

Q So really not very much?

A Mm-hmm.

Q Is that no?

A That is no.

Q For the record.

A Thank you.

Q Sorry. I can't -- yeah, we can't --

A No.

Q But on those couple days that you did do it, what were the responsibilities for the recovery room nurse?

A To watch the patient as they're fully waking up, making sure there's not any complications, answering their questions, helping them.

Q Did you ever see the doctors come out to recovery?

A Yes.

Q Frequently, infrequently, how would --

A Infrequently.

Q In?

A Infrequently.

Q How about the CRNAs?

A I did see them come out.

Q How often?

A Infrequently.

Q Do you know what precharting is?

A Yes.

Q What is that?

A It's filling out the paperwork before the actual events occurred.

Q Did that occur at the endoscopy center?

A Yes.

Q Did you participate in that?

A I don't remember, but I would assume I probably did.

Q Okay. And how would that have taken place? What would the precharting have been, if you recall?

A The times. Writing down -- they had kind of a rote method as to what the time frames would be.

Q And can you explain that just a little more, what you mean by the method of the times?

A They'll assume that the patient's going to take a half-hour to recover, so they would note the recovery time before it was actually up.

Q Are you -- on your training, are you supposed to do that?

A No.

Q Do you do that now in your current job?

A No.

MS. WECKERLY: I'll pass the witness, Your Honor.

THE COURT: All right. Cross.

MS. STANISH: The Court's indulgence.

(Pause in proceedings)

CROSS-EXAMINATION

BY MS. STANISH:

Q Hi, Ms. Campbell. My name's Margaret Stanish. I represent Dr. Desai. I just have a few points that I want to clarify with you. Did you ever have any contact with the CDC or the Southern Nevada Health District?

A Yes.

Q And tell us about that, please, without going into what they told you. Did they -- did they interview you?

A I believe they did.

Q And can you -- let's talk -- I want to set some

foundation here. Do you recall when this conversation occurred?

A I believe it was in the preop room.

Q And are we talking about in January of 2008, when the CDC was in the facility observing procedures?

A Yes.

Q All right. And so you're -- in what room are you?

A The preop room.

Q And somebody is observing what you're doing?

A No.

Q Okay. Maybe I didn't understand you. Did -- what happened with the -- what was your contact with the CDC? Did they interview you?

A Yes. They just asked questions.

Q Okay. Can you tell us who asked you questions --

A No.

Q -- do you know?

Okay. Do you know if it was somebody from the CDC, or was it somebody from the Southern Nevada Health District, or do they all look alike to you?

A I couldn't tell you which one.

Q They didn't give you a business card or tell you, or you don't recall?

A I don't recall.

Q Was anyone -- how many people were present for that interview?

A I don't remember.

Q Were they taking notes?

A I don't remember.

Q Do you remember how long the meeting lasted?

A Meaning specifically with me?

Q Yes.

A Short. Maybe two minutes.

Q And you also had to give a blood sample, I assume, at some point, correct?

A Yes.

Q Did anybody, when you were in the preop area, did they have to train you how to do a saline flush, or was that something you already knew?

A I already knew that, but they showed me also.

Q And just clarify something for me, please. I understood you to say that at different times there were different types of syringes used for the purposes of flushing; is that correct?

A Yes.

Q And one was you actually just had the syringe and then you had to put a needle on it; is that what I'm understanding you to say?

A Yes.

Q And then the other one was later on the prefilled syringe with the needle already attached, correct?

A There was no needle on it.

Q Oh, okay. Well, gosh, I'm glad I asked you that then. So even the prefilled one, you had to put a needle on it?

A Or just screw it right onto the heplock.

Q The heplock lets you screw the syringe directly [inaudible]?

A I don't remember which one we had, whether it was the needle one or the screw-on one.

Q In your -- in your duties, did you help keep the facility clean?

A Minimally.

Q What for instance did you do?

A Clean up after we put in the IVs, you know, throw away the sharps and make sure things were stocked to start the IVs, things like that.

Q And did you -- were you always able to get supplies when you needed to have supplies available?

A Yes.

Q And I meant to ask you this when we were discussing preop. I know you were a relatively new nurse. By the way, was Anne Yost a classmate of yours in the community

college, or the -- what was it, Southern Nevada College --

A Yes.

Q -- of Nursing?

Was she a classmate of yours?

A Yes.

Q And did you socialize with her during this time frame where you worked?

A You mean school?

Q Outside of school once you graduated.

A We kept in touch. I wouldn't say we socialized.

Q Did you discuss this case at any point since the outbreak was announced?

A No.

Q The -- when you're in preop -- I know this was your first job out of nursing school. When you're in preop and a patient walks in, how do you go about assessing their condition?

A Ask them if they've done their prep, if they've not eaten, answer any questions that they have and get their -- any background that they're asking that relates to the testing.

Q What was it you currently do?

A Right now I work in the nursery.

Q And where?

A At Valley Hospital.

Q And at this time, I'm going back to your first job, of course, when you're doing the assessment, is there anything that you do where you're just eyeballing that patient when they come in, in order to do your assessment?

A Mm-hmm.

Q Tell us about that.

A You can just look at them, make sure that they're stable, everything's all right, that they've got enough hydration, things like that.

Q And are some of those observations part of what you need to chart in preop?

A Oh, I don't know. It may be charting by exception. If there is an issue, alert somebody to it.

Q What does that mean, charting by exception? I don't understand that.

A That there was something out of the ordinary, make note of that and maybe call it to someone's attention.

Q To the extent that you were involved in precharting, if you saw something that was different from what you precharted, like the condition of the person, what would you do?

A I'm sorry. I lost your train of thought there.

Q Yeah, me too. Oh, yeah. When you are -- I understand that there was precharting in the preop room, correct, or no?

A Not that I did.

Q Okay. So what -- I misunderstood you. So what you're telling me, when you had the responsibility of the prechart [sic] room, you would accurately fill out the part of the chart that dealt with the assessment of the patient, correct?

A Yes.

Q And moving now to the procedure room, am I right to understand that when you wrote down the procedure time, it was the time that was taken right from the -- the vitals strip? Do you know what I'm saying?

A Mm-hmm. And I'm a little bit fuzzy about where those times came from, but I know they came off of some paperwork that came from the nurse anesthetist.

Q And speaking of the nurse anesthetist, was it your experience that when you're in the procedure room, the nurse anesthetist is doing their own assessment of the patient?

A Yes.

Q And tell us what that involves based on your observations.

A Making sure they're breathing, making sure their heart rate's okay.

Q I'm really talking about before they start administering anesthesia.

A Oh.

Q Do they do an assessment --

A They speak -- they speak to the patient, make sure that they're alert and conscious and they know what procedure is going to happen and what they're going to do.

Q And do the -- do the CRNAs generally have a clipboard and a piece of paper that they're writing on as they do that interview, if you recall?

A I don't remember a clipboard, but I remember a piece of paper that they're writing on. It could have been just on the counter.

Q An anesthesia record?

A Yes.

Q When you worked there, did you ever observe or have to be involved in a procedure in any fashion when the patient opted out of anesthesia, saying I want to go cold turkey, don't give me any anesthesia?

A I believe there was a time.

Q Do you recall that time?

A Vaguely. I don't remember if it went through or not. I think they wanted to drive home, and if you have the anesthesia you can't drive home.

Q I see. So if somebody doesn't have someone who can take off of work and escort them home and chauffeur them, people will have the procedure without anesthesia?

A They could. I don't remember if we did that day or not.

Q All right. And that's fair enough. It's been a while. I understand. You ever see anybody mistreat a patient?

A No.

Q If you did, what would you have done?

A I would have reported it and called them on it at the time.

Q On September 21st, 27 [sic], you're involved in a number of these procedures as the preop nurse, correct?

A Yes.

Q Something went horribly wrong that day, correct?

A I don't know.

Q You don't know. You were not cognizant of any unsafe practices going on in the clinic that you were aware of, that you saw?

A I knew that the numbers were way high.

Q And when the -- despite the numbers being high, were you able to do your job safely? Just I'm talking about you.

A Yes.

Q And if that meant slowing down procedures or getting behind, so be it, you were going to do your job right, correct?

A Yes.

MS. STANISH: Okay. I have nothing further. Thank you, ma'am.

THE COURT: All right. Mr. Santacroce.

MR. SANTACROCE: Thank you.

CROSS-EXAMINATION

BY MR. SANTACROCE:

Q Good afternoon, Ms. Campbell. I represent Ron Lakeman. You know Ronald Lakeman, correct?

A Yes.

Q You've worked with him in the past?

A Yes.

Q I want to talk to you about the preop procedures and what you did on September 21, 2007. Okay?

A Okay.

Q I want you to go through the heplock procedures as you administered those heplocks on September 21, 2007.

A I can do that, but it will be generalized, because I don't remember that day in particular.

Q Okay. Would you say that you employed the same procedure on that day as you had on any other day?

A Yes.

Q Tell me about it.

A Put on some gloves. Apply a tourniquet.

Q Okay. Let me stop you there. Where would you

get the gloves?

A They're in a rack on the wall. You can --

Q In the preop area?

A Mm-hmm. And you can pick the size you want or need.

Q Can you hold on one second? I want to get the picture of the preop area.

(Pause in proceeding.)

MS. STANISH: It's probably the last one.

MR. SANTACROCE: Yeah, because I'm getting to the last one. It probably is.

MS. STANISH: Give me half of them and I'll help you out.

MR. SANTACROCE: Okay. Thank you.

BY MR. SANTACROCE:

Q Okay. While we're looking at that, let's continue. So you would get gloves out of a container off a wall somewhere, right?

A Mm-hmm.

Q How many beds were in the -- or how many chairs were in the preop area?

A I believe there was three.

MS. STANISH: Rick.

BY MR. SANTACROCE:

Q Showing you Exhibit 117, is that the preop -- a

preop area?

A It looks like it. Mm-hmm.

Q Okay. And I guess in that picture we only see two --

MR. SANTACROCE: Is there any more pictures of that?

MS. STANISH: [No audible response.]

BY MR. SANTACROCE:

Q We only see two chairs?

A Yes.

Q But you recall there being three chairs?

A Yes. Off to my right.

Q Okay. Over here somewhere? Over here? Where? You can touch the screen.

THE COURT: If you touch the screen, like you run your finger down, it'll make a mark.

BY MR. SANTACROCE:

Q Okay. We have three patients in that room at a time?

A You could. It would fluctuate.

Q And you have a door to that room; is that correct?

A There was an archway. I don't recall if there was an actual door on it or not.

Q I'm going to move this over. It looks to me like a door. I don't know. You tell me.

A Oh, that -- you're standing in the entranceway though.

Q I am. Okay. This is the entranceway, correct?

A That door is not the entranceway in my mind.

Q Okay.

A That door goes into utility; telephone, electrical in my mind. I could be wrong.

Q Is it open in this picture?

A It is open.

Q So you're saying that I'm standing in an entryway which would be right in this area, correct?

A Yes.

Q So you'd walk in. Is this room sealed off from the rest of the facility?

A I don't remember there being a door there. A doorway, but no door attached to it.

Q And what could you see from this room? If you were looking out the door where I'm standing, what would you see?

A A large area of recovery off to your right, and the procedure rooms off -- excuse me. I got it backwards. To the left would be the recovery areas, and to the right would be the procedure rooms.

Q You couldn't see the procedure rooms from this room though, correct?

A No, just the doors into there.

Q Okay. All right. So where on this wall are the gloves kept? Oh, I see them. Right here?

A Yes.

Q Okay. All right. So you get gloves on, then what would you do?

A Then put a tourniquet on the patient's arm, look for a vein, find the one you want, wipe them down with alcohol, insert a cannula, take the tourniquet off, take the needle out, attach the heplock, tape it down good, and flush it out with saline.

Q What are these things on the wall?

A They're oxygen in case there's a problem.

Q Did you ever have to use that?

A No.

Q Where is -- where would you keep the saline?

A If I remember, there was trays, little prep trays. I don't see them in here.

Q Can you describe what that prep tray looks like?

A I believe they were white in color, rectangle, 10-by-14. They had the needles in them, the saline, the alcohol, two-by-twos, the heplocks.

Q And who would prep those trays?

A I don't specifically know, but I think it was just a group effort that we kept them filled up with supplies.

Q So if you ran out of supplies you'd fill them up?

A I could if I knew where the stuff was. I didn't always know where they were.

Q Well, did you know where the stuff was?

A Some.

Q Did you know where the saline was kept?

A I don't recall.

Q You don't have a recall of getting saline and putting it in the prep tray?

A I don't.

Q So are you telling me that the saline was always in the prep tray when you took the prep tray?

A Or I asked someone for it.

Q And those saline bottles could have been used on other patients?

A The ones I asked for?

Q Yeah.

A No, because they would come new to us.

Q So every time you would start out with a tray, it would be a new bottle of saline?

A No.

Q It would be a partially, could be used, had been used?

A It could be on the tray there.

Q So when you got a tray and there could have been a saline bottle that was partially used, correct?

A Yes.

Q Was there ever a time when there was two RNs that did the heplocks on the same day?

A Yes. Uh-huh.

Q Okay. So another RN could have put a heplock in, correct?

A [No audible response.]

Q Put a saline bottle back in a tray, correct?

A Mm-hmm.

Q You picked up that tray, used that saline bottle; isn't that correct?

A Huh. Yes. Excuse me.

Q You would have no idea whether the other RN used aseptic practices or not, would you, unless you observed them?

A That's correct.

Q Now, I want to show you Bates No. 007911. This is a chart of the infected patients on September 21, 2007. I'm going to try to get this so we can see all of it, and I'm going to step -- oh, I'll stay here. I can see that. Can you see it okay?

A I think so.

Q Okay. And your name is in the middle here, do you see that?

A Yes. Yes.

Q And this information purports to say that you started the heplock on the source patient, Kenneth Rubino. Okay. Would you have any reason to disagree with that?

A No.

Q Did you know that Kenneth Rubino had hepatitis C when you inserted the heplock?

A Right now, I can't --

Q No. I mean at the time.

A At the time I would have because it's on their chart.

Q Would you have taken any special precautions knowing that?

A Nothing different other than just making note of it in my mind.

Q Interestingly, Kenneth Rubino's the source patient. You also start the heplock for Rodolfo Meana on the same day. Do you see that?

A Uh-huh.

Q You have no reason to dispute that, right?

A No.

Q You also started the heplock for Sonia Orellana on that day, correct?

A I have no reason to doubt it.

Q Gwendolyn Martin and this other fellow, right?

A I've got no reason to doubt it.

Q Now, if you look down on the bottom line, you also started a heplock for Patty Aspinwall and Carole Grueskin, correct?

A I've got no reason to doubt that either.

Q Now, there's another individual here named Jeff Krueger. Do you see that?

A Yes.

Q And it purports -- the records purport to indicate that he started heplocks on Lakota Quanah and Stacy Hutchison. Could he have shared the same preop room with you on that day and started some heplocks?

A Yes.

Q Now I want to show you State's Exhibit 156. And I will represent to you that the orange stripe means the source patient, which was Kenneth Rubino. And we -- you've already stated that you have no reason to doubt that you started the heplock on Kenneth Rubino, correct?

A I believe so.

Q And the yellow line is patient that cannot be genetically connected to Rubino. Then the green stripes are the people that allegedly got hep C at the clinic on this day. Do you see that?

A Yes.

Q And you started the heplock on Kenneth Rubino,

Rodolfo Meana, Sonia Orellana, Gwendolyn Martin and Patty Aspinwall, who's on the bottom of that chart. Do you see that?

A Yes.

Q Every person that got hepatitis C except for Stacy Hutchison, the heplock was started by you, correct?

A I have no reason to doubt that.

Q Now, you were asked some questions about seeing propofol go from one room to another. Do you remember that?

A Yes.

Q And you testified that you saw propofol going from one room to another, correct?

A Yes.

Q But what I didn't hear you say is that the propofol you saw going from one room to another was sealed bottles of propofol; isn't that correct?

A Yes.

Q So every time you saw a bottle go from room to room, it was sealed new bottle, correct?

A No.

Q Okay.

A I couldn't say that.

Q Do you remember giving an interview to the metropolitan police department?

A Yes.

MR. SANTACROCE: Do you guys have the hard copies?

MS. STANISH: Oh, I do.

(Pause in proceedings)

MR. SANTACROCE: I'm going to show you page 13 of your interview with the metropolitan police department, and see if this refreshes your recollection. And just ignore the highlighted area. That's Ms. Stanish and she likes to color.

MS. STANISH: Outside the box.

THE WITNESS: Do you want me to look at the whole page, or --

BY MR. SANTACROCE:

Q Yeah, if you can read that whole page or particularly this area.

A Okay. I answer something yes. And then they ask --

Q Just read it to yourself.

A Oh, okay.

Q Tell me when you're done reading it.

A I'm done.

Q Okay. Do you remember your testimony as to when they asked you what you observed as to the propofol going from room to room?

A Now that you've refreshed my mind, I believe that's what it was.

Q You believed it was sealed bottles, correct?

A No. I believe that's what my testimony was --

Q At the time?

A -- at the time. But right now I don't remember. It could have been.

Q Okay. But your testimony at the time when you gave the interview -- unfortunately, I don't have the date on this copy. I can look it up. But your interview at the time, and it's fair to say that it was closer in proximity to the date of the incidents, correct?

A Yes.

Q And your memory would have been better at that time, would you say?

A Yes.

Q And didn't you tell them that you believed that they were sealed bottles?

A Yes.

Q And today you have no recollection as to whether they were sealed or not sealed, correct?

A I don't remember.

Q And you also said that you saw these bottles go from room to room toward the end of the day; isn't that correct?

A Yes.

Q And the reason why? You gave a reason. Do you remember?

A To my recollection right now the reason was when they're getting to the end of the day, you have a patient in one room and not the other, you need to finish up the last patient, so you need the propofol for that patient.

Q And they didn't want to check back the bottles, full bottles back into the room, so they would use what they have rather -- they didn't want to go check out more bottles at the end of the day, so they would get full bottles and use those full bottles; isn't that your testimony?

A Yes.

Q Thank you. And you were asked in that interview do you remember which CRNAs would do that, that is get sealed bottles from other CRNAs at the end of the day. And you said you didn't remember which ones, correct?

A I don't remember what my testimony was, but that's what I was thinking my answer is right now.

Q And you don't remember today, do you?

A No, I do not remember.

Q So you couldn't say whether Keith Mathahs or Ronald Lakeman did that kind of thing, could you?

A That's correct.

MR. SANTACROCE: I don't have anything further. Thank you.

THE COURT: Redirect.

REDIRECT EXAMINATION

BY MS. WECKERLY:

Q Ms. Campbell, when you were working at the clinic, did you ever observe a fellow RN to violate aseptic technique or universal precautions?

A No.

Q Did you ever violate those principles when you were working?

A No.

Q Mr. Santacroce asked you about the propofol moving from room to room, and your interview said, I believed the bottles were sealed?

A I think that's what it said.

Q Okay. And there was -- you believed it was at the end of the day because of the back and forth between the CRNAs, correct?

A Yes.

Q And they were talking about like how many cases you have left and in your mind it was rather than going and checking out more, they would just use what's in the rooms?

A Yes.

Q But it would go back and forth, whatever it was?

A Yes.

MS. WECKERLY: Thank you.

THE COURT: Any recross?

MR. SANTACROCE: Just a brief question.

RECROSS-EXAMINATION

BY MR. SANTACROCE:

Q You were asked if you ever saw a fellow RN use non-aseptic techniques, correct?

A Yes.

Q Did you witness Jeff Krueger starting a heplock on Lakota Quanah on September 21, 2007?

A No.

Q Did you witness Jeff Krueger do the heplock on Stacy Hutchison on September 21, 2007?

A I can't say that I did.

MR. SANTACROCE: That's it. Thank you.

THE COURT: Ms. Stanish?

MS. STANISH: Nothing further. Thank you, Your Honor.

THE COURT: Any additional -- any juror questions for this witness? All right. Ms. Weckerly, any questions?

MS. WECKERLY: No. Sorry. Thank you.

THE COURT: Was the saline bottle that was used and shared in the preop room opened fresh every morning?

THE WITNESS: Not that I remember. I don't remember either way.

THE COURT: You don't remember whether you -- so you don't remember whether or not the bottle was thrown out at the end of each day if it wasn't finished?

THE WITNESS: I don't remember that.

THE COURT: Okay. Any questions from the defense based on that last juror question?

MS. STANISH: No, Judge.

THE COURT: From the State?

MS. WECKERLY: No, Your Honor.

THE COURT: Any additional juror questions?

All right. Ma'am, there being no more questions, thank you for your testimony, and please don't discuss your testimony with anyone else who may be a witness in this case. Thank you, and you are excused.

State, call your next witness.

MS. WECKERLY: Janine Drury.

JANINE DRURY, STATE'S WITNESS, SWORN

THE CLERK: Please state and spell your first and last name for the record.

THE WITNESS: Janine, J-a-n-i-n-e, Drury, D-r-u-r-y.

THE COURT: Thank you. Ms. Weckerly.

DIRECT EXAMINATION

BY MS. WECKERLY:

Q Ms. Drury, how were you employed in 2007?

A As a preop nurse at the endoscopy center.

Q And how -- as of that date, how long had you worked as a nurse?

A As of that date I had worked since 1983 as a

nurse.

Q Where did you go to nursing school?

A At Louisiana State University in New Orleans.

Q And did you work as a nurse in New Orleans prior to coming to Las Vegas?

A Yes, ma'am.

Q Where did you work?

A I worked at Memorial Medical Center, previously Baptist Hospital.

Q And when you first came to Las Vegas, was your first nursing job at the endoscopy center?

A Yes, it was.

Q And what major event was it that caused you to come to Las Vegas?

A Katrina happened and my hospital closed, and we lost our house and my husband lost his job. So my sister offered for us, she lived out here, to come and relocate to here for awhile.

Q And what -- I think you might have just said it, but just so I'm clear, when did you start at the endoscopy center?

A In -- on May 1st of 2006.

Q Who was it that hired you? How did you go about getting your job?

A I found it in the newspaper. I had previously

been a nurse administrator at the hospital where I was, and decided that for my family and everything I needed something a little more low key. So I wanted to go back to the bedside and looked for clinic work, and I looked in the newspaper. They were advertising for a nurse. I sent my resume in and I was called for an interview.

In the meantime, I found out where it was and researched. It was the largest privately owned clinic, who the owners were and that they were involved with the medical board, things like that. So I went in, was interviewed by Jeff Krueger and Tonya Rushing and was hired.

Q And how long after your interview did you start working approximately?

A It wasn't that long. I can't remember. It was really quick, because we -- I wanted to get a job as quick as possible, so maybe it was a week or so.

Q When you were working at the endoscopy center, you're an RN, correct?

A Yes, ma'am.

Q Did you -- did you work all areas of the practice; meaning preop, procedure room and recovery?

A Not when I was first there. When I was first there I was trained in the endoscopy room pretty much exclusively. And then later some things happened and I wound up being most of my time there the preop nurse.

Q And so you first -- you first started in the procedure room?

A Yes.

Q Okay. That's what we've been calling it.

A Okay.

Q I think you used a different word, but is --

A Endoscopy room.

Q Okay. Is procedure room okay, just so we're --

A That's fine.

Q -- you know, talking about the same thing?

Who trained you to work in the procedure room?

A Maggie Murphy was one person who trained me. Jeff Krueger also trained me. Rod Chaffee also was a person I oriented with, and I believe Lisa Falzone.

Q And in the procedure room, were your responsibilities monitoring the patient somewhat, but documenting what happened in the procedure?

A Right.

Q But I think you said that eventually you were spending a lot of your time in preop.

A Right.

Q So you would have been the first medical person that the patients came in contact with once they were brought back for their procedures?

A Yes, ma'am.

Q As the person in the preop room, were you called upon to administer IVs to patients?

A That was our job, to start the IVs. That was the primary thing, to give an IV, and they wanted the best person possible to do it. They only wanted one stick per patient and I kind of had the skills, so that's where I wound up.

Q Now, we've heard people describe like, well, I looked for a good vein. I guess you must be good at finding a good vein?

A Yeah.

Q And when you say one stick, what do you mean?

A That instead of using multiple needles to get into the vein, that you would put the tourniquet on, look for a vein that either popped out or that you could feel, and then I could get the needle in, take the needle out and leave the catheter behind just in one stick.

Q When you -- when you were working the procedure room and you got the IV administered, would you flush it with saline?

A Yes.

Q Was that your normal practice, did you --

A Right.

Q You have to --

A And we had bottles of saline and it was like a

tray that we had set up with all our supplies. And you would take a new syringe that had a needle already attached to it, clean off the top of the saline, pull back like 2 to 3 cc, which is the smallest syringes, and then just flush the port of the heparin lock -- I'm sorry. It's a saline lock. There's no heparin in it. Just flush it with some saline to make sure it stayed open until they got in the procedure room.

Q And did -- to your knowledge, did all preop nurses flush that with saline?

A All the RNs did, yes.

Q In your training in nursing and then your obviously your experience working in New Orleans prior to coming to Las Vegas, were you familiar with aseptic technique or universal precautions?

A Intimately.

Q Very, very familiar?

A Extremely. I was considered the gestapo in some places where I worked.

Q Okay. And what does that mean to you, those techniques?

A You treat every patient -- universal technique means you treat every patient as if they were infected with something that could potentially harm you or something back to them, so you would always wear gloves. You would always make sure that anything you're using on the patient is sterile,

clean, appropriately cleaned used on the patient, and that you wouldn't use one thing from one patient to another that had been used.

Q And along those lines, if you had administered something to a patient, would you ever go back into the common saline vial with that needle and syringe?

A No. Never.

Q Why not?

A Because you could contaminate that saline with whatever was in that patient's IV into that saline bottle.

Q Now, is this some secret bit of knowledge that you have?

A No, no. That's Nursing 101.

Q So that's pretty basic?

A Yes.

Q When you -- when you were working at the clinic, did you ever have a supervisory role?

A I was supposed to be taking over the charge nurse position starting March 1st of 2008.

Q Okay.

A But -- I'm sorry. I never signed any papers. It was never given over to me. It was never decided that I finally had it. I was in grooming, training.

Q When you were working at the clinic, did you work with Lynette Campbell?

A Yes, I did.

Q And is she the lady that just left the courtroom?

A Yes.

Q And what -- well, in what proximity did you work with her, or --

A I was responsible for training her when she came to the endoscopy center.

Q And in training her, did you have the opportunity to observe her technique in administering the IV and flushing it with saline?

A Yes, ma'am.

Q In your experience, did she ever violate those precautions or proper technique?

A I never saw her do that.

Q And were you, you know, pretty strict? I mean, were you watching, or were you --

A Oh, again, no, I stood there and watched her. I had like a three or four time thing that I would watch, and then even though she was working in the same room with me, because the preop area was very small, I would still occasionally watch other people doing IVs mostly because I wanted to see who was going to be getting sticks and if they did it right. She was still learning to do IVs, so I stayed real close to her for a long time.

Q And so you had a -- at least a pretty good opportunity to observe her practices?

A Yes.

Q During the time that you worked at the endoscopy clinic, how would you describe the patient load?

A Very heavy. Extreme some days. I was surprised at the number of people but -- that came through as patients. I wasn't familiar with that type of workload, but I kind of attributed to a new place. I'd never lived anyplace but New Orleans, so.

Q This is how it is out in Las Vegas?

A The Wild West we jokingly call it in my family.

Q Was it hard for you to keep up with your work?

A Extremely hard. I was going through some medical problems at the time, pretty much the whole time I was employed at endoscopy center, and sometimes the physicality of the job was very extreme on me. And emotionally sometimes it would take a lot because I -- just the long hours and the volume of patients, you didn't get a chance to care sometimes.

Q When you were in the procedure room and you would initially have contact with patients when they first came in, I mean, were you the one that kind of got a rapport with them?

A Yeah. And that's kind of what I did too as preop. I felt like that was one of the things that I could do

is put some humanity into it. And that's just the way I am with patients; hey, how you doing, how's it going, wow, that was a great drink, you had a drink last night, yeah, yuk, yuk.

You know, who's this, your wife with you, whatever, is this the first time you've had this. Try to answer any of their questions, explain to them a little bit about what's going to happen as quickly -- I'm a fast talker, so I could get some of that in before we had to move on.

Q Did the patients stay in preop long before they were moved into recovery?

A Sometimes. It depended upon what was going on with the patients in the procedure rooms. If you had a patient that had a more complicated colonoscopy, several polyps or something, they might be in there and so we kind of would get backed up. So then I would talk to the patients. We had a TV in there. We'd talk about what was on TV or whatever, you know, human stuff we'd try to talk about.

Q Yeah. I mean, part of that, I would assume, was to kind of lower their stress level and...

A Yeah.

Q Did you -- okay. You mostly were in preop, but you were sometimes in the procedure rooms; is that right?

A Yes.

Q In the procedure rooms, did you observe or have the opportunity to observe the CRNAs that were practicing?

A Yes.

Q And did you see how they would handle bathroom breaks or lunch breaks?

A Yes.

Q Describe what you saw.

A For the most part always, whether it was the nurses or the CRNAs, we would break between patients. It was very infrequent that you would see someone leave the room during a procedure. The procedures went so fast it wasn't like you were holding on to go do something for, you know, 30, 40 minutes or something like that. So during the time that -- if somebody needed to take a break, the other person would cover by going to the other room, anesthetists.

Same thing with the nurses. They would cover and we'd have one doc going between the rooms and the anesthetists would just follow them. And that's what happened at lunchtime also. We'd go down to just one anesthetist, and that anesthetist would follow the doc into the next room and then back again to the next room.

Q And I mean, were -- I mean, in addition to lunch breaks, were there like bathroom breaks or a personal break or anything like that?

A Usually, if -- not usually. Like I said, we usually did it between times. There may have been an occasional time when someone was called out of the room during

the beginning of the morning around 10:00-ish or so. Like when Dr. Desai was finished with his procedures during the daytime, if he wanted to speak to somebody, if it might be another doctor or Ron or somebody, then we'd kind of do the same particular thing of switching through with just one.

Q Do you ever remember observing Ron Lakeman meet with Dr. Desai in the mornings?

A Not before everything. But I do recall a couple of times, I'm not specific about the dates, of being called out to come meet with Dr. Desai, and whoever the other anesthetist was would have to go between the rooms.

Q Now, did you yourself work with Dr. Desai?

A Yes.

Q And in your work with him, I mean, did you get along with him?

A We had a mutual respect.

Q Did you ever talk to him or have a discussion with him about the reuse of forceps?

A That wasn't a discussion. That was a yelling match.

Q When was the yelling match?

A I don't know the date. I can't even tell you when it was, but I remember it very vividly and apparently even the nursing board heard about it, so. A lot of people also remembered it. But I was working in the room and he was

going between patients, and one of the technicians came up to me and said, He asked me -- he meaning Dr. D, had asked her to use, reuse the forceps.

And I said, What are you talking about? And she says, We're reprocessing the forceps. And I started talking very loudly, screaming at some point, no, that's single use only, you're not going to do that while I'm here, I will walk out, I'm not doing this, this is putting patients at risk.

Q Who were you talking to when you were saying that?

A Dr. Desai.

Q And --

A In the patient room.

Q Okay. And loud voice from you, or how would you describe --

A Well, I talk loud anyway, so I didn't think I was talking loud, but everybody heard it in the -- so I was --

Q What was the outcome?

A My perception of the outcome was that from that time forward no one ever said anything about reusing anything again in front of me, whether it was bite blocks or biopsy forceps or anything. I always saw my technicians, then I was really on the watch of seeing them open them or myself opening the biopsy forceps to give to the physicians during the procedures. But I can't attest to what was going on

everyplace else. I know that in my sight after that it never happened that I saw.

Q In your time at the clinic, did you ever not participate, but did you ever witness Dr. Desai and Dr. Carrol maybe having a meeting?

A I would never witness a meeting. But when somebody's pulled off with a patient, working on the patients to go to Dr. Desai's office for awhile, you just assumed that that was a meeting, because that's the only time -- that's what a meeting was, to go to Dr. Desai's office, to be pulled off of doing patient cases, and then we'd kind of have to go to other physicians.

Q What about Tonya Rushing?

A Tonya would -- Tonya would participate in some of those meetings sometimes, because I know we'd say, Well, Dr. Desai and Tonya want to see you in Dr. D's office, that's where he's going, he's going to Dr. D's office. I myself had been called up to Tonya's office when I was working with Katie, who was the director of nursing, on some policy changes and things. And even though it was clinical, we had to go sit in front of Tonya and discuss what those changes were going to be.

Q Okay. And Tonya Rushing doesn't have a medical background?

A No, she does not.

Q But you had some meetings with her about policy?

A Yeah. Specifically policies about what we would be doing for every specific thing, whether it be how we transport patients, who transports the patients, things that were really under nursing's jurisdiction.

MS. WECKERLY: The Court's indulgence.

(Pause in proceedings)

BY MS. WECKERLY:

Q Ms. Drury, do you remember occasions or instances where the CRNAs would put in the IV when you were in the procedure rooms?

A Yes.

Q And did you observe whether or not they would flush the heplock with saline?

A Most of the anesthetists did not use anything but the propofol with or without the lidocaine in it. They really didn't -- I've even -- I remember specifically even offering them a couple of times a saline flush, and they're going, No, no, we're good. So they would just start the IV, put the cap on and have it ready to go just to put the propofol. And when you're doing it in the room, it really was only a few minutes before the case was going to start and they were going to do that anyway, so.

Q And what -- I mean, what's the medical reason why they wouldn't need to do the saline flush in the procedure

room?

A Because the -- well, there's no medical reason, I guess. They just figured that they were going to be doing the procedure so quickly, so shortly after that, that they would just leave it open. I never thought that was good practice, because you always want to make sure that that IV stays patent; in other words, working, so that you would put saline in it to make sure it stays working so that when you go to give the anesthesia, you're not going, oh, it's clotted now and I have to restart an IV. It's just better practice to make sure it's going to stay there.

Q But in your experience, what you observed, they didn't --

A No.

Q -- they didn't do the saline flush?

A No. No, they did not.

MS. WECKERLY: Thank you. I'll pass the witness, Your Honor.

THE COURT: All right. Cross.

CROSS-EXAMINATION

BY MR. SANTACROCE:

Q Good afternoon, Ms. Drury.

A Mm-hmm.

Q I represent Ron Lakeman. You know Ron, correct?

A Yes.

Q When did you first come to meet Ron?

A When I started working at the endoscopy center.

Q And was your relationship just a working relationship, or was there a social relationship?

A We had a little bit of social things at first. We met a couple times for dinner. And when he was getting rid of some furniture, because we had lost so much, he generously gave us some linens and a couple of pieces of furniture.

Q And your professional relationship with him, you worked in the procedure room with him on some occasions?

A Yes, I did.

Q We'll talk about that in a minute, but before we do, I want to talk about the preop procedures as you described them. The supplies that you used to do the heplocks were in a utility tray of some kind, correct?

A Yes.

Q Would you fill up your own utility tray in the morning?

A Usually it was the job of the preop nurses the day before when they were finishing, to make sure the tray was well stocked before you put it on the shelf and get it locked up for overnight.

Q There's been some testimony that the unused portions of saline would be -- at the end of the day would be stored and then reused the next day; is that your

recollection?

A No. Because when I did it, I would throw away the salines and start the new day. Because they're only good for 24 hours without any preservatives in them.

Q Okay. So unlike propofol, which is only several hours, saline can last up to 24 hours without being --

A That's what the standard is, yeah.

Q -- contaminated?

A Yeah.

Q Okay. So that wasn't your practice, but it might have -- well, let me ask you this: Did you ever start a day where there was unused portion of saline?

A There might have been. I can't remember off the top of my head. But I would have never used it. I would have thrown it away and opened my own bottles.

Q But there might have been occasions where there were unused portions of saline in your tray to use the next day, correct?

A I can't say definitely. I can't remember seeing that.

Q And you can't say whether or not Lynette Campbell or Jeff Krueger wouldn't have used those, can you?

A No. That's why I would have never used anything that was opened, because I only use what I open.

Q Was there times when there was two RNs in the

preop area that would start --

A Yes.

Q -- heplocks?

You need to let me finish. I'm sorry. It's late in the day and I'm slurring my words. It's going to take me a little longer --

A That's okay. And I'm anxious and --

Q -- to get them out.

A -- I want to answer.

THE COURT: He usually doesn't slur his words until 7:00 or 8:00 o'clock at night.

THE WITNESS: And I'm talking fast Southern. I just want to get out of here, so.

MR. SANTACROCE: Me too.

BY MR. SANTACROCE:

Q In any event, there was times when there was two RNs in the procedure -- preop room that would administer heplocks, correct?

A Yes.

Q Okay. You testified that you never saw Lynette Campbell use non-aseptic practices; is that correct?

A Correct.

Q On September 21, 2007, Lynette Campbell started the heplocks on Rubino, Meana, Orellana, Martin and this guy, and she also started it on Aspinwall and Grueskin. Did you

witness her start those heplocks --

A On that day?

Q -- on those patients on that day?

A No, because I was not there that day.

Q Okay.

A I was out on medical leave.

Q So you can't testify as to what procedures or practices she used on September 21, 2007 whatsoever?

A I cannot. I was not there.

Q Jeff Krueger started a heplock on this patient and this patient on that same day. And again, you weren't there, so you can't testify as to what his practices and procedures were?

A Correct.

Q And you can't testify that in the beginning of the day Lynette Campbell didn't use saline bottle that was already open from the day before, can you?

A I cannot say that, no.

Q You talked about these -- when the CRNAs took lunch breaks, the procedure for that. Were you ever aware that sometimes a third CRNA would come in at 11:00 o'clock in the morning?

A That wasn't an always practice, but I -- now that you're saying that, I do have recollection of that, but --

Q And the reason that person would come in would be to relieve a CRNA for lunch; isn't that correct?

A Yep.

Q So on these occasions where you witnessed CRNAs relieving another CRNA for a lunch break, how often did you witness that?

A Three people or two people? Two people happened -- with only two people, that was the usual thing.

Q Okay. And how often did you work in the procedure rooms as opposed to the preop room?

A Well, from May of 2006, when I was first hired, to about that following December of 2006, I pretty much was in there all the time. Peggy Tagle had one room and I had the other pretty much all day. All day meaning you didn't even get lunch and nobody came to relieve you for bathroom. After December of 2006 to the rest of the time is when I started doing the preop area and I continued that until the place closed.

Q So from 2000 and -- the end of 2006 until the operation closed in 2008, you were in preop?

A Mm-hmm. I did give lunch relief to nurses, and I did start in the morning sometimes as an early person. I would start the rooms.

Q What do you mean by that?

A I would be the preop nurse and follow the

patient into the room, so I might do one or two procedures in the morning, and then it would switch to the nurse that was going to be in the room all day.

Q So there'd be times throughout that 2006 to 2008 time period where you would work in a procedure room, but your primary responsibility was preop during that time period; is that correct?

A Yep.

Q And from the preop area, I suppose you were pretty busy, because in your testimony to -- or your interview with Metro you said that there'd be times when there'd be three chairs, four people waiting to get heplocks started and things of that nature, correct?

A Yes, I did.

Q So you were busy all day long, correct?

A Yep.

Q So you didn't have much time to look at what was going on near the procedure rooms, did you?

A Not when I wasn't in the rooms, no.

Q You talked about the -- you had some heated discussion with Dr. Desai about the reuse of bite blocks and forceps; is that correct?

A Yes.

Q When was that?

A I can't recall what time frame that was.

Q Do you recall what year it was?

A No. I'd be guessing, and I'm not going to guess. I really can't have a time frame for it.

Q So there was a time period when bite blocks and forceps were reused?

A I don't know that. All I know is that's one of the technicians came up to me and said she was told to do that and I said, That's not happening while I'm here, so.

Q Okay. I want to jump back for a second, because something struck me as not being right, and I don't know. You testified that the syringes for the saline didn't come with needles.

A No, I did. They had needles and syringes. They were one piece.

Q Okay.

A And then later in the time that I was there, in my tenure, it was just syringes that had saline in them, so then you just had to hook them to the port.

Q Okay. So the time that the needles came with the syringes, that was all one package?

A Yes.

Q Okay. So it must have been somebody else that testified that the needle and the syringe came in two pieces. Are you aware of that?

A I know that in the procedure rooms for

anesthesia, they had 10 cc syringes --

Q I'm not talking about that. I'm talking about the preop saline.

A And I'm telling -- I'm trying to tell you that in one place they had needles and syringes together, and that was the preop area. There were other places in the facilities where the needles and syringes were not together.

Q Was there ever a time in the preop area when the needles and syringes weren't together?

A Not that I recall.

Q You talked about the CRNAs starting heplocks; is that correct?

A Yes.

Q And when was that?

A That would be either when someone couldn't get the IV, as in the preop area, or when a patient -- so it was a difficult stick, or when the patients were one of the first patients in the morning.

Q Well, we know that on September 21st of 2007, the heplocks were all started by Lynette and Jeff Krueger, at least for the infected patients. So when you're talking about the CRNAs starting a heplock, you're not talking about September 21, 2007, are you?

A No. I wasn't there, but you're showing me who started them.

MR. SANTACROCE: I have nothing further. Thank you.

THE COURT: Ms. Stanish.

MS. STANISH: I know I'm not going to finish in 15 minutes, Your Honor, but do you want me to start, or just wait until tomorrow?

THE COURT: I guess we can just take our evening recess then.

MS. STANISH: Okay. Sorry, ma'am. You're going to --

THE COURT: You're going to have to --

MS. STANISH: -- be welcomed back.

THE COURT: You're going to have to come back either way.

THE WITNESS: My boss isn't really happy, but that's okay.

THE COURT: What are they going to do.

THE WITNESS: I know.

THE COURT: Their bosses aren't happy.

MS. STANISH: We can take on your boss.

THE COURT: No one's boss is happy.

All right. Ladies and gentlemen, we're going to go ahead and take our evening recess at this point in time. We'll reconvene tomorrow morning at 9:00 a.m.

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 or listen to any reports of or commentaries on this case, any person or subject matter relating to the case. Don't do any independent research by way of the Internet or any other medium, and please don't form or express an opinion on the trial.

Place your notepads in your chairs and follow Kenny out through the rear door.

(Jurors recessed at 4:40 p.m.)

THE COURT: And ma'am, during our evening recess, please don't discuss your testimony with anybody. Okay.

MS. WECKERLY: I missed the time that you said to start tomorrow.

THE COURT: 9:00.

MS. WECKERLY: Okay. We have -- I've told the defense that in addition now to Ms. Drury, we're planning on calling Vince Sagendorf. He's out of state and then going on vacation, so I --

THE COURT: Okay.

MS. WECKERLY: And I'm told he may be an all day witness.

THE COURT: Really?

MR. WRIGHT: Another CRNA.

MS. WECKERLY: So --

THE COURT: Well, the other CRNAs didn't take all

day.

MR. SANTACROCE: Just a day and a half.

THE COURT: It just felt like it.

MS. WECKERLY: I'll have one other nurse kind of for late afternoon that maybe we can call at the lunch break. But based on their representations, I'm having that one witness and Ms. Drury in the morning.

THE COURT: Okay. I will bring -- I had the bailiff feel the -- wrong word, kind of test the waters --

MR. STAUDAHER: We knew what you meant.

THE COURT: Feel around with a juror, not a good word choice, to see if our gal with the Safe Key issue could maybe get other family members to kind of start stepping in so we can start going to 6:00 to get this thing wrapped up. So far no. And then she even complained before we asked her that leaving at 5:10 she was late yesterday, when we ended a little bit later.

So I'm going to see if maybe there's some way we can start having longer days to get this wrapped up. I don't like to start too early, but I'm thinking of maybe starting to start at 8:30.

MR. WRIGHT: That's not -- I'm going to object to that. When we started this, I explained the condition of my client.

THE COURT: And so far we've been working, I think

we --

MR. WRIGHT: Yeah, but now you're talking about changing it. He has not made a doctor's appointment. He has not made a therapy appointment at all during this trial. And he's wearing down.

THE COURT: Okay.

MR. WRIGHT: And I thought we had -- and we've told the jurors our time.

THE COURT: Exactly, 9:00 to 5:00, and we've been observing that. But we've had some late days, some 12:30 days. We've had a couple of early days last week. We had a 3:30 out or 3:45 out. We had a 1:00 o'clock out on Friday. So we've also had some short days.

I mean, here's the thing. As I'm, you know, sitting here, I don't want, you know, we talked about this before, but, you know, I don't want any heart attacks here, myself included. And I'm trying to figure, you know, what's the least stressful thing, to have some longer days to maybe shorten the time, you know.

But so far we've kept it always within the 9:00 to 5:00, and like I said, we had a couple of short days last week. We've had two short days this week, and it's only been a four-day week. So, you know, if we have an occasional day of 8:30 to 6:00 or 9:30 to 6:00, or something like that, I don't -- I'm not suggesting going 12-hour days every single

day.

MR. WRIGHT: Well, I can't do it. I told you what I have to do in working with Dr. Desai. This isn't something where I just go home or something.

THE COURT: No, I understand that.

MR. WRIGHT: Because of his diminished capacity, I work -- I go back and work on the thing with him before working on the case. This is the situation.

THE COURT: Okay. Then we'll stay with 9:00 to 5:00 days or shorter days, which again, we've had, you know, of the last five days, four have been short days. This is -- and this really wasn't even a long day because we didn't start -- the start time was 9:45. By the time they got here it was -- everybody was here, it was 10:00 o'clock.

We took an hour and a half for lunch, which turned out to be longer than an hour and a half because three jurors were late. So within the past five days, we have not had a single full day within the past five days. Because we had, I think Thursday was the 3:45, 3:30 out. Friday was the holiday, that was a 1:00 o'clock out.

MR. STAUDAHER: Monday we weren't here.

THE COURT: Monday we weren't here. Tuesday was a 12:30 start. Wednesday was a 12:30 start. Today was a 9:45 start with an hour and a half taken for lunch.

MR. WRIGHT: We started at 9:00 o'clock Wednesday.

MR. SANTACROCE: Yeah. We had the Petrocelli.

MR. WRIGHT: We had a hearing that went the entire time.

THE COURT: Oh, we did. We did. I'm talking about the jurors.

MR. WRIGHT: And my client's here. This isn't a leisurely pace. I don't know what [inaudible].

MS. STANISH: [Inaudible.]

MS. WECKERLY: I wasn't complaining about the time. I just was saying I was going to have one other witness besides Sagendorf.

THE COURT: I've had it with your lollygagging, Mr. Wright. No, I know it's not a leisurely pace. I'm just -- look, I'm trying to balance, you know, with the jurors as well. I mean, they don't like long days either. But the trial's taking a long time and all I'm --

Okay. So we'll stay with the 9:00 to 5:00, the days. And again, I forgot that we all started at 9:00, but we've had some shorter was my only point. We've had some shorter days and some, you know, a long lunch today, so whatever. All right.

MR. WRIGHT: I appreciate what we've done. I only thought -- I was only objecting if it was moving off.

THE COURT: All right.

MS. WECKERLY: I'll email the name of the nurse. I

think I told you who it is, but...

THE COURT: Okay. So we'll see everybody at 9:00.

MR. SANTACROCE: Your Honor, what are we doing with Ms. Pomikal [phonetic]?

MS. STANISH: Oh, right. Can we get the transcript?

THE COURT: I haven't had a chance to look at it, notwithstanding the leisurely pace. It's on my desk. We'll have copies for everyone tomorrow to look at. We also have Mack Brown kind of hanging in the wind. He's now gone. I wasn't too concerned about him, because he was still on paid days. He's now transitioning into unpaid.

MR. WRIGHT: Has he said anything?

THE COURT: No. He hasn't said anything yet, so.

(Court recessed for the evening at 4:47 p.m.)

CERTIFICATION

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

AFFIRMATION

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

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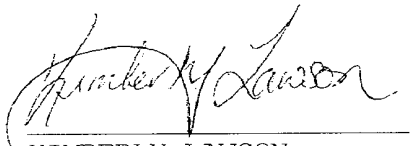

KIMBERLY LAWSON

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 26

FRIDAY, MAY 31, 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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I N D E X

WITNESSES FOR THE STATE:

LAS VEGAS, NEVADA, FRIDAY, MAY 31, 2013, 9:04 A.M.

* * * * *

(Outside the presence of the jury.)

THE COURT: Everyone ready? We're all here now. Where did we leave off?

MS. STANISH: I think I'm up on this -- this is [inaudible] we're ready?

THE COURT: Yeah, you were right.

THE MARSHAL: So you want me to bring them in?

THE COURT: Sure.

THE MARSHAL: All right.

THE COURT: Get the witness.

MS. STANISH: I'm sorry?

THE COURT: You can get the witness.

MS. STANISH: Oh, okay.

THE MARSHAL: Ladies and gentlemen, please rise for the presence of the jury.

(Jury entering at 9:07 a.m.)

THE MARSHAL: Thanks, everybody. You may be seated.

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 defendants and their counsel, the officers of the court and the ladies and gentlemen of the jury.

And, ma'am, you are still under oath; you understand

that?

THE WITNESS: Yes, ma'am. I do.

THE COURT: All right. Ms. Stanish, you may begin your cross-examination.

MS. STANISH: Thank you, Your Honor.

JANINE DRURY, STATE'S WITNESS, PREVIOUSLY SWORN

CROSS-EXAMINATION

BY MS. STANISH:

Q Good morning.

A Good morning.

Q My name is Margaret Stanish, and I represent Dr. Desai. First, before I butcher your last name, could you tell me how to pronounce it?

A Drury. Like jury with a D.

Q Drury, now I got it. Thank you. I need that. Thank you.

I wanted to start off with an interesting comment that you made during your direct exam. That I understand you fare from the great commonwealth of Louisiana? That's a commonwealth?

A It's not a ---

Q A state?

A -- commonwealth, but I don't know what we would call it.

Q Don't know what it is, it's just different. But

was less than that, we were called to receive our distribution checks. The process prior to that or the process of how that sum became to fruition, we were not aware of that process, at least I wasn't aware of that process.

Q What about if for some reason you didn't see eye to eye with Dr. Desai and you had to leave, you wanted to quit, how would that work?

A How would that work if I wanted to quit the practice?

Q Let's just say you wanted to quit the practice, I'm done, I don't like what's going on, whatever.

A I would basically ask for a meeting to sit down with him and discuss that need.

Q Now, I notice where it goes down to article six here, do you see that?

A Yes.

Q It says covenant not to complete. Do you see that?

A Yes.

Q What did that mean?

A If we were to leave the practice, we were restricted as of where can we practice immediately after leaving the operations. We would be restricted. I believe there is a mile radius that we were not allowed to practice within a particular set time.

Q Okay. So right, I'm just going to point to it and direct you, it says that you wouldn't essentially compete for three years?

A Right.

Q And if you come down here, within a 25-mile radius of the location.

A That is correct.

Q That's Shadow Lane, correct?

A Uh-huh.

Q So 25-mile radius of Shadow Lane. Is there any portion of Las Vegas that that would not include?

A It would have to be in the outskirts pretty much, perhaps Henderson, Boulder City, places like that.

Q Okay. So at least not Las Vegas proper, correct?

A Correct.

Q And for a period of three years?

A Correct.

Q Was there any issue with that and you and feeling like you couldn't leave if you needed to?

A No. I kind of realized from the very beginning that if I wanted to leave I'd basically have to leave town.

Q That's what I was getting at. Did you feel that you could practice here anywhere based on that non-compete clause if you got sideways with Desai?

A I had seeked advice regarding that possibility when I read the contract. The advice that I received was that you can always challenge it that in court because that's considered not necessarily legal in certain states. So you want to spend the money to take it to court, you're welcome to do that. You might be able to win it.

Q But you felt that at least if you abided by this that you couldn't practice anywhere in town?

A Right.

MR. SANTACROCE: Your Honor, I'm going to object to the whole relevance of this covenant not to compete. Move to strike that part of that testimony.

THE COURT: It's overruled on the relevance ground, but you were getting a little leading there, Mr. Staudaher.

BY MR. STAUDAHER:

Q I'm showing you this page, which is page eight. And I know there's a number of different sections to this, but it's page eight in this. It's a signature page. Do you see that?

A Yes.

Q Do you see your signature anywhere on that page?

A Yes, I do.

Q And you can draw -- we don't necessarily need this for the whole time, but you can draw with your fingernail. Just clear it down here if you need to clear it.

A Okay.

Q Can you show us where your signature is?

A (Witness complies.)

Q And is that, in fact, your signature?

A It is my signature.

Q So in signing this agreement, did you agree to all those things we talked about?

A Correct.

Q You can clear that if you would, please. And the next page, which is entitled action by written consent of the operations manager. The operations manager was different than managing partner; is that correct?

A I can't say that I understand the difference.

Q Okay. I mean, what was your -- beside Dr. Desai and him being the managing partner, did you understand the terms operation manager, anything like that within the practice, what they did, what they didn't do, who answered to whom in that regard?

A Not in a full extent.

Q But I see that on this you're also listed here, are you not?

A Yes, I am.

Q And you said that you didn't know what percentage or whatever you had before, but I see it says at least here, you see a number of shares.

A Correct.

Q What does that mean?

A At the point of distribution it will be the number, the equivalent number of the total amount that I will get distributed.

Q So you have 11 and various other people have 17, eight and Dr. Desai, looks like he has 36 and three-sevenths.

A Correct.

Q Do you see that? Now, were you aware that if other -- you mentioned that when you started there were around five, I think?

A Correct, five or six.

Q By the time you got to the end it was how many?

A I believe there was 11 to 12.

Q When new people came in, new doctors, what would happen to the value of your shares?

A We would be asked to surrender some of the shares that we have in order to distribute to the new members.

Q What about Dr. Desai, did he surrender any shares?

A Not that I remember.

Q So he kept his shares intact and the rest of you had to essentially dilute yours, surrender them?

A Correct.

Q And I saw that there were various partners who

wrote checks in here and I just didn't -- and there's one here listed for you. Do you see that?

A Yes.

Q The amount, can you read that?

A $45,000.

Q What was this for?

A That was actually the purchase of the shares to be part of the endoscopy center.

Q For those 11 shares?

A Correct.

MR. SANTACROCE: Objection. Misstates the testimony. I think it was 11 shares or 11 percent.

MR. STAUDAHER: It said 11 shares.

THE WITNESS: It says 11 shares on the contract.

BY MR. STAUDAHER:

Q We'll go back to it just so we're clear. Right here, does it say number of shares, 11?

A Yes.

Q Okay. Is that your understanding of what your -- what you had?

A Correct.

Q That 45,000, was that to purchase those 11 shares?

A That is correct.

Q So what did that entitle you to as far as like

do you get -- does it translate into percentages?

A I can't recall precisely, but I believe it equals to 11 percent.

Q Now, there were different clinics and endoscopy centers, correct?

A Correct.

Q Did that mean that you got 11 percent if that's what it translated to for all the different clinics, the endoscopy centers, the gastroenterology centers or was it just one or two or three of those?

A No. That was just only for the Endoscopy Center Two, which was the one located at Burnham Avenue.

Q Okay.

A So there were revenues proceeding from that facility.

Q What about revenues that came from Shadow Lane or from one of the gastroenterology centers?

A I was not entitled to that.

Q So just that one little slice; is that right?

A Correct.

THE COURT: In order to get revenues, did you have to work a certain number of hours or certain amount?

THE WITNESS: No. The workload was distributed pretty equally in terms of hospital assignments and number of patients that we will see at the clinics. Periodically, on

the partners meeting we will have statistics presented in terms of who's see what number of patients and what have you to try to keep things even.

THE COURT: Who's doing what. Okay. Go on, Mr. Staudaher.

BY MR. STAUDAHER:

Q Remember, I asked you a moment ago about if Desai inserted himself just beyond the main things, down to even something as -- well, as lower level, sort of administration as a scheduling issue?

MS. STANISH: Objection.

THE COURT: I'm sorry, I --

MS. STANISH: I object, Your Honor. Basically testifying again. Reading.

THE COURT: State your question.

MR. STAUDAHER: I'll rephrase it.

BY MR. STAUDAHER:

Q You said Dr. Desai was the managing partner, made the big decisions, right?

A Correct.

Q I think I asked you if he made lesser decisions as well.

A Correct.

Q How far down he inserted him into the management of the practice.

A How far down would I --

Q How far down did he do it? I asked you about scheduling and things like that and you said that he did.

A I think that he was pretty much involved with all aspects, all the way down to scheduling.

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

THE COURT: You may.

BY MR. STAUDAHER:

Q I'm just going to show you three -- because these relate to you. Take a look at those and see if you remember not receiving them but any communication about such items that are depicted there.

A Yeah, I do have some vague recollection of seeing some of these documents.

Q Okay. Again, just for the record, we're looking at 99, 100, 101 also admitted by stipulation. Can you tell us what these refer to?

A Those are memos going back and forth between Tonya Rushing and some of the local office managers regarding preferences on the schedule, what times I preferred to see patients or do patients and which facility at.

Q Just showing you 99 first. This actually appears it's from Dr. Desai, managing partner, correct?

A Correct.

Q Does it discuss in the very first paragraph

something about you?

A Yes.

Q And what's the issue there? What's the -- what's going on?

A Basically, I have expressed that I wanted to do my own patients and the days that I wanted to do them.

Q So he, at least, was involved at that level with scheduling and working with physicians to adjust their schedules?

A Correct.

Q Is it similar for the next one which also appears to be -- and this is 101, which appears to be from, also from Dr. Desai here?

A Yes.

Q And in this one, it looks like the very first part is where it talks about you primarily; is that correct?

A Correct.

Q And what's that about? Same thing?

A This is the same. Basically, me requesting to see patients at a particular facility.

Q And the last one it looks as though it's -- it's about you again. It says per Dr. Desai. Do you see that?

A Correct.

Q And it's specifically talking about scheduling. What's this about?

A This is basically an assignment of the times that I will be doing cases or endoscopies.

Q It doesn't just talk about time, does it? It talks about numbers.

A The numbers, uh-huh.

Q So when you will start through a certain period and how many procedures you will do?

A Correct.

Q And then down here there's a handwritten reference. And it looks like there's been communication with you about this. Do you recall that?

A Yes.

Q What was that about?

A Basically, one of the local office managers stating that I have requested for the Shadow Lane office to know what my change in schedule were.

Q Does it appear as though you were communicated with?

A Correct.

Q Do you recall that at all or something similar to that?

A Vaguely.

Q Does it sound familiar?

A It sounds familiar.

Q Now, a couple of things. During procedures when

you -- and you did endoscopy procedures, correct, upper endoscopies and colonoscopies?

A Yes.

Q During the procedures, how involved are you with staff inside the room, CRNAs, nurses, GI techs?

A I can give you sort of like the routine. Basically, walk in the room, greet the patient, confirm this is the right patient and the procedure that we're doing. Then I will direct the nurse anesthetist to initiate the induction. And thereafter, my communication was mostly with the endoscopy technician who's handing me equipment so I can complete the procedure.

Once I finish the procedure I basically go to a computer station to generate report of what I just did. So my interaction will be with the nurse anesthetist asking to begin the anesthesia and the technician in the room. Limited interaction with the nursing staff or anybody else in the room.

Q Were you aware that you were essentially the de facto supervisor for the CRNA?

A Yes. There is such a thing as once you walk into the operating room you're the captain of the ship. So basically, everybody's your responsibility.

Q Did you feel as though -- I mean, were you aware at least that you were a supervisor of the CRNAs' activities

other than just you being generally in charge when you walked in the room?

A To an extent, yes. That is subject to interpretation in my opinion.

Q Well, what is your interpretation of it at the time anyway?

A We're basically asking them to initiate the anesthesia. The actual process of how they dose the medications or how do they use the vials and syringes, you would expect these people to be trained for that procedure. So you're not necessarily overlooking to every single step that they take. My responsibility, my main responsibility during a procedure is the patient's life in front of me. I need to be attentive and paying attention to what's happening during the procedure with that patient.

Q Did you ever start procedures on patients before anesthetic was on board?

A No.

Q Did you ever direct the anesthetist to not give additional medication if the patient started to wake up before you were done?

A No.

Q Do you think that would be appropriate to do?

A No.

Q As far as your direct involvement with the CRNA,

and you know who I'm talking about, the person who does the anesthetic, correct?

A Yes.

Q Did you ever direct their activities in any way when you were in the room other than to say go ahead and put them to sleep?

A No.

Q Did you feel comfortable jumping around the screen, so to speak, and doing that particular work?

A No.

Q Have you ever been trained in anesthesia or anesthetic practice in any way?

A We're trained on conscious sedation, but not specifically with the type of anesthesia that CRNAs do.

Q And this is not conscious sedation what these people are going through. They're actually unconscious at some point.

A It's deep sedation is the actual term that we use.

Q Now, related to that, did you ever at any point order anybody to minimize the use of supplies or re-use supplies, anything like that?

A No.

Q I'm talking -- when I say supplies, I'm talking about anything from the drug propofol to an alcohol pad, four

by four, K-Y Jelly, anything like that.

A No.

Q Were you aware, did you have any knowledge of any orders out there in the practice to economize supplies?

A Yes. There will be times that we'll talk about how to make the practice more efficient, more effective. It is a business, so part of the business is looking at how we spend the money for the practice.

Q So are these at the partner meetings?

A Yes.

Q Who ran the partner meetings?

A Dr. Desai.

Q Would it be suggested, agreed to, voted on as to how this was supposed to take place?

A There is no process. Like I said, there is no voting. The recommendations would be presented by Dr. Desai and, of course, if somebody had a problem with it or if there was any objections, that person will voice it.

Q How did the dynamic go? Were you ever present when anybody stood up to him and said no, we're not doing that, I'm not going to be party to any of that?

MR. SANTACROCE: I'm going to object as to leading.

THE COURT: Overruled.

MR. STAUDAHER: It doesn't suggest the answer.

THE COURT: I said overruled, Mr. Staudaher.

MR. STAUDAHER: Sorry, Your Honor.

THE COURT: You can answer.

THE WITNESS: Can you please rephrase it or state it again?

BY MR. STAUDAHER:

Q When you were in the meetings, did anybody ever stand up to Dr. Desai about anything he was saying he wanted to have done in the practice?

A Sure.

Q Okay. How did that go?

A I have personally done it a couple of times. There would be situations in which I do recall there was one manufacturer that was suggesting that we could re-use snares or biopsy devices for polypectomies. And I had voiced that I was uncomfortable with that, that I would like to see the literature and that I wasn't going to do it.

Q What was his response?

A I can't recall the exact response, but basically he will respect my opinion and I will look into it.

Q Okay. So that's you. Are there other doctors around at this same time?

A Sure.

Q So he's told you what he wants you to do, you say I'm not doing it until I do more work.

A Correct.

Q Anybody else say anything?

A It will be others agreeing to that opinion, yes.

Q Did he say okay, let's table this and not introduce any -- do it until we have a better consensus or something along those lines?

A Yeah. Don't recall the exact verbiage on the conversation, but if there is objections to a particular procedure, he will recant and will be subject to further discussion.

Q What about propofol?

A What about it?

Q Was there any discussion about economizing propofol use?

A There have been discussions in regards to the way that the propofol was supplied. Some of the manufacturer companies basically allowing for larger vials so you can actually use it on multiple patients. And also discussions in terms of how would be that accomplished safely without jeopardizing the patient care.

Q So this is an actual discussion that's going on with Dr. Desai and the other doctors?

A Yes, it have. I can't remember the exact meeting, but I remember that when the first review from the health district came through, we talked about the fact that they have recommended we needed to stop purchasing those large

vials and go to single-dose vials because of the risk of cross-contamination. And the arguing came upon that yes, there is a risk but there is a very legitimate safe way to use these large vials on multiple patients.

Q So let's -- I want to go back before the health district gets involved and ask you about that. So was there a discussion before the health district came in about using larger vials in a multiple patient setting?

A Yes.

Q Describe for me what the discussion was at the time about that. And you mentioned also on how that would be implemented. So tell me about that as well.

A Right. You could, again, the discussion was in the sense that it will save money when you actually have a large vial as opposed to multiple single vials. It also save resources. And the conversation was in the sense of how can that be accomplished safely and we all know from medical school that that can be done. Basically, if you have a large vial, as long as you withdraw from that vial with a new set of needles and syringes, that vial will never be contaminated or cross-contaminated. But it always has to be used with a new syringe and needle. So long as that was the policy and the procedures followed, we were comfortable with that.

Q So who's coming up with this in the meeting? Where did this come from?

A I can't recall the details of that particular meeting on who actually came up with it.

Q Were there any written policies, to your knowledge, to that regard?

A There was written policies, yes.

Q And the written policies said what, exactly?

A I do not recall.

Q Is it essentially what you talked about, that if you have a larger vial you're going to use it in a multiple patient setting that you can only enter it with a clean, unused syringe and needle?

A Correct.

Q To withdraw the medication?

A Yes.

Q Was there any discussion about, you know, it's okay to just change the needle out. If you take it out -- and here's the scenario. Clean needle syringe going into the propofol bottle, putting that needle syringe into a patient through the hep-lock, administering medication through that hep-lock, administering medication, then taking that syringe which has been in contact with the patient, and either directly going back into the bottle or removing the needle, putting on a new needle on the same syringe and going back into the bottle?

A No, that would be asking for trouble.

Q Why?

A Subject to human error. You may not be paying attention how the needle was taken off from the syringe and end up inserting a syringe and it's actually contaminated into the vial and using it in another patient.

Q Now, propofol itself, is that a long, short-acting agent?

A A short-acting agent.

Q During a procedure, typical procedure, would there -- with you being there, you seeing this take place, would it be required that a patient undergo multiple doses throughout the procedure?

A Yes.

Q Would there be the requirement to go -- you know the syringes where these 10 cc syringes, correct?

A Correct.

Q Would it be required that more than one syringe be used on a patient?

A Yes.

Q How many syringes in your estimate, based on your own personal experience, would be used on a patient or would necessarily need to be used?

A Probably average about four.

Q So four different syringes per patient is what we're talking about?

A Correct.

Q If you were going to do it in the way you described?

A I'm sorry, I take that back. That will be in a colonoscopy which takes longer. For an endoscopy it would probably be less than that, maybe one or two at the most.

Q Fair enough. And what was the length of procedure time that we're talking about?

A It depends on the procedure, but endoscopy can be anywhere from two to five minutes. And a colonoscopy can last anywhere from 10 minutes to half hour.

Q Okay. On average, though, how long do the colonoscopies last?

A About 10 minutes.

Q So the half hour was kind of an outlier then as far as time?

A Yes.

Q Do you recall interviewing with the police at some point?

A Yes.

Q Do you recall when I asked you about where this came from about economizing propofol and do you recall talking to them and telling them who you thought told you about this?

A Yes.

Q Who was it?

A Who was the --

Q Person who told you about this economizing of propofol.

A At the time it could have been from Clifford Carrol, could have been from one of the nurse managers in the facility. I can't recall exactly who would have initiated that conversation.

MR. STAUDAHER: May I approach, Your Honor?

THE COURT: You may.

MR. STAUDAHER: And Page 29 for counsel.

BY MR. STAUDAHER:

Q You can read as much before and after for context as you can. Go ahead and read this section and tell me if that refreshes your memory.

A Are you talking about the one that is in asterisk or the whole page?

Q Just read as much of that as you need to to refresh your memory. I'm going to ask you about 32, so you might as well just look at that as well.

A Page 32? Okay.

Q Does that refresh your memory on who was the one who directed you about the use of propofol?

A Yes.

Q Who was it?

A Dr. Desai.

Q You didn't mention anybody else, you mentioned Dr. Desai, correct?

A Correct.

Q And also, with regard to questions that were asked of you about who made the decisions, who did you say made all of the decisions and created all of the policies?

A Dr. Desai.

Q One last thing related to that was Dr. Desai, you remember in that discussion saying that Dr. Desai was the one who decided he was going to buy multiple-use vials of propofol?

A Correct.

Q Basically told you that that's the way it was going to be.

A Right.

Q Now, I asked you before, I gave you the scenario of how, you know, re-use of the propofol, if you had one syringe, let's just say and you were going back into the bottle with that same patient, would you ever see a legitimate or even a possible way of using that bottle then on a new patient?

A No. I would discourage that.

Q And why?

A Because of the risk of cross-contamination.

Q Did anybody ever discuss that in any of these

meetings with Dr. Desai about well, you know, you've got to make sure that it's clean needle, clean syringe every single time if you're going to use it for the next patient?

A Yes, we have.

Q And during that discussion, was there discussion about the risk that might be involved if, in fact, you didn't follow that procedure?

A Yes.

Q Was everybody speaking English at the time? Did anybody not understand that?

A Everybody was speaking in English and I think everybody understood.

Q If you were aware that a patient came in that had Hepatitis C, Hepatitis B, HIV, some communicable disease, a patient you're going to do a procedure on, do you treat those patients any differently?

A No.

Q Do you take any extra precautions?

A No.

Q Is there any issue about when they get scheduled? If you have a Hepatitis C or HIV positive patient and you schedule them at the beginning, middle or end of the schedule, does it matter?

A No.

Q And why not?

A If you follow standard procedures, all the patients are treated the same way, there's no risk of cross-contamination, hence, everything will be safe.

Q Okay. Are there breaches?

A Are there breaches?

Q Breaches in -- what are those procedures, those standard procedures called?

A I'm not sure that I understand the question.

Q Have you ever heard the term universal safety precautions?

A Yes.

Q Is that what we're talking about?

A Yes.

Q So if you follow those there should be no problem?

A Right.

Q Do the universal safety precautions ever contemplate the scenario I gave you before of re-use of say a bottle of propofol on one patient and then that bottle going and being used on another patient?

A Not that I'm aware of.

Q Would that alarm you if someone, a CRNA did that on a patient that you were dealing with?

A Yes.

Q Now, with regard to the universal safety

precautions, going back to what I asked you about, are there sometimes breakdowns in how patients are handled or how things are taken care?

A Not that I'm aware of.

Q There's never a time when there's a breakdown on that?

A Not that I'm aware of.

Q Okay. What about the re-use of other items besides propofol? You mentioned snares. You said you wouldn't do that.

A Right.

Q What about biopsy forceps, were those okay to be reused?

A No.

Q What about bite blocks?

A Yes.

Q Okay. Tell me about that.

A There's a safe way to use these blocks in multiple patients. In fact, the manufacturer expects the bite locks to be used in multiple patients. As long as you follow a very strict process for cleaning them between patients, which is the same process that the scopes go through, it will be safe and without risk of cross-contamination.

Q Okay. Are you saying that you think it's okay to take a scope that's been in somebody's bottom, put it in

the same, put the bite block in sort of the same cleaning process as that scope?

A That is correct.

Q Okay. And you think that the bite blocks themselves are labeled or the manufacturers are okay with that happening?

A Yes.

Q Any discussion on how much those things actually cost?

A No.

Q Do you know?

A I do not know.

Q And you think they're reusable?

A Yes.

Q Any other things like that that you think are reusable, besides the bite blocks. You said snares and biopsy forceps, no, correct?

A Correct.

Q Anything else besides the scopes, obviously. You process those.

A That's it.

Q What about -- you know there's a -- when you do the procedures there is a large 60 cc syringe that gets used.

A Correct.

Q Have you ever known a plastic type syringe t be

multiple use syringe?

A No.

Q Is it pretty clear, universally, that those are just disposable?

A Correct.

Q Would you ever think that it was reasonable to reuse that large irrigation syringe on a new patient?

A Absolutely not.

Q What about the basin and the bowl that they pull the fluids out and gets irrigated into it?

A No.

Q And that contains, at least at some point, even with a patient that has good, a good prep, some fecal material gets on and in those types of things.

A It could.

Q To your knowledge, did you know that any kind of reuse was going on with that item?

A Not that I'm aware of or that I was aware of.

Q At the end of a procedure for you, how do you withdraw the scope? Regardless of how long it takes you, when you get to the end, how do you take it out?

A The actual withdrawal process is where you do most of the inspections. So you very gently and carefully remove the scope from the patient's body.

Q Do you ever just yank it out?

A No.

Q Why not?

A Again, that's the most important part of the procedure, the actual withdrawal time in which you're looking for any abnormalities through the colon. So there's absolutely no reason to just pull it out. Besides the fact that by yanking it out, as you said, you can actually harm the patient.

Q So that would put the patient at risk?

A Sure.

Q When you do the procedures, you said that you really look, the withdrawal time is the most important?

A Correct.

Q Do you ever use anything like air to blow up the colon a little bit so you can see better?

A Yes.

Q And we talked about irrigation. Do you also irrigate?

A Yes.

Q At the end of the procedure or as you're withdrawing, what do you do about all that air and that fluid that's inside the colon?

A Once you get to the rectum, you try to withdraw as much air as you can to allow for the patient to become more comfortable.

Q So if you just yank the scope out for want of a better word and left all that in there, what would be the result?

A The patient will be uncomfortable when they wake up.

Q And about how much fluid would you introduce into the colon during a procedure like that, on withdrawal?

A It varies. It can be none to probably a liter or more.

Q So it could be a fair amount of fluid?

A Substantial.

Q The air itself, would that just cause the patient to have discomfort?

A Correct.

Q How long would that typically last? If you didn't take any of it out and just took the scope out, didn't suck out all the air, suck out all the fluid and the like?

A It varies, but once the anesthesia wear and they're able to pass the gas on their own, that discomfort should subside.

Q Would that be at least a period of time then?

A Anywhere from two to five minutes, perhaps.

Q So you think that that would happen before they left the facility?

A Correct.

Q Did you ever feel at any time during the course -- and you worked primarily where again, at Burnham?

A My main office was in Horizon Ridge and the procedures I did at the Burnham facility.

Q Did you ever do endoscopies at the Shadow Lane facility?

A I have.

Q Was there any difference in your experience at the Shadow Lane facility versus the Burnham facility as far as patient numbers, the way things were done, the atmosphere, that kind of thing?

A I don't have a good way to compare it. I worked out of the Shadow Lane facility when I first came into town in '98 to 2000, perhaps. It was a smaller facility. It was just one endoscopy room. At the time, the Burnham facility wasn't available.

Q But the times that you did work at Shadow Lane, was there any difference?

A In terms of?

Q Just well, the speed of the procedures, the number of procedures and so forth, compared to when you worked at Burnham?

A Everybody had their own speeds so I will take my time, do my procedure and move on. Other individuals might be faster than me.

Q Did you ever hear any grumbling about how things were at Shadow Lane versus --

A Yes.

MS. STANISH: Objection. Hearsay.

MR. STAUDAHER: I'm just asking -- not asking what was said, Your Honor.

THE COURT: He just said yes.

BY MR. STAUDAHER:

Q So you did hear issues?

A Yes.

THE COURT: That may be hearsay, depending on what he heard and who he heard it from.

BY MR. STAUDAHER:

Q Did you ever confront Desai about anything like that, anything you heard?

A No. We didn't really have a, I would say, a personal relationship to confront about these things. It will be brought up in partners meetings. If there was some concerns, that would be the time to voice them.

Q Well, did it happen? I mean, he's there at the partners meeting, correct?

A Yes.

Q Concerns about what we just discussed come up?

A Yes.

Q And I'm talking about differences or things that

are happening at Shadow Lane.

A Yes.

Q Since he's there, what kinds of things came up at the partners meetings regarding that?

A The volume of the patient load. It was considered excessive by most of the staff and there was a lot of rumbling, complaints by the staff about the pace of the procedures and the pace of the day.

Q So Desai got confronted with that?

A Yes.

Q And what was his response?

A I do not recall.

Q Were you surprised at his response?

A Do not recall.

MR. STAUDAHER: Nothing further, Your Honor.

THE COURT: All right. Cross.

MS. STANISH: Your Honor, may we approach?

THE COURT: Sure.

(Off-record bench conference.)

THE COURT: All right, Mr. Santacroce, why don't you begin your cross-examination.

CROSS-EXAMINATION

BY MR. SANTACROCE:

Q Good afternoon, Dr. Herrero.

A Good afternoon.

Q I'm Frederick Santacroce. I represent Ron Lakeman. Do you know Mr. Lakeman?

A I do.

Q How do you know him?

A He was one of the nurse anesthetists working for the endoscopy centers at a time.

Q Have you performed procedures with him?

A Probably have.

Q At which center?

A Probably at the Burnham facility.

Q Do you recall, have an independent recollection of working with him?

A Vaguely. Ron was mostly at the Shadow Lane facility, so I don't recall working with him with any frequency.

Q But you had opportunity to observe his procedures and practices?

A Sure.

Q Did his procedures and practices comport with reasonably medically safe practices?

A Of course.

Q Yes?

A Yes.

Q You came to Las Vegas in 1998, correct?

A Correct.

Q And you became part of gastroenterology clinic. Did you obtain a partnership at that time, in 1998?

A No.

Q So you went to work for a salary?

A Correct.

Q And then when did you first get your partnership interest?

A Three years after being part of the practice.

Q Is that the check we saw for 45,000?

A Is your question --

Q I'm sorry. Was that the check we saw for 45,000 that you had written, did that purchase those share?

A No, sir, that's for something different.

Q What was that for?

A That's for the shares at the Endoscopy Center Two.

Q Okay. Did you obtain interest -- tell me, what's Endoscopy Center Two?

A There was two endoscopy facilities, one on Shadow Lane, one on Burnham Avenue. And the Endoscopy Center Two was the one on Burnham.

Q Did you ever have any interest in the Shadow Lane center?

A Yes, I did.

Q When was that?

A Don't recall specifically the dates, but probably in the mid 2000s.

Q You purchased shares in that?

A Yes.

Q And how much did you pay for those shares?

A I do not recall.

Q Did you eventually sell those shares?

A I was asked to sell them.

Q Do you recall how much you got for those shares?

A Do not recall.

Q I'm going to show you this State's Exhibit 97 again. Do you remember testifying regarding the hierarchy of the partnership structure? Do you recall that testimony?

A Yes.

Q The managing partner was Dipak Desai and under him were staff physicians and partnership physicians. What's the distinction between partnership physicians and staff physicians?

A Staff physicians are basically employees. They get a base salary. And the partnership physicians are the ones that share the net income of the practice.

Q And you were in the partnership physicians category?

A From 2001 on.

Q Until it closed in '08.

A Right.

Q And what was your responsibility as a partnership physician?

A Patient care on a daily basis, taking care of patients in the offices, at the endoscopy centers and in the hospitals.

Q And you see under partnership physicians, the chief operating officer falls, Tonya Rushing, correct?

A Yes.

Q And I guess she is under both staff physicians and partnership physicians, correct?

A Yes.

Q Did you have any interaction with Ms. Rushing?

A Yes.

Q What -- can you tell me the nature of that?

A She will be the person that we will go to whenever we had issues, concerns or suggestions about the operations of our individual practices.

Q Can you give me some specific examples, what would that be?

A Whenever we needed new staff, medical assistance to room patients, we needed a blood pressure cuff at a facility, we needed new pans or pads or whatever we needed for the facilities to work.

Q Would she be the one that would do the hiring of

extra staff, if needed?

A At the offices, yes. I'm not too sure that she was in charge of the endoscopy centers.

Q And she would be in charge of both number two and Shadow Lane, correct?

A Right.

Q And in Henderson?

A Yes.

Q Who would hire the CRNAs, do you know?

A I don't know for sure.

Q You were never involved in the hiring of any CRNAs?

A I was not.

Q Were you involved in any of the hiring practices?

A Never.

Q You talked about being captain of the ship. What does that mean, being captain of the ship?

A For billing purposes, particularly through federal government and Medicare, in order to bill for a procedure there has to be a physician responsible for that patient. There has to be a diagnostic code associated to the actual procedure. Hence, that physician is in the documents in charge of everything that happens in the operating room. Again, for billing purposes.

Q So you would be essentially responsible for all the billing that went on in that procedure room for that procedure?

A No.

Q Okay. Where am I mistaken?

A The billing actually takes place after the procedure is completed. All we do is provide codes. It goes to the billers and then the billers take care of the billing.

Q And you would provide a code for your services?

A Correct.

Q And for the anesthesia services?

A No.

Q Who would do that?

A I do not know.

Q Would the billings appear on both of the same billing sheet?

A No. When we actually finished the procedure, the procedure actually generates what is called the CPT code. Only refers to the fact that I did a colonoscopy or an endoscopy. Doesn't have anything to do with anesthesia.

Q And is that computer generated?

A Right.

Q You talked about an anesthesia fund, a CRA fund; is that correct?

A I didn't talk about it. He mentioned it.

Q Okay. You answered a question about it, right?
A Right.
Q All right. He mentioned it, you answered the question. There was a CRNA fund, correct?
A Correct.
Q And that CRNA fund was actually the proceeds received from the anesthesia billing system; is that correct?
A Right.
Q And that CRNA fund was distributed monthly, correct?
A I do not recall. I think it was less than monthly. Perhaps every two to three months.
Q Okay. That CRNA fund was never distributed to the CRNAs, was it?
A Not that I'm aware of.
Q It was distributed to the physicians, correct?
A Not directly.
Q Okay. Tell me the indirect path that it took.
A We, at least I wasn't aware of how these funds will get distributed. I'm not a businessman, I don't care for business. But the only thing that we would see is a check or a distribution that includes whatever collection they have from the anesthesia, reimbursements and from the facility fees and from the professional fees. So basically, it's a global total that gets divided among the partners at the end of the

two months or three months period.

Q Okay. So that fund, the anesthesia fund, all the money collected for the anesthesia, would be part of that global sort of fund, correct?

A Correct.

Q And it would be made up of three facets?

A Correct.

Q CRNA fund.

A Facility fee and professional fee.

Q And what is professional fee?

A That's my part of the procedure. That's me performing the procedure.

Q So all of you doctors would pool that money and divide it?

A Correct.

Q So the money, all those monies from those different entities, what the physician were, what the anesthesia was charged and facility fees, all put into a big pot and distributed pro rata based on your shares, correct?

A Correct.

Q And can you give me an idea of what you made in let's say 2007 out of that?

A Do not recall.

Q Would it be over a million dollars?

A No.

Q Over 500,000?

A No.

Q How much?

A Probably less than a hundred.

Q Okay. So is it your testimony that you received only $100,000 for 2007, the work you performed at the endoscopy center?

A I do not recall the exact number, but it was probably somewhere around that number.

Q Are you aware of what the other doctors received?

A We did not encourage that type of conversation.

Q That wasn't what I asked you. I said are you aware --

A I'm not aware.

Q Okay. Would it surprise you to know that, for example, Clifford Carrol possibly made near almost two million dollars?

A That won't surprise me.

Q Would it surprise you that possibly Eladio Carrera made over a million dollars?

A That won't surprise me.

Q I want to go back to the responsibility that you have as a physician in the procedure room. You're basically in charge of that procedure room, correct?

A Correct.

Q There's a doctor, there's a CRNA, there's a tech and there's a nurse, correct?

A Correct.

Q You have an opportunity to watch all of these people work?

A Sure.

Q If there was some gross negligence you would call them on it?

A Absolutely.

Q For example, if the tech gave you a dirty scope, you'd call him on it?

A Absolutely.

Q If the CRNA employed unsafe practices you would call him on it?

A Absolutely.

Q If the nurse did something that was against what you know to be medically safe, you would call them on it?

A Yes.

Q And the buck stops with you, I guess, doesn't it?

A Sort of, yes.

Q Now, on these particular incident dates on July 25th, 2007 and September 21st, 2007, you weren't involved in any of the procedures at the clinic, correct?

A No.

Q Therefore, I guess you weren't charged criminally with anything, correct?

A No.

Q Were you aware of any improper billing practices at the clinic?

A No.

Q You would agree, however, that you did receive money from these billing practices, correct?

A Yes.

Q You weren't charged in any way with any kind of fraud to insurance companies, were you?

A No.

Q You weren't charged in any way with any kind of theft from insurance companies, were you?

A No.

Q You didn't lose your medical license over this, did you?

A No.

Q Still practicing?

A Yes.

Q Where are you practicing?

A Henderson.

Q In another type of clinic setting?

A I have my own office.

Q So you perform colonoscopies and endoscopies where, at hospitals?

A Hospitals and a surgical center.

THE COURT: Do you have any physician partners now or is it just you?

THE WITNESS: I do. One.

THE COURT: So you're in a group or there's one other.

MR. SANTACROCE: Court's indulgence.

BY MR. SANTACROCE:

Q You testified as to the procedures when you -- let me ask you what the procedure was when you actually went into a procedure room. Was the patient there waiting for you?

A Yes.

Q Did you see the patient prior to entering the procedure room?

A Yes.

Q Did you do a history and a physical on the patient?

A A quick assessment prior to it, yes.

Q Tell me what a quick assessment is.

A Ask them a few questions and confirm the reason why they're there for.

Q And what questions would you ask?

A What's the reason why they're there, what kind

of symptoms we're addressing, do they have any questions about the procedure itself.

Q Would you fill out a form for that?

A Yes.

Q And that would be part of the patient's file?

A Correct.

Q Would you sign that form?

A Yes.

Q And then, what happens after that?

A I ask the anesthesiologist to begin induction and I start my procedure.

Q So in your experience and practice, which includes working with Mr. Lakeman, correct, you would also instruct the anesthetist, the CRNA to induce the patient, correct?

A Correct.

Q The anesthetist wouldn't do that prior to you coming into the room, would they?

A No.

Q You mentioned that being a partner in the business it was a business, correct?

A Right.

Q And as any good business, you would have discussions about cost saving measures, correct?

A Yes.

Q And was that an open and free flowing discussion?

A No.

Q Okay. Tell me why not.

A There was, like I said before, there was no real process. There will be recommendations coming down from Dr. Desai as of the things that we could do to improve the profits of the practice.

Q And you would give suggestions and input?

A Correct.

Q Other doctors would do the same?

A Yes.

Q And then, I guess, there would be some decision making process regarding those suggestions.

A Right.

Q You mentioned about the reuse of equipment, that you could reuse snares, correct?

A No.

Q What did you say?

A I said it has been suggested by the manufacturers that perhaps you could reuse those snares with appropriate cleansing procedures. But I was uncomfortable with it.

Q Okay. So manufacturers of the snare suggested you could do that.

A Yes.

Q You did mention that you could reuse certain other items, correct?

A Right.

Q Biopsy forceps?

A No. The bite blocks.

Q Okay. Bite blocks. And that would have to comply with a certain cleaning process, correct?

A Correct.

Q But they could be reused?

A Yes.

Q And what other things could be reused?

A The scopes. That's about it.

Q Okay. And tell me about the scopes. Tell me what they look like, how they're cleaned.

A A scope is basically a long hose that has channels within the hose through which we insert instruments to perform different procedures during the endoscopy. And once the procedure is completed, they get taken by the technician to a cleaning room in which they receive both mechanical and chemical cleansing.

Q Have you watched that process?

A I have.

Q There's been some testimony here in this court that some of the scopes in the Shadow Clinic were hanging up

and there was fecal matter dripping from them and they were reused. Have you ever witnessed anything like that?

A No, sir.

Q If that was the case, if in fact scopes were dirty or not property cleaned and reused, could that be a possible transmission for disease?

A Sure.

Q If bite blocks were used and not properly cleaned, could that be a possible transmission for disease?

A It's likely, but possible.

Q Possible. Because there is some blood to the bite blocks, correct?

A Correct.

Q When you saw patients, they had hep-locks, correct?

A Correct.

Q And that hep-lock would be started in a different procedure room; isn't that also correct?

A Yes.

Q And that would be started by a nurse.

A Yes.

Q And are you familiar with the term flushing?

A Yes.

Q Tell me what that is.

A Once you start the IV, you introduce through the

IV an amount of saline to make sure that everything flow through into the vein.

Q And if you backflush that there's a possibility of withdrawing blood, correct?

A Yes.

Q And that could be a possibility or a mechanism for transmission; isn't that correct, for disease?

A Yes.

Q You mentioned these various partnership meetings. I want to be clear, who attended those? Can you tell me who attended those meetings?

A Partners.

Q Just partners?

A Just partners.

Q Never saw Mr. Lakeman in a partnership meeting, did you?

A No.

Q Were you ever present at a meeting with Mr. Lakeman and Dr. Desai or Dr. Carrol or Dr. Carrera?

A No.

Q I have no further questions. Thank you, sir.

A You're welcome.

THE COURT: May I see counsel at the bench?

(Off-record bench conference.)

THE COURT: Doctor, unfortunately we're not going to

finish your testimony today. We're required to end at a certain time. Can you be back tomorrow morning at 9:00 a.m.?

THE WITNESS: I cannot. I have a full office and hospital schedule.

THE COURT: Okay. Then you're going to need to coordinate with the DAs when you can come back because obviously, we're not through with you yet.

Ladies and gentlemen, we're going to go ahead and take our evening recess right now. We'll reconvene tomorrow morning at 9:30 a.m. During the evening recess you're reminded that you're not to discuss the case or anything relating to the case with each other or with anyone else. You're not to read, watch or listen to any reports of or commentaries on this case or 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. Please leave your notepads in your chairs and follow the bailiff through the rear door.

(Jury recessed at 4:27 p.m.)

THE COURT: Basically, for the record, it's 4:30. We took the evening recess because Ms. Stanish indicated that she needed time to confer with her client.

Doctor, you indicated you can't come back tomorrow morning at nine. Is there a time tomorrow that you can come

back?

THE WITNESS: I can come back Wednesday afternoon. I have a lot of patients that will have to be rescheduled. That's a lot of a burden for these people.

THE COURT: I only care about the ones who have actually done the -- I mean, I don't know if you'd had people who had actually gone today and been doing their preps. To me that's kind of cruel to make those people do their preps and then reschedule them and make them re-prep. That's why I -- I would just note that -- let me ask you to do this, Doctor. Go ahead and just step into the vestibule so we may be arguing about your testimony a little bit here.

Before you're excused for the day and whenever you may come back, you are admonished you're not to discuss your testimony with anyone else who may be a witness in this case. Okay? Just go ahead and step into the vestibule, please.

Basically, just so everyone knows, the way I handle these situations with the jury is I tell the jury okay, we haven't finished with the witness, but we're calling other witnesses before and they've been instructed the order in which the testimony comes in doesn't matter. They have to still, of course, keep an open mind and that doesn't matter if we interrupt testimony in the order it comes in.

Would everyone be fine then with him coming back Wednesday afternoon?

MS. WECKERLY: Sure.

THE COURT: Is that fine with you, Ms. Stanish?

MS. STANISH: Yes, Your Honor.

THE COURT: Mr. Santacroce, are you fine with that?

MR. SANTACROCE: I have nothing else to say to him.

THE COURT: Well, you might have some recross or something like that. Mr. Staudaher, then you can just let him know we're fine with him coming back Wednesday afternoon.

MR. STAUDAHER: You want me to do that right now, Your Honor?

THE COURT: Sure. And then you can kind of coordinate the time with him.

Then, for tomorrow, our start time is 9:30 tomorrow. And my understanding is the State, you have a physician and he's going to be the first witness?

MS. WECKERLY: That's correct, Your Honor.

THE COURT: Okay. So nothing else to do today. We'll see everyone back, and then just for the record, then obviously, that gives ample time since he's not coming back until Wednesday afternoon for Dr. Desai to confer with his counsel prior to cross-examination of that witness.

Juror number 16 has indicated that she has a physician's appointment at eight a.m., not this Thursday, but next Thursday and would like a 10:00 start time. I'm fine with that because I think these nine to five days are probably

getting a little difficult for the jurors. So a 10:00 start time might be a good thing occasionally.

MR. WRIGHT: Is that this coming Thursday?

THE COURT: No, not this Thursday, but the following Thursday. So I'm fine with doing a 10:00 start time. Okay, then. Everyone's excused.

(Court recessed for the evening at 4:31 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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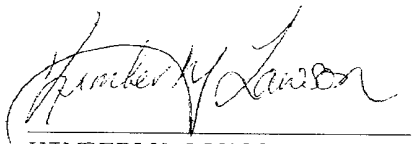

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DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

STATE OF NEVADA, Plaintiff vs. DIPAK KANTILAL DESAI, RONALD ERNEST LAKEMAN, Defendants	)	CASE NO. C265107-1,2 CASE NO. C283381-1,2 DEPT. NO. XXI **Transcript of Proceedings**

BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE

JURY TRIAL - DAY 23

TUESDAY, MAY 28, 2013

APPEARANCES:

FOR THE STATE:	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: JULIE POTTER, TRANSCRIBER

JRP TRANSCRIPTION

INDEX OF WITNESSES

* * * * *

INDEX OF EXHIBITS

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

(Court was called to order)

(Outside the presence of the jury.)

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

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

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

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

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

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

going to --

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

JUROR NO. 1: Well --

THE COURT: Being on a jury, I mean.

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

THE COURT: Now --

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

THE COURT: Now, they can't --

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

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

JUROR NO. 1: No, I understand.

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

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

THE COURT: You do the --

JUROR NO. 1: -- and talented program.

THE COURT: -- GATE; right?

JUROR NO. 1: Right. And they didn't have anyone to do it, so I have pieces of projects all over my room. And so like this morning I went in and taught two classes and tomorrow I have --

THE COURT: Let me ask you this. I understand the school year is going to be over soon.

JUROR NO. 1: Right.

THE COURT: And so that would alleviate any --

JUROR NO. 1: Right, it would. It's just been a really hard time because I'm moving schools. I mean, you know.

THE COURT: Right.

JUROR NO. 1: The big -- my big -- I mean, where that is total concern, my biggest concern is the other issue.

THE COURT: Right.

JUROR NO. 1: I mean, it is stressful. I mean, the multiple sclerosis, I mean, it's something new I'm kind of learning to --

THE COURT: To live with and --

JUROR NO. 1: -- live with and deal with, and I do find, you know, to be extremely fatigued. And when stress comes I do -- the only way I can describe it is the strength just being sucked out of my muscles and it especially affects that side. And there is that scary part to me since I am learning

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

THE COURT: Right.

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

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

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

THE COURT: Right.

JUROR NO. 1: I'm not sure.

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

JUROR NO. 1: So that's --

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

not an issue.

JUROR NO. 1: Okay.

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

JUROR NO. 1: Right.

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

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

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

THE COURT: And you're sure it was an upper endoscopy?

JUROR NO. 1: I'm pretty sure it was. That's what my brother remembers, too. So, I mean, that's all I can go on.

THE COURT: Okay.

JUROR NO. 1: I mean, they did something down. That's what we remember.

THE COURT: Down the throat.

JUROR NO. 1: Right. That's all I can say is that's what we remember. And that's why I didn't contact any other family members because I didn't want to get into --

THE COURT: Right. Okay.

JUROR NO. 1: -- you know. But there was a perforation, they went to emergency surgery, and she passed away about a month and a half --

THE COURT: Did she --

JUROR NO. 1: -- later.

THE COURT: Did they recognize the perforation right away? I'm assuming she's a patient at Valley Hospital. And was she admitted through the ER with spasms or what happened? How is she even there?

JUROR NO. 1: You know, my uncle took her and so I'm not --

THE COURT: Okay.

JUROR NO. 1: -- 100 percent sure if it was an emergency and then he took her. I -- I don't know.

THE COURT: Okay.

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

THE COURT: Uh-huh.

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

THE COURT: Okay.

JUROR NO. 1: And they --

THE COURT: And then they --

JUROR NO. 1: -- they did --

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

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

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

THE COURT: When did they operate on the perforation?

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

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

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

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

JUROR NO. 1: Right. But --

THE COURT: Okay.

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

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

JUROR NO. 1: Correct.

THE COURT: And did they link her death to the perforation or -- or --

JUROR NO. 1: Yes, ma'am, they did.

THE COURT: Okay. And you don't -- nothing else you recall about the doctor who performed the upper endoscopy?

JUROR NO. 1: The doctor who had the consultation, I remember he had an extremely thick accent because it was -- we -- we all had to kind of get together and go, okay, you know, we were all getting different parts of it. I -- I want to say that he was Indian. That he had --

THE COURT: Okay.

JUROR NO. 1: -- Indian background.

THE COURT: I mean, did he appear that he could be, you know, Asian or Indian or --

JUROR NO. 1: Oh, I mean, definitely yes.

THE COURT: Okay.

JUROR NO. 1: I mean, my impression was that he was Indian. You know, I don't want to -- you know, I couldn't say I'm 100 percent for sure. I would say I was 99 --

THE COURT: I mean, he could have been Pakistani or Bangladeshian or --

JUROR NO. 1: I suppose.

THE COURT: -- Sri Lankan?

JUROR NO. 1: I suppose. I just remember that being in my mind.

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

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

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

THE COURT: Okay.

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

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

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

THE COURT: Okay. But when --

JUROR NO. 1: -- identification.

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

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

at all.

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

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

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

JUROR NO. 1: Right.

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

JUROR NO. 1: Right.

MR. STAUDAHER: -- be interpreted.

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

MR. STAUDAHER: Sure.

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

THE COURT: Other Indian gastro --

JUROR NO. 1: Right.

THE COURT: Because I believe the other Indian physician who testified was the anesthesiologist.

MR. STAUDAHER: Yes, and he did not work at the --

THE COURT: Right. He was --

MR. STAUDAHER: -- clinic.

THE COURT: -- an anesthesiologist.

JUROR NO. 1: Oh, I know. I mean, and like I said, I'm not 100 -- like I said, I couldn't be 100 percent sure. I just -- this has just been on my mind and I have to, you know --

MR. STAUDAHER: Certainly.

THE COURT: No, absolutely.

JUROR NO. 1: -- say that.

THE COURT: We appreciate --

JUROR NO. 1: I mean, this is --

THE COURT: -- the disclosure and you did the right thing by disclosing it. Now we just need to, you know, get the --

JUROR NO. 1: Right.

THE COURT: -- get the details, as much as you can remember. And I appreciate 2006 it was a very stressful time and, you know, probably everything was a blur and so I understand it's difficult to understand specifics, but --

JUROR NO. 1: And it's been -- I mean, and as I've

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

THE COURT: It's emotional.

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

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

JUROR NO. 1: Yes, sir.

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

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

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

JUROR NO. 1: Right.

THE COURT: -- by the ribcage?

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

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

JUROR NO. 1: Yes.

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

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

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

MR. STAUDAHER: Do you recall if this was in the esophagus or the stomach or the pylorus or someplace downstream of where it was?

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

THE COURT: Oh, the pylorus. Absolutely.

MR. STAUDAHER: The opening --

THE COURT: Everyone is going to know.

MR. STAUDAHER: I'm sorry. The opening between the stomach and the intestine.

JUROR NO. 1: You know what, I don't know. I think when you questioned me about this earlier I said esophagus. I went back later and went, why did I say that? That definitely was not the correct word. I think it had to do something in the lower intestines. Or not the lower intestines, but in the stomach area or upper intestine area.

MR. STAUDAHER: But it was recognized fairly quickly, and even though she had surgery and didn't have a good outcome it was something that whether they told you immediately or 45 minutes later, it happened within a relatively short period of time; is that right?

JUROR NO. 1: I guess. We were frustrated that we weren't told immediately so we could make a decision immediately. Obvious -- I mean, we wasted -- to us it seemed

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

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

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

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

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

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

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

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

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

MR. STAUDAHER: I have nothing further.

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

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

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

THE COURT: Can you --

JUROR NO. 1: I mean --

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

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

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

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

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

THE COURT: Okay.

JUROR NO. 1: -- to the testimony.

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

is that --

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

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

THE COURT: How old was your grandmother?

JUROR NO. 1: She was almost 90.

THE COURT: Yeah.

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

THE COURT: She worked?

JUROR NO. 1: She still worked.

THE COURT: Out of the home?

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

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

THE COURT: Right.

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

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

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

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

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

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

JUROR NO. 1: Possibly.

MR. SANTACROCE: Okay. I have nothing further.

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

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

Mr. Wright or Ms. Stanish?

MR. STANISH: Ms. Pomykal; right?

JUROR NO. 1: Pomykal.

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

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

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

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

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

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

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

THE COURT: Sure.

(Off-record bench conference.)

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

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

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

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

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

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

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

MR. STANISH: Without having you discuss or share with

us your perception of specific evidence --

JUROR NO. 1: Okay.

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

JUROR NO. 1: Yes, it is.

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

THE COURT: Well, wait a minute. This issue --

Can I state this --

MR. STANISH: Sure.

THE COURT: -- a different way?

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

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

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

JUROR NO. 1: Right.

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

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

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

THE COURT: Right.

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

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

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

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

THE COURT: Okay.

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

THE COURT: Ms. Stanish, any follow up?

MR. STANISH: No, Your Honor.

THE COURT: Mr. Staudaher, any additional follow up

with Ms. Pomykal?

MR. STAUDAHER: No, Your Honor.

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

JUROR NO. 1: Okay. Thank you. I appreciate everyone listening and I --

THE COURT: And I'm going to have you go back in the jury room.

JUROR NO. 1: Okay.

THE COURT: Obviously, you can't discuss your letter, your situation, what we discussed in here. They -- they probably know better than to ask you, but they may say, oh, what was going on in there, something like that. Obviously, you're directed you can't discuss anything that's just transpired in the courtroom with the other -- I'm sorry, the other jurors. All right? Thank you. Go ahead and --

JUROR NO. 1: Thank you so much.

THE COURT: -- follow Kenny from the courtroom.

(Juror No. 1 exits the courtroom.)

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

MR. SANTACROCE: Yes.

MR. WRIGHT: Yes.

MR. SANTACROCE: We're going to --

THE COURT: -- excluded?

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

Honor.

THE COURT: State?

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

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

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

MR. STAUDAHER: Right.

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

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

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

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

MR. SANTACROCE: Can we just --

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

MR. STANISH: Your Honor --

THE COURT: And it'll be fresh in your mind and --

Yes?

MR. STANISH: I had a motion in limine.

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

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

THE COURT: The anesthesiologist.

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

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

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

MR. STAUDAHER: The doctor's time?

THE COURT: Yeah.

MR. STAUDAHER: No.

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

MR. STAUDAHER: Not doctor time.

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

THE COURT: Oh.

MR. STANISH: And as I --

THE COURT: With procedure coding?

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

THE COURT: Which included upcoding.

MR. STAUDAHER: Yeah, and falsifying records, and

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

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

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

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

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

MR. STANISH: I start --

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

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

pre-charting --

MR. STANISH: First off --

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

MR. STANISH: First off, as --

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

MR. STANISH: -- I understand this upcoming witness, she does talk about the pre-charting that we've already heard about. That's not what I'm objecting to.

THE COURT: No, I understand. But I'm saying -- you're saying it's bad act evidence and it's --

MR. STANISH: The bad act evidence that I see, and with this witness and one that's scheduled to come up later this week, Ms. Johnson, I believe her name is, who is a billing person who only billed the procedure codes, billing is complex. And the anesthesia billing is separate and apart. It's a whole different set of codes, a different technique of billing.

We were not given discovery of the billing invoices or, I'm sorry, the claims and the payments relating to the procedure codes. And what this witness does in her one day there, she describes for the investigator what she sees as potentially they're upcoding and billing a tray fee.

And I just -- you know, we're getting into a whole different area of billing fraud that we haven't been given sufficient discovery to even defend, yet it's something that they're throwing on the wall to see if it sticks, and it's

another bad act.

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

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

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

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

MR. STAUDAHER: No, what --

THE COURT: Or is --

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

THE COURT: I mean, okay, she's going to testify they wanted me to bill a tray fee and I didn't feel that was right, so I quit. Is that essentially what she's going to say?

MR. STAUDAHER: That's not the only thing she's --

THE COURT: Well, I'm hoping.

MR. STAUDAHER: -- going to say.

THE COURT: I'm hopeful that's not --

MR. STAUDAHER: Right. The tray fee is that it was -- it -- regardless of the procedure, regardless of whether they actually opened one up or not or did anything along those lines that they charged for every single one of them. Every single person that rolled through got that fee whether they --

THE COURT: Now, is that --

MR. STAUDAHER: -- had the thing done or not.

THE COURT: -- not allowable? I mean, I guess my question is, Mr. Staudaher, whether it's a bad or not, what's the context of that? Because, I mean, how -- is that not allowable in billing or is it allowable? How do we know?

MR. STAUDAHER: Well, we have a billing person that's going to be coming in to testify and that certainly can address that issue.

MR. STANISH: As far as --

MR. STAUDAHER: I mean, that's the -- that's the thing.

THE COURT: Well, it's your case. I mean, you

might --

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

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

MR. STAUDAHER: -- that clearly it's charging for things that -- services that were never rendered or supplies that were never given. And --

THE COURT: I mean, well, except there was a tray. It's just like these court appointed lawyers, none of these people here, obviously, who write the same brief over and over again and make $300,000 from the County a year, I won't mention names, submitting the same briefs over and over again that they're not rewriting. I mean, is that legal? Apparently, because they keep paying them for it. You know what I'm saying?

So, I mean, a tray is used. Maybe you can bill every time the tray is used whether you open a new tray or not. I don't really know. And I suspect that you don't really know, either.

MR. STAUDAHER: What, that you can bill for materials that you don't -- that you don't chart -- or you don't use?

THE COURT: I don't know.

MR. STAUDAHER: No, you cannot do that.

THE COURT: Like I said, we've got lawyers billing the County every day for briefs that they've been using for the past decade and they keep rebilling it.

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

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

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

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

THE COURT: What's wrong with --

MR. STANISH: -- evaluate it.

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

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

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

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

MR. STANISH: All right.

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

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

(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.

And the State may call its next witness.

MR. STAUDAHER: State calls Karen Peterson.

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

KAREN PETERSON, STATE'S WITNESS, SWORN

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

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

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

All right. Mr. Staudaher, you may proceed.

DIRECT EXAMINATION

BY MR. STAUDAHER:

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

A I'm a nurse.

Q And how long have you done that work?

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

Q What kind of nurse are you?

A A registered nurse.

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

A At College of Marin in Kentfield, California.

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

A Yes.

Q -- intermittent?

A Yes.

Q So all together.

A Right.

Q Where -- the types of practices or -- or situations you've been in over the years, what kinds of places have you worked?

A Hospitals, two hospitals, one family practice physician, and a large multi-specialty clinic.

Q Okay. Have you also worked in an ambulatory care center?

A Right. Yes.

Q Okay. So about four different types of medical situations?

A Uh-huh.

Q And office, clinic, procedure clinic, and hospital --

A Right.

Q -- is that fair?

A Right.

Q During the time that you worked at those various things, let's talk about the ambulatory care center. Was that one place or more than one of those types of facilities?

A More than one.

Q Where were they located at?

A One was in Seattle, Washington, at the Polyclinic in Seattle.

MR. SANTACROCE: I'm sorry. I didn't hear the last part of that.

THE WITNESS: At the Polyclinic in Seattle.

MR. SANTACROCE: Thank you.

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

BY MR. STAUDAHER:

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

A Right.

Q What kinds of things did they do there?

A They do colonoscopies and upper endoscopies.

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

A Right.

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

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

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

A Yes.

Q Doing sort of gastroenterological type work?

A Yes.

Q So three different locations of just doing that alone?

A Correct.

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

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

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

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

Q And is this the Endoscopy Center of Southern Nevada?

A It is.

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

A Yes.

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

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

Q Right out of the box?

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

Q So you moved -- did you stay in Las Vegas after that for any length of time? I mean, do you live here now?
A Yes.
Q So this was a place you were moving to, then?
A Correct.
Q After you started or while you interviewed with Ms. Maley, what happened? What was the next step?
A I had about a week or so later was my first day in the clinic, and I followed a preceptor that day.
Q Okay. And who was the preceptor to the best of your knowledge?
A Linda -- Lisa Falzone.
Q Is that the person that kind of showed you the ropes?
A Right.
Q Now, prior to going to work on the first day, did you have any -- and your initial talking and being hired by Katie Maley, was there any other interactions you had at the clinic?
A No, it was just an in the office interview.
Q You ever meet with any doctors, anything like that during the time you were there?
A On that day that I worked, yes, but --
Q But not prior?
A But not prior.
Q So nothing happens until you get up to the point where you're going to start working that day; correct?

A Correct.
Q Now, had you been given some sort of orientation, anything like that beforehand?
A About between 9:00 and 9:45 I was given an employee handbook and papers to fill out in their lunch room, which is what I did.
Q And who gave you that information?
A Katie Maley.
Q Did she explain things to you or just said here's your stuff and --
A Read it over and then you will follow Lisa Falzone for the day.
Q Okay.
MR. STAUDAHER: May I approach, Your Honor?
THE COURT: You may.
BY MR. STAUDAHER:
Q I'm going to show you what has been previously marked as State's Proposed 161. And counsel has already had a chance to look at this. But would you flip through that and tell me if you recognize it, and then tell me what it is.
A This is the employee handbook that I was given.
Q Okay.
A Yes.
Q Now, what is the time frame that you were at the clinic on -- on that one day?

A It was April 23, 2007.

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

A Yes.

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

A This is the only version they gave me.

Q Okay.

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

MS. STANISH: No objection.

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

MR. SANTACROCE: No objection.

THE COURT: That'll be admitted.

(State's Exhibit 161 admitted.)

BY MR. STAUDAHER:

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

A All right.

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

A Yes.

Q Tell us kind of how the day goes.

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

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

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

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

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

Q Tell us how it goes. Keep going.

A On that particular day?
Q Yes.
A Okay. For me, one of the things that -- that bothered me on that day, we had -- it was towards the end of the day and Lisa had stepped out of the room. The technician was not available and the physician was doing the colonoscopy. And they were irrigating through the colonoscopy --
Q Scope?
A -- scope. And you use a large 60 cc syringe just filled with water. Well, when you're done with that, then you just -- the physician usually sets it on the bed or the little table beside him. I realized he was done using it. I went over, I picked up the syringes. I refilled them with water off of the stand, and I set them there so he could reuse them again if he needed them to clear his field.
Q Now, this is on the same patient; correct?
A This is, yeah, all on the same patient.
Q Okay.
A And he did not use -- need to reuse them again. So when the procedure was over and the patient was moved out, I told the technician that was working that day that the tray was contaminated. And she said that that's okay. And the nurse anesthetist said to me, in quotes, that's the way they do it here.
Q Well, how did -- did that have an effect on you when

you heard that?

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

Q And when you say you couldn't believe it, what -- what's the problem with that?

A Because -- because you've got a contaminated syringe sitting up there that had the propensity to be used for another patient.

Q So is that a problem?

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

Q Is that something that is contrary to any place you've ever worked before?

A Yes.

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

A No.

Q -- that that was okay?

A No.

Q Now, the syringe itself, I mean, does it -- is this something you said that was used to irrigate out the inside of a scope?

A It is because you get debris in there or maybe your field of vision isn't good, maybe the -- the prep wasn't adequate, and so the physician clears his field of vision using water. It can be just tap water because it's not a sterile thing, but it's just used to clear the field of vision.

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

syringe or something?

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

Q So material and things are coming back cut?

A They can be, yes.

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

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

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

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

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

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

that came into the room to relieve her at some point in time.

Q Okay. So at least there are some switching out of personnel, is that fair?

A Right.

Q Now, did you remain in the same room or did you go between rooms during the day?

A I was in the same room all the time.

Q Was Lisa with you the whole time?

A Except when she had stepped out.

Q So the time -- when you're in that room and you're with Lisa, what are the things that you're actually doing?

A I'm expected to write procedure times down there. You're expected to finish filling out fee tickets that were done, that type of thing.

Q What do you mean by that?

A A fee ticket is -- they're procedure codes for the procedure, and there's a diagnosis code for the diagnosis. So you're expected to write the times that, you know, the starting minute times of the procedure. They also wanted you to exactly write a post assessment time two minutes after the end of the procedure.

You were expected to write that the IV was DCed exactly five minutes after the post assessment time, and that is really done in the recovery room. It's not done in the procedure, even if the recovery room nurse is signing off for

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

Q And DC means discontinue?

A Discontinued.

Q Okay.

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

Q Did that bother you?

A Yes.

Q A lot?

A Yes.

Q Had you ever done that before?

A No.

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

A No.

Q Other than this one day?

A That is all.

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

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

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

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

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

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

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

A I was there April 23rd.

Q Of 2007?

A 2007, yes.

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

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

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

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

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

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

A Right.

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

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

MS. STANISH: Objection, then.

MR. STAUDAHER: Well, again --

MS. STANISH: Hearsay.

THE WITNESS: Well --

BY MR. STAUDAHER:

Q What did you experience?

A Well, my experience was what somebody told me.

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

Unless, Mr. Staudaher, you want to --

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

BY MR. STAUDAHER:

Q Without saying who said what to you --

THE COURT: Or what they said.

BY MR. STAUDAHER:

Q -- or what they actually said, was there any issue with you having to conserve on supplies while you were there?

A Not me personally, no.

Q Is this something you overheard somebody else talking about?

A Right.

Q Okay.

MS. STANISH: Objection. Hearsay.

MR. WRIGHT: Hearsay.

MR. STAUDAHER: I'm trying to find out what it is.

THE COURT: That's sustained.

MR. WRIGHT: Right. And that -- well, it's hearsay.

THE COURT: Well, he was --

MR. WRIGHT: You can't.

THE COURT: Mr. Staudaher --

MR. STAUDAHER: I'll move --

THE COURT: -- is going to --

MR. STAUDAHER: I'll move on.

THE COURT: -- move on. I think he was trying to endeavor to find out how she knew about the supply issue, whether it was something with her. She said, no, that was not a

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

Q So the patient rolls out. So the chart that you would have filled out would have gone with the patient --

A Right.

Q -- is that fair?

A Yes.

Q Did you do that? Did you mark these times down like the wanted you to?

A I'm sure I did it on a couple of charts.

Q Okay. Did that make you feel uncomfortable?

A Yes.

Q The times that were on the chart that related to things that actually happened in the room that you were in, the procedure room, how were those times put down on the chart, meaning the procedure time. Did you look at the clock? I mean, did you have to follow something?

A I believe they were taken off of the data scope readings in the room.

Q Are you talking about like the tape read with the monitor --

A Right. Yes.

Q -- itself? So you took those times off of the tape monitor, put those down on your procedure chart. Did that actually coincide pretty much with what actually happened in the room?

A I think it did. It's -- it's a little hard to

remember that right now.

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

A Taking --

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

A Sometimes.

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

A No.

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

A Right.

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

BY MR. STAUDAHER:

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

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

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

/ / /

BY MR. STAUDAHER:

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

A Yes.

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

A Yes.

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

A Uh-huh. Right.

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

A Yes.

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

A Yes.

Q -- patient records?

A Yes.

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

A I don't recall reading that, no.
Q Okay. Have you subsequently read it?
A Yes.
Q Was there some irony that you saw in that they were asking you to do something that they could have terminated you for?
MR. SANTACROCE: I'm going to object --
MS. STANISH: Objection.
MR. SANTACROCE: -- as to relevance, Your Honor.
THE COURT: That's sustained.
BY MR. STAUDAHER:
Q But clearly what's depicted in the employee manual they hand to you on the day and then ask you the very same day was contrary to what's in this manual; correct?
A Yes.
MR. STAUDAHER: Pass the witness, Your Honor.
THE COURT: Who would like to go first? Ms. Stanish?

CROSS-EXAMINATION

BY MS. STANISH:
Q Good afternoon, ma'am.
A Hello.
Q You had mentioned, and I'm hoping that you can clarify something or educate us on an issue. I understood you to mention that the syringes -- well, maybe -- I don't know what you said. Is in the colonoscopy room, is this a sterile

procedure?

A No.

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

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

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

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

Q What is the mucosal barrier?

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

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

A Yes.

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

A It needs to be wiped down.

Q The whole room?

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

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

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

Q Okay.

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

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

the procedure to clear the colon initially?

A I don't know.

Q Do you recall whether or not the doctor -- well, could a doctor do a biopsy without first flushing?

A Yes.

Q He could do it without first flushing? Do you --

A Yes.

Q -- recall if a biopsy was done in this -- during this particular procedure that you described?

A I do not.

Q And you don't recall who the physician was?

A No, there were several physicians in the room that day.

Q You mean alternating?

A Yes.

Q And you had -- moving now to your testimony about the monitors. I understand it you were directed to use the vital monitor times for the beginning and the end of the procedure?

A Correct.

Q And so tell us how that actually worked. I mean, did the CRNA start the monitor, or did somebody else?

A I assume it was the CRNA.

Q And -- and then when you got the -- did somebody actually hand you the tape so that you could get the times off of the -- the vital tape?

A I honestly can't remember.
Q You don't remember that part? But your memory is that you used the start time of the procedure and the end time of the procedure from the vital monitor strip?
A Correct.
Q And did I understand your testimony to be that that time would closely reflect the procedure time?
A Yes.
Q Did you observe, if you recall, the CRNA interviewing the patient to do the assessment for anesthesia?
A I don't really recall what she said to the patients.
Q But do you recall Ms. Hubbard having a conversation with the patient while you were in the room?
A I'm sure she must have, because she started a number of IVs in the room.
Q And it's your experience that the -- I know you worked in the past with the anesthesiologists. Have you ever worked with CRNAs other than this one day at the gastro clinic?
A I -- I've worked with CRNAs, but only really as friends, not as --
Q Is it a fair statement to say that the CRNA would have had to have had a conversation with the patient in order to assess the -- the anesthesia that was going to be given to them or whether they were a candidate --
A They --

Q -- for it?
A They should.
Q Did you see that occur, or you don't remember?
A I don't recall.
Q Are you an expert on procedure codes?
A I am not an expert.
Q Okay. I don't have anything further. Thank you, ma'am.
A Uh-huh.
THE COURT: Mr. Santacroce.
MR. SANTACROCE: Thank you.

CROSS-EXAMINATION

BY MR. SANTACROCE:
Q I want to go back to April 23, 2007, and focus in a little bit about what the CRNA did or didn't do, okay. You testified that you, I believe, went in and started a procedure room at about 10:00 in the morning; is that correct?
A Yes.
Q Do you recall which procedure room you were in?
A I don't know the number. It was on the right hand side of the building.
Q Okay.
A Closest to the lunch room. That's all I know.
Q How many procedure rooms did they have at the clinic?
A Two, I believe.

Q Were both procedure rooms being used on the day that you worked there?
A Yes.
Q I believe you testified that you were in a room with a CRNA named Linda Hubbard; is that correct?
A Yes.
Q Were you in that room most of the day with Linda Hubbard?
A Yes.
Q Except at one time when she had to be relieved for some reason?
A And I don't know if it was more than one procedure. I don't recall.
Q You don't know if what was one procedure?
A You said she -- she wasn't there for one procedure. What I'm saying is it might have been more than one that somebody relieved her for.
Q Well, at some point in the day she was relieved; correct?
A Correct.
Q And what part of the day was that?
A I don't recall.
Q You don't know if it was morning or afternoon?
A No, I don't.
Q How many procedures did you do with her in the morning

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

A I don't have a number.

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

A No.

Q You don't recall who relieved Linda Hubbard?

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

Q Ron who?

A I think it was Lieberman.

Q Were you introduced to these CRNAs?

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

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

A No.

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

A I was not watching her administer the propofol.

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

A Yes.

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

A Correct.
Q And that was Linda Hubbard?
A Yes.
Q And why did that bother you?
A Because it should have been discarded at the end of the procedure along with the rest of the items on the tray.
Q So when you said that the colonoscopy procedure room is not a sterile environment, that particular aspect of it is?
A It's not sterile, but it's clean. It should be clean.
Q Okay. What's the difference between sterile and clean?
A Well, if it -- if -- clean is, for instance, if you have a package of two by -- four by fours, you can take some out, set it on a tray that just has a clean field, a clean towel or something on it, okay, and that's just clean. It's -- it's not sterile. It's not ripped specifically out of a package and -- and put on a sterile field so that there is absolutely no contamination of any bacteria, hands or anything.
Q Was that syringe that you were concerned about reused on a subsequent patient?
A I didn't see it be reused, but it had the potential to be reused.
Q And the concern would be that possibly if that was reused on another patient that could have passed some kind of infection or disease; is that correct?

A Yes.
Q But you didn't witness that happen?
A I did not.
Q When Ms. Hubbard was relieved at some point in the day, do you know how long she was gone for?
A I don't have the time period, no.
Q You -- you do recall that she did come back to that room; correct?
A Yes.
Q The CRNA that relieved her, can you tell me anything about that person?
A I don't recall any specifics.
Q Did you see that person, that other CRNA administer any propofol?
A Not that I recall.
Q You said you were concerned that Linda Hubbard only wore one glove during the procedure; is that correct?
A Starting IVs.
Q Did the other CRNA that relieved her wear two gloves?
A I don't remember seeing them start IVs.
Q So the only concern you had about the two-glove issue was the starting of the IVs, not the administration of the propofol; correct?
A Right. Yes.
Q So the subsequent, the second CRNA that comes into the

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

A I do not recall that, no.

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

A Right.

Q Do you recall how that person administered the propofol?

A No.

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

A I do not.

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

A I do not know.

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

THE COURT: Redirect.

MR. STAUDAHER: Nothing, Your Honor.

THE COURT: Any juror questions for this witness?

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

State, call your next witness.

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

/ / /

VINCENT MIONE, STATE'S WITNESS, SWORN

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

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

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

THE WITNESS: Yes.

THE COURT: All right.

Mr. Staudaher, go ahead.

MR. STAUDAHER: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. STAUDAHER:

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

A I was a certified anesthetist.

Q How long had you done that work?

A Since 1965.

Q From '65 up until when?

A 2008.

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

A No. No, I haven't.

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

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

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

THE COURT: Okay.

Go on.

BY MR. STAUDAHER:

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

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

Q How many places have you worked as a CRNA?

A After graduation from Chestnut Hill?

Q Uh-huh.

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

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

Q Yourself you mean?

A Myself, yes.

Q Okay.

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

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

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

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

A Yes, mostly they were all hospital based.

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

A We had some which were associated with the hospitals

Q So the hospital --

A They were part of --

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

Q Did this group contain both?
A Yes, it did.
Q How many of each were there to the best of your -- your memory? I know it's a long time ago.
A We started with about ten or more anesthesiologists, and about -- it was probably about eight or ten of us, and that was in 1971. And it just kept growing until we had somewhere in the area between 40 and 50 of each.
Q So when you're working in that group, I know you're predominantly in one hospital setting, but you -- is it fair to say that you also moved around and did anesthesia at other places as well?
A Yes. Uh-huh.
Q And that's all part of this group?
A Yes, it is.
Q Now, during the time that you're part of the group and you're doing these anesthetic procedures, I mean, how do you keep track of that and how does the people -- or does the group bill for your services, for example?
A They had their billing services. I have no idea.
Q So you didn't actually do the physical billing?
A We had -- no, we had nothing to do with billing.
Q Did you have to supply them with some sort of face sheet or document saying, okay, this is the patient I worked on and this is the procedure that was done, anything like that?

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

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

A Yes.

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

A Uh-huh.

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

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

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

A Yes.

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

A Yes, for each case.

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

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

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

A Yes.

Q I mean, is that typically how it's billed?
A Yes.
Q Okay. So you did that for the 30-odd years. You come out to Las Vegas. Now, when you came out to Las Vegas, you said you had some medical procedures yourself before you came out here --
A Yes.
Q -- is that fair?
A Yes.
Q The position that you took at the clinic here, which clinic was it that you were working at?
A I think the only one at that time was the gastroenterology clinic here in -- I don't even remember the street name.
Q Well, there's a couple of them in town.
A Over by -- what was it -- what was it called? Gastroenterology of Las Vegas, I think.
Q Okay. Is it over by Shadow -- or by Shadow Lane?
A Yes, it was on Shadow Lane.
Q Okay. So that's -- is that the first place you worked when you came here?
A Yes.
Q Is that the only place you ever worked while you were in Las Vegas?
A No.

Q Where else did you work?
A Shortly after I took employment there, Dr. Desai, I guess, had a contract going or something with the military and the -- I volunteered to work over at the VA clinic on the other side of town. I can't remember the name of the street there either, but I worked there almost -- a little over three and a half years.
Q So we're talking about Las Vegas. Are all these --
A Yes.
Q -- places in the Las Vegas valley?
A That's in Las Vegas, yes.
Q Okay. So the VA hospital, you worked there.
A And the other one was the Burnham -- the Burnham clinic.
Q So three places in town?
A Three places, yes.
Q So Burnham, the VA, and for a better name we'll call it Shadow Lane. Okay?
A Okay.
Q And do you recall if it was the Endoscopy Center of Southern Nevada, if that's the name of it?
A I don't -- I couldn't tell you for sure. I don't remember the names.
Q But it was located over on Shadow Lane?
A This is the one on Shadow Lane by, what is -- is that

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

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

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

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

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

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

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

Q Did you work with him at Burnham at all?

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

Q Did you work with him out the VA?

A He was hardly ever there.

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

A Yes.

Q Do you see him in court today?

A Yes.

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

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

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

THE COURT: It will.

BY MR. STAUDAHER:

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

A Yeah.

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

A Oh, definitely Shadow Lane.

Q When you say definitely, what do you mean?

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

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

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

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

A Yes.
Q -- patient load significant to you
A Yes, it -- it was.
Q Okay. Was it a problem at all for you when you were working there?
A Yes, it was -- it was very stressful and I -- we just tried to do the best we could under the circumstances.
Q Did you ever talk to anybody, Dr. Desai, anyone about trying to maybe reduce the numbers a little bit?
A Well, you couldn't talk to Desai very -- Dr. Desai very often. He's -- but if we had any complaints, usually we went through Tonya Rushing.
Q Okay. Why couldn't you talk to Dr. Desai?
A He was just busy. He was -- was not always in the work area. He was either there or in his office or back and forth.
Q Was there a problem if you did see him in a -- in a procedure room talking to him, though?
A Well, on occasion.
Q Did you do that?
A Yes.
Q We're going to get into some of that in a minute. But are you familiar with the anesthetic drug propofol?
A Yes, I am.
Q Prior to coming to Las Vegas had you used that drug?

A Yes, I did.

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

A In Florida.

Q Did you use it a lot there?

A Yes.

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

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

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

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

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

A Yes.

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

A They have on occasion, yes.

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

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

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

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

A Yes.

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

A Yes.

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

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

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

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

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

A There were a lot of --

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

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

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

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

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

A Well, you know --

MR. WRIGHT: Foundation.

THE WITNESS: What?

BY MR. STAUDAHER:

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

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

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

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

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

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

Q Anybody ever get whiplash or anything with the --

A No.

Q -- oxygen?

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

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

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

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

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

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

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

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

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

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

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

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

Q Okay. Are we talking about the colonoscopies?

A The colonoscopies were very fast, yes.

Q And what about the upper endoscopies?

A The endoscopies --

Q Would they be shorter?

A -- sometimes they'd be five minutes.

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

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

Q Okay.

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

cuff and EKG machine.

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

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

Q So ycu'd have them --

A 10 or 15.

Q -- all lined up?

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

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

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

Q Did you get behind sometimes, though?

A Yes.

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

A Yes, mostly. Yes.

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

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

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

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

A Well, we were -- yes --

MR. WRIGHT: Foundation, please.

BY MR. STAUDAHER:

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

A Yeah.

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

MR. WRIGHT: Can I have a year?

BY MR. STAUDAHER:

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

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

MR. STAUDAHER: We'll go through that.

THE COURT: Okay. Well --

BY MR. STAUDAHER:

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

A Oh, yes.

Q When you're talking about --

MR. WRIGHT: What year? Foundation.

MR. STAUDAHER: I'm getting there.

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

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

THE COURT: And how many patients about a day?

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

THE COURT: A day?

THE WITNESS: A day, yes.

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

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

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

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

THE COURT: Okay.

THE WITNESS: I'm not sure.

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

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

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

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

THE COURT: I see.

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

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

THE WITNESS: Yes. Mostly relieving in the afternoons.

THE COURT: Okay.

Go on, Mr. Staudaher.

BY MR. STAUDAHER:

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

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

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

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

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

A Yes. Uh-huh. High.

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

A Yes, there was.

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

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

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

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

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

rolling through?

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

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

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

THE COURT: Okay.

BY MR. STAUDAHER:

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

A Right. Correct. Yes.

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

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

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

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

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

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

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

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

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

A These are boxes of 10 cc syringes.

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

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

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

A Yeah.

Q -- is that fair?

A Yes.

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

A Yes.

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

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

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

A Usually we go through between 120 or 200 milligrams.

Q And what size bottles of propofol were you using?

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

Q Did that change?

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

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

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

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

A Yes, it does.

Q So 100 milligrams would be 10 ccs?

A Yes.
Q Did you use any kind of a lidocaine solution in your syringe to help with the initial dose that you gave a patient?
A Yeah. When we prefilled them we'd use like a quarter or a half cc of 1 percent lidocaine.
Q So there would be less than 10 ccs in each syringe; correct?
A Yes, there would be.
Q So if you have a 20 cc bottle, even using two syringes you're going to have some left over in the bottle; correct?
A Yes.
Q If you used a 50, would it be the same thing, that you used five syringes, you're still going to have some left over at the end?
A There would still be some residual, yes.
Q With regard to the syringes themselves, did you ever -- and stay with me for a moment because I'm going to give you two different scenarios. Did you ever take a single syringe, go into a patient, and then go back into a bottle with that same syringe?
A On occasion if it was the last amount in the bottle I would use the last remaining propofol for that patient. Everything was discarded after that.
Q Okay. So the same -- so a single syringe you might reuse on a single patient --

A Yes.
Q -- correct?
A Correct.
Q Into a bottle of propofol?
A Yes.
Q Did you ever use open bottles of propofol from one patient to another?
A Well, we refilled our syringes from the bottles.
Q Let me -- let me give you the scenario again so that we have it. You've got a bottle of propofol that you have drawn cleanly medication out of.
A Yes.
Q That bottle is sitting down.
A Uh-huh.
Q You administer your drug to the patient. Next patient rolls in. You haven't touched that bottle again. Could you or have you reused that bottle, the propofol end, on a new patient?
A Yes, with another sterile syringe and needle we would withdraw some more propofol from that bottle.
Q If you had taken a syringe that you had used on a patient more than once and gone back into that bottle, what would be the state of that bottle?
A It would be contaminated.
Q Would you ever use that contaminated bottle on a new patient?

A No.

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

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

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

A Yes.

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

A Yes.

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

A Yes, that is generally known.

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

A Yes.

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

A Correct.

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

A I don't believe so.

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

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

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

MR. WRIGHT: Foundation.

THE COURT: What time --

BY MR. STAUDAHER:

Q Again, the time frame --

MR. WRIGHT: As which clinic.

BY MR. STAUDAHER:

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

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

BY MR. STAUDAHER:

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

MR. WRIGHT: And --

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

THE WITNESS: I don't --

THE COURT: Okay. Maybe Mr. Staudaher --

THE WITNESS: I don't understand.

BY MR. STAUDAHER:

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

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

A Yes.

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

A Correct. Yes.

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

A Correct.

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

A [Nods head yes].

Q You've got to say yes.

A I think so.

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

A Uh-huh.

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

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

Q Okay. What about the other room?

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

that little tray.

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

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

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

A I could, yes.

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

A Yes, I would do that. Yes.

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

A Yes.

Q -- more than one syringe on most patients?

A Usually, yes.

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

A Correct.

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

use more than one syringe.

A Right.

Q Is that fair?

A Yes.

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

A Yes.

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

A It was used or it would be discarded.

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

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

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

A Okay.

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

A The syringe would be sitting there when we were done

and it would be discarded.

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

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

Q He didn't to you?

A [Shakes head no].

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

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

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

A Yes.

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

A I may have, yes.

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

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

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

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

A Yes, possibly.

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

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

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

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

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

A Just --

MR. SANTACROCE: Objection. Calls for speculation.

THE COURT: Yeah, that's --

BY MR. STAUDAHER:

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

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

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

A Well, moving around a little bit.
Q So he would reach across and just inject propofol himself?
A Yes, sometimes. Not very often.
Q When you relieved at lunch time, do you ever remember going into a room where other CRNAs syringes, bottles of propofol were -- were out?
A Yes.
Q Would you use other CRNA's set ups?
A If they told me they just drew up, I would -- yes, I've used them if they said they just reloaded it to use on the next patient, I would use it.
Q So you would necessarily -- I mean, you would walk over and would they have the same thing, some syringes lined up?
A They had the -- yeah, setups were similar in each room.
Q Okay. So you -- but clearly you didn't see them draw those syringes?
A No. If they told me they were. If they didn't, usually I'd draw up my own.
Q But my point is did you see them draw the syringes up when you went over there --
MR. WRIGHT: Foundation as to --
BY MR. STAUDAHER:
Q -- and used their setup?

A No.

MR. WRIGHT: -- who, when, where.

THE COURT: Well, it's overruled.

BY MR. STAUDAHER:

Q Did -- did you see them draw those up, first of all?

MR. WRIGHT: Ma'am?

THE WITNESS: No, I didn't.

MR. WRIGHT: Foundation, please.

THE COURT: He said he -- he hasn't seen that.

So when you would go room to room, there would sometimes be syringes with propofol -- when I say, you know, to relieve somebody for lunch -- that were already set out; correct?

THE WITNESS: Yes.

THE COURT: Okay. And I think Mr. Staudaher said -- question was you would sometimes use those, then, on the next patient; correct?

THE WITNESS: Yes.

THE COURT: And then what were you saying about -- and then -- but you never saw those actually being filled?

THE WITNESS: No.

THE COURT: Okay.

MR. STAUDAHER: Court's indulgence one second, Your Honor.

/ / /

BY MR. STAUDAHER:

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

A I don't believe I have, no.

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

A Oh, yes, there was.

Q And who provided that pressure?

A Dr. Desai.

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

A Yes. Correct.

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

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

Q Well, what was your --

MR. WRIGHT: I didn't hear.

BY MR. STAUDAHER:

Q -- concern in those situations?

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

MR. STAUDAHER: Oh, I'm sorry.

THE COURT: Can you state your answer again?

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

BY MR. STAUDAHER:

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

A If it was getting --

Q -- pull the scope?

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

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

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

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

A Yeah, just --

Q -- with your hand.

A Right.

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

A Yes.
Q Is that fair?
A Yes.
Q So he would take that scope all the way out quickly?
A On occasion.
Q And what would happen?
A Some fecal matter would fly around the room a little bit and that's it. You know, it just was messy.
Q What was your concern when the patient was starting to move around when the scope is inside of them?
A I didn't want them moving for fear of punching the -- the intestine.
Q That was the reason why you wanted to give more medication?
A The primary reason, yes.
Q So are we talking -- the movement is what I want to ask you about now. So the movement of the patient in those situations with the scope as far in as you've described, was it more than just twitching of the patient? Was it moving around?
A Well, as soon as the patient starts to wiggle or twist their body around, it can be -- it can be a problem --
Q So clearly --
A -- as far as having the --
Q -- that would be a patient care issue; correct?
A Correct.

Q Now, when you did your anesthetic work, I've got a picture in my mind of a syringe with a needle on it and then you administer the medication into the hep-lock?

A Yes.

Q Do you give a dose, take it out, cap it or something and set aside, or how did you mechanically do that?

A We use the -- we use the induction dose and inject. We get them asleep usually around almost a syringe full. If there was any residual in there, we'd leave the syringe in the port in case I had to give some more it stayed there. And if not, we'd just wait, and if they were moving we'd give them the rest, take it out, and then we'd introduce another syringe.

Q Was that -- I mean, is that the way you did it or --

A That's the way I did it.

Q -- the way all of you did it or --

A I don't know what the other people did.

Q That's the way you did it.

A That's the way I did it.

Q So you got a syringe in -- in that sort of hep-lock --

A Hep-lock.

Q -- thing.

A Yes.

Q The needle is in there communicating with the person's vascular system, blood system; correct?

A Yes.

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

A Correct.

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

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

Q All of them; correct?

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

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

A Yes. Uh-huh.

Q For both the 50s and the 20s?

A Yes, they did.

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

A Correct. Yes.

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

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

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

recall talking to police?

A I -- yes, I recall an interview.

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

A Yes.

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

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

Q Okay. Go ahead. Hum it away.

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

Q Okay.

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

Q Did you describe it as a factory atmosphere?

A Oh, definitely.

Q Assembly line type thing?

A Yes.

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

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

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

why he wanted you to use less propofol?

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

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

BY MR. STAUDAHER:

Q Based on --

THE COURT: -- did he say something --

BY MR. STAUDAHER:

Q Based on what he --

THE COURT: -- to you about it?

BY MR. STAUDAHER:

Q -- told you.

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

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

A Yes.

Q Can you tell us about that?

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

THE COURT: When was this meeting?

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

THE COURT: Do you recall about when you had the meeting?

THE WITNESS: I have no idea.

THE COURT: Okay. And who all was there? Dr. Desai --

THE WITNESS: A couple of the anesthetists and Dr. Desai and myself.

THE COURT: Okay.

THE WITNESS: I don't think Dr. Nayyar was there. I don't remember.

BY MR. STAUDAHER:

Q Okay. So tell us about it. What was the --

A And the theory was with a little more saline in the vial -- in the -- in the syringe with the propofol with the initial push is a possibility it may allow the propofol to last a little longer. And --

Q Did he explain how that was supposed to work?

A Not really. We just sort of --

Q Was that to flush out the little tiny bit that remains in that little tiny catheter in the hand?

A No, no, it was -- it was added. A few ccs were added to the syringe of propofol and pushed.

Q So let me get this straight. Your take on this was that he wanted you to dilute the propofol, the drug --

A Yes.

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

room until they left the room.

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

A The patient rolls in there. Yes.

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

A Correct.

Q Is that right?

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

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

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

Q Okay. But your, if I understand --

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

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

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

that during the afternoon recess 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 the case, person or subject matter relating to the case. Don't do any independent research, and please don't form or express an opinion on the trial. Notepads in your chairs, and follow the bailiff through the rear door.

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

THE WITNESS: Okay.

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

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

THE COURT: Then why do you want to take a break?

MR. SANTACROCE: I just --

THE COURT: No, thank you. I needed a break anyway, so that was good timing.

(Court recessed at 3:02 p.m., until 3:17 p.m.)

(Inside the presence of the jury.)

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

And, Mr. Staudaher, you may resume your questioning.

BY MR. STAUDAHER:

Q When we left off -- excuse me. When we left off we were starting to talk about -- or we were talking about the

start and stop times for anesthesia. Do you recall that?

A Yes.

Q And I think you said that you believed it was the patient comes in the patient room, the patient leaves, there's the start and stop time, but then later on there was this issue with 31 minutes?

A Yes.

Q Describe for us what we're talking about with regard to this 31 minute thing.

A Well, quite often one of the secretaries from the office, I don't know which office it was from, either Dr. Desai's office or the billing office, and they used to bring the charts back and say Dr. Desai wants 31 minutes on this chart.

Q So, I mean, was this every --

A For the -- I think it was one of the insurance companies wouldn't pay unless it was 31 minutes. That's what was explained to me.

Q Who explained that to you?

A The people that came down and said.

Q Did Dr. Desai ever directly tell you any of this?

A No.

Q So insurance wouldn't pay unless it was the 31 minutes?

MR. WRIGHT: Foundation.

THE WITNESS: Correct.

BY MR. STAUDAHER:

Q What -- how long was this going on?

MR. WRIGHT: As -- as to --

THE COURT: Well, he's laying the foundation.

MR. WRIGHT: Okay.

BY MR. STAUDAHER:

Q How long did that all happen?

THE COURT: Well, when were you told that? Like right when you started or sometime later?

THE WITNESS: I really can't recall. I know it started around -- we weren't -- I can't remember the time frame at all. But I know at one point they were bringing the charts back and wanted 31 minutes. I think it was PacifiCare was the insurance they mentioned that wouldn't pay for the procedure unless it was 31 minutes.

BY MR. STAUDAHER:

Q Now --

MR. WRIGHT: Foundation as to whom and like where.

THE COURT: Okay.

BY MR. STAUDAHER:

Q Who did -- who told you the 31 minutes initially?

A I don't -- the people that were coming in the room that were asking for it. I don't know. I don't remember.

Q Do you recall, again --

A I do not remember.

Q Do you remember giving a statement to the police at one point? Do you remember --

A You mean at the previous meeting or wherever?

Q Yes. When -- do you remember the police coming and talking to you and recording a statement that you gave to them?

A Okay. Yes.

Q Okay. And would it refresh your memory to maybe see a copy of that --

A Yeah, I don't remember the --

Q -- regarding that very issue?

A Yes. I don't remember what I said then.

Q Would it refresh your memory if I showed you a copy of the transcript on that?

A I hope so.

Q Okay.

MR. STAUDAHER: May I approach, Your Honor?

THE COURT: Sure.

BY MR. STAUDAHER:

Q And this -- this statement is in two parts, Part A and Part B. I'm going to show you Part A, page 18. And this is -- you can read as much of this before and after as you need to to get context, but the area that I am referring to is on page 18. And go ahead and start at --

A This?

Q Yeah. Go ahead and start reading -- reading that in

there and then tell me does that refresh your memory at all. And you actually may have to, if you want to, the previous page as well if you need to look at that.

MR. WRIGHT: Which part is that, Mike?

MR. STAUDAHER: Part B, the bottom of 17. Actually, starting at the middle of 17 and going onto 18.

MR. WRIGHT: Okay.

THE WITNESS: Right here, and --

BY MR. STAUDAHER:

Q Just -- just go ahead and read it and then tell me if that refreshes your memory. Take your time.

A Okay.

Q Does that refresh your memory?

A Well, this is what I said.

Q Okay. I'm just -- I'm just asking you --

A Yes. Yes, it did.

Q -- does that refresh your memory? Is that right?

A Yes.

Q Okay. And who was the one who told you that initially?

A Initially Keith Mathahs mentioned it.

Q Okay. So -- and do you recall roughly when that was?

A Probably early on. As I said, it was early on working there, but I cannot recall exactly when.

Q As a matter of fact, do you give a number to the

police of how many anesthesia records that you think you've done this with?

A Several.

Q What?

A Several.

Q When they talked to you about the number of records they've reviewed --

A Yes.

Q -- and talked to you about that?

A Yes, I was rather surprised that I wrote it so many times.

Q Okay. So there was a lot of them; right?

A Yes, there were.

Q Okay. Just so we're clear on this, you were -- I mean, was there any -- you said this was an insurance billing thing that they wouldn't pay for it unless it was over the certain amount is what they told you.

A Correct.

MR. WRIGHT: They? Is this Keith Mathahs?

THE COURT: Is that -- did anyone else tell you that, or just Keith Mathahs that you can remember?

THE WITNESS: Some of the -- the girls used to come down from the office with the charts and want 31 minutes on it. And I asked why, and they said -- and I was told, Keith initially told --

MR. WRIGHT: That girl, that what I --

BY MR. STAUDAHER:

Q Keith initially.

A I don't know. There were several secretaries there. I couldn't tell you who. I don't remember them. It was five, six years ago.

Q Okay. So Keith initially, and then it was some of the secretaries that came down and said --

A Yes, they would keep coming down and say Dr. Desai wants 31 minutes on this -- on this chart.

THE COURT: So had you filled --

THE WITNESS: And we just started writing it in because --

THE COURT: Had you filled in less than 30 minutes, and then they'd bring the chart back to you?

THE WITNESS: Yes. Yes, they did.

THE COURT: Is that what happened?

THE WITNESS: Yes, they did.

THE COURT: Okay.

BY MR. STAUDAHER:

Q Now, the accurate time is -- is the patient in, the patient out; correct? I mean, that's what anesthesia time is?

A That's anesthesia time, yes.

Q Is that the way it has been in all of the many years you've practiced in other places?

A Yes, it was.

Q Did you ever in any of those 30 plus years practice in these multiple hospitals, multiple settings, did you ever continue on anesthesia time when you weren't with a patient or dealing with a patient?

A No.

Q When you were doing that, meaning the putting the time down, were you doing something more on the record than just putting the time down?

A They were adding vital signs, etcetera.

Q Okay. So the vital signs where clearly the patient is not with you; right?

A Correct.

Q Why did you do that?

A I guess it just made it part of the record that they -- they wanted to use for the insurance company.

Q In fact, was it not so that in case somebody looked at them --

MR. WRIGHT: Objection. He's leading.

BY MR. STAUDAHER:

Q Well, would it refresh your memory to look at a transcript on that issue?

A Probably.

MR. STAUDAHER: May I approach, Your Honor?

THE COURT: Sure.

BY MR. STAUDAHER:

Q Page 29 -- actually, may be --

MR. WRIGHT: What page is it?

MR. STAUDAHER: Page 27 --

MR. WRIGHT: Let me see yours.

MR. STAUDAHER: -- to 29.

MR. WRIGHT: Let me see yours a minute. Thank you.

BY MR. STAUDAHER:

Q Bottom of 27, going on to -- actually, you can skip ahead from 27 to 29. Okay? If you want to. All right.

A Uh-huh. 27?

Q Bottom of 27, and then go ahead to 29 and look at that one, too.

A Okay.

Q Now, does that refresh your memory on why you may have done that?

A Well, my --

Q I'm talking about the vital signs, why the vital signs would be the same as the time.

A I just automatically put them down to match the 31 minutes. My assumption was -- my assumption was that these -- these procedures had a flat rate charge, and I didn't feel that, you know, it was interfering with anything to do with what the cost of the procedure was or the anesthesia fees. I didn't even know they had -- they use that for anesthesia fees.

Q Did you -- did you need to see this one more time or is it --

A I don't.

Q Okay.

A I'm too --

Q The question to you was related to that very -- very thing. To justify the patient -- that the patient, if any -- any bone -- and I think that's a misspelling -- ever questioned you on the anesthesia time you made it look like the patient was still there by recording blood pressures when the patient really wasn't there. Your answer, yeah, uh-huh.

That's the reason, is it not?

A That's the reason, yes.

Q Okay. So it's to, a better word, cover your tracks, essentially? Isn't that what's also discussed here?

A Well, that essentially would be right.

Q So if the log -- and you were asked this also -- the log shows that the procedure is actually maybe a ten-minute procedure, are you just going to fill it in, the blood pressure for the whole time that they're there even when they're not there? Back then.

A Well, it got to a point where it was just so annoying all the time someone coming in and interrupting during other cases, I guess we just automatic -- I automatically just filled it in just so they wouldn't bother me. I didn't realize that it

was -- had anything to do financially.

Q So you didn't -- hold on. You just said you didn't think this had anything to do with it financially?

A No, I -- no.

Q Did you not testify awhile ago in your statement to the police that you knew that this was for reimbursement for insurance, that they wouldn't pay if you hadn't done this?

A They wouldn't -- yes, they wouldn't -- that particular insurance company wouldn't pay. Correct.

Q So is that fair to say that that has to do with money coming from an insurance company?

A Yes, but it just -- not dealing in any of the finances for all the time I was in this profession, I just -- I just didn't realize it, what they were doing, that the time was important dollar-wise for all the charges.

Q Showing you --

A Maybe I'm confused.

Q -- State's 86. A record from, I will represent to you -- I don't know if you've seen this. And that'll be my first question. Have you ever seen anything like this from the clinic?

A No.

Q Okay. And here where it's talking about how to figure the number of units for anesthesia, do you see that?

A I see it here, yes.

Q And these are for anesthesia charges. Do you see that?

A Yes.

Q And then going to State's 82, alsc from the clinic. Talking about when anesthesia time starts and stops, as you had said, personal -- when you're in personal attendance with the patient.

A Yes.

Q And that you use the American Society of Anesthesiologists Relevant Value Guide and Crosswalk for determining charges; correct? That's what it says here?

A Well, that's what the -- yes.

Q Have you ever seen this document before?

A No.

Q You know that as an anesthesiologist working for all those times and the various things that you did that clearly what you do, the time you spend with patient, is how -- how it gets billed out.

A Yes.

Q Is that right?

A Yes.

Q Did they tell you anything differently when you came to work here that we don't bill for anesthesia at all?

A I kept asking what the charges were for anesthesia and the only thing I ever figured out was -- was between $75 and

$150 flat -- flat fee. That's all I could recall.

Q So why did it even matter --

A Right.

Q -- what times you put down?

A Exactly. Well --

MR. SANTACROCE: Objection. Calls for speculation.

THE COURT: That's sustained.

BY MR. STAUDAHER:

Q Well, if you know. I mean, did -- did they tell you why it mattered if it didn't -- if you didn't know?

MR. WRIGHT: Objection. Foundation.

THE COURT: Sustained.

BY MR. STAUDAHER:

Q Did you ever see Dr. Desai start procedures before you had given anesthesia?

A On occasion he would. He'd come in and want to start them and sometimes I wasn't ready to inject and he'd start them without -- without asking to inject on several occasions.

MR. STAUDAHER: Pass the witness, Your Honor.

THE COURT: All right. Cross.

CROSS-EXAMINATION

BY MR. WRIGHT:

Q Mr. Mione, my name is Richard Wright. I represent Dr. Desai. Okay? How many times have you been interviewed for this testimony?

A I believe once.
Q One time?
A Repeat the question.
Q How many times have you been interviewed before your testimony here?
A Well, once was several years ago.
Q Okay. Was that --
A 2008, I believe, yes.
Q 2008?
A Yeah, I think that year.
Q Was that with the police?
A Yes.
Q Okay. Is that right?
A And some other people in there.
Q Okay. Law enforcement?
A Yes.
Q Okay. Other than that, had you been interviewed by anyone?
A No.
Q Okay.
A Not that I recall.
Q Okay. And you -- you worked at the center until it closed; correct?
A Well, I was there when it closed, yes.
Q Okay. You were there when it closed; right?

A Yeah, I was -- I was working at Burnham after the VA closed because I requested not to be working at this -- at --

Q Okay. How frequently did you work at Shadow Lane?

A I couldn't tell you. We just sort of -- they'd call me over there a lot in the afternoons when they needed extra help.

Q Okay. So like a thousand times, a thousand days?

A For the entire several years I was there?

Q Yeah.

A I couldn't put a number on it. I don't know.

Q Okay. Where did you mainly work?

A From early on I was working mainly at the VA and working in the afternoons at times at either Burnham or at the Shadow Lane.

Q Okay. Where did you work most of the time, if not at VA?

A When not at the VA?

Q Yes.

A Is that what you said? A lot of times at Burnham. It's -- I don't remember which was which, but, you know, wherever they sent me I went.

Q Okay. I understand.

A Okay.

Q I'm just saying which one did you work at most of the time when you weren't at the VA?

A Mostly at Burnham.
Q Okay. So you mostly worked at Burnham; correct?
A Yes.
Q Okay. And you infrequently worked at Shadow Lane; correct?
A Correct.
Q Okay. Because as -- as I read your interview with the Metropolitan Police Department you came out here two thousand -- well, you started work in 2003 --
A Yes.
Q -- right?
A Yes.
Q Okay. And you worked a couple weeks at Shadow, and then went to VA for three and a half years; is that right?
A Yes.
Q Okay. And by -- by going to VA, that was a clinic that was contracted by Dr. Desai's group --
A Yes.
Q -- is that right?
A Yes, it was.
Q Okay. I mean, you were still working for Dr. Desai's practice --
A Yes, I was.
Q -- but you were assigned to the VA clinic; right?
A Right.

Q And was that a separate clinic other than Burnham and other than Shadow Lane?
A Yes.
Q Okay. And was that over near the Burnham facility?
A Yes, it was.
Q Okay. And then if you started in 2003 that was about three and a half years at VA, did you stop working at VA in about 2006 or '07?
A Yes, somewhere around that.
Q Okay. Did -- did the contract end with VA or something?
A I have no idea.
Q Okay. Well, did someone replace you there?
A No, the clinic closed.
Q Okay. The clinic closed.
A Yes.
Q Okay. That -- that clinic closed down; right?
A Yes, it did.
Q Okay. So then you worked mainly at Burnham; is that correct?
A Yes.
Q That's what I read in your Metro statement; is that true?
A Yes.
Q Okay. You worked mainly with whom at the Burnham

clinic? Who did you work with?

A I'm trying to remember his name. Dr. Mason.

Q Dr. Mason.

A I'm bad on names. I'm sorry.

Q That's okay. That's all right. Now, do you recall when the CDC or the Southern Nevada Health District or various agencies came to the clinic?

A I believe I was called over that day because they wanted to draw blood or something, yes.

Q Okay. Called over from where?

A From Burnham, I presume.

Q Okay. You were at Burnham; right?

A Yes.

Q Okay. And then some day, whenever this happened, and it was -- I'll represent to you it was January 2008, okay?

A Correct.

Q So in January 2008 your contact with the investigators from the agencies was you were called over to give a blood sample.

A Yes.

Q And everyone was; correct?

A Correct.

Q I mean all of the employees; right?

A I assume. I don't know.

Q Okay. You didn't know?

A [Shakes head no].
Q Okay.
A I'm sorry.
Q Were you interviewed at that time?
A Not that I recall.
Q Okay. Were you working when an inspection took place?
A Yes, I remember several women there with clipboards, and I think one older gentleman was standing out in the work area.
Q Okay. And did you talk to them, then?
A I don't recall anything but probably saying hello or whatever.
Q Okay. And would that -- would that have been an inspection at Shadow Lane or Burnham?
A No, that was at Shadow Lane.
Q Okay. And so did -- you remember a couple ladies with clipboards?
A Uh-huh.
Q Right?
A Yes.
Q Okay. And you don't recall being interviewed; correct?
A I don't.
Q And the -- were -- were you working at Shadow Lane that day?

A Well, I was called over there for the -- I assumed I was working there that day or put to work there that day. I don't recall.

Q Okay. Well, would -- is this the same day you gave a blood test?

A Yes, I was there --

Q Okay.

A -- for that.

Q So you were called over from Burnham for a blood test; is that right?

A Well, I didn't know why, but I went over there, yes.

Q Okay. And so I just want to be sure that's the same day we're talking about; right?

A I assume so. I -- I --

Q Ordinarily, I'm asking you.

A I don't remember.

Q Okay. You don't remember. Were you working at Shadow Lane doing a procedure when all of the surveyors, investigators, whatever you want to call them, came in and watched you do a procedure?

A I saw them in the hallway, yeah.

Q Okay.

A I saw no one come in the room.

Q Okay. You didn't see anyone come in and observe your procedure?

A Not in my room, no.
Q Okay. And you weren't interviewed by them and you simply gave a blood sample; is that correct?
A Interviewed by whom? These people?
Q Yes.
A No, there was a couple of -- whoever came in to draw the blood. We went into another office and they said we're here to draw some blood samples and they're collecting it from everybody. I said okay. But they weren't the interviewer. I think there were some -- a couple of young nurses there. Whoever it was that drew the blood. I don't remember who they were.
Q Okay. But that was the extent of your interaction or conversation with them?
A Seeing them, yeah, that's correct.
Q Okay. Now, in -- in 2008 you were interviewed by the police, okay. You have seen your transcripts of those interviews; correct?
A I believe I read them. I don't recall.
Q Okay. I mean, you know you were interviewed on two days and transcripts were prepared; correct? I'm talking about by the police like in August 2008.
A Yes, I remember one interview. Yes.
Q Okay. One interview. I'm sorry. One interview, two parts. One day; right?

A I guess. I imagine. It just was one day. So if it was one or two parts --

Q Okay.

A -- that's what it was. I don't know.

Q Now, at -- at that time you -- I want to go through some of those statements with you. Okay?

A All right.

Q And then you tell me if they're all accurate. Okay? Now, at the time you explained that you were -- from your experience in Florida you were very familiar with propofol; correct?

A Correct.

Q And you said that here today that you were actually using it before it was like licensed or readily available; right?

A Yes.

Q Okay. And when you came to the clinic and were hired, who interviewed you?

A Dr. Desai.

Q Okay.

A And I believe Tonya might have been there, Rushing.

Q Okay. Tonya Rushing. And who would -- did you talk to anyone about getting the job there? Did someone refer you there or anything?

A When I was at an anesthesia meeting it was Keith

Mathson. He -- he --

Q Keith Mathahs?

A Yeah. He was at the meeting, too, and he said there was an opening at the clinic and why don't you interview, which I did. And I sent in --

Q Okay.

A -- my CV.

Q Okay. And an anesthesia meeting, this would be a meeting of the anesthetists in the community?

A It was a combination of physicians and anesthetists.

Q Okay. And is that like a society or club or group or something?

A It's a -- for ours it's a national organization. For anesthetists and the other ones the American Society of Anesthesiologists.

Q Okay. So that would be a local meeting in Las Vegas?

A Yes, it was.

Q Of practitioners of anesthesia?

A Correct.

Q Okay. And you heard about the opening from Keith -- Keith Mathahs?

A Correct.

Q Okay. And then you went and applied and you were hired; correct?

A Correct.

Q And did you -- were you already credentialed or did that take time for or activating your license?

A No, I was -- yes, I was working on getting credentialed here in this state from Florida.

Q Okay. And that just means getting your license here all up to date; correct?

A Yes.

Q Okay. And you did all of that and then went to work; right?

A Correct.

Q Okay. And did -- did anyone have to teach you about how to give prcpofol?

A No.

Q Okay. And you -- you already knew because that's what you've been doing; right?

A Yes.

Q Okay. And then who did -- who did you start working with as far as a CRNA?

A Well, at the time when I was working and -- and accepted the position, Dr. Desai said, you know, your doctors are -- you would be working with the physicians and you are in charge of your work, period.

Q Okay.

A There was no one specifically in charge of -- in charge of us. We were sort of on our own, but employed by the

corporation.

Q Okay. And do you -- and do you recall that he told you you're responsible for your anesthesia and you need to do what you think is right?

A That's correct.

Q Correct?

A Yeah.

Q And has Dr. Desai told you that at the beginning?

A Yes, he did.

Q Okay. And you told the police that; correct?

A I guess so.

Q Okay. And the -- did you -- what -- you're working, when you started in 2003, one room -- one procedure room at Shadow Lane; right?

A Yes.

Q Okay. And you worked there for a short period of time before going to the VA clinic?

A Yes.

Q Okay. Who were you working with then?

A Keith Mathahs.

Q Okay. And when you started, what was your -- I want to start 2003. You just started work.

A Uh-huh.

Q Okay? And tell me what your practice was.

A Well, he said there at the clinic they load up 10 or

15 syringes --

Q Okay.

A -- of propofol.

Q Who said that?

A Keith did.

Q Okay. Keith Mathahs.

A And he showed how we set them -- he set them up there. And I said, well, it sounded pretty feasible to me using a syringe, clean syringes and needles for each draw. And we just drew up as many as possible. So a lot of times he'd draw them up in the morning.

Q Okay.

A And we'd be ready to practice.

Q Okay. So you were both working there and Keith is showing you the ropes, for lack of a better word?

A Yes. Uh-huh.

Q Okay. And the -- you'd get the propofol out in the morning. What size vials then?

A At that time I believe they were all 20 cc.

Q Okay. They were 20s.

A 20s, yeah.

Q And you would take -- you'd have a box of clean needles and syringes; right?

A Correct.

Q Or you and Keith would. And you would take and draw

up ten to fifteen 10 cc vials --

A Yes.

Q -- correct?

A Correct.

Q Okay.

MR. STAUDAHER: Objection. 10 cc vials?

THE WITNESS: 10 cc syringes.

MR. WRIGHT: I'm sorry. Syringes. 10 ccs into a syringe. Thank you.

BY MR. WRIGHT:

Q And so you would then have a supply and all of those are clean and sterile; correct?

A Yes.

Q So you're taking a 20 cc vial of propofol and you could feel two needle and syringes out of it; right?

A Yes.

Q Okay. And so if you had like 16 of them filled up, you would have used eight propofol vials; right?

A Correct.

Q Okay. And then you would toss each one of those in the trash; right?

A Yes.

Q Okay. And then the patients would start coming in, okay. The first patient rolls in. What do you do?

A What do mean? To get started?

Q Right.
A You put on their blood pressure cuff and EKG and all the oxygen.
Q Okay. You have -- you have experience having done all that?
A Yes.
Q Okay. And would you interview the patient?
A Yes, they're interviewed prior to going to sleep.
Q Okay. Because you're -- you're going to ask them all those questions, allergic to eggs, all that stuff?
A Allergies and all that, yes.
Q Right. To make sure that they are -- it's appropriate to use propofol; right?
A Correct.
Q And you would do all of that; correct?
A Yes.
Q And there is a form and you'd fill it out on their -- what do you call it? History and physical --
A Anesthesia record, yeah.
Q Anesthesia record.
A Yes.
Q Okay. So then the first patient coming in, did you use lidocaine?
A When the bottles were -- when the syringes were filled. Usually Keith said -- suggested we put a quarter -- a

half cc of lidocaine in the syringe before we filled it with --

Q Okay.

A -- the propofol. So you had a small amount of lidocaine because it does burn when you inject it.

Q Okay. Would you do that in every one of them, or just some of them?

A We usually filled all of them with about a quart, half cc. It wasn't enough to overdose anybody.

Q Okay. And -- and that, when we're talking about Keith Mathahs, he's explaining to you the process --

A Yes.

Q -- correct?

A Uh-huh.

Q And you were familiar with lidocaine?

A Yeah.

Q I mean, this wasn't something new. You knew exactly what he was talking about; correct?

A Correct.

Q And so what you would do is in -- in the brand new needle and syringe you'd put a small amount of lidocaine in it?

A Yes.

Q Out of a common lidocaine multiuse vial --

A Yes.

Q -- correct?

A Correct.

Q That's just the way it was everywhere --
A Yes.
Q -- correct?
A Correct.
Q Okay. And then you'd put in propofol to fill up the 10 ccs in the syringe, set it aside and have your stack, stack of needles and syringes?
A Correct.
Q Okay. Now, the patients start -- the first patient comes in. You've done your history and physical. Time to start the procedure. Hep-lock is in the patient most of the time; correct?
A Yes.
Q That's put in out in the pre-op area?
A In the -- in the early parts I think a lot of the times we started --
Q Okay.
A -- a lot of the IVs.
Q Okay. So oftentimes you would start it?
A Uh-huh. Yes.
Q Okay. And so the hep-lock is where you're going to put the needle and syringe?
A Yes.
Q Okay. And so you -- you put the -- were you one that normally always dosed 100 to begin with?

A Usually it took around 100, sometimes some more. It's all according to the weight of the patient, the size, and --

Q Okay.

A -- etcetera.

Q But would you fully inject the first syringe if you had made the determination the patient is healthy and it's ready? Would you totally inject the first syringe?

A Not, as a bolus. I'd probably -- I usually put in about 40, 50 ccs and wait a little bit, you know, a half minute or whatever and see if it was reacting, and then --

Q Okay.

A -- inject a little more until they're asleep.

Q Okay. And so -- and the -- the whole time the needle and syringe is sitting in the hep-lock?

A Yes.

Q Okay. And, of course, then you finished, you fully injected the 10 ccs.

A Yes.

Q Okay. And now what would you do with that needle and syringe?

A Discard it.

Q Okay. And the -- do you have a sharps container?

A Yes.

Q Okay. And you were always meticulous about that?

A I hope so.

Q Well, I'm asking. I hope so, too. I mean, I'm asking your normal practice.

A I would -- it was normal to do that, yes.

Q Okay. Because it was done, correct, that needle and syringe?

A It was finished, yes.

Q Okay. And you weren't going to use it again?

A No.

Q Okay. So you discarded it in the --

A In the sharps.

Q -- sharps. Okay. Now, the patient may need more sedative, more propofol; correct?

A Correct.

Q Okay. So would -- would you take -- pick up a new needle and syringe prefilled?

A Yes.

Q Okay. You have to say it for the court --

A Oh, okay.

Q -- record.

THE COURT: It's all being taped and that's why, you know, we can't --

THE WITNESS: Okay.

THE COURT: -- the -- the court recorder can't transcribe that.

/ / /

BY MR. WRIGHT:

Q And so you would use a new needle and syringe on the patient; right?

A Yes.

Q To give more propofol if the patient needed it?

A Yes.

Q Okay. And most of the time it's never going to go over 200; right?

A Correct.

Q Most of the time.

A Most of the time that's correct.

Q Okay. Most of the time it's going to be one full syringe and then either close to a full one or most of a second?

A Yes, correct.

Q Okay. So now you have given -- given either all of the second or most of the second. So a clean needle and syringe; right?

A Yes.

Q Okay. And then patient is done, procedure is going to be ending. Okay? What do you do with that needle and syringe?

A It's disposed of also.

Q Okay.

A You squirt out the rest of whatever is in there and throw the -- put the -- put them in the sharps box.

Q Okay. And you would never use that needle and syringe

on another patient --

A No.

Q -- correct?

A Correct.

Q And you would never use that propofol if there's still some remaining in there. You wouldn't use that on any --

A No.

Q -- other patient or put it back in a bottle?

A No.

Q You would discard it?

A Yes, it would be discarded.

Q Okay. And did -- did anyone -- anyone there ever tell you, no, use that left over propofol?

A I can't recall, but it may have been mentioned.

Q Okay. Who would have --

A Dr. Desai may have mentioned it, but I don't recall. Half the time he said a lot of things going on and, you know, I just did what I had to do and --

Q You did what you had to do.

A And just, you know --

Q Okay. Well, did -- did he --

A -- if he said something, I would just get rid of it.

Q Did Dr. Desai ever tell you to reuse a needle and syringe?

A No.

Q What?
A Not that I recall.
Q Okay.
A I mean, he mentioned reusing stuff, but it just wasn't done.
Q Okay. What -- what did he mention reusing stuff?
A He mention, you know, don't waste the propofol.
Q Okay.
A It would be the same thing.
Q I understand don't waste the propofol.
A Right.
Q Okay. What I'm asking you is did Dr. Desai or anyone there ever tell you reuse a needle and syringe?
A No.
Q Okay. And -- and if they had, you would not have.
A Correct.
Q Is that correct?
A Yes.
Q I mean, you -- if someone said reuse this dirty needle and syringe on another patient, you would have said hell no, I presume.
A Exactly.
Q Is that correct?
A That's correct.
Q Okay. Well, when you were saying I was just doing

what I was told or something. You were practicing the entire time you were there what you believed was safe, clean, aseptic technique; correct?

A That's correct. Yes.

Q And never did anyone tell you to do differently; correct?

A That's correct.

Q Now, in -- in fact, when Keith was explaining to you the procedures being utilized at Shadow Lane, drawing up multiple needles and syringes out of the propofol vials, no one at any time told you to do anything against what you had already normally been trained to do; correct?

A That's correct.

Q I mean, that's what you told the police --

A Yes.

Q -- and I want to be sure that's a correct statement. So it wasn't when you were learning it and starting out that all of the sudden you went, whoa, this is dangerous or something. You knew they were -- Keith was showing you a safe, correct, aseptic technique; right?

A Right.

Q Okay. Now, you then went to work at the VA clinic.

A Correct.

Q About until it closed, about three and a half years.

A Yes.

Q Okay. The procedures at the VA clinic, who -- who were the doctors there? Do you happen to remember?

A Dr. Wahid, Dr. -- I mentioned him before. I can't remember --

Q Okay.

A -- his name. Yeah.

Q They use --

A Several from our clinic. The younger -- a couple of the younger doctors worked there.

Q Okay.

A Dr. Nayyar and Dr. Wahid primarily.

Q Okay. Dr. Nayyar; N-A-Y-Y-A-R?

A Yes, I imagine.

Q Okay. Common spelling. They -- did they use propofol at the VA?

A Yes, we did.

Q Okay. And you utilized the same practice there that Keith showed you and that you were totally familiar with; correct?

A Yes, I did.

Q Okay. Is that right?

A Yes, I did.

Q Okay. So the -- the practice at VA, did -- did they -- was there anything different regarding the procedure, the injection of the propofol at the VA?

A At the VA. Well, what they did is each case the nurse brought out propofol that was needed and at the end of the case, whatever was there, everything was thrown out.

Q Okay.

A Everything.

Q The propofol vial?

A Propofol vial, syringes, everything was tossed out completely. There was nothing that -- if there was a residual, that was also thrown out.

Q Okay. The needle and syringe?

A The needle and syringe.

Q So whether the residual is in the propofol vial or the needle and syringe, you would toss it?

A Correct.

Q Okay. Did they have the same type of hep-locks?

A I believe so. I can't recall because we -- we had them sometimes. Sometimes we didn't. I don't recall.

Q Okay. Did they ever use an IV line?

A Now, at the VA everybody had an IV fluid running before they came into the treatment room.

Q Okay. So that was a different type of procedure?

A Yes.

Q Okay. So when -- at the VA, patient coming in, patient already has an IV fluid line running?

A Yes, I -- I usually started them out in the holding

area if the nurses couldn't get them started.

Q Okay. Explain to the jury what that means because thus far all we've heard about is hep-locks being inserted on the back of the wrist.

A At most -- at most outpatient facilities everybody comes in with at least 500 ccs of Ringer's lactate or -- or saline fluid. And they have an intravenous set up, a drip, and usually your injection site is up in the IV tubing someplace rather than right in the -- the pick in the arm or hand.

Q Okay. So is that the --

A And it's just a variation of the -- the same thing in a way. But make sure that they're not dehydrated, etcetera. It was -- it's a little more expensive, but that's what they did there. And we had needle-less -- needle-less equipment.

Q Needle-less.

A Needle-less equipment. Right.

Q Okay.

A They had ports that you just put your syringe on and inject. You didn't have to inject into a rubber diaphragm or anything.

Q Okay. Let's talk about VA because you were there for three and a half years.

A Yeah.

Q This was part of Dr. Desai's clinic; right?

A Yes, it was.

Q Okay. Because you were an employee. You were salaried; correct?
A I was salary from --
Q Correct.
A -- gastro. Right.
Q Right. And that -- so you didn't leave and go to work independently for the VA.
A No, I was -- I guess you'd go with a subcontractor.
Q Okay.
A He subbed me out to there.
Q Okay. And so there, when a patient comes in they have an -- already an IV line and, what, a little bag above them?
A There's a, yeah, bottle of either Ringer's lactate or some other fluid.
Q Saline --
A Ringer's lactate fluid or saline --
Q Okay.
A -- IV fluid.
Q Okay.
A Just -- just keep them hydrated.
Q Okay. Now, when you're going to give them, that patient the propofol, okay?
A Yes.
Q You don't inject it into a hep-lock in the back of their wrist?

A No.
Q You inject it where?
A In the tubing. It has several injection sites, and we use just one of the injection sites on the tubing and then inject it that way and then run some fluid in the --
Q Okay.
A -- tubing.
Q And that -- so it then flows in with saline solution?
A Saline, yes.
Q Right? At the VA?
A Yes. Saline or Ringer's.
Q Okay. And do you remember talking to Dr. Nayyar about that?
A No.
Q You don't? About the use of saline and propofol at the same time.
A That's -- this was -- this was a suggestion for use at -- at Shadow, not at the VA. It was not used at the VA at all.
Q What wasn't used?
A A push saline injection that you're mentioning.
Q Okay.
A Do you understand? Can I explain?
Q I don't think I understand.
A Okay. The IV fluid is running in a tubing and the patient gets their propofol pushed into their IV fluid with the

IV dripping in also.

Q Okay.

A At -- at Shadow Lane, no IVs unless the patient was getting hypotensive or whatever, we'd start one out in the holding area to get them -- you know, get some fluid in their body. But otherwise, IVs were not a common -- a common use at Shadow Lane.

Q Saline was not?

A No, the IV fluids.

Q Okay. The IV fluid.

A Right. Now, the saline that you mentioned from Dr. Nayyar mentioning putting some in with the propofol and pushing it was, you know, for either -- it was Shadow Lane, actually. It had nothing to do with the VA. They had their own protocol.

Q Okay.

A And --

Q I'll get to this Dr. Nayyar saline portion.

A Okay. I just want to say it wasn't part of the VA regime at all.

Q Okay.

A He never said anything to anybody.

Q Okay. But at -- at the VA the propofol was being injected with the saline.

A Yes.

Q Okay. But you had been asked questions about dilution

and have you ever heard of saline with propofol and the answer is, yeah, VA for three and a half years; right?

A Right, but it wasn't a -- if it's in -- well, if it was in the hand it wasn't a fast push, it was just dripped in with the other.

Q I understand.

A Okay.

Q Saline was being dripped into the patient along with the propofol; correct?

A Correct.

Q Right?

A Correct. Yes.

Q Okay. Now, I want to get to -- you know, leave VA alone now, okay?

A Okay.

Q And the -- get -- get to a situation, either at Burnham -- did you -- did you do the same procedures, your same technique, preload syringes, you did the same at Burnham and Shadow Lane?

A Yes.

Q Okay. Your -- your procedures were identical at each, Burnham and Shadow Lane?

A Yes.

Q Okay. And so I want to get to a situation where you don't have any more preloaded syringes.

A Uh-huh.
Q Okay.
A Yes.
Q You still have a box of clean sterile needle and syringes there; right?
A Yes.
Q And you have propofol vials sitting there; right?
A Yes.
Q Okay. And so a -- you -- you've used up your supply of preloads, okay?
A Okay.
Q And now a new patient rolls in. What -- what's -- what's your practice? What's your procedure? What's your protocol?
A I'd be refilling more syringes with --
Q Okay. You -- you --
A -- propofol.
Q Okay. You would always try to keep ahead --
A Right.
Q -- by supply done, reload more syringes; correct?
A Yes.
Q And so if like reload five more or six more; right?
A Correct. Yes.
Q Okay. And so on each of those, every reload, new needle, new syringe.

A Uh-huh.
Q Set it aside. It's sterile; correct?
A Yes.
Q Now, did -- did there come times -- did there come a time where 50s rather than 20s started being used?
A I can only recall that they were -- when I went to -- back to Shadow Lane, I found there were 50 cc syringes. And I think that's around the time that Mr. Lakeman was there, so that -- for a time frame, that might be about the date. I don't know.
Q Okay.
A And I think the reasoning I heard was it was cheaper to by 50 cc vials than 20 cc vials.
Q Okay.
A And so we, I guess, adjusted our practice to just fill up more syringes from, you know, a 50 cc vial rather than a 20.
Q Okay. Because nothing really changed in your practice, you just now had --
A No.
Q -- a 50 rather than the 20; correct?
A More propofol, yes.
Q Right. And so instead of filling up four syringes with two 20s, you'd fill up five with one 50; correct?
A Yes.
Q Okay. And this -- this -- you -- you were using all

of the propofol to fill up syringes; right?

A Yes.

Q Most of the time.

A Yes.

Q Okay. If there was a time when like you were done and there was still some residual left in a propofol vial, what would you do with that?

A You're talking about the 50 cc vials?

Q Or a 20.

A Yes, if here was enough left, I'd draw it up with another sterile syringe and needle and use it. And if there wasn't that much left, it would be discarded.

Q Okay. Would you say -- just suppose there's -- the way it's gone you've used one-fourth out of a cc -- out of a 20, okay?

A Uh-huh.

Q It was -- you would then fill a brand new syringe out of it; right?

A How small of an amount? If it was just like a cc or two, it wouldn't matter.

Q Okay. What would you do with it?

A Throw it away.

Q Throw it away --

A Yes.

Q -- right?

A Correct.
Q I mean, if whatever, some residual amount in the propofol vial, you would discard; correct?
A Yes.
Q Okay. Did you -- you didn't save it for the next day?
A No.
Q Okay. And you wouldn't save a half used propofol vial and get out a needle and draw it up and use it on a new patient, would you?
A No.
Q Okay. I felt you hesitate a minute.
A No, I'm just -- I'm just trying to understand what you're -- what you're -- what you're saying, that's all.
Q Okay. Now, there were -- there were times when you would be at Shadow, correct, and Dr. Desai would be doing the procedure?
A Yes.
Q Okay. And at -- at times he would tell you don't use too much; correct?
A Yes.
Q And he would tell you if he is near the end don't give anymore; is that correct?
A Yes.
Q Now, the 20s and 50s of propofol vials, those -- those were being used, the contents were being used on multiple

patients; correct?
A Yes.
Q Okay. And you -- you were aware -- well, when did you become aware that they say single patient use on the vial?
A Well, it's in the brochure written on the bottle.
Q Okay. Okay.
A However --
Q However.
A -- you know, it was not an uncommon practice to draw more than one syringe full out of a multiple dose vial.
Q Okay. And you said, in fact, everybody does it; correct?
A That was --
Q That's what you --
A -- what I said.
Q -- told the police that everybody was doing it; correct?
A Yes.
Q Okay. And you said you're not going to throw away propofol when it can be used correctly; right?
A For the size of the vials, correct.
Q Right. And, in fact, you -- you thought the 50s were multi-use; right?
A Yes, I -- with that amount of propofol I assumed it could be used for multiple doses, which it --

Q Okay.
A -- was used for.
Q Well, you told the police that it came with a spike for it.
A Correct.
Q And you believed it was multi-use.
A Correct.
Q Okay. And so what does the spike mean?
A The spike means you'd be drawing more than one time from a -- from the large vial.
Q Okay.
A You wouldn't --
Q And tell the jury what a spike is for the propofol vial.
A It was just a little contraption with a point that goes into the vial. And you can just put the syringe without a needle on it and withdraw propofol without puncturing the -- the diaphragm --
Q Okay.
A -- several times.
Q So can you use a spike on a 20?
A Yes, you can.
Q Okay. But the spikes don't come with 20?
A I don't recall if they did or not.
Q Okay. But you knew they came with 50s?

A Yes.

Q Okay. And so the spike was just something that you would stick in the 50 propofol vial and -- and it served as a little nozzle on top that you could draw propofol out of?

A Yes.

Q And so you didn't even have to use a needle?

A Correct.

Q Okay. Whereas on the 20s -- on the 20s when you weren't using any spike, you would take the needle and syringe, you'd wipe the top of the rubber bladder on the 20; right?

A Right.

Q Then you'd draw it up using a needle and syringe.

A Correct.

Q But on the 50 you were using a spike.

A Correct.

Q Correct?

A Yes.

Q Okay. And so you would just take the syringe and hook it up to the little nozzle or nipple or whatever it is, the spike, and you would draw out 10 ccs.

A Correct.

Q Right?

A Yes.

Q Okay. And then when you take it off, what do you do with it? Put a needle on it?

A Put a needle on the end of it, right.
Q Okay. At that time you put the needle on.
A Right.
Q Put it in your little stack of preloads.
A Correct.
Q Right?
A Yes.
Q Okay. And when -- never mind. Other than Keith and other CRNAs, did management or supervisors or anyone every tell you to load up syringes the way you were?
A No.
Q Okay. That's because the way you were doing it was absolutely safe and proper; correct?
A Yes.
Q Did you -- you've testified for me and on direct that you never reused a needle and syringe on a different patient; correct?
A Yes.
Q Okay. Were there ever occasions when you would reuse needle and syringe on the same patient you had dosed?
A That I've done. When there was a little -- little residual left in a particular propofol bottle I would reuse the syringe.
Q Okay.
A On that same patient and discard it all after that.

Q Okay. And that was all totally safe and aseptic proper technique; correct?

A In my opinion it was, yes.

Q Okay. And has anyone told you differently?

A No.

Q Okay. And what you're talking about hypothetically is if you dosed a patient and you have a propofol vial, say a 50 that still has five in it, okay?

A Uh-huh. Yes.

Q And the patient needs some more. You'd use the same needle and syringe to get the residual to use only on that patient; correct?

A I would do that.

Q Okay. And then you would toss the needle and syringe and the propofol vial out; correct?

A Yes.

Q You were asked did you ever receive orders to reuse needles and syringes or were you ever admonished by anyone at any time because you worked reusing needles and syringes? You said no; correct?

A Correct.

Q You then said they never really commanded much of what I did there.

A Correct.

Q Okay. Because you knew what you were doing; right?

A Yes, right.

Q Did Dr. Desai ever say you are using too many syringes? No, he just complained that you use too much propofol; correct?

A That's correct.

Q You would get bonuses, $5,000 quarterly?

A That was not a steadfast thing.

Q Okay.

A I think we got, if I recall, maybe two or whatever they were. And eventually it was almost like dangling a carrot in front of you. And, you know, you'd find -- he said because you're working so hard, you know, you'll get a bonus. And most places I worked gave bonuses, you know. It was not an uncommon practice.

But it got to the point where it was just frustrating to know if you were getting anything or not, so we just, you know, gave up on -- on even asking anymore. And I think Tonya had a -- Tonya had a lot -- you know, she would tell us, you know, well, we'll -- we'll work on it. And sometimes you'd get it and sometimes you don't. But the ones -- there was only a few times we did get that anyway toward the latter part of our position there.

Q Okay.

A It was not steadfast at all.

Q Do you recall telling the police you got bonuses

quarterly, an extra 20,000 a year, and then they stopped --

A Right. Yes.

Q -- at the end of '07?

A Yes, but that wasn't every year. It was probably for a couple of years.

Q A couple of years.

A Yeah, I can't recall.

Q Okay. And when they stopped, you -- you got a raise by 20,000; correct?

A That was the -- the last contract I signed. It never came to fruition anyway. That's correct. They just added it into the salary and that was the end of bonuses and raises and whatever. That's correct.

Q Okay. Now, does -- when you get to the hep-lock, saline -- forget the hep-lock. I want to get to the saline push mixed with propofol.

A Okay.

Q That -- that was a result of a meeting; correct?

A That was about a -- probably a ten-minute meeting in Dr. Desai's office.

Q Okay. And whose idea was that?

A Initially Dr. -- Dr. Nayyar suggested it. And I went along with him and I suggested it to Dr. Desai.

Q Okay.

A And he said, well, if it worked, you know.

Q Okay.
A It would --
Q So this Dr. Nayyar suggested using 5 ccs of saline after the first injection of propofol. Is that what I'm understanding?
A Yeah, you inject the propofol and then push the saline which was supposed to prolong the effect of less propofol. But it was --
Q It didn't work out.
A It didn't go anywhere.
Q Okay. But on who it evolved and whose idea it was and the experiment, for lack of a better word, Dr. Nayyar discussed it with you --
A Yes.
Q -- correct?
A Correct.
Q And then you tried it for a little while yourself; correct?
A Yes.
Q After talking to Dr. Nayyar; correct?
A Yes.
Q And then you took your idea to Dr. Desai; correct?
A I'm not sure it worked that way. I don't recall how -- how it worked, I don't recall.
Q You don't recall what?

A When we took the idea to Dr. Desai. I don't recall how that all worked.

Q Do you recall, I mean, telling the police? Sir, let me get this straight, you came up with the idea, you tried it on the patients at Shadow and Burnham and then you approached Dr. Desai with that idea?

A And at that time --

Q Yes.

A No, at that time I couldn't recall my conversations with Dr. Nayyar.

Q Okay.

A At that time it was a rather rattling time at this interview.

Q Okay.

A And that -- I missed that part.

Q Okay.

A And I recall that after I read this report that I got recently.

Q Okay. What report?

A From the meeting several years ago. I don't recall ever seeing it before.

Q Okay. When did --

A Until now.

Q -- you get it recently?

A Pardon me?

Q I thought you just said when you got this report recently.

A Then I recall my talking to Dr. -- or Dr. Nayyar speaking about this procedure. I didn't recall it at the time. I just mentioned that I did, I was doing it.

Q Okay. When did you get this recently?

A To review it?

Q Yes.

A A few weeks ago, I imaging.

Q Okay. From whom?

A From the office.

Q Okay. From the district attorney?

A Yes.

Q Okay. So they gave you a copy of it?

A Yes.

Q So you came in and read it?

A No, I have a copy of it.

Q Okay. You have a copy. And so they just said read this to prepare for our meeting?

A Yes.

Q Is that right?

A Correct.

Q Okay. And so then is -- is it correct that you talked with Dr. Nayyar about it?

A Yes.

Q And do you recall that Dr. Nayyar talked about propofol being used at the VA where he was?
A Right. But we didn't use it there.
Q Propofol?
A I mean, not propofol. We didn't use that technique at the -- at the VA.
Q Okay. There it was automatic. The saline was dripping in automatically; correct?
A Yes.
Q Okay. And so then after talking to Dr. Nayyar, you tried it yourself --
A Correct.
Q -- right? And then you took the suggestion to Dr. Desai. Am I right about that?
A Correct.
Q Okay. And you said this -- this may work and it may give the -- the patient greater comfort; correct?
A Yes.
Q Is that right? I mean, I'm asking that --
A What I'm saying is --
Q -- because that's what I read.
A -- it would probably be using a little less propofol --
Q Okay.
A -- and come out with the same result. It was just an

idea, which didn't work.

Q Okay. Did you say it utilized the 5 cc portion of saline to see if the technique would cut down on the discomfort of the patient? Your idea.

A Probably the wrong terminology, but, yes.

Q Okay. Well, I -- those are your words; right?

A I imagine at the time.

Q Okay. And so you took that and that would use -- well, what would they -- what -- what discomfort does that cut down on? You use less propofol, less risk on the patient? I don't --

A I don't know.

Q Well, it was your idea, sir.

A I know. It was -- it was just something we just thought up --

Q We --

A -- that did -- did not work.

Q Who is the we?

A Nayyar. He suggested it and I went along and we said let's try it.

Q Okay.

A And it didn't work.

Q Okay. I understand. It was discontinued like --

A In other words, the faster you're pushing in propofol with a little dilution, it might have lasted a little longer.

Q Okay. And so when we say it would cut down on the discomfort for the patient, is -- is -- does that mean you don't have to give them as much propofol?

A I had -- it must have been. I don't recall.

Q You indicated on direct examination that there were times when Dr. Desai would inject the propofol himself.

A On -- on a few occasions he did.

Q Okay. And so I -- I didn't see that anywhere in these statements. Did you see it in there?

A I don't recall, no.

Q Okay. When -- when did that come up?

A Over the period of the time when I was working there, you know.

Q Okay. No, I --

A Not very -- it wasn't a very often thing. It was just something that he would do. Reach over and push. It happened, you know, several times, but not many.

Q Okay. When did you remember that?

A Just thinking over things that went on in the last --

Q Okay. Who --

A -- five years.

Q -- did you discuss it with?

A I don't believe I discussed it with anybody.

Q Did you discuss it with the district attorney when you were interviewed?

A I don't recall.
Q You don't recall?
A No.
Q Well, how did he know to ask the question?
MR. STAUDAHER: Objection. Speculation.
THE WITNESS: I have no idea.
BY MR. WRIGHT:
Q Okay. Well, did you see it anywhere in your lengthy interviews with the police department?
A At that interview I was not of sorts, to be honest with you.
Q You were not --
A We were rather in a --
Q I didn't hear you.
A -- an uncomfortable situation and I just, you know, probably wasn't thinking right at the time.
THE COURT: What was that word you used? You said that was not of sorts?
THE WITNESS: Out of sorts.
THE COURT: Oh, out of sorts.
THE WITNESS: Out of sorts.
THE COURT: I didn't understand.
MR. WRIGHT: That's what I didn't hear.
THE WITNESS: Quite intimidating, actually.
/ / /

BY MR. WRIGHT:

Q Well, he called you a liar; right?

A They --

Q What?

A They were saying things sometimes that I don't recall, you know, doing or not doing.

Q Do you recall that they called you a liar?

A If you want to put it that way. I don't know.

Q Well, what did they think you were lying about?

A I have no idea.

Q You don't have any idea?

A No.

Q Did -- do you recall that you kept insisting that no one told you ever to reuse syringes? Right?

A Well, if they never told me -- I never remember them telling me if they did, no.

Q Okay. No one ever told you to reuse syringes --

A No.

Q -- right?

A No, sir.

Q And do you recall what they were calling you a liar about?

A No.

Q Were you lying to them?

A I don't know.

Q Pardon?
A I don't -- I can't recall, sir. I don't --
Q Okay. I'm not asking what you said. I'm saying were you lying to the police when you were interviewed?
A Not that I recall.
Q Okay. I mean, you weren't intentionally sitting there telling lies to them, were you?
A No.
Q Okay.
A Okay.
Q Now, you have always been a salaried anesthetist?
A Yes.
Q For your whole career?
A That's correct.
Q Okay. So you didn't, even when you were in this large group in Hollywood, Florida, you didn't do your own billings?
A Not at all, no.
Q Okay. And the -- as -- as I understand it, you -- you thought there was a flat fee charge for -- for your -- your anesthesia services?
A Correct.
Q Correct?
A We were salaried.
Q I understand that.
A And whatever they charged, there was, you know, their

-- there was their fees and I don't know exactly how the whole procedure worked. I never got into all that.

Q Okay. And you -- you have indicated that you thought it was like a flat fee.

A For here at the clinic, yes. I thought these outpatient procedures were, you know, a flat rate and that's what they charged for anesthetist anesthesia. I know that physicians bill some other way, but I never really knew how they did it or looked into it.

Q Okay.

MR. WRIGHT: Court's indulgence.

BY MR. WRIGHT:

Q A patient's first injection, propofol, okay. What -- what's the interval before the next injection normally?

A Interval?

Q Interval, amount of time.

A From injection first -- to put them asleep in the first place? Is that what you're inferring?

Q Yeah, put them to sleep.

A Okay. So they're going to sleep with the first injection. If they're not asleep enough or still moving around, I just titrate a couple of ccs at a time until they're --

Q Okay. Until they're asleep.

A -- somnolent. Yeah.

Q Okay.

A Sleeping.

Q Now, when you were pre-filling the syringes, needles and syringes with propofol, you would fill it and then cap the needle?

A Yes.

Q Okay. I mean, that's obvious, but I mean you wouldn't leave just syringes and needles sitting there?

A No, I wouldn't.

Q Do you recall -- do you have your immunity agreement? You have immunity?

A I don't know.

Q Do you have immunity?

A I don't know, sir.

Q You don't know?

A I must be --

MR. STAUDAHER: He doesn't -- he doesn't have immunity. He gave a proffer, Your Honor.

MR. WRIGHT: He -- he what?

THE COURT: Okay. Did you -- why don't you ask him if he got a letter or made an agreement or, you know, whatever.

BY MR. WRIGHT:

Q Do you believe you have immunity for your testimony?

A I assume so.

Q Okay. And you assume so from talking to the district attorney or your own attorney, or why do you assume so?

A I just assumed it. I don't know.

Q Okay. Did you get a letter explaining it? Do you remember?

A I don't recall, sir.

Q Okay. Do you --

(Pause in the proceedings.)

BY MR. WRIGHT:

Q Take a look at that. Read it to yourself, Mr. Mione, and see if you recognize it.

A That was back in -- okay. I don't recognize the letter, but -- I don't think I received a copy of this. Was I supposed to receive one of these?

Q You can't --

THE COURT: You don't get to ask him questions.

THE WITNESS: I don't -- I don't --

THE COURT: It's okay. A lot of witnesses do it. Let me ask you this. Did you -- do you recognize that letter? Have you seen that letter before?

THE WITNESS: I remember something about a proffer, but I didn't understand it.

THE COURT: Okay. Did you --

THE WITNESS: And I don't believe I --

THE COURT: Did you get a letter, this letter?

THE WITNESS: I don't believe so, no.

THE COURT: I'm sorry. You don't believe ever --

THE WITNESS: I don't believe I did.

THE COURT: Okay. That's fine.

Move on, Mr. Wright.

MR. WRIGHT: Okay.

BY MR. WRIGHT:

Q Do you know who this -- do you know who --

A Yes.

Q -- Daniel M. Bunin is?

A Bunin, yes.

Q Who is that?

A He was a lawyer I hired.

THE COURT: That you hired?

THE WITNESS: Yeah --

THE COURT: Okay.

THE WITNESS: -- that I had to hire.

BY MR. WRIGHT:

Q Let me show you your transcript of your interview with the police department and see if maybe this refreshes your recollection about getting immunity. I'm on page 4.

MR. STAUDAHER: And I'm going to object to it. He did not get immunity. It does not say that, and he keeps asking about the proffer. A proffer is not an immunity agreement.

THE COURT: All right.

MR. WRIGHT: Can we approach the bench?

THE COURT: Sure. He doesn't remember the letter,

so --

(Off-record bench conference.)

MR. WRIGHT: I don't have any further questions, Your Honor.

THE COURT: All right.

Mr. Santacroce, do you want to get started or --

MR. SANTACROCE: It's up to you, Your Honor. I'm going to be past 5:00, I'll tell you that.

THE COURT: All right. Well, I guess we can take our break for the day, then.

Ladies and gentlemen, we'll reconvene tomorrow at 12:30. Again, we won't take a lunch break, so eat lunch or bring a snack or whatever you need to do. Thursday and Friday we're going to go all day 9:00 to 5:00 and get back into the 9 to 5 routine.

So before I excuse you for the evening recess I must remind you 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 the case, 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 don't form or express an opinion on the trial. If you would all please leave your notepads in your chairs and follow Kenny through the rear door.

(Jury recessed at 4:50 p.m.)

THE COURT: And, Mr. Mione, you need to be back here tomorrow before 12:30.

THE WITNESS: I'm working.

THE COURT: Oh, well --

THE WITNESS: I'll try to get it.

THE COURT: And you can't discuss your testimony with anyone else over the evening recess. Okay?

THE WITNESS: Okay.

THE COURT: Before Mr. Mione leaves for the day, I told him he needed to be back at 12:30 unless you've got some unique scheduling thing with another witness or whatever.

MS. WECKERLY: No, he can -- we'll finish him.

THE COURT: Okay. So, Mr. Mione, we start back up at 12:30, so get here a few minutes early. Okay?

THE WITNESS: Thank you.

(Mr. Mione exits the courtroom at 4:51 p.m.)

THE COURT: All right. Mr. Wright, is there anything that you would like to put on the record regarding the letter that was sent to Mr. Bunin or this immunity issue that keeps cropping up?

MR. WRIGHT: Yes. I -- I object each time Mr. Staudaher objects because he announced to the jury in his objection that this is not immunity and that -- and that is not correct. I mean, it's -- his talking objection conveys to the

jury that I am misleading them or the witness and I am not. In fact, the fact is the letter, which I believe, because I got this from the district attorney because they don't keep copies of their proffer agreements for some reason, but this is a grant of use immunity binding on the district attorney's office.

THE COURT: And why don't you just read exactly what paragraph you're referring to.

MR. WRIGHT: Oh, I marked -- I marked it.

THE COURT: Okay.

MR. WRIGHT: It's the entire -- I mean, I can't -- they -- they -- the information cannot be used directly or derivatively. I mean, whatever they get out of his interview can't be used against him. If that's not an immunity bath, I don't know what is.

MR. STAUDAHER: It's absolutely not immunity. I know --

THE COURT: Well, Mr. Staudaher --

MR. STAUDAHER: It's a proffer.

THE COURT: -- it seems to me that what we're dealing with here are semantics. It's immunity from use, use immunity from using the statement against him. It doesn't mean you can't prosecute him, which is full immunity. You're not granting him full immunity from prosecution.

Full immunity means that you agree not to prosecute him regardless of any other evidence from an unrelated or

related source that should come up. That's full immunity. You are not giving him full immunity. Mr. Wright is not saying that you are giving him full immunity. Mr. Wright is saying you agree not to use the statement.

Now, I understand immunity means different things. And, clearly, you can't bind the federal government in any kind of grant of use or transaction -- transactional immunity is another term, but you can't bind the federal government from not prosecuting him for the insurance fraud or whatever they may choose to prosecute him from. Everybody is on the same page here, so I think it's -- it's a question of semantics.

And are you disputing that in that letter you say that the State or whoever wrote the letter, whether it was you or Mr. Mitchell or whoever, the State agrees not to use any statements in the proffer and they're not going to use any information gleaned from the proffer? Isn't that in the letter?

MR. STAUDAHER: It is in the letter.

THE COURT: Okay.

MR. STAUDAHER: Unless he is untruthful, then that -- then that information can be used.

THE COURT: Right.

MR. STAUDAHER: And --

THE COURT: And he can be prosecuted for perjury.

MR. STAUDAHER: Yes, if -- if he lies, obviously. But that would be under oath. He can lie to his heart's content in

the proffer letter and it's not perjury per se. It would allow us to use the statements against him if that was shown.

But also Mr. Wright stated at the bench, and I want to make sure we're clear on this, that it doesn't matter from the State perspective if the federal authorities granted him immunity for every charge that they can muster against him. That in no way --

THE COURT: It doesn't bind --

MR. STAUDAHER: -- binds --

THE COURT: -- the State.

MR. STAUDAHER: -- the State.

THE COURT: You're separate sovereignties. Everybody knows this.

MR. STAUDAHER: And he's --

THE COURT: It's the State -- I mean, just like you can't -- you know, if the State of Texas wants to prosecute him, they can do that. I mean, you can't bind the federal government, the federal government can't bind you.

MR. STAUDAHER: Right. But that's not what was said at the bench and that's why I want to make sure we're clear on that.

THE COURT: Well, I don't think that's what Mr. -- Mr. Wright was saying. I think what -- well, maybe Mr. Wright wants to tell us what --

MR. WRIGHT: No.

THE COURT: That's not what I understood, anyway. I don't remember exactly what he said.

MR. WRIGHT: They were -- right in his Metro interview there were two proffer agreements, one from the feds and -- because Crane Pomerantz was there at the interview.

THE COURT: The U.S. Attorney? Someone from the U.S. --

MR. WRIGHT: Yes.

THE COURT: -- Attorney's office.

MR. WRIGHT: And they have a proffer agreement, which I don't have because they keep them above the well as well as the district attorney's office does. And Mr. Whitely explained the State proffer agreement to him. And so you have both of them. And then since, Crane Pomerantz has emailed me that every CRNA was given what federally we call pocket use immunity, I mean, which is the same as what they -- letter use immunity. And so they -- they have federal use immunity, and he has state use immunity, both pocket --

THE COURT: Right.

MR. WRIGHT: -- informal, promised by the prosecutors, but equally as binding as if it was court ordered use immunity.

THE COURT: Right. Here's the thing. This may come up in the future. In this situation it didn't really matter because this witness didn't really know. He didn't seem to -- he hadn't seen the letter, he didn't recognize the letter, he

didn't really know whether -- he assumed, but he didn't really know.

So I told Mr. Wright at the bench, you know, if he knows, he knows. But any further inquiry would probably have to get into, you know, well, what did Mr. Bunin tell you or something like that, which, clearly, he can't go into. So, you know, in the future, if there's a U.S. Attorney sitting there and they're also promising immunity at the same meeting, as I understand --

Is that what happened, Detective Whitely? You got an AUSA in there --

MR. WHITELY: There was a proffer --

THE COURT: -- and you've got --

MR. WHITELY: -- yes, ma'am.

THE COURT: -- a detective and they're both contemporaneously saying, you know, there's going to be immunity from the use of your statement, then I think it's fair game for Mr. Wright to ask him if, you know, if the witness understood that that was federal as well.

Now, obviously, if the U.S. Attorney's Office wasn't involved or the FBI wasn't involved in the interview and there was no subsequent involvement with the U.S. Attorney's Office or the FBI, then we don't get into federal immunity because that would have nothing to do with any conversation with the State. But I think in this particular instance with Mr. Mione, you

know, you've got the U.S. Attorney sitting right here, or the assistant U.S. Attorney sitting right there. So I think it was a fair area of questioning by Mr. Wright.

Now, again, clearly if they're not involved, it's something that didn't happen or it happened much after the interview with the State or with Metro, then that's not relevant and it's not really related. But in this case, I think clearly because it's -- they're -- they're together, they're talking to him at the same time. I don't think you can say that they're not related as to what he understood. It's kind of academic at this point because he didn't really seem to -- to know or remember or whatever.

MR. STAUDAHER: The only concern the State has and I don't mean to belabor this, but the reason that there is a stricture on my part regarding this issue of the word immunity in this context is because if we grant immunity to anybody, we grant immunity.

In fact, we could have -- he could have given his proffer, which means we can't use the statement unless it's proved to be false or whatever, we couldn't use the statement against him. We could have turned around the very -- as soon as it was over and say we don't like what we heard, we're --

THE COURT: Right. And --

MR. STAUDAHER: -- prosecuting you.

THE COURT: -- we're going to prosecute you.

MR. STAUDAHER: There's no immunity there. If we had come in and said you have immunity or your belief is -- your subjective belief is that you have immunity before you start to give us this statement, that is different at the State level.

THE COURT: We -- Mr. Staudaher, we all get it. It's -- we're all --

MR. STAUDAHER: Okay.

THE COURT: -- on the same page.

MR. STAUDAHER: Great.

THE COURT: It's just -- it's just semantics. And, you know, Mr. Wright was going down that path and he wanted to introduce the letter which explicitly says we can't use your statement unless it proves to be false, in which case we can use it or we can prosecute you for perjury. It doesn't say the State is not going to, you know, prosecute you if other evidence comes forward or we don't like what you have to say or we think you're a liar or, you know, you can't remember, you know, anything or whatever.

MR. WRIGHT: Or if you change your story.

THE COURT: You know, I mean, that -- I think everybody -- the letter says what it says. We're just -- you know, the quibble seems to be about the term use immunity as opposed to general immunity, or immunity from prosecution or, you know, like I said -- okay, it comes back to me -- transactional immunity is what we're talking about or not

talking about.

But it's just -- we're -- you know, Mr. Wright is using a different -- using the term differently than you're using it and I don't think -- you know, I think it's fine for the State to point out that there was no immunity from prosecution. But I also think it's fine for Mr. Wright to -- to point out that you understood they couldn't use the statement against you and, you know, it's kind of like a no-risk thing for them at that point, you know, unless it's found to be false you can be prosecuted for perjury.

I mean, the letter says what it says and I think Mr. Wright -- you know, it's fair -- it's fair questioning by Mr. Wright. And like I said, it's certainly fine for you, then, to clear up that they can still be prosecuted and that your office can't bind the federal government. I mean, that's fine, too, but I think what Mr. Wright is saying is, you know, to -- to jump up and say, oh, you know, it's not immunity, you know. You can say it's not immunity from prosecution or something like that.

MR. WRIGHT: That doesn't get into the statute of limitations because he can't be prosecuted now.

MR. STAUDAHER: Well, that has nothing to do with immunity.

MR. WRIGHT: No.

MR. STAUDAHER: It has nothing to do --

MR. WRIGHT: No, you gave it.

MR. STAUDAHER: -- with immunity.

MR. WRIGHT: He has an absolute pass. Call it what you want. He cannot be indicted tomorrow. The statute has run.

MR. STAUDAHER: That is not immunity. The fact that the State doesn't --

THE COURT: What Mr. Wright is --

MR. STAUDAHER: -- does not proceed on a prosecution is not --

MR. WRIGHT: Okay. But I --

MR. STAUDAHER: -- immunity.

MR. WRIGHT: -- don't want to leave the inference that they --

THE COURT: That he can still be prosecuted.

MR. WRIGHT: Correct. He can't.

MR. STAUDAHER: He could have been --

MR. WRIGHT: The only way --

MR. STAUDAHER: -- at the time.

MR. WRIGHT: -- he can be prosecuted is if he changes his story.

THE COURT: For perjury.

MR. WRIGHT: That's the terms of the agreement. And that's what -- I'm going to offer that in as an exhibit. That's the best evidence we have of his agreement with the State.

MR. STAUDAHER: They -- I don't have an issue with

the --

THE COURT: Yeah, it says --

MR. STAUDAHER: -- statement coming in.

THE COURT: -- what it says.

MR. STAUDAHER: But his inference that it was --

MR. WRIGHT: So I offer J1.

MR. STAUDAHER: -- that it's basically you change your story and we prosecute you and that's the only thing you have. It's if he lies, essentially, if he's found to be lying. The fact if he said statements before and he says different statements now clearly would indicate that there is a problem there. But what happens with him as a result is neither here nor there. The fact that he is not able to be prosecuted on these charges, with the exception of a murder charge if one of the people he dealt with actually died down the road.

THE COURT: That's true.

MR. STAUDAHER: I mean, so --

THE COURT: I mean, there's no statute of limitations on murder, so --

MR. STAUDAHER: And we have one of those charges in this case, so I mean it's not out of the realm of possibility.

THE COURT: No, I mean, none of his patients are part of the linkage, though, correct?

MR. STAUDAHER: The genetically matched ones, no.

THE COURT: Right.

MR. WRIGHT: Call it a walk, a pass, whatever you want to call it.

THE COURT: Well, here's -- going forward this may come up again with other nurse anesthetists, so let's just set some ground rules.

Going forward, you know, use the term immunity from using your statement, and then you can use the term immunity from prosecution by the State of Nevada or whatever. And then it won't be suggestive that you are misleading anybody or Mr. Wright is misleading anybody so that it's clear we're talking about two different concepts here. Immunity from using the statement, that the statement can't be used against him, and then immunity from prosecution, which he doesn't have.

So, I mean, I think that's really the crux of this whole thing so that no one is suggesting that anybody is lying here or trying to hide the ball or anything like that because really what we have is a semantic dispute. You know, what -- what we're going to call it, what we're going to call what you gave him in the letter.

MR. WRIGHT: But I get -- but I get to ask any witness what they're -- what do you understand --

THE COURT: Yeah.

MR. WRIGHT: -- you have received --

THE COURT: What do you understand.

MR. WRIGHT: -- in exchange. And if --

THE COURT: The problem is arising --

MR. WRIGHT: -- and if they call it -- what -- what matters is what they think, whether they're right or wrong.

THE COURT: The problem -- and you're fine to ask that. The problem is arising when we get like Mr. Mione, well, I don't know, I didn't understand anything, I don't get it. And then you say, well, isn't it true you had immunity? And then Staudaher jumps up and says that's not true.

That's the problem, and it's going to happen again and again because they're all going to come in here and say, oh, well, I don't really know, I mean, I thought I wouldn't get, you know, in trouble or something or whatever they say. And then you -- so let's just sort of have that as sort of a ground rule. Okay? We'll see you tomorrow --

MR. SANTACROCE: Your Honor, are we going to --

THE COURT: -- at 9:00 a.m. 9:00 a.m.

MR. STAUDAHER: 9:00 a.m.

MS. STANISH: Juror No. 1?

MR. SANTACROCE: Are we going to address that?

THE COURT: Oh, I was going to -- here's what I'm doing. I asked Janie to have a rough, not filed, not proofread, rough transcript prepared for me so I can review, again, her answers. I'm happy to give you guys copies of this rough transcript, which, understood, it's not an official transcript. It can't be filed. It can't be used for appellate purposes. It