

EXHIBIT G

COPY

DISTRICT COURT
CLARK COUNTY, NEVADA
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THE STATE OF NEVADA,

Plaintiff,

vs.

KEITH H. MATHAHS,

Defendant.

CASE NO. C283381-3
C283381-1

DEPT NO. XXIII

TRANSCRIPT OF
PROCEEDINGS

BEFORE THE HONORABLE STEFANY MILEY, DISTRICT COURT JUDGE

ARRAIGNMENT (ALL)

**DEFENDANT'S MOTION FOR BAIL ON ORDER SHORTENING TIME (MATHAHS)
DEFT'S MOTION TO STAY PROCEEDINGS PENDING RESOLUTION OF WRIT
PROCEEDINGS PURSUANT TO NRAP 8 (A)**

WEDNESDAY, AUGUST 22, 2012

APPEARANCES:

For the State:

PAMELA WECKERLY, ESQ.
MICHAEL V. STAUDAHER, ESQ.
Chief Deputy District Attorneys

For Defendant Lakeman:

FREDERICK A. SANTACROCE, ESQ.

For Defendant Mathahs:

MICHAEL V. CRISTALLI, ESQ.

For Defendant Desai:

RICHARD A. WRIGHT, ESQ.
MARGARET M. STANISH, ESQ.

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1 **LAS VEGAS, NEVADA, WEDNESDAY, AUGUST 22, 2012, 9:59 A.M.**

2 * * * * *

3 MR. CRISTALLI: Good morning, Your Honor. Attorney
4 Michael Cristalli appearing on behalf of Keith Mathahs.

5 MR. SANTACROCE: Frederick Santacroce for defendant
6 Ronald Lakeman.

7 MR. WRIGHT: Richard Wright and Margaret Stanish for
8 Dr. Dipak Desai.

9 THE COURT: All right. Good morning, counsel.

10 MR. STAUDAHER: Michael Staudaher and Pam Weckerly on
11 behalf of State, Your Honor.

12 THE COURT: Good morning. All right. So I have
13 several things on calendar this morning. Would you like to
14 address the motions first, because the one thing that is on
15 calendar is the district court arraignment; however, one of
16 the motions filed has to do with postponing the arraignment,
17 and, Mr. Cristalli, that is your motion?

18 MR. CRISTALLI: Your Honor, thank you. I did file a
19 motion to stay the proceedings and I appreciate the Court's
20 consideration. I know it was at the last minute, and the
21 State also was considerate enough to allow us to argue this
22 prior to the bail motion and going forward with the
23 arraignment.

24 As this Court understands, there is another matter
25 currently pending in front of Judge Adair. That has to do

1 with criminal neglect as well as -- an allegation of criminal
2 neglect as well as allegations of fraud and racketeering
3 amongst a few of the charges that are contained within that
4 indictment.

5 The defense filed both myself, Mr. Santacroce in
6 joining, and Mr. Wright filed petitions attacking the
7 sufficiency or the specificity and legality of the indictment,
8 and ultimately, have those issues currently pending in the
9 Nevada Supreme Court on a writ of mandamus.

10 The Supreme Court has instructed the State to answer
11 that writ and the State has just asked for an enlargement of
12 time to file the response. So that's kind of the procedural
13 posture in front of Judge Adair currently on that indictment.

14 The charge for which we're before Your Honor is a
15 charge of second-degree murder arising out of the death of Mr.
16 Meana who is charged in -- who is one of the named victims --
17 alleged named victims in the criminal complaint -- or criminal
18 indictment, I'm sorry, that is pending before Judge Adair.

19 He is contained in one of the indictments which is
20 the criminal neglect. In that charge as that particular
21 charge statutorily has a provision which increases the penalty
22 if death occurs subsequent to the allegations of neglect.

23 The indictment, the way it's pled in this case, is
24 identical to the way it's pled in the case in front of Judge
25 Adair as it relates to the criminal neglect. That issue is

1 currently up in front of the Nevada Supreme Court as it's
2 challenging the legality of that indictment and how that
3 indictment was pled.

4 So depending on what the Nevada Supreme Court does in
5 that case, meaning if they decide that we are correct and that
6 the indictment is flawed inherently and instruct the State
7 accordingly and dismiss that indictment or force the State to
8 go back before the grand jury and present evidence and get an
9 indictment returned according to the instructions of the
10 Nevada Supreme Court, that directly affects the indictment in
11 this case.

12 I don't see any argument that alters that theory as
13 to how this case will play out. So it's our request because
14 of the way that this indictment is pled, identical to the one
15 that's pled in front of Judge Adair that's currently pending
16 up in front of the Nevada Supreme Court, which ultimately will
17 be influenced by the determination of the Supremes, that these
18 proceedings be stayed.

19 Once there's a determination by the Nevada Supreme
20 Court as it relates to that indictment, those issues and that
21 directive will also influence this Court's determination on
22 the indictment that's currently pending before Your Honor.

23 So for those reasons, we're asking that all
24 proceedings be stayed until after there's been a determination
25 on the issue currently before the Nevada Supreme Court on the

1 writ of mandamus.

2 THE COURT: Okay. Anything else, Counsel?

3 MR. CRISTALLI: No, Your Honor.

4 THE COURT: Anything else by Mr. Wright or Mr.
5 Santacroce?

6 MR. WRIGHT: I would just join in it.

7 THE COURT: All right. By the State?

8 MR. STAUDAHER: Yes, Your Honor. May we be allowed
9 to respond orally since the untimely motions?

10 THE COURT: Yes. And it was -- it was -- it was only
11 placed on calendar with the understanding the State would be
12 allowed to respond orally because it was not timely. All
13 right.

14 MR. STAUDAHER: That being said, a couple of things
15 from the outset. First of all, we're here at initial
16 arraignment. There have -- the indictment as it's standing
17 here stands alone. It's not tied to the other case in the
18 sense that it is a superseding indictment or anything like
19 that. That's why it tracked to a different department, your
20 department.

21 The wording of the actual pleading within this
22 indictment, it's a completely different charge. There is no
23 similarity in actually how this is actually pled in comparison
24 with the indictment from the other case. So however the
25 Supreme Court makes the determination as to the

1 sufficiency/insufficiency of any particular count or counts
2 within that indictment in that case really does not affect
3 this particular matter.

4 This particular case here is, again, a second-degree
5 murder case. It is based on the way its pled the theories of
6 liability that the defendants are basically being charged
7 with, or at least under. As far as this case is concerned,
8 there is no basis or reason legally or otherwise to stay any
9 proceeding in this case, especially since there has been no
10 proceeding in this case to even appeal at this stage.

11 There has not been a writ brought the -- or sort of
12 challenging the sufficiency of either the charging document
13 itself or the probable cause that went into the grand jury's
14 determination in this particular matter. That would be
15 essentially the first step, depending on how the Court would
16 rule on that. There may be an appellate reason to go forward
17 to the Supreme Court at that point. So at this stage, there
18 is nothing right before the Court to allow the Court even, I
19 would submit, to stay the proceedings based on what may or may
20 not happen in a separate and unrelated case from this
21 particular matter.

22 Now, it is true that the victim in this case was a
23 victim in the other case, but there's no indication that the
24 State, even if we -- if we needed to, could not proceed on
25 dual prosecutions. Different cases, different charges up

1 until the time that jeopardy attaches.

2 So as far as that's concerned there is no basis at
3 this point for a stay in this matter because there's no matter
4 that could be appealed at this stage because the defendant
5 hasn't even been arraigned. And there's no stay -- and
6 actually -- and my counsel pointed out in the underlying case
7 which is before Judge Adair, the district court case that Mr.
8 Cristalli was referring to, he raised a motion or brought a
9 motion before the Court to stay those proceedings and that was
10 denied, so there's not even a stay in that district court
11 case.

12 I know that he has raised that with the Supreme Court
13 and asked for them to stay the district court proceedings in
14 that matter, but again, as of the present time, there's no
15 stay in either one of these cases.

16 THE COURT: Anything else?

17 MR. CRISTALLI: Yes, Your Honor. I mean, to say that
18 these two cases are unrelated is just denying the realities of
19 the current situation. All I can do is encourage the Court to
20 compare the two indictments. The language contained in those
21 indictments as far as the theory of liability are identical.
22 It is very unusual for the State to do procedurally what they
23 did. Do they have a right to do it? I don't know yet. We'll
24 have an opportunity to challenge that. But certainly, the
25 normal procedure for them would have been to get a superseding

1 indictment, supersede on the original indictment and amend it
2 to include a charge of second-degree murder.

3 They chose not to do that for reasons, I assume,
4 they're trying to push that first case along and to push --
5 put leverage on the defendants in this case. So be it. But
6 to deny the reality that they are identical and that the only
7 difference is the death of one of the alleged victims in a
8 particular count, of which, Your Honor, the statutory
9 provision of a criminal neglect has a provision if a defendant
10 -- if an alleged victim passes on. So there is no new
11 evidence associated with this case. The only difference is
12 the charging -- the charging offense.

13 The fact that Judge Adair denied a stay in the
14 district court is procedure. Obviously, Judge Adair believed
15 her determination on the petition or motion to dismiss was a
16 valid determination. The Nevada Supreme Court ultimately is
17 going to be the determining body to make a decision as far as
18 legitimacy of that particular indictment. Why is it
19 concerning right now? Well, for a number of reasons. We're
20 going to go forward with bail today. Right now, Mr. Mathahs
21 is out on half a million dollar bail. Once a bail setting is
22 made in this particular case, he will then have to post
23 another bail, okay, Which is pretty onerous in terms of his
24 financial ability to do so.

25 Why am I raising that? Because if this indictment is

1 inherently flawed and is -- and the other one is dismissed,
2 which makes this one inherently flawed, and dismisses it, then
3 they're back to square one. They have to present the evidence
4 again to the grand jury. So my position is let's wait to see
5 what the Nevada Supreme Court does and see what ruling comes
6 down and then go forward with it. What harm is it to wait at
7 this particular point in time? There is none.

8 So you -- the Court certainly has the discretion to
9 stay these proceedings upon the determination by the Nevada
10 Supreme Court. I think the State's own concession is that
11 they believe that the Supremes are going to come back
12 relatively quickly on that determination. Whether or not
13 that's true or not, I don't know. But certainly, there is no
14 harm, no foul in continuing this, at the very least, matter to
15 wait to see what the Supreme Court does on the petition.

16 THE COURT: All right. I'm going to deny the request
17 for a stay. I believe with the State's position that there is
18 no legal basis for a stay in this particular case. So what
19 that means is today we're going to arraign these three
20 gentlemen, and also, we will discuss the issue of bail. I
21 know, Mr. Cristalli, I believe you also -- you're also the one
22 who filed a motion discussing bail, asking that no additional
23 bail be set.

24 MR. CRISTALLI: Yes, Your Honor. And just so the
25 Court is aware, so the record is clear, we're objecting to

1 going forward on the arraignment as well as on the bail. I
2 understand and certainly respect the Court's ruling, but we
3 believe that procedurally it's flawed to go forward with those
4 proceedings today.

5 THE COURT: Okay. You made your record, Counsel.
6 Would you like to argue bail before we arraign him, or do you
7 want to arraign him first? What would you like to do?

8 MR. CRISTALLI: Yes, Your Honor. I can go -- I can
9 go forward with the bail. I know the Court has had an
10 opportunity to read the bail motion. Mr. Mathahs sits before
11 you as a 76-year-old male, somebody who has had no criminal
12 history in his entire life, somebody who has been a caretaker
13 in this community and other communities for the last 40 years.
14 I don't think Mr. Mathahs even has a traffic ticket to be
15 perfectly honest with you, Your Honor.

16 We have continuously fought the allegations by the
17 State as it is alleged against Mr. Mathahs. He was an
18 employee of the centers and the -- associated with Dr. Desai.
19 There are a myriad of other employees associated with this
20 investigation and indictment of which a slew of were doctors
21 who profited from their association as owners in this
22 organization. You're charging Mr. Mathahs as a racketeer who
23 was an employee following directions of the centers. The
24 reason why he sits, I think, before Your Honor instead of
25 anybody else who are witnesses who presented testimony before

1 the grand jury is probably he didn't get to the table quick
2 enough, number one; and number two, it is alleged that Mr.
3 Mathahs treated one of the source patients.

4 Your Honor, another consideration is that Mr. Mathahs
5 has been out on half a million dollar bond for how long now?

6 MR. SANTACROCE: Over two years.

7 MR. CRISTALLI: Over two years with no incident. He
8 continuously comes before Judge Adair on all of the status
9 check hearings. He works with me directly on a daily basis in
10 my office. His wife and family are supporting him. His wife
11 of how many years?

12 MR. SANTACROCE: 53.

13 MR. CRISTALLI: 53 years is a caretaker as well in
14 this community, is a -- is a nurse in the community. He
15 remains out on half a million dollar bail. When this case was
16 -- well, not this case. When the -- when the other case was
17 before Judge Mosley, bail was set at a half million dollars.
18 Ultimately, Mr. Lakeman, who was represented by Mr.
19 Santacroce, petitioned the Court for a reduction of that bail.
20 They were successful. Rightfully so in our opinion, and that
21 bail was reduced to \$50,000.

22 When we petitioned the Court, we petitioned it when
23 the case was transferred from Judge Mosley to Judge Adair, and
24 we asked for a reduction consistent with the reduction that
25 Mr. Lakeman received, for which both defendants are placed in

1 identical situations in terms of the theory of liability
2 alleged by the State.

3 We were unsuccessful. Judge Adair said, well, I
4 don't feel that I need to do that right now. Revisit it at
5 the appropriate time. So not only do you have Mr. Mathahs out
6 on a half million dollar bail, who has complied completely
7 over the last two and a half years with all of courts -- all
8 of the court's directives, but also, you have a
9 disproportionate situation between codefendants, which is
10 inherently unfair. So that's one of the reasons why we ask
11 the Court to keep bail the way it is. It can --

12 THE COURT: Meaning no additional bail?

13 MR. CRISTALLI: Correct, no additional bail. I mean,
14 to ignore the fact that there is a half a million dollar bail
15 still pending against Mr. Mathahs, you know, is to ignore the
16 pink elephant in the room.

17 THE COURT: So you're saying Lakeman was originally
18 half a million as well and was reduced to 50,000 by Judge
19 Mosley?

20 MR. CRISTALLI: Yes, Your Honor.

21 THE COURT: All right.

22 MR. CRISTALLI: You know, and so we have a situation
23 where there's, you know, disproportionate bail settings, and
24 the fact that, you know, Mr. Mathahs is fighting for his life.
25 I mean, he is a nurse necessitatis. He certainly was not --

1 he was an employee of the organization, somebody who was not
2 benefiting from the profits associated with the organization
3 as the physicians were, as partners or owners of the
4 organization, so financially, he does not have the ability to
5 put the type of money up that he has previously put up, which
6 is a half a million dollars, unfortunately.

7 We do not want bail to be a punitive measure. That's
8 not what it's for. It's to secure the defendant's appearance
9 and to protect the community from harm. Certainly, the
10 community is protected as Mr. Mathahs no longer is in the
11 medical field. He doesn't have his licenses to do that and
12 he's no longer performing any services related to his
13 profession.

14 Certainly, we deny any allegations associated with
15 that, but if that was a concern, it shouldn't be one. As far
16 as flight, I don't know that Mr. Mathahs has -- he doesn't
17 have a passport. His family is here supporting him. They
18 continue to support him. He has made every court appearance
19 ordered by Judge Mosley and Judge Adair. He meets with me on
20 a weekly basis, so as far as those conditions are concerned,
21 the existing amount of half a million, I think, certainly
22 secures those two considerations, Your Honor.

23 So for all of those reasons, in addition to
24 acknowledging that we have attached I don't know how many
25 character letters on behalf of Mr. Mathahs from individuals

1 within the community, both in the professional community and
2 the community -- his church community and just friends and
3 acquaintances and family as well, that can attest for Mr.
4 Mathahs' character as an individual; so for all of those
5 reasons, we would ask that the Court not set a bail and
6 consider what has been posted in the case that currently is in
7 front of Judge Adair.

8 THE COURT: All right. We're kind of just holding
9 out of order, but we started on the bail issue so why don't I
10 just hear from Mr. Santacroce now.

11 MR. SANTACROCE: Yes, Your Honor. Thank you. The
12 Court's in a unique position here today because it has a track
13 record to go by. These defendants have been out on bail for
14 over two years. They have been model citizens during that
15 time period. They have made all of the required court
16 appearances. They haven't posed a flight risk. They're not a
17 danger to the community because, as Mr. Cristalli said, my
18 client as well has tendered his license and no longer
19 practices anywhere.

20 So those -- the Court is on some safe ground because
21 we have this track record, and I think the Court should take
22 that into consideration. With regard to my client, again,
23 65-year-old nurse with impeccable record all of his career, an
24 impeccable military career, practiced medicine for many, many
25 years without incident, until this incident where he finds

1 himself in a situation which he basically has no control over.
2 Unfortunately, he's charged in this case when we feel he
3 shouldn't be in the first place; and secondly, he's charged in
4 another indictment before this Court, which we feel is
5 completely improper, manipulative by the State, and forum
6 shopping based -- by the State. They already have these
7 charges pending in another court. I can't understand why
8 we're filing a new indictment in a different court when the
9 same charges are pending in another court.

10 Having said that, I think the Court should take that
11 into consideration because bail has been posted in that
12 previous case. As Mr. Cristalli said, my client was out on
13 half a million dollar bail for better than a year and a half.
14 Judge Mosley revisited that issue and thought that was absurd
15 and reduced the bail to \$50,000. And I'm asking you to not
16 increase his bail at this time, but if the Court decides to
17 increase that, to increase it marginally and allow him to post
18 a reasonable bail pursuant to the Eighth Amendment in the
19 United States Constitution.

20 THE COURT: All right. Mr. Wright, sir.

21 MR. WRIGHT: Yes, Your Honor. I agree with Mr.
22 Santacroce in the sense that it's my position that we are
23 already on bail on this charge. This is a de facto
24 superseding indictment. We know in the law that we look at
25 facts, not labels to determine what something is. Mr.

1 Staudaher can call a dog a pig, and we can look and see what
2 it is. This is truly a superseding indictment. This went
3 back to the same grand jury and they only heard two witnesses
4 for the indictment before this Court, and I am presuming
5 without having seen the transcript that the only additional
6 fact that was presented to the same grand jury was the fact
7 that Mr. Meana, who previously had substantial bodily injury
8 from having hepatitis C virus, died in the interim; so
9 therefore, they put on proof of Mr. Meana's death and both
10 probable evidence that it was caused by hepatitis C. Two
11 witnesses in, I think, an hour or so and they returned an
12 indictment.

13 It should have been what we call a superseding
14 indictment in the same case before the same judge. It's the
15 same facts, circumstances, transaction. The only addition is
16 the patient died, and when it's superseding, by statute the
17 bail applies to it. NRS 178.502, extension of bond or
18 undertaking to other proceedings, "Any bond or undertaking
19 must provide the bond or undertaking, extends to" -- and we go
20 down to (a)(2), "extends to any action or proceeding in
21 justice court, municipal court or district court arising from
22 a later charge which is substantially similar to the charge
23 upon which bail was given and is based upon the same act or
24 omission as the charge."

25 We are presently on Dr. Desai's \$1 million bail on

1 this same charge, and that bail in that court -- the other
2 court, it's my position which is where we should be, but that
3 bail by statute applies to these charges.

4 I presumed we were just having an arraignment. I
5 didn't receive any motion to increase bail on this case. Now,
6 whether this was motivated by forum shopping, as Mr.
7 Santacroce suggested, or an effort to get out of the deficit
8 in the first pleading, which is up before the Supreme Court
9 now, I don't know why the State chose to pretend like this is
10 a brand new offense and case that these defendants committed
11 in the interim because it's purely a superseding indictment.

12 Dr. Desai, no record whatsoever charged in this case,
13 has posted his \$1 million bail a couple of years ago and then
14 was indicted federally for health care fraud arise -- it
15 actually duplicates the health care fraud already pled in this
16 case, but the feds indicted him. We appeared in -- they
17 indicted him in 2011 when he returned from Lakes Crossing. He
18 was arraigned in federal court. He was released on his own
19 recognizance, third-party custody because of his diminished
20 capacity.

21 His custodian, his wife, Dr. Kusum Desai, is by court
22 order the third-party custodian for pretrial services in the
23 federal system, and he is on federal pretrial services
24 supervision by which Dr. Desai and his custodian, Mrs. Desai,
25 appear once a month before a federal pretrial services

1 officer.

2 They -- I have informed the federal court and pre --
3 fed pretrial services of this superseding indictment and they
4 have no issue with his conditions of release because in the
5 federal system and in the state's system he has been
6 completely compliant, made all court appearances as requested,
7 and nothing has changed whatsoever in this case regarding
8 conditions of release other than Mr. Meana passed away. And
9 so I would ask that the bail remain as it is, and if the State
10 has some changed circumstances, they should file a motion to
11 increase bail and we can respond to it.

12 THE COURT: Okay. Anything else by defense counsel
13 and before the State responds to the bail issue?

14 MR. CRISTALLI: No, Your Honor.

15 THE COURT: Thank you. Mr. Staudaher, Ms. Weckerly?

16 MR. STAUDAHER: First of all, as far as forum
17 shopping is concerned, I think the Court's aware of how cases
18 are assigned in the Eighth Judicial District Court, that the
19 State doesn't have prior knowledge of nor any influence on how
20 that is done. That being said, this is not a superseding
21 indictment. This is a separate and distinct indictment before
22 a separate and distinct court beside whatever is [inaudible]
23 these defendants in another courtroom, Judge Adair's courtroom
24 specifically.

25 This is what we're here on. We're here on a murder

1 charge related to a single victim in this particular case
2 which all of the defendants are charged with. Now, Mr.
3 Cristalli indicated early on as to why they thought that their
4 clients were just kind of roped in, didn't get to the table
5 fast enough, why their clients were even part of this.

6 I mean, these are the two nurses that actually
7 infected the patients. That's why they're in part -- they're
8 involved with this. That's -- those are the allegations; the
9 reckless acts of all three defendants are what puts them here
10 in court today, and those reckless acts, those sort of taking
11 advantage of patients that essentially could not do for
12 themselves, what, they were putting their lives in the hands
13 of these individuals who then did what they did is why they're
14 here on this case.

15 The other case is separate and distinct as far as the
16 charges are concerned in that case. This particular matter,
17 the Court has one charge, one charge only, one victim, one
18 victim only at that point and that's what we're here to
19 decide. A murder case, we did give them the courtesy of a
20 summons, but when we come to court today, this is the time to
21 set bail in this particular matter. We are going to be asking
22 for a half a million dollars bail on Mr. Desai -- Dr. Desai.
23 We're going to be asking for a hundred thousand dollars each
24 on Mr. Lakeman and Mr. Mathahs, and the reasons behind the
25 disparity in those are twofold.

1 First of all, they do stand in a little bit different
2 position. Without relying on the other case, some information
3 from the other case and how bail was produced and so forth is
4 probably important for this Court's determination. In the
5 underlying case before Judge Adair, when Judge Mosley had that
6 matter before him -- he was the one who set the bail for all
7 defendants, by the way, the half a million for each one of the
8 defendants, nurses, and the million dollars for defendant
9 Desai.

10 In the -- in Desai's case, defendant Desai was able
11 to post a half -- or a million dollars cash over the weekend.
12 That's how he has access to funds and large quantities of
13 funds. That money is not even his. It is his sister's money
14 that was placed in bond for -- or not bond, but put -- was
15 posted for him.

16 So right now, he has no dog in the race as far as
17 money goes. He is -- has -- he's a physician. He has assets.
18 His wife is a physician and they have income. They have a
19 significantly different financial setting and situation than
20 do the other two, and the reason that we're asking for a
21 reduced bail amount for the other two is reflective of that
22 situation.

23 Now, whether or not Mr. Mathahs has a certain bail
24 and Mr. Lakeman has a different bail in a separate case is not
25 really an issue before this Court. It's whether or not

1 there's an appropriate amount of bail in this particular
2 matter for this particular charge is what this Court needs to
3 decide. If the defendants wish to have Judge Adair or --
4 bring this matter before Judge Adair based on what this Court
5 may have done in this particular charge or based on other
6 factors, that's for Judge Adair to determine and for them to
7 litigate that.

8 Mr. Cristalli brought a motion before Judge Adair for
9 a reduction in bail like Mr. Santacroce had. She denied that.
10 His bail remained at the half a million dollar amount. They
11 may revisit that down the road, but that doesn't affect what
12 this Court does as far as bail is concerned.

13 If, theoretically, that whole case for some reason
14 went away and this Court had set no bail, all three of these
15 individuals would be on no bail for a murder charge because
16 that case would certainly be before this Court still. That's
17 why we're here. We're here to set a reasonable bail based on
18 the nature of the charge and what they did.

19 This is not something where they're charged with
20 involuntary manslaughter or something where a person just died
21 as a result of some action that they did that they didn't have
22 some foreseeable way of seeing it would cause harm to a
23 patient. These people actually engaged in practices, which
24 they knowingly engaged in, and which resulted in an infection
25 of a patient which resulted in his death, and that's why we're

1 here today to argue this issue.

2 As far as the differences between the two, again, I
3 would just say that those are issues that they need to raise
4 with the District Court 21, department -- or rather, Judge
5 Adair, and it should not really factor into this Court's
6 calculus as to what is reasonable or not reasonable for bail.
7 We do know that they stand in different positions. That's why
8 we have asked for the different amounts. We feel that that's
9 a fair and reasonable amount for a murder case, and we feel
10 that that's what they should be posting.

11 THE COURT: Okay. We did this kind of out of order
12 in that we argued bail first. Let me go ahead -- unless you
13 want to say something --

14 MR. CRISTALLI: I do, Your Honor. I mean, I just
15 want to be able to respond just quickly. I mean, first of
16 all, to argue that this is a separate and distinct case is
17 just -- you know, you got to kind of throw away your reason.
18 I mean, these cases are the same case. They have the same
19 facts. There has been no new evidence presented before the
20 grand jury other than the fact the medical evidence associated
21 with the cause and more than of Mr. Meana's death. They are
22 identical, so for Mr. Staudaher to say that they are for some
23 reason separate and distinct is disingenuous. It is. It
24 doesn't pass the smell test.

25 As far as his statement that this is a murder case,

1 it's not an involuntary manslaughter case, well, factually,
2 you know, if you're going to make the allegations as it
3 relates to somebody passing on on a criminal neglect --
4 medical criminal neglect case as articulated statutorily in
5 the criminal neglect statute which increases the penalties
6 from a 1 to 6 to a 1 to 20 if death occurs, they shouldn't be
7 charged with anything more than an involuntary manslaughter
8 just based on the allegations. Second-degree murder is an
9 inflated charge, so if he wants to start debating the
10 sufficiency of the State's allegations as they relate to this
11 particular case, we certainly can do that.

12 For him to then say that that case could somehow go
13 away and then we'll be stuck with a murder charge in this
14 case, is also laughable. If that case goes away, Judge, this
15 case goes away because they go away on the same premise and on
16 the same basis because they are identical.

17 They have done this in an effort to put leverage on
18 the defendants. This would never normally happen. They would
19 supersede their indictment. They would amend the indictment
20 and they would charge an additional charge of murder. For
21 whatever reason, they have chosen to put on the dog-and-pony
22 show and to charge this case separately.

23 So I'm going to be put in a situation now where my
24 bail is absolutely going to be disproportionate and it
25 shouldn't be. What we have posted in a half a million dollars

1 in this case originally was unreasonable based on Mr. Mathahs'
2 involvement as well as his history in this community and his
3 character.

4 THE COURT: Then that's something you need to take up
5 with Judge Adair. I can only deal with Meana's case.

6 Is there anything to add by counsel on the bail
7 issue? Mr. Wright, sir.

8 MR. WRIGHT: Yes. I just -- I can't pass up to say
9 this isn't the same case. I don't know why we sat in this
10 courthouse deposing Mr. Meana, Rodolfo Meana, in the other
11 case because the other case was -- Rodolfo Meana was one of
12 the seven patients, and we deposed him until he stopped it.
13 Mr. Meana happened to have died presumably due -- and I say
14 presumably from the accusations in the indictment because I
15 have not seen the evidence, but presumably, from the hepatitis
16 C virus.

17 Mr. Meana we were deposing for the other case to
18 preserve his testimony for that case for that trial. Mr.
19 Meana elected to forego treatment. He is the only patient of
20 the group who would not take hepatitis C virus treatment and
21 he ultimately died. Now, that is the only changed
22 circumstance, and to argue here this is some new murder case
23 that came up, the facts of the bail in this case, it was set
24 by Judge Caddish. She set the \$1 million bail when the first
25 indictment was returned. That amount that was posted was

1 posted by his sister because I was required to show to the
2 court the source of the funds, because Dr. Desai and his
3 practices were in federal bankruptcy court at the time and so
4 he could not post any bail out of bankruptcy; and since then,
5 the bankruptcy has gone forward and he is individually
6 bankrupt, and so that's the explanation of where this million
7 dollars cash that he was able to post.

8 If -- that was posted and I provided all of the
9 information to Judge Caddish and to Mr. Staudaher as to the
10 source of the funds and where it came from, so it's a
11 mischaracterization to talk about Dr. Desai being a wash in
12 cash and could come up with a million dollars or something.
13 Thank you.

14 THE COURT: All right. Like I said, we did this kind
15 of out of order. Let me proceed in arraigning the
16 individuals, then I'll address bail amounts, if any.

17 Mr. Cristalli, you have Mr. Mathahs?

18 MR. CRISTALLI: Yes, Your Honor. And once again,
19 Your Honor, just so we're clear, this is over my objection.

20 THE COURT: I understand it's over your objection.

21 MR. CRISTALLI: Thank you.

22 THE COURT: Thank you. All right. Mr. Mathahs, what
23 is your full legal name, sir?

24 DEFENDANT MATHAHS: Keith Harry Mathahs.

25 THE COURT: And how old are you, sir?

1 DEFENDANT MATHAHS: 76 and a half.

2 THE COURT: What's your education, sir?

3 DEFENDANT MATHAHS: Well, college degree and went
4 into nursing. Got a degree in nursing, and also, anesthesia.

5 THE COURT: All right. Is it fair to say you read,
6 write, understand the English language?

7 DEFENDANT MATHAHS: Yes, I do.

8 THE COURT: And I have a copy of the indictment. The
9 indictment charged you with the crime of second-degree murder,
10 a Category A felony. Did you review the indictment?

11 DEFENDANT MATHAHS: Yes.

12 THE COURT: All right. Did you discuss with your
13 lawyer?

14 DEFENDANT MATHAHS: Yes.

15 THE COURT: And how are you going to plea, sir, to
16 this charge, guilty or not guilty?

17 DEFENDANT MATHAHS: Not guilty.

18 THE COURT: Thank you. In a moment we'll set you
19 guys for trial.

20 Okay. We have Mr. Lakeman next. Good morning, Mr.
21 Lakeman. What is your full legal name?

22 DEFENDANT LAKEMAN: Ronald Ernest Lakeman.

23 THE COURT: And how old are you, Mr. Lakeman?

24 DEFENDANT LAKEMAN: 65.

25 THE COURT: And what is your education, sir?

1 DEFENDANT LAKEMAN: I have a degree from the
2 University of Alabama in nursing and a degree in anesthesia
3 from George Washington University in Washington, D.C.

4 THE COURT: Is it fair to say you read, write,
5 understand the English language?

6 DEFENDANT LAKEMAN: Yes.

7 THE COURT: I have a copy of the indictment. The
8 indictment charges you with the crime of murder, second
9 degree, Category A felony. Did you read the indictment?

10 DEFENDANT LAKEMAN: Yes. It was read to me by my
11 attorney.

12 THE COURT: All right. And I didn't ask this of the
13 other gentleman. Do you waive the reading of the indictment?

14 MR. SANTACROCE: We do waive --

15 DEFENDANT LAKEMAN: Yes.

16 MR. SANTACROCE: -- Your Honor.

17 THE COURT: All right. And sir, with respect to the
18 charge of murder, second degree, Category A felony, how do you
19 want to plead, guilty or not guilty?

20 DEFENDANT LAKEMAN: Not guilty.

21 THE COURT: All right. Thank you, sir. And Mr.
22 Wright, Mr. Desai?

23 MR. WRIGHT: Yes, Your Honor. The -- I will be
24 asking the Court to enter a plea of not guilty on behalf of
25 Dr. Desai. I have read the indictment to Dr. Desai. Dr.

1 Desai, because of organic brain injury from a stroke, is my
2 judgment operating under diminished capacity in his cognitive
3 ability; and therefore, pursuant to Rule of Professional
4 Conduct 1.14 I am acting in his behalf to protect his
5 interests. That is his true name in the indictment. He does
6 not factually or legally comprehend or understand an
7 indictment when he discussed it with me this past week or when
8 I attempted to discuss it with him and so I would ask the
9 Court to enter a plea of not guilty on his behalf.

10 THE COURT: All right. I will accept that plea.
11 Counsel, bail is going to be set in this matter.

12 I'm going to render the following amounts for bail.
13 This takes into consideration the facts of this particular
14 case, the charge of this case as well as their compliance in
15 their additional court proceedings. I am going to order bail
16 at \$50,000 for Mr. Lakeman and Mr. Mathahs. I'm ordering bail
17 of \$250,000 for Mr. Desai. At this time I am going to have
18 these gentlemen remanded into custody. They will have to post
19 bail.

20 MR. CRISTALLI: And Your Honor, we do have bond --
21 Mr. Mathahs' bond company here. They're prepared to post, and
22 I know that we routinely have walk through --

23 THE COURT: If they have the money --

24 MR. CRISTALLI: Yeah.

25 THE COURT: -- then they can do the walk through.

1 MR. CRISTALLI: Yeah.

2 THE COURT: If they do not, they're going to have to
3 be remanded --

4 MR. CRISTALLI: Right. And they -- they can do the
5 walk through and I would like them to have an opportunity, and
6 I don't know that the State has an objection to allow us to do
7 the walk through under these circumstances.

8 THE COURT: So long as there's the money --

9 MR. CRISTALLI: Yeah.

10 THE COURT: -- you have all the money in court today
11 for all defendants.

12 MR. CRISTALLI: Well, the bondsman is here.

13 THE COURT: The bondsman's here, and what about --

14 MR. CRISTALLI: Yes.

15 THE COURT: -- for yours, Mr. Santacroce?

16 MR. SANTACROCE: My bondsman is right here and
17 they're prepared to --

18 MR. CRISTALLI: Yeah.

19 MR. SANTACROCE: -- write the bond.

20 MR. WRIGHT: I will get the funds.

21 THE COURT: All right. Then --

22 MR. CRISTALLI: Is there -- do we have to have them
23 in -- be shackled at this time. I'm not -- if we're prepared?
24 That's why we have them here today to post.

25 MR. WRIGHT: We will post it today.

1 MR. CRISTALLI: I mean, they're going to post right
2 now. I mean, I could -- you could put them under oath if you
3 would like and attest to that fact. I mean, they're on a half
4 a million dollars right now that they posted.

5 MR. WRIGHT: We are here on a summons and appeared, I
6 mean, as ordered, even last time before Judge Caddish. I
7 mean, we were allowed in that case four days, I mean, to post
8 the cash bail, but we will post the bail for a bond today and
9 so I would ask that we be given till 4:00 o'clock to do it or
10 turning themselves in at the jail.

11 THE COURT: I'll give you guys until -- your clients
12 until 4:00 o'clock today to post it; otherwise, they will be
13 remanded into custody and will have to bail --

14 MR. CRISTALLI: We'll have that taken care of, Your
15 Honor, and we could supply the Court with verification of that
16 once that process is completed. We'll certainly send it over
17 to Robert if you would like us to do that and we can handle
18 that immediately.

19 THE COURT: Yes. All right. Any questions, counsel?
20 And we're going to need to set you gentlemen for trial. Are
21 they going to invoke or are they going to waive?

22 MR. SANTACROCE: We're -- Lakeman is waiving.

23 MR. WRIGHT: I waive on behalf of Dr. Desai.

24 THE COURT: And Mr. Cristalli, are you waiving as
25 well?

1 MR. CRISTALLI: We do, Your Honor.

2 THE COURT: All right. We will give you a trial
3 date. Gentlemen and counsel, will -- counsel for the State,
4 have you discussed trial dates at this time? I understand
5 from Judge Adair, depending on what happens in the Supreme
6 Court, I know you're set for trial in October, but it could
7 possibly go later. Realistically in this case you're not
8 going to be until next year anyways, so did you discuss
9 possible dates?

10 MR. CRISTALLI: Your Honor, in light of the
11 circumstances associated with the other case, even though the
12 State denies the existence of one, I would like maybe to set a
13 status check to determine where we are at with that case
14 before setting trial on this case.

15 THE COURT: Okay. So last I read on the thing the
16 State had 30 days to file a response and I don't remember how
17 long -- or 20. I don't remember. I don't remember when that
18 response is due in Judge Adair's case.

19 MR. STAUDAHER: I know that there has been a request
20 for enlargement of time so I'm not sure how that affected that
21 date specifically or when the actual date for answer was.

22 THE COURT: The order directing answer, it looks
23 like --

24 MR. CRISTALLI: I have --

25 THE COURT: -- you had 20 days from August 6th. You

1 did an enlargement of time so you'll have additional time.
2 You want to set it on for a status in 45 days for the setting
3 of the trial date?

4 MR. STAUDAHER: Actually, the State, although I don't
5 have an issue with a specific date, we would like to have an
6 actual date set as soon as the Court can accommodate it on the
7 calendar.

8 THE COURT: Well, with that being said, you're
9 probably going to be -- well, as soon as possible is probably
10 going to be next year.

11 MR. STAUDAHER: That's fine.

12 THE COURT: Antoinette, what do you have?

13 MR. STAUDAHER: Just whenever the Court can --

14 THE CLERK: March --

15 MR. STAUDAHER: -- can do it.

16 THE CLERK: -- Your Honor.

17 THE COURT: March. March 2013, how is that for
18 defendants?

19 MR. SANTACROCE: I don't have my trial calendar in
20 front of me, Your Honor, unfortunately.

21 MR. CRISTALLI: Okay. I was just tapped and advised
22 I have a capital murder case going in March.

23 THE COURT: Okay. Then that puts where, Antoinette?

24 THE CLERK: That would be the end of May into early
25 June.

1 THE COURT: Thereafter it'd be August 2013.

2 MR. WRIGHT: Just for the record, I object to the
3 setting. I'm unclear where -- I will need to speak to Mr.
4 Pomerance in the federal court, with the prosecutor. We're
5 sort of by handshake --

6 THE COURT: Then why don't we do this.

7 MR. WRIGHT: -- implicitly awaiting the other case,
8 and then the federal case was going -- and of course, this
9 wasn't envisioned --

10 THE COURT: Okay.

11 MR. WRIGHT: -- and so he is awaiting trial in
12 federal court.

13 THE COURT: Why don't we do this. Why don't we set a
14 30-day status on trial setting. I need all counsel to please
15 look at their calendars between now and then, and when you
16 come in here, we will look at where we stand, or where you
17 guys stand with respect to what was the filings in Judge
18 Adair's department.

19 All right. 30-day date, please.

20 THE CLERK: September 19th, 9:30.

21 MR. SANTACROCE: September what?

22 THE CLERK: 19th.

23 MR. CRISTALLI: Thank you, Your Honor.

24 MR. SANTACROCE: And would you waive my client's
25 appearance, Your Honor, or does he need to be here for that?

1 THE COURT: I don't have any objections.

2 MR. STAUDAHER: There's only one person the State
3 has --

4 THE COURT: It's just a pretrial setting.

5 MR. STAUDAHER: -- an objection to not appearing at
6 every single hearing and that's Dr. Desai based on even the
7 representations in court today about his lack of capacity or
8 whatever. As the Court's probably aware, that was raised in
9 the underlying case that counsels were referring to in front
10 of Judge Adair. That defendant -- or Defendant Desai went up
11 to Lake's Crossing, was found to be malingering his symptoms
12 and because of that we feel it's important for the Court to
13 make its own assessment when he comes into court how he
14 handles himself, how he responds, things like that as we go
15 along. So he stands in a completely different position than
16 the others. We would submit it to the Court on Mr. Mathahs
17 and Mr. Lakeman.

18 THE COURT: Mr. Wright, are you asking to waive your
19 client's appearance at the next hearing or is he intending to
20 be present?

21 MR. WRIGHT: I would request to waive his appearance.
22 It creates a great imposition on his wife who is his custodian
23 who has to bring him here and she's a practicing physician.

24 THE COURT: All right. I waive the -- I'll waive the
25 appearances of the defendant since it is only going to be a

1 trial setting. All other substantive hearings their presence
2 will be required. Okay. We'll see you on the September date.

3 MR. SANTACROCE: One other issue, Your Honor, is that
4 I have not received discovery of the grand jury transcripts.
5 I'm asking for 21 days after I receive that information --

6 THE COURT: All right.

7 MR. SANTACROCE: -- to file a writ.

8 MR. CRISTALLI: We would join in that, Your Honor.

9 THE COURT: Okay. Anything by the State?

10 MR. WRIGHT: I join that.

11 MR. STAUDAHER: That's fine.

12 THE COURT: All right. That'll be granted. All
13 right. Any other additional matters?

14 MR. SANTACROCE: Not from Mr. Lakeman, Your Honor.
15 Thank you for your consideration.

16 THE COURT: All right. Thank you.

17 MR. WRIGHT: Thank you, Your Honor.

18 MR. CRISTALLI: Thank you, Your Honor.

19 THE COURT: Thank you.

20 (Court recessed at 10:46 a.m.)

21

22

23

24

25

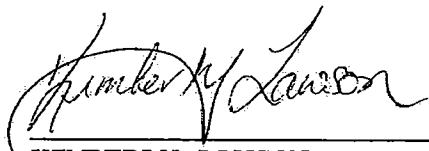
CERTIFICATION

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.

**KARR REPORTING, INC.
Aurora, Colorado**


KIMBERLY LAWSON

KARR Reporting, Inc.

EXHIBIT H

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2
3 KEITH MATHAHS,
4 Petitioner,
5 vs.
6

Electronically Filed
Aug 21 2012 03:13 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

7 THE EIGHTH JUDICIAL DISTRICT
8 COURT OF THE STATE OF
9 NEVADA, IN AND FOR THE
COUNTY OF CLARK, AND THE
HONORABLE VALERIE ADAIR,
DISTRICT JUDGE

CASE NO: 61359
D.C. NO: C2654107

10 Respondent,
11 and
12 THE STATE OF NEVADA,
13 Real Party in Interest.

14 **MOTION FOR ENLARGEMENT OF TIME**

15 COMES NOW the State of Nevada, by STEVEN B. WOLFSON, Clark
16 County District Attorney, through his Deputy, RYAN J. MACDONALD, and
17 moves this Court for an enlargement of time within which to file Answer to
18 Petition for Writ of Mandamus or Prohibition. This motion is based on the
19 following memorandum, declaration of counsel and all papers and pleadings on
20 file herein.

21 Dated this 21st day of August, 2012.

22 Respectfully submitted,

23 STEVEN B. WOLFSON
24 Clark County District Attorney
Nevada Bar #001565

25
26 BY */s/ Ryan J. MacDonald*

27 RYAN J. MACDONALD
28 Deputy District Attorney
Nevada Bar #12615
Office of the Clark County District Attorney

1 **MEMORANDUM**

2 I, RYAN J. MACDONALD, am the supervising attorney in the above-
3 captioned case. This Court may extend the time to file an Answer to Petition for
4 Writ of Mandamus or Prohibition upon a showing of good cause. NRAP 26(b)(1).

5 The State's Answer on the instant matter is currently due on August 26,
6 2012. This petition challenges the sufficiency of a 40-page Indictment in a
7 complex, important, and constantly-evolving case. In order to adequately respond
8 to petitioner's claims, the State requires more than the 20 days initially allotted.¹

9 Due to the above-described circumstances, the State submits that good cause
10 exists to extend the filing due date and respectfully requests this Court's
11 permission for an extension of time of an additional TWENTY (20) days to file its
12 Answer to Petition for Writ of Mandamus or Prohibition, making the Answer due
13 to be filed on or before September 17, 2012. This motion is made in good faith
14 and not for purposes of undue delay.

15 Dated this 21st day of August, 2012.

16 Respectfully submitted,

17 **STEVEN B. WOLFSON**
18 Clark County District Attorney
19 Nevada Bar #001565

20 BY */s/ Ryan J. MacDonald*

21 **RYAN J. MACDONALD**
22 Deputy District Attorney
23 Nevada Bar #12615
24 Office of the Clark County District Attorney
25 Regional Justice Center
26 200 Lewis Avenue, P.O. Box 552212
27 Las Vegas, Nevada 89155-2212
28 (702) 671-2500

¹The State notes that Petitioner has filed a motion for emergency stay of district court proceedings in this Court on August 21, 2012. The State submits that because the trial date is October 22, 2012, a stay of district court proceedings is unnecessary at this time.

1 **CERTIFICATE OF SERVICE**

2 I hereby certify and affirm that this document was filed electronically with
3 the Nevada Supreme Court on August 21, 2012. Electronic Service of the
4 foregoing document shall be made in accordance with the Master Service List as
5 follows:

6 CATHERINE CORTEZ MASTO
7 Nevada Attorney General

8 MICHAEL V. CRISTALLI, ESQ.
9 EUNICE M. MORGAN
10 Counsels for Appellant

11 RYAN J. MACDONALD
12 Deputy District Attorney

13
14
15 BY /s/ eileen davis
16 Employee, District Attorney's Office
17
18
19
20
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23
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25
26

27 RJM/ed
28

EXHIBIT A

1 IND

2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 MICHAEL V. STAUDAHER
6 Chief Deputy District Attorney
7 Nevada Bar #008273
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

FILED

JUN 4 1 03 PM '10

[Signature]
CLERK OF DISTRICT COURT

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,)

11 Plaintiff,)

12 -vs-

13 DIPAK KANTILAL DESAI, #1240942,
14 RONALD ERNEST LAKEMAN,
15 KEITH H. MATHAHS,)

16 Defendant(s).)

Case No. C265107
Dept. No. XIV

INDICTMENT

17 STATE OF NEVADA)
18 COUNTY OF CLARK) ss.

19 The Defendant(s) above named, DIPAK KANTILAL DESAI, RONALD ERNEST
20 LAKEMAN and KEITH H. MATHAHS accused by the Clark County Grand Jury of the
21 crime(s) of RACKETEERING (Felony - NRS 207.350, 207.360, 207.370, 207.380, 207.390,
22 207.400), PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS OR
23 PROPERTY (Felony - NRS 0.060, 202.595), CRIMINAL NEGLECT OF PATIENTS
24 (Felony - NRS 0.060, 200.495), INSURANCE FRAUD (Felony - NRS 686A.2815),
25 THEFT (Felony - NRS 205.0832, 205.0835) and OBTAINING MONEY UNDER FALSE
26 PRETENSES (Felony - NRS 205.265, 205.380), committed at and within the County of
27 Clark, State of Nevada, on or between June 3, 2005, and May 5, 2008, as follows:

28 ///

1 COUNT 1 - RACKETEERING

2 Defendants, did on or between June 3, 2005, and May 5, 2008, then and there, within
3 Clark County, Nevada knowingly, willfully and feloniously while employed by or associated
4 with an enterprise, conduct or participate directly or indirectly in racketeering activity
5 through the affairs of said enterprise; and/or with criminal intent receive any proceeds
6 derived, directly or indirectly, from racketeering activity to use or invest, whether directly or
7 indirectly, any part of the proceeds from racketeering activity; and/or through racketeering
8 activity to acquire or maintain, directly or indirectly, any interest in or control of any
9 enterprise; and/or intentionally organize, manage, direct, supervise or finance a criminal
10 syndicate; and/or did conspire to engage in said acts, to-wit: by directly or indirectly causing
11 and/or pressuring the employees and/or agents of the Endoscopy Center of Southern Nevada
12 to falsify patient anesthesia records from various endoscopic procedures; and/or to commit
13 insurance fraud by directly or indirectly submitting said false anesthesia records to various
14 insurance companies for the purpose of obtaining money under false pretenses from said
15 insurance companies and/or patients; said fraudulent submissions resulting in the payment of
16 monies to Defendants and/or their medical practice and/or the enterprise, which exceeded the
17 legitimate reimbursement amount allowed for said procedures; Defendants being responsible
18 under one or more of the following principles of criminal liability, to wit: (1) by directly
19 committing said acts; and/or (2) aiding or abetting each other in the commission of the crime
20 by directly or indirectly counseling, encouraging, hiring, commanding, inducing, or
21 procuring each other, and/or others to commit said acts, Defendants acting with the intent to
22 commit said crime.

23 COUNT 2 - INSURANCE FRAUD

24 Defendants did, on or about July 25, 2007, knowingly and willfully present, or cause
25 to be presented a statement as a part of, or in support of, a claim for payment or other
26 benefits under a policy of insurance issued pursuant to Title 57 of the Nevada Revised
27 Statutes, knowing that the statement concealed or omitted facts, or contained false or
28 misleading information concerning a fact material to said claim; and/or did assist, abet,

1 solicit or conspire to present or cause to be presented a statement to an insurer, a reinsurer, a
2 producer, a broker or any agent thereof, knowing that said statement concealed or omitted
3 facts, or did contain false or misleading information concerning a fact material to a claim for
4 payment or other benefits under such policy issued pursuant to Title 57 of the Nevada
5 Revised Statutes, by falsely representing to ANTHEM BLUE CROSS – BLUE SHIELD
6 that the billed anesthesia time and/or charges for the endoscopic procedure performed on
7 SHARRIEFF ZIYAD were more than the actual anesthetic time and/or charges, said false
8 representation resulting in the payment of money to Defendants and/or their medical practice
9 and/or the racketeering enterprise which exceeded that which would have normally been
10 allowed for said procedure; Defendants being responsible under one or more of the
11 following principles of criminal liability, to wit: (1) by directly committing said acts; and/or
12 (2) aiding or abetting each other in the commission of the crime by directly or indirectly
13 counseling, encouraging, hiring, commanding, inducing, or procuring each other, and/or
14 others to commit said acts, Defendants acting with the intent to commit said crime, and/or
15 (3) pursuant to a conspiracy to commit this crime.

16 COUNT 3 - PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS
17 OR PROPERTY

18 Defendants did on or about July 25, 2007, then and there willfully and unlawfully
19 perform acts in willful or wanton disregard of the safety of persons or property resulting in
20 substantial bodily harm to MICHAEL WASHINGTON, in the following manner, to-wit: by
21 Defendants performing one or more of the following acts: (1) by directly administering
22 and/or directly or indirectly instructing employees of the Endoscopy Center of Southern
23 Nevada, (ECSN) to administer one or more doses of the anesthetic drug Propofol from a
24 single use vial to more than one patient contrary to the express product labeling of said drug
25 and in violation of universally accepted safety precautions for the administration of said
26 drug; and/or (2) by creating an employment environment in which said employees were
27 pressured to administer one or more doses of the anesthetic drug Propofol from a single use
28 vial to more than one patient contrary to the express product labeling of said drug and in

violation of universally accepted safety precautions for the administration of said drug; and/or (3) by directly reusing and/or directly or indirectly instructing said employees, and/or creating an employment environment in which said employees were pressured to reuse syringes and/or needles and/or biopsy forceps and/or snares and/or bite blocks contrary to the express product labeling of said items, and/or in violation of universally accepted safety precautions for the use of said items; and/or (4) by directly limiting and/or directly or indirectly instructing said employees, and/or creating an employment environment in which said employees were pressured to limit the use of medical supplies necessary to conduct safe endoscopic procedures; and/or (5) by falsely precharting patient records and/or rushing patients through said endoscopy center and/or rushing patient procedures at the expense of patient safety and/or well being and/or directly or indirectly instructing said employees, and/or creating an employment environment in which said employees were pressured to falsely prechart patient records and/or rush patients through said endoscopy center and/or rush patient procedures at the expense of patient safety and/or well being; and/or (6) by directly or indirectly scheduling and/or treating an unreasonable number of patients per day which resulted in substandard care and/or jeopardized the safety and/or well being of said patients; and/or (7) by directly failing to adequately clean and/or prepare endoscopy scopes, contrary to the express manufacturers guidelines for the handling and processing of said endoscopy scopes, and/or in violation of universally accepted safety precautions for the use of said scopes and/or directly or indirectly instructing said employees, and/or creating an employment environment in which said employees were inadequately trained and/or pressured to provide endoscopy scopes for patient procedures that were not adequately cleaned and/or prepared contrary to the express manufacturers guidelines for the handling and processing of said endoscopy scopes, and/or in violation of universally accepted safety precautions for the use of said scopes; Defendants being responsible under one or more of the following principles of criminal liability, to wit: (1) by directly committing said acts; and/or (2) aiding or abetting each other in the commission of the crime by directly or indirectly counseling, encouraging, hiring, commanding, inducing, or procuring each other,

1 and/or others to commit said acts, Defendants acting with the intent to commit said crime,
2 and/or (3) pursuant to a conspiracy to commit this crime.

3 COUNT 4 - CRIMINAL NEGLECT OF PATIENTS

4 Defendants, on or about July 25, 2007, being professional caretakers of MICHAEL
5 WASHINGTON, did act or omit to act in an aggravated, reckless or gross manner, failing to
6 provide such service, care or supervision as is reasonable and necessary to maintain the
7 health or safety of said MICHAEL WASHINGTON, resulting in substantial bodily harm to
8 MICHAEL WASHINGTON, said acts or omissions being such a departure from what would
9 be the conduct of an ordinarily prudent, careful person under the same circumstances that it
10 is contrary to a proper regard for danger to human life or constitutes indifference to the
11 resulting consequences, said consequences of the negligent act or omission being reasonably
12 foreseeable; said danger to human life not being the result of inattention, mistaken judgment
13 or misadventure, but the natural and probable result of said aggravated reckless or grossly
14 negligent act or omission, by performing one or more of the following acts: (1) by directly
15 or indirectly instructing employees of the Endoscopy Center of Southern Nevada, (ECSN) to
16 administer one or more doses of the anesthetic drug Propofol from a single use vial to more
17 than one patient contrary to the express product labeling of said drug and in violation of
18 universally accepted safety precautions for the administration of said drug; and/or (2) by
19 creating an employment environment in which said employees were pressured to administer
20 one or more doses of the anesthetic drug Propofol from a single use vial to more than one
21 patient contrary to the express product labeling of said drug and in violation of universally
22 accepted safety precautions for the administration of said drug; and/or (3) by directly or
23 indirectly instructing said employees, and/or creating an employment environment in which
24 said employees were pressured to reuse syringes and/or needles and/or biopsy forceps and/or
25 snares and/or bite blocks contrary to the express product labeling of said items, and/or in
26 violation of universally accepted safety precautions for the use of said items; and/or (4) by
27 directly or indirectly instructing said employees, and/or creating an employment
28 environment in which said employees were pressured to limit the use of medical supplies

1 necessary to conduct safe endoscopic procedures; and/or (5) by directly or indirectly
2 instructing said employees, and/or creating an employment environment in which said
3 employees were pressured to falsely prechart patient records and/or rush patients through
4 said endoscopy center and/or rush patient procedures at the expense of patient safety and/or
5 well being; and/or (6) by directly or indirectly scheduling and/or treating an unreasonable
6 number of patients per day which resulted in substandard care and/or jeopardized the safety
7 and/or well being of said patients; and/or (7) by directly or indirectly instructing said
8 employees, and/or creating an employment environment in which said employees were
9 inadequately trained and/or pressured to provide endoscopy scopes for patient procedures
10 that were not adequately cleaned and/or prepared contrary to the express manufacturers
11 guidelines for the handling and processing of said endoscopy scopes, and/or in violation of
12 universally accepted safety precautions for the use of said scopes; and/or (8) by methods
13 unknown; for the purpose of enhancing the financial profit of ECSN, said act(s) or
14 omission(s) causing the transmission of Hepatitis C virus from patient SHARRIEFF ZIYAD
15 to patient MICHAEL WASHINGTON, who was not previously infected with the Hepatitis
16 C virus; Defendants being responsible under one or more of the following principles of
17 criminal liability, to wit: (1) by directly committing said acts; and/or (2) aiding or abetting
18 each other in the commission of the crime by directly or indirectly counseling, encouraging,
19 hiring, commanding, inducing, or procuring each other, and/or others to commit said acts,
20 Defendants acting with the intent to commit said crime, and/or (3) pursuant to a conspiracy
21 to commit this crime.

22 COUNT 5 - INSURANCE FRAUD

23 Defendants did, on or about July 25, 2007, knowingly and willfully present, or cause
24 to be presented a statement as a part of, or in support of, a claim for payment or other
25 benefits under a policy of insurance issued pursuant to Title 57 of the Nevada Revised
26 Statutes, knowing that the statement concealed or omitted facts, or contained false or
27 misleading information concerning a fact material to said claim; and/or did assist, abet,
28 solicit or conspire to present or cause to be presented a statement to an insurer, a reinsurer, a

1 producer, a broker or any agent thereof, knowing that said statement concealed or omitted
2 facts, or did contain false or misleading information concerning a fact material to a claim for
3 payment or other benefits under such policy issued pursuant to Title 57 of the Nevada
4 Revised Statutes, by falsely representing to VETERANS ADMINISTRATION that the
5 billed anesthesia time and/or charges for the endoscopic procedure performed on MICHAEL
6 WASHINGTON were more than the actual anesthetic time and/or charges, said false
7 representation resulting in the payment of money to Defendants and/or their medical practice
8 and/or the racketeering enterprise which exceeded that which would have normally been
9 allowed for said procedure; Defendants being responsible under one or more of the
10 following principles of criminal liability, to wit: (1) by directly committing said acts; and/or
11 (2) aiding or abetting each other in the commission of the crime by directly or indirectly
12 counseling, encouraging, hiring, commanding, inducing, or procuring each other, and/or
13 others to commit said acts, Defendants acting with the intent to commit said crime, and/or
14 (3) pursuant to a conspiracy to commit this crime.

15 COUNT 6 - INSURANCE FRAUD

16 Defendants did, on or about July 25, 2007, knowingly and willfully present, or cause
17 to be presented a statement as a part of, or in support of, a claim for payment or other
18 benefits under a policy of insurance issued pursuant to Title 57 of the Nevada Revised
19 Statutes, knowing that the statement concealed or omitted facts, or contained false or
20 misleading information concerning a fact material to said claim; and/or did assist, abet,
21 solicit or conspire to present or cause to be presented a statement to an insurer, a reinsurer, a
22 producer, a broker or any agent thereof, knowing that said statement concealed or omitted
23 facts, or did contain false or misleading information concerning a fact material to a claim for
24 payment or other benefits under such policy issued pursuant to Title 57 of the Nevada
25 Revised Statutes, by falsely representing to ANTHEM BLUE CROSS AND BLUE
26 SHIELD that the billed anesthesia time and/or charges for the endoscopic procedure
27 performed on KENNETH RUBINO were more than the actual anesthetic time and/or
28 charges, said false representation resulting in the payment of money to Defendants and/or

1 their medical practice and/or the racketeering enterprise which exceeded that which would
2 have normally been allowed for said procedure; Defendants being responsible under one or
3 more of the following principles of criminal liability, to wit: (1) by directly committing said
4 acts; and/or (2) aiding or abetting each other in the commission of the crime by directly or
5 indirectly counseling, encouraging, hiring, commanding, inducing, or procuring each other,
6 and/or others to commit said acts, Defendants acting with the intent to commit said crime,
7 and/or (3) pursuant to a conspiracy to commit this crime.

8 COUNT 7 - PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS
9 OR PROPERTY

10 Defendants did on or about September 21, 2007, then and there willfully and
11 unlawfully perform acts in willful or wanton disregard of the safety of persons or property
12 resulting in substantial bodily harm to STACY HUTCHINSON, in the following manner, to-
13 wit: by Defendants performing one or more of the following acts: (1) by directly
14 administering and/or directly or indirectly instructing employees of the Endoscopy Center of
15 Southern Nevada, (ECSN) to administer one or more doses of the anesthetic drug Propofol
16 from a single use vial to more than one patient contrary to the express product labeling of
17 said drug and in violation of universally accepted safety precautions for the administration of
18 said drug; and/or (2) by creating an employment environment in which said employees were
19 pressured to administer one or more doses of the anesthetic drug Propofol from a single use
20 vial to more than one patient contrary to the express product labeling of said drug and in
21 violation of universally accepted safety precautions for the administration of said drug;
22 and/or (3) by directly reusing and/or directly or indirectly instructing said employees, and/or
23 creating an employment environment in which said employees were pressured to reuse
24 syringes and/or needles and/or biopsy forceps and/or snares and/or bite blocks contrary to
25 the express product labeling of said items, and/or in violation of universally accepted safety
26 precautions for the use of said items; and/or (4) by directly limiting and/or directly or
27 indirectly instructing said employees, and/or creating an employment environment in which
28 said employees were pressured to limit the use of medical supplies necessary to conduct safe

1 endoscopic procedures; and/or (5) by falsely precharting patient records and/or rushing
2 patients through said endoscopy center and/or rushing patient procedures at the expense of
3 patient safety and/or well being and/or directly or indirectly instructing said employees,
4 and/or creating an employment environment in which said employees were pressured to
5 falsely prechart patient records and/or rush patients through said endoscopy center and/or
6 rush patient procedures at the expense of patient safety and/or well being; and/or (6) by
7 directly or indirectly scheduling and/or treating an unreasonable number of patients per day
8 which resulted in substandard care and/or jeopardized the safety and/or well being of said
9 patients; and/or (7) by directly failing to adequately clean and/or prepare endoscopy scopes,
10 contrary to the express manufacturers guidelines for the handling and processing of said
11 endoscopy scopes, and/or in violation of universally accepted safety precautions for the use
12 of said scopes and/or directly or indirectly instructing said employees, and/or creating an
13 employment environment in which said employees were inadequately trained and/or
14 pressured to provide endoscopy scopes for patient procedures that were not adequately
15 cleaned and/or prepared contrary to the express manufacturers guidelines for the handling
16 and processing of said endoscopy scopes, and/or in violation of universally accepted safety
17 precautions for the use of said scopes; Defendants being responsible under one or more of
18 the following principles of criminal liability, to wit: (1) by directly committing said acts;
19 and/or (2) aiding or abetting each other in the commission of the crime by directly or
20 indirectly counseling, encouraging, hiring, commanding, inducing, or procuring each other,
21 and/or others to commit said acts, Defendants acting with the intent to commit said crime,
22 and/or (3) pursuant to a conspiracy to commit this crime.

23 COUNT 8 - CRIMINAL NEGLECT OF PATIENTS

24 Defendants, on or about September 21, 2007, being professional caretakers of
25 STACY HUTCHINSON, did act or omit to act in an aggravated, reckless or gross manner,
26 failing to provide such service, care or supervision as is reasonable and necessary to
27 maintain the health or safety of said STACY HUTCHINSON, resulting in substantial bodily
28 harm to STACY HUTCHINSON, said acts or omissions being such a departure from what

would be the conduct of an ordinarily prudent, careful person under the same circumstances that it is contrary to a proper regard for danger to human life or constitutes indifference to the resulting consequences, said consequences of the negligent act or omission being reasonably foreseeable; said danger to human life not being the result of inattention, mistaken judgment or misadventure, but the natural and probable result of said aggravated reckless or grossly negligent act or omission, by performing one or more of the following acts: (1) by directly or indirectly instructing employees of the Endoscopy Center of Southern Nevada, (ECSN) to administer one or more doses of the anesthetic drug Propofol from a single use vial to more than one patient contrary to the express product labeling of said drug and in violation of universally accepted safety precautions for the administration of said drug; and/or (2) by creating an employment environment in which said employees were pressured to administer one or more doses of the anesthetic drug Propofol from a single use vial to more than one patient contrary to the express product labeling of said drug and in violation of universally accepted safety precautions for the administration of said drug; and/or (3) by directly or indirectly instructing said employees, and/or creating an employment environment in which said employees were pressured to reuse syringes and/or needles and/or biopsy forceps and/or snares and/or bite blocks contrary to the express product labeling of said items, and/or in violation of universally accepted safety precautions for the use of said items; and/or (4) by directly or indirectly instructing said employees, and/or creating an employment environment in which said employees were pressured to limit the use of medical supplies necessary to conduct safe endoscopic procedures; and/or (5) by directly or indirectly instructing said employees, and/or creating an employment environment in which said employees were pressured to falsely prechart patient records and/or rush patients through said endoscopy center and/or rush patient procedures at the expense of patient safety and/or well being; and/or (6) by directly or indirectly scheduling and/or treating an unreasonable number of patients per day which resulted in substandard care and/or jeopardized the safety and/or well being of said patients; and/or (7) by directly or indirectly instructing said employees, and/or creating an employment environment in which

1 said employees were inadequately trained and/or pressured to provide endoscopy scopes for
2 patient procedures that were not adequately cleaned and/or prepared contrary to the express
3 manufacturers guidelines for the handling and processing of said endoscopy scopes, and/or
4 in violation of universally accepted safety precautions for the use of said scopes; and/or (8)
5 by methods unknown; for the purpose of enhancing the financial profit of ECSN, said act(s)
6 or omission(s) causing the transmission of Hepatitis C virus from patient KENNETH
7 RUBINO to patient STACY HUTCHINSON, who was not previously infected with the
8 Hepatitis C virus; Defendants being responsible under one or more of the following
9 principles of criminal liability, to wit: (1) by directly committing said acts; and/or (2) aiding
10 or abetting each other in the commission of the crime by directly or indirectly counseling,
11 encouraging, hiring, commanding, inducing, or procuring each other, and/or others to
12 commit said acts, Defendants acting with the intent to commit said crime, and/or (3)
13 pursuant to a conspiracy to commit this crime.

14 COUNT 9 - INSURANCE FRAUD

15 Defendants did, on or about September 21, 2007, knowingly and willfully present, or
16 cause to be presented a statement as a part of, or in support of, a claim for payment or other
17 benefits under a policy of insurance issued pursuant to Title 57 of the Nevada Revised
18 Statutes, knowing that the statement concealed or omitted facts, or contained false or
19 misleading information concerning a fact material to said claim; and/or did assist, abet,
20 solicit or conspire to present or cause to be presented a statement to an insurer, a reinsurer, a
21 producer, a broker or any agent thereof, knowing that said statement concealed or omitted
22 facts, or did contain false or misleading information concerning a fact material to a claim for
23 payment or other benefits under such policy issued pursuant to Title 57 of the Nevada
24 Revised Statutes, by falsely representing to HEALTH PLAN OF NEVADA that the billed
25 anesthesia time and/or charges for the endoscopic procedure performed on STACY
26 HUTCHINSON were more than the actual anesthetic time and/or charges, said false
27 representation resulting in the payment of money to Defendants and/or their medical practice
28 and/or the racketeering enterprise which exceeded that which would have normally been

1 allowed for said procedure; Defendants being responsible under one or more of the
2 following principles of criminal liability, to wit: (1) by directly committing said acts; and/or
3 (2) aiding or abetting each other in the commission of the crime by directly or indirectly
4 counseling, encouraging, hiring, commanding, inducing, or procuring each other, and/or
5 others to commit said acts, Defendants acting with the intent to commit said crime, and/or
6 (3) pursuant to a conspiracy to commit this crime.

7 COUNT 10 - PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS
8 OR PROPERTY

9 Defendants did on or about September 21, 2007, then and there willfully and
10 unlawfully perform acts in willful or wanton disregard of the safety of persons or property
11 resulting in substantial bodily harm to RUDOLFO MEANA, in the following manner, to-
12 wit: by Defendants performing one or more of the following acts: (1) by directly
13 administering and/or directly or indirectly instructing employees of the Endoscopy Center of
14 Southern Nevada, (ECSN) to administer one or more doses of the anesthetic drug Propofol
15 from a single use vial to more than one patient contrary to the express product labeling of
16 said drug and in violation of universally accepted safety precautions for the administration of
17 said drug; and/or (2) by creating an employment environment in which said employees were
18 pressured to administer one or more doses of the anesthetic drug Propofol from a single use
19 vial to more than one patient contrary to the express product labeling of said drug and in
20 violation of universally accepted safety precautions for the administration of said drug;
21 and/or (3) by directly reusing and/or directly or indirectly instructing said employees, and/or
22 creating an employment environment in which said employees were pressured to reuse
23 syringes and/or needles and/or biopsy forceps and/or snares and/or bite blocks contrary to
24 the express product labeling of said items, and/or in violation of universally accepted safety
25 precautions for the use of said items; and/or (4) by directly limiting and/or directly or
26 indirectly instructing said employees, and/or creating an employment environment in which
27 said employees were pressured to limit the use of medical supplies necessary to conduct safe
28 endoscopic procedures; and/or (5) by falsely precharting patient records and/or rushing

1 patients through said endoscopy center and/or rushing patient procedures at the expense of
2 patient safety and/or well being and/or directly or indirectly instructing said employees,
3 and/or creating an employment environment in which said employees were pressured to
4 falsely prechart patient records and/or rush patients through said endoscopy center and/or
5 rush patient procedures at the expense of patient safety and/or well being; and/or (6) by
6 directly or indirectly scheduling and/or treating an unreasonable number of patients per day
7 which resulted in substandard care and/or jeopardized the safety and/or well being of said
8 patients; and/or (7) by directly failing to adequately clean and/or prepare endoscopy scopes,
9 contrary to the express manufacturers guidelines for the handling and processing of said
10 endoscopy scopes, and/or in violation of universally accepted safety precautions for the use
11 of said scopes and/or directly or indirectly instructing said employees, and/or creating an
12 employment environment in which said employees were inadequately trained and/or
13 pressured to provide endoscopy scopes for patient procedures that were not adequately
14 cleaned and/or prepared contrary to the express manufacturers guidelines for the handling
15 and processing of said endoscopy scopes, and/or in violation of universally accepted safety
16 precautions for the use of said scopes; Defendants being responsible under one or more of
17 the following principles of criminal liability, to wit: (1) by directly committing said acts;
18 and/or (2) aiding or abetting each other in the commission of the crime by directly or
19 indirectly counseling, encouraging, hiring, commanding, inducing, or procuring each other,
20 and/or others to commit said acts, Defendants acting with the intent to commit said crime,
21 and/or (3) pursuant to a conspiracy to commit this crime.

22 COUNT 11 - CRIMINAL NEGLECT OF PATIENTS

23 Defendants, on or about September 21, 2007, being professional caretakers of
24 RUDOLFO MEANA, did act or omit to act in an aggravated, reckless or gross manner,
25 failing to provide such service, care or supervision as is reasonable and necessary to
26 maintain the health or safety of said RUDOLFO MEANA, resulting in substantial bodily
27 harm to RUDOLFO MEANA, said acts or omissions being such a departure from what
28 would be the conduct of an ordinarily prudent, careful person under the same circumstances

that it is contrary to a proper regard for danger to human life or constitutes indifference to the resulting consequences, said consequences of the negligent act or omission being reasonably foreseeable; said danger to human life not being the result of inattention, mistaken judgment or misadventure, but the natural and probable result of said aggravated reckless or grossly negligent act or omission, by performing one or more of the following acts: (1) by directly or indirectly instructing employees of the Endoscopy Center of Southern Nevada, (ECSN) to administer one or more doses of the anesthetic drug Propofol from a single use vial to more than one patient contrary to the express product labeling of said drug and in violation of universally accepted safety precautions for the administration of said drug; and/or (2) by creating an employment environment in which said employees were pressured to administer one or more doses of the anesthetic drug Propofol from a single use vial to more than one patient contrary to the express product labeling of said drug and in violation of universally accepted safety precautions for the administration of said drug; and/or (3) by directly or indirectly instructing said employees, and/or creating an employment environment in which said employees were pressured to reuse syringes and/or needles and/or biopsy forceps and/or snares and/or bite blocks contrary to the express product labeling of said items, and/or in violation of universally accepted safety precautions for the use of said items; and/or (4) by directly or indirectly instructing said employees, and/or creating an employment environment in which said employees were pressured to limit the use of medical supplies necessary to conduct safe endoscopic procedures; and/or (5) by directly or indirectly instructing said employees, and/or creating an employment environment in which said employees were pressured to falsely prechart patient records and/or rush patients through said endoscopy center and/or rush patient procedures at the expense of patient safety and/or well being; and/or (6) by directly or indirectly scheduling and/or treating an unreasonable number of patients per day which resulted in substandard care and/or jeopardized the safety and/or well being of said patients; and/or (7) by directly or indirectly instructing said employees, and/or creating an employment environment in which said employees were inadequately trained and/or pressured to provide endoscopy scopes for

1 patient procedures that were not adequately cleaned and/or prepared contrary to the express
2 manufacturers guidelines for the handling and processing of said endoscopy scopes, and/or
3 in violation of universally accepted safety precautions for the use of said scopes; and/or (8)
4 by methods unknown; for the purpose of enhancing the financial profit of ECSN, said act(s)
5 or omission(s) causing the transmission of Hepatitis C virus from patient KENNETH
6 RUBINO to patient RUDOLFO MEANA, who was not previously infected with the
7 Hepatitis C virus; Defendants being responsible under one or more of the following
8 principles of criminal liability, to wit: (1) by directly committing said acts; and/or (2) aiding
9 or abetting each other in the commission of the crime by directly or indirectly counseling,
10 encouraging, hiring, commanding, inducing, or procuring each other, and/or others to
11 commit said acts, Defendants acting with the intent to commit said crime, and/or (3)
12 pursuant to a conspiracy to commit this crime.

13 COUNT 12 - INSURANCE FRAUD

14 Defendants did, on or about September 21, 2007, knowingly and willfully present, or
15 cause to be presented a statement as a part of, or in support of, a claim for payment or other
16 benefits under a policy of insurance issued pursuant to Title 57 of the Nevada Revised
17 Statutes, knowing that the statement concealed or omitted facts, or contained false or
18 misleading information concerning a fact material to said claim; and/or did assist, abet,
19 solicit or conspire to present or cause to be presented a statement to an insurer, a reinsurer, a
20 producer, a broker or any agent thereof, knowing that said statement concealed or omitted
21 facts, or did contain false or misleading information concerning a fact material to a claim for
22 payment or other benefits under such policy issued pursuant to Title 57 of the Nevada
23 Revised Statutes, by falsely representing to SECURE HORIZONS and/or PACIFICARE that
24 the billed anesthesia time and/or charges for the endoscopic procedure performed on
25 RUDOLFO MEANA were more than the actual anesthetic time and/or charges, said false
26 representation resulting in the payment of money to Defendants and/or their medical practice
27 and/or the racketeering enterprise which exceeded that which would have normally been
28 allowed for said procedure; Defendants being responsible under one or more of the

1 following principles of criminal liability, to wit: (1) by directly committing said acts; and/or
2 (2) aiding or abetting each other in the commission of the crime by directly or indirectly
3 counseling, encouraging, hiring, commanding, inducing, or procuring each other, and/or
4 others to commit said acts, Defendants acting with the intent to commit said crime, and/or
5 (3) pursuant to a conspiracy to commit this crime.

6 COUNT 13 - PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS
7 OR PROPERTY

8 Defendants did on or about September 21, 2007, then and there willfully and
9 unlawfully perform acts in willful or wanton disregard of the safety of persons or property
10 resulting in substantial bodily harm to PATTY ASPINWALL, in the following manner, to-
11 wit: by Defendants performing one or more of the following acts: (1) by directly
12 administering and/or directly or indirectly instructing employees of the Endoscopy Center of
13 Southern Nevada, (ECSN) to administer one or more doses of the anesthetic drug Propofol
14 from a single use vial to more than one patient contrary to the express product labeling of
15 said drug and in violation of universally accepted safety precautions for the administration of
16 said drug; and/or (2) by creating an employment environment in which said employees were
17 pressured to administer one or more doses of the anesthetic drug Propofol from a single use
18 vial to more than one patient contrary to the express product labeling of said drug and in
19 violation of universally accepted safety precautions for the administration of said drug;
20 and/or (3) by directly reusing and/or directly or indirectly instructing said employees, and/or
21 creating an employment environment in which said employees were pressured to reuse
22 syringes and/or needles and/or biopsy forceps and/or snares and/or bite blocks contrary to
23 the express product labeling of said items, and/or in violation of universally accepted safety
24 precautions for the use of said items; and/or (4) by directly limiting and/or directly or
25 indirectly instructing said employees, and/or creating an employment environment in which
26 said employees were pressured to limit the use of medical supplies necessary to conduct safe
27 endoscopic procedures; and/or (5) by falsely precharting patient records and/or rushing
28 patients through said endoscopy center and/or rushing patient procedures at the expense of

1 patient safety and/or well being and/or directly or indirectly instructing said employees,
2 and/or creating an employment environment in which said employees were pressured to
3 falsely prechart patient records and/or rush patients through said endoscopy center and/or
4 rush patient procedures at the expense of patient safety and/or well being; and/or (6) by
5 directly or indirectly scheduling and/or treating an unreasonable number of patients per day
6 which resulted in substandard care and/or jeopardized the safety and/or well being of said
7 patients; and/or (7) by directly failing to adequately clean and/or prepare endoscopy scopes,
8 contrary to the express manufacturers guidelines for the handling and processing of said
9 endoscopy scopes, and/or in violation of universally accepted safety precautions for the use
10 of said scopes and/or directly or indirectly instructing said employees, and/or creating an
11 employment environment in which said employees were inadequately trained and/or
12 pressured to provide endoscopy scopes for patient procedures that were not adequately
13 cleaned and/or prepared contrary to the express manufacturers guidelines for the handling
14 and processing of said endoscopy scopes, and/or in violation of universally accepted safety
15 precautions for the use of said scopes; Defendants being responsible under one or more of
16 the following principles of criminal liability, to wit: (1) by directly committing said acts;
17 and/or (2) aiding or abetting each other in the commission of the crime by directly or
18 indirectly counseling, encouraging, hiring, commanding, inducing, or procuring each other,
19 and/or others to commit said acts, Defendants acting with the intent to commit said crime,
20 and/or (3) pursuant to a conspiracy to commit this crime.

21 COUNT 14 - CRIMINAL NEGLIGENCE OF PATIENTS

22 Defendants, on or about September 21, 2007, being professional caretakers of
23 PATTY ASPINWALL, did act or omit to act in an aggravated, reckless or gross manner,
24 failing to provide such service, care or supervision as is reasonable and necessary to
25 maintain the health or safety of said PATTY ASPINWALL, resulting in substantial bodily
26 harm to PATTY ASPINWALL, said acts or omissions being such a departure from what
27 would be the conduct of an ordinarily prudent, careful person under the same circumstances
28 that it is contrary to a proper regard for danger to human life or constitutes indifference to

1 the resulting consequences, said consequences of the negligent act or omission being
2 reasonably foreseeable; said danger to human life not being the result of inattention,
3 mistaken judgment or misadventure, but the natural and probable result of said aggravated
4 reckless or grossly negligent act or omission, by performing one or more of the following
5 acts: (1) by directly or indirectly instructing employees of the Endoscopy Center of
6 Southern Nevada, (ECSN) to administer one or more doses of the anesthetic drug Propofol
7 from a single use vial to more than one patient contrary to the express product labeling of
8 said drug and in violation of universally accepted safety precautions for the administration of
9 said drug; and/or (2) by creating an employment environment in which said employees were
10 pressured to administer one or more doses of the anesthetic drug Propofol from a single use
11 vial to more than one patient contrary to the express product labeling of said drug and in
12 violation of universally accepted safety precautions for the administration of said drug;
13 and/or (3) by directly or indirectly instructing said employees, and/or creating an
14 employment environment in which said employees were pressured to reuse syringes and/or
15 needles and/or biopsy forceps and/or snares and/or bite blocks contrary to the express
16 product labeling of said items, and/or in violation of universally accepted safety precautions
17 for the use of said items; and/or (4) by directly or indirectly instructing said employees,
18 and/or creating an employment environment in which said employees were pressured to limit
19 the use of medical supplies necessary to conduct safe endoscopic procedures; and/or (5) by
20 directly or indirectly instructing said employees, and/or creating an employment
21 environment in which said employees were pressured to falsely prechart patient records
22 and/or rush patients through said endoscopy center and/or rush patient procedures at the
23 expense of patient safety and/or well being; and/or (6) by directly or indirectly scheduling
24 and/or treating an unreasonable number of patients per day which resulted in substandard
25 care and/or jeopardized the safety and/or well being of said patients; and/or (7) by directly or
26 indirectly instructing said employees, and/or creating an employment environment in which
27 said employees were inadequately trained and/or pressured to provide endoscopy scopes for
28 patient procedures that were not adequately cleaned and/or prepared contrary to the express

1 manufacturers guidelines for the handling and processing of said endoscopy scopes, and/or
2 in violation of universally accepted safety precautions for the use of said scopes; and/or (8)
3 by methods unknown; for the purpose of enhancing the financial profit of ECSN, said act(s)
4 or omission(s) causing the transmission of Hepatitis C virus from patient KENNETH
5 RUBINO to patient PATTY ASPINWALL, who was not previously infected with the
6 Hepatitis C virus; Defendants being responsible under one or more of the following
7 principles of criminal liability, to wit: (1) by directly committing said acts; and/or (2) aiding
8 or abetting each other in the commission of the crime by directly or indirectly counseling,
9 encouraging, hiring, commanding, inducing, or procuring each other, and/or others to
10 commit said acts, Defendants acting with the intent to commit said crime, and/or (3)
11 pursuant to a conspiracy to commit this crime.

12 COUNT 15 - INSURANCE FRAUD

13 Defendants did, on or about September 21, 2007, knowingly and willfully present, or
14 cause to be presented a statement as a part of, or in support of, a claim for payment or other
15 benefits under a policy of insurance issued pursuant to Title 57 of the Nevada Revised
16 Statutes, knowing that the statement concealed or omitted facts, or contained false or
17 misleading information concerning a fact material to said claim; and/or did assist, abet,
18 solicit or conspire to present or cause to be presented a statement to an insurer, a reinsurer, a
19 producer, a broker or any agent thereof, knowing that said statement concealed or omitted
20 facts, or did contain false or misleading information concerning a fact material to a claim for
21 payment or other benefits under such policy issued pursuant to Title 57 of the Nevada
22 Revised Statutes, by falsely representing to ANTHEM BLUE CROSS AND BLUE
23 SHIELD that the billed anesthesia time and/or charges for the endoscopic procedure
24 performed on PATTY ASPINWALL were more than the actual anesthetic time and/or
25 charges, said false representation resulting in the payment of money to Defendants and/or
26 their medical practice and/or the racketeering enterprise which exceeded that which would
27 have normally been allowed for said procedure; Defendants being responsible under one or
28 more of the following principles of criminal liability, to wit: (1) by directly committing said

1 acts; and/or (2) aiding or abetting each other in the commission of the crime by directly or
2 indirectly counseling, encouraging, hiring, commanding, inducing, or procuring each other,
3 and/or others to commit said acts, Defendants acting with the intent to commit said crime,
4 and/or (3) pursuant to a conspiracy to commit this crime.

5 COUNT 16 - INSURANCE FRAUD

6 Defendants did, on or about September 21, 2007, knowingly and willfully present, or
7 cause to be presented a statement as a part of, or in support of, a claim for payment or other
8 benefits under a policy of insurance issued pursuant to Title 57 of the Nevada Revised
9 Statutes, knowing that the statement concealed or omitted facts, or contained false or
10 misleading information concerning a fact material to said claim; and/or did assist, abet,
11 solicit or conspire to present or cause to be presented a statement to an insurer, a reinsurer, a
12 producer, a broker or any agent thereof, knowing that said statement concealed or omitted
13 facts, or did contain false or misleading information concerning a fact material to a claim for
14 payment or other benefits under such policy issued pursuant to Title 57 of the Nevada
15 Revised Statutes, by falsely representing to UNITED HEALTH SERVICES that the billed
16 anesthesia time and/or charges for the endoscopic procedure performed on PATTY
17 ASPINWALL were more than the actual anesthetic time and/or charges, said false
18 representation resulting in the payment of money to Defendants and/or their medical practice
19 and/or the racketeering enterprise which exceeded that which would have normally been
20 allowed for said procedure; Defendants being responsible under one or more of the
21 following principles of criminal liability, to wit: (1) by directly committing said acts; and/or
22 (2) aiding or abetting each other in the commission of the crime by directly or indirectly
23 counseling, encouraging, hiring, commanding, inducing, or procuring each other, and/or
24 others to commit said acts, Defendants acting with the intent to commit said crime, and/or
25 (3) pursuant to a conspiracy to commit this crime.

26 COUNT 17 - PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS
27 OR PROPERTY

28 Defendants did on or about September 21, 2007, then and there willfully and

1 unlawfully perform acts in willful or wanton disregard of the safety of persons or property
2 resulting in substantial bodily harm to SONIA ORELLANA-RIVERA, in the following
3 manner, to-wit: by Defendants performing one or more of the following acts: (1) by directly
4 administering and/or directly or indirectly instructing employees of the Endoscopy Center of
5 Southern Nevada, (ECSN) to administer one or more doses of the anesthetic drug Propofol
6 from a single use vial to more than one patient contrary to the express product labeling of
7 said drug and in violation of universally accepted safety precautions for the administration of
8 said drug; and/or (2) by creating an employment environment in which said employees were
9 pressured to administer one or more doses of the anesthetic drug Propofol from a single use
10 vial to more than one patient contrary to the express product labeling of said drug and in
11 violation of universally accepted safety precautions for the administration of said drug;
12 and/or (3) by directly reusing and/or directly or indirectly instructing said employees, and/or
13 creating an employment environment in which said employees were pressured to reuse
14 syringes and/or needles and/or biopsy forceps and/or snares and/or bite blocks contrary to
15 the express product labeling of said items, and/or in violation of universally accepted safety
16 precautions for the use of said items; and/or (4) by directly limiting and/or directly or
17 indirectly instructing said employees, and/or creating an employment environment in which
18 said employees were pressured to limit the use of medical supplies necessary to conduct safe
19 endoscopic procedures; and/or (5) by falsely precharting patient records and/or rushing
20 patients through said endoscopy center and/or rushing patient procedures at the expense of
21 patient safety and/or well being and/or directly or indirectly instructing said employees,
22 and/or creating an employment environment in which said employees were pressured to
23 falsely prechart patient records and/or rush patients through said endoscopy center and/or
24 rush patient procedures at the expense of patient safety and/or well being; and/or (6) by
25 directly or indirectly scheduling and/or treating an unreasonable number of patients per day
26 which resulted in substandard care and/or jeopardized the safety and/or well being of said
27 patients; and/or (7) by directly failing to adequately clean and/or prepare endoscopy scopes,
28 contrary to the express manufacturers guidelines for the handling and processing of said

1 endoscopy scopes, and/or in violation of universally accepted safety precautions for the use
2 of said scopes and/or directly or indirectly instructing said employees, and/or creating an
3 employment environment in which said employees were inadequately trained and/or
4 pressured to provide endoscopy scopes for patient procedures that were not adequately
5 cleaned and/or prepared contrary to the express manufacturers guidelines for the handling
6 and processing of said endoscopy scopes, and/or in violation of universally accepted safety
7 precautions for the use of said scopes; Defendants being responsible under one or more of
8 the following principles of criminal liability, to wit: (1) by directly committing said acts;
9 and/or (2) aiding or abetting each other in the commission of the crime by directly or
10 indirectly counseling, encouraging, hiring, commanding, inducing, or procuring each other,
11 and/or others to commit said acts, Defendants acting with the intent to commit said crime,
12 and/or (3) pursuant to a conspiracy to commit this crime.

13 COUNT 18 - CRIMINAL NEGLECT OF PATIENTS

14 Defendants, on or about September 21, 2007, being professional caretakers of SONIA
15 ORELLANA-RIVERA, did act or omit to act in an aggravated, reckless or gross manner,
16 failing to provide such service, care or supervision as is reasonable and necessary to
17 maintain the health or safety of said SONIA ORELLANA-RIVERA, resulting in substantial
18 bodily harm to SONIA ORELLANA-RIVERA, said acts or omissions being such a
19 departure from what would be the conduct of an ordinarily prudent, careful person under the
20 same circumstances that it is contrary to a proper regard for danger to human life or
21 constitutes indifference to the resulting consequences, said consequences of the negligent act
22 or omission being reasonably foreseeable; said danger to human life not being the result of
23 inattention, mistaken judgment or misadventure, but the natural and probable result of said
24 aggravated reckless or grossly negligent act or omission, by performing one or more of the
25 following acts: (1) by directly or indirectly instructing employees of the Endoscopy Center
26 of Southern Nevada, (ECSN) to administer one or more doses of the anesthetic drug
27 Propofol from a single use vial to more than one patient contrary to the express product
28 labeling of said drug and in violation of universally accepted safety precautions for the

1 administration of said drug; and/or (2) by creating an employment environment in which
2 said employees were pressured to administer one or more doses of the anesthetic drug
3 Propofol from a single use vial to more than one patient contrary to the express product
4 labeling of said drug and in violation of universally accepted safety precautions for the
5 administration of said drug; and/or (3) by directly or indirectly instructing said employees,
6 and/or creating an employment environment in which said employees were pressured to
7 reuse syringes and/or needles and/or biopsy forceps and/or snares and/or bite blocks contrary
8 to the express product labeling of said items, and/or in violation of universally accepted
9 safety precautions for the use of said items; and/or (4) by directly or indirectly instructing
10 said employees, and/or creating an employment environment in which said employees were
11 pressured to limit the use of medical supplies necessary to conduct safe endoscopic
12 procedures; and/or (5) by directly or indirectly instructing said employees, and/or creating an
13 employment environment in which said employees were pressured to falsely prechart patient
14 records and/or rush patients through said endoscopy center and/or rush patient procedures at
15 the expense of patient safety and/or well being; and/or (6) by directly or indirectly
16 scheduling and/or treating an unreasonable number of patients per day which resulted in
17 substandard care and/or jeopardized the safety and/or well being of said patients; and/or (7)
18 by directly or indirectly instructing said employees, and/or creating an employment
19 environment in which said employees were inadequately trained and/or pressured to provide
20 endoscopy scopes for patient procedures that were not adequately cleaned and/or prepared
21 contrary to the express manufacturers guidelines for the handling and processing of said
22 endoscopy scopes, and/or in violation of universally accepted safety precautions for the use
23 of said scopes; and/or (8) by methods unknown; for the purpose of enhancing the financial
24 profit of ECSN, said act(s) or omission(s) causing the transmission of Hepatitis C virus from
25 patient KENNETH RUBINO to patient SONIA ORELLANA-RIVERA, who was not
26 previously infected with the Hepatitis C virus; Defendants being responsible under one or
27 more of the following principles of criminal liability, to wit: (1) by directly committing said
28 acts; and/or (2) aiding or abetting each other in the commission of the crime by directly or

1 indirectly counseling, encouraging, hiring, commanding, inducing, or procuring each other,
2 and/or others to commit said acts, Defendants acting with the intent to commit said crime,
3 and/or (3) pursuant to a conspiracy to commit this crime.

4 COUNT 19 - INSURANCE FRAUD

5 Defendants did, on or about September 21, 2007, knowingly and willfully present, or
6 cause to be presented a statement as a part of, or in support of, a claim for payment or other
7 benefits under a policy of insurance issued pursuant to Title 57 of the Nevada Revised
8 Statutes, knowing that the statement concealed or omitted facts, or contained false or
9 misleading information concerning a fact material to said claim; and/or did assist, abet,
10 solicit or conspire to present or cause to be presented a statement to an insurer, a reinsurer, a
11 producer, a broker or any agent thereof, knowing that said statement concealed or omitted
12 facts, or did contain false or misleading information concerning a fact material to a claim for
13 payment or other benefits under such policy issued pursuant to Title 57 of the Nevada
14 Revised Statutes, by falsely representing to CULINARY WORKERS HEALTH FUND that
15 the billed anesthesia time and/or charges for the endoscopic procedure performed on SONIA
16 ORELLANA-RIVERA were more than the actual anesthetic time and/or charges, said false
17 representation resulting in the payment of money to Defendants and/or their medical practice
18 and/or the racketeering enterprise which exceeded that which would have normally been
19 allowed for said procedure; Defendants being responsible under one or more of the
20 following principles of criminal liability, to wit: (1) by directly committing said acts; and/or
21 (2) aiding or abetting each other in the commission of the crime by directly or indirectly
22 counseling, encouraging, hiring, commanding, inducing, or procuring each other, and/or
23 others to commit said acts, Defendants acting with the intent to commit said crime, and/or
24 (3) pursuant to a conspiracy to commit this crime.

25 COUNT 20 - PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS
26 OR PROPERTY

27 Defendants did on or about September 21, 2007, then and there willfully and
28 unlawfully perform acts in willful or wanton disregard of the safety of persons or property

1 resulting in substantial bodily harm to CAROLE GRUESKIN, in the following manner, to-
2 wit: by Defendants performing one or more of the following acts: (1) by directly
3 administering and/or directly or indirectly instructing employees of the Endoscopy Center of
4 Southern Nevada, (ECSN) to administer one or more doses of the anesthetic drug Propofol
5 from a single use vial to more than one patient contrary to the express product labeling of
6 said drug and in violation of universally accepted safety precautions for the administration of
7 said drug; and/or (2) by creating an employment environment in which said employees were
8 pressured to administer one or more doses of the anesthetic drug Propofol from a single use
9 vial to more than one patient contrary to the express product labeling of said drug and in
10 violation of universally accepted safety precautions for the administration of said drug;
11 and/or (3) by directly reusing and/or directly or indirectly instructing said employees, and/or
12 creating an employment environment in which said employees were pressured to reuse
13 syringes and/or needles and/or biopsy forceps and/or snares and/or bite blocks contrary to
14 the express product labeling of said items, and/or in violation of universally accepted safety
15 precautions for the use of said items; and/or (4) by directly limiting and/or directly or
16 indirectly instructing said employees, and/or creating an employment environment in which
17 said employees were pressured to limit the use of medical supplies necessary to conduct safe
18 endoscopic procedures; and/or (5) by falsely precharting patient records and/or rushing
19 patients through said endoscopy center and/or rushing patient procedures at the expense of
20 patient safety and/or well being and/or directly or indirectly instructing said employees,
21 and/or creating an employment environment in which said employees were pressured to
22 falsely prechart patient records and/or rush patients through said endoscopy center and/or
23 rush patient procedures at the expense of patient safety and/or well being; and/or (6) by
24 directly or indirectly scheduling and/or treating an unreasonable number of patients per day
25 which resulted in substandard care and/or jeopardized the safety and/or well being of said
26 patients; and/or (7) by directly failing to adequately clean and/or prepare endoscopy scopes,
27 contrary to the express manufacturers guidelines for the handling and processing of said
28 endoscopy scopes, and/or in violation of universally accepted safety precautions for the use

1 of said scopes and/or directly or indirectly instructing said employees, and/or creating an
2 employment environment in which said employees were inadequately trained and/or
3 pressured to provide endoscopy scopes for patient procedures that were not adequately
4 cleaned and/or prepared contrary to the express manufacturers guidelines for the handling
5 and processing of said endoscopy scopes, and/or in violation of universally accepted safety
6 precautions for the use of said scopes; Defendants being responsible under one or more of
7 the following principles of criminal liability, to wit: (1) by directly committing said acts;
8 and/or (2) aiding or abetting each other in the commission of the crime by directly or
9 indirectly counseling, encouraging, hiring, commanding, inducing, or procuring each other,
10 and/or others to commit said acts, Defendants acting with the intent to commit said crime,
11 and/or (3) pursuant to a conspiracy to commit this crime.

12 COUNT 21- CRIMINAL NEGLECT OF PATIENTS

13 Defendants, on or about September 21, 2007, being professional caretakers of
14 CAROLE GRUESKIN, did act or omit to act in an aggravated, reckless or gross manner,
15 failing to provide such service, care or supervision as is reasonable and necessary to
16 maintain the health or safety of said CAROLE GRUESKIN, resulting in substantial bodily
17 harm to CAROLE GRUESKIN, said acts or omissions being such a departure from what
18 would be the conduct of an ordinarily prudent, careful person under the same circumstances
19 that it is contrary to a proper regard for danger to human life or constitutes indifference to
20 the resulting consequences, said consequences of the negligent act or omission being
21 reasonably foreseeable; said danger to human life not being the result of inattention,
22 mistaken judgment or misadventure, but the natural and probable result of said aggravated
23 reckless or grossly negligent act or omission, by performing one or more of the following
24 acts: (1) by directly or indirectly instructing employees of the Endoscopy Center of
25 Southern Nevada, (ECSN) to administer one or more doses of the anesthetic drug Propofol
26 from a single use vial to more than one patient contrary to the express product labeling of
27 said drug and in violation of universally accepted safety precautions for the administration of
28 said drug; and/or (2) by creating an employment environment in which said employees were

1 pressured to administer one or more doses of the anesthetic drug Propofol from a single use
2 vial to more than one patient contrary to the express product labeling of said drug and in
3 violation of universally accepted safety precautions for the administration of said drug;
4 and/or (3) by directly or indirectly instructing said employees, and/or creating an
5 employment environment in which said employees were pressured to reuse syringes and/or
6 needles and/or biopsy forceps and/or snares and/or bite blocks contrary to the express
7 product labeling of said items, and/or in violation of universally accepted safety precautions
8 for the use of said items; and/or (4) by directly or indirectly instructing said employees,
9 and/or creating an employment environment in which said employees were pressured to limit
10 the use of medical supplies necessary to conduct safe endoscopic procedures; and/or (5) by
11 directly or indirectly instructing said employees, and/or creating an employment
12 environment in which said employees were pressured to falsely prechart patient records
13 and/or rush patients through said endoscopy center and/or rush patient procedures at the
14 expense of patient safety and/or well being; and/or (6) by directly or indirectly scheduling
15 and/or treating an unreasonable number of patients per day which resulted in substandard
16 care and/or jeopardized the safety and/or well being of said patients; and/or (7) by directly or
17 indirectly instructing said employees, and/or creating an employment environment in which
18 said employees were inadequately trained and/or pressured to provide endoscopy scopes for
19 patient procedures that were not adequately cleaned and/or prepared contrary to the express
20 manufacturers guidelines for the handling and processing of said endoscopy scopes, and/or
21 in violation of universally accepted safety precautions for the use of said scopes; and/or (8)
22 by methods unknown; for the purpose of enhancing the financial profit of ECSN, said act(s)
23 or omission(s) causing the transmission of Hepatitis C virus from patient KENNETH
24 RUBINO to patient CAROLE GRUESKIN, who was not previously infected with the
25 Hepatitis C virus; Defendants being responsible under one or more of the following
26 principles of criminal liability, to wit: (1) by directly committing said acts; and/or (2) aiding
27 or abetting each other in the commission of the crime by directly or indirectly counseling,
28 encouraging, hiring, commanding, inducing, or procuring each other, and/or others to

1 commit said acts, Defendants acting with the intent to commit said crime, and/or (3)
2 pursuant to a conspiracy to commit this crime.

3 COUNT 22 - INSURANCE FRAUD

4 Defendants did, on or about September 21, 2007, knowingly and willfully present, or
5 cause to be presented a statement as a part of, or in support of, a claim for payment or other
6 benefits under a policy of insurance issued pursuant to Title 57 of the Nevada Revised
7 Statutes, knowing that the statement concealed or omitted facts, or contained false or
8 misleading information concerning a fact material to said claim; and/or did assist, abet,
9 solicit or conspire to present or cause to be presented a statement to an insurer, a reinsurer, a
10 producer, a broker or any agent thereof, knowing that said statement concealed or omitted
11 facts, or did contain false or misleading information concerning a fact material to a claim for
12 payment or other benefits under such policy issued pursuant to Title 57 of the Nevada
13 Revised Statutes, by falsely representing to HEALTH PLAN OF NEVADA that the billed
14 anesthesia time and/or charges for the endoscopic procedure performed on CAROLE
15 GRUESKIN were more than the actual anesthetic time and/or charges, said false
16 representation resulting in the payment of money to Defendants and/or their medical practice
17 and/or the racketeering enterprise which exceeded that which would have normally been
18 allowed for said procedure; Defendants being responsible under one or more of the
19 following principles of criminal liability, to wit: (1) by directly committing said acts; and/or
20 (2) aiding or abetting each other in the commission of the crime by directly or indirectly
21 counseling, encouraging, hiring, commanding, inducing, or procuring each other, and/or
22 others to commit said acts, Defendants acting with the intent to commit said crime, and/or
23 (3) pursuant to a conspiracy to commit this crime.

24 COUNT 23 - PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS
25 OR PROPERTY

26 Defendants did on or about September 21, 2007, then and there willfully and
27 unlawfully perform acts in willful or wanton disregard of the safety of persons or property
28 resulting in substantial bodily harm to GWENDOLYN MARTIN, in the following manner,

1 to-wit: by Defendants performing one or more of the following acts: (1) by directly
2 administering and/or directly or indirectly instructing employees of the Endoscopy Center of
3 Southern Nevada, (ECSN) to administer one or more doses of the anesthetic drug Propofol
4 from a single use vial to more than one patient contrary to the express product labeling of
5 said drug and in violation of universally accepted safety precautions for the administration of
6 said drug; and/or (2) by creating an employment environment in which said employees were
7 pressured to administer one or more doses of the anesthetic drug Propofol from a single use
8 vial to more than one patient contrary to the express product labeling of said drug and in
9 violation of universally accepted safety precautions for the administration of said drug;
10 and/or (3) by directly reusing and/or directly or indirectly instructing said employees, and/or
11 creating an employment environment in which said employees were pressured to reuse
12 syringes and/or needles and/or biopsy forceps and/or snares and/or bite blocks contrary to
13 the express product labeling of said items, and/or in violation of universally accepted safety
14 precautions for the use of said items; and/or (4) by directly limiting and/or directly or
15 indirectly instructing said employees, and/or creating an employment environment in which
16 said employees were pressured to limit the use of medical supplies necessary to conduct safe
17 endoscopic procedures; and/or (5) by falsely precharting patient records and/or rushing
18 patients through said endoscopy center and/or rushing patient procedures at the expense of
19 patient safety and/or well being and/or directly or indirectly instructing said employees,
20 and/or creating an employment environment in which said employees were pressured to
21 falsely prechart patient records and/or rush patients through said endoscopy center and/or
22 rush patient procedures at the expense of patient safety and/or well being; and/or (6) by
23 directly or indirectly scheduling and/or treating an unreasonable number of patients per day
24 which resulted in substandard care and/or jeopardized the safety and/or well being of said
25 patients; and/or (7) by directly failing to adequately clean and/or prepare endoscopy scopes,
26 contrary to the express manufacturers guidelines for the handling and processing of said
27 endoscopy scopes, and/or in violation of universally accepted safety precautions for the use
28 of said scopes and/or directly or indirectly instructing said employees, and/or creating an

1 employment environment in which said employees were inadequately trained and/or
2 pressured to provide endoscopy scopes for patient procedures that were not adequately
3 cleaned and/or prepared contrary to the express manufacturers guidelines for the handling
4 and processing of said endoscopy scopes, and/or in violation of universally accepted safety
5 precautions for the use of said scopes; Defendants being responsible under one or more of
6 the following principles of criminal liability, to wit: (1) by directly committing said acts;
7 and/or (2) aiding or abetting each other in the commission of the crime by directly or
8 indirectly counseling, encouraging, hiring, commanding, inducing, or procuring each other,
9 and/or others to commit said acts, Defendants acting with the intent to commit said crime,
10 and/or (3) pursuant to a conspiracy to commit this crime.

11 COUNT 24 - CRIMINAL NEGLECT OF PATIENTS

12 Defendants, on or about September 21, 2007, being professional caretakers of
13 GWENDOLYN MARTIN, did act or omit to act in an aggravated, reckless or gross manner,
14 failing to provide such service, care or supervision as is reasonable and necessary to
15 maintain the health or safety of said GWENDOLYN MARTIN, resulting in substantial
16 bodily harm to GWENDOLYN MARTIN, said acts or omissions being such a departure
17 from what would be the conduct of an ordinarily prudent, careful person under the same
18 circumstances that it is contrary to a proper regard for danger to human life or constitutes
19 indifference to the resulting consequences, said consequences of the negligent act or
20 omission being reasonably foreseeable; said danger to human life not being the result of
21 inattention, mistaken judgment or misadventure, but the natural and probable result of said
22 aggravated reckless or grossly negligent act or omission, by performing one or more of the
23 following acts: (1) by directly or indirectly instructing employees of the Endoscopy Center
24 of Southern Nevada, (ECSN) to administer one or more doses of the anesthetic drug
25 Propofol from a single use vial to more than one patient contrary to the express product
26 labeling of said drug and in violation of universally accepted safety precautions for the
27 administration of said drug; and/or (2) by creating an employment environment in which
28 said employees were pressured to administer one or more doses of the anesthetic drug

Propofol from a single use vial to more than one patient contrary to the express product labeling of said drug and in violation of universally accepted safety precautions for the administration of said drug; and/or (3) by directly or indirectly instructing said employees, and/or creating an employment environment in which said employees were pressured to reuse syringes and/or needles and/or biopsy forceps and/or snares and/or bite blocks contrary to the express product labeling of said items, and/or in violation of universally accepted safety precautions for the use of said items; and/or (4) by directly or indirectly instructing said employees, and/or creating an employment environment in which said employees were pressured to limit the use of medical supplies necessary to conduct safe endoscopic procedures; and/or (5) by directly or indirectly instructing said employees, and/or creating an employment environment in which said employees were pressured to falsely prechart patient records and/or rush patients through said endoscopy center and/or rush patient procedures at the expense of patient safety and/or well being; and/or (6) by directly or indirectly scheduling and/or treating an unreasonable number of patients per day which resulted in substandard care and/or jeopardized the safety and/or well being of said patients; and/or (7) by directly or indirectly instructing said employees, and/or creating an employment environment in which said employees were inadequately trained and/or pressured to provide endoscopy scopes for patient procedures that were not adequately cleaned and/or prepared contrary to the express manufacturers guidelines for the handling and processing of said endoscopy scopes, and/or in violation of universally accepted safety precautions for the use of said scopes; and/or (8) by methods unknown; for the purpose of enhancing the financial profit of ECSN, said act(s) or omission(s) causing the transmission of Hepatitis C virus from patient KENNETH RUBINO to patient GWENDOLYN MARTIN, who was not previously infected with the Hepatitis C virus; Defendants being responsible under one or more of the following principles of criminal liability, to wit: (1) by directly committing said acts; and/or (2) aiding or abetting each other in the commission of the crime by directly or indirectly counseling, encouraging, hiring, commanding, inducing, or procuring each other, and/or

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1 others to commit said acts, Defendants acting with the intent to commit said crime, and/or
2 (3) pursuant to a conspiracy to commit this crime.

3 COUNT 25 - INSURANCE FRAUD

4 Defendants did, on or about September 21, 2007, knowingly and willfully present, or
5 cause to be presented a statement as a part of, or in support of, a claim for payment or other
6 benefits under a policy of insurance issued pursuant to Title 57 of the Nevada Revised
7 Statutes, knowing that the statement concealed or omitted facts, or contained false or
8 misleading information concerning a fact material to said claim; and/or did assist, abet,
9 solicit or conspire to present or cause to be presented a statement to an insurer, a reinsurer, a
10 producer, a broker or any agent thereof, knowing that said statement concealed or omitted
11 facts, or did contain false or misleading information concerning a fact material to a claim for
12 payment or other benefits under such policy issued pursuant to Title 57 of the Nevada
13 Revised Statutes, by falsely representing to PACIFIC CARE that the billed anesthesia time
14 and/or charges for the endoscopic procedure performed on GWENDOLYN MARTIN were
15 more than the actual anesthetic time and/or charges, said false representation resulting in the
16 payment of money to Defendants and/or their medical practice and/or the racketeering
17 enterprise which exceeded that which would have normally been allowed for said procedure;
18 Defendants being responsible under one or more of the following principles of criminal
19 liability, to wit: (1) by directly committing said acts; and/or (2) aiding or abetting each other
20 in the commission of the crime by directly or indirectly counseling, encouraging, hiring,
21 commanding, inducing, or procuring each other, and/or others to commit said acts,
22 Defendants acting with the intent to commit said crime, and/or (3) pursuant to a conspiracy
23 to commit this crime.

24 COUNT 26 - THEFT

25 Defendants did, between July 25, 2007 and December 31, 2007, then and there
26 knowingly, feloniously, and without lawful authority, commit theft by obtaining personal
27 property in the amount of \$250.00, or more, lawful money of the United States, from
28 STACY HUTCHINSON, KENNETH RUBINO, PATTY ASPINWALL, SHARRIEFF

1 ZIYAD, MICHAEL WASHINGTON, CAROLE GRUESKIN and RODOLFO MEANA,
2 and/or ANTHEM BLUE CROSS AND BLUE SHIELD, HEALTHCARE PARTNERS OF
3 NEVADA, UNITED HEALTH SERVICES, VETERANS ADMINISTRATION and
4 SECURED HORIZONS, by a material misrepresentation with intent to deprive those
5 persons of the property, in the following manner, to-wit: by falsely representing that the
6 billed anesthesia time and/or charges for the endoscopic procedure performed on STACY
7 HUTCHINSON, KENNETH RUBINO, PATTY ASPINWALL, SHARRIEFF ZIYAD,
8 MICHAEL WASHINGTON, CAROLE GRUESKIN and RODOLFO MEANA, were more
9 than the actual anesthetic time and/or charges, said false representation resulting in the
10 payment of money to Defendants and/or their medical practice and/or the racketeering
11 enterprise, which exceeded that which would have normally been allowed for said
12 procedure, thereby obtaining said personal property by a material misrepresentation with
13 intent to deprive them of the property, Defendants being responsible under one or more of
14 the following principles of criminal liability, to wit: (1) by directly committing said acts;
15 and/or (2) aiding or abetting each other in the commission of the crime by directly or
16 indirectly counseling, encouraging, hiring, commanding, inducing, or procuring each other,
17 and/or others to commit said acts, Defendants acting with the intent to commit said crime,
18 and/or (3) pursuant to a conspiracy to commit this crime.

19 COUNT 27 - OBTAINING MONEY UNDER FALSE PRETENSES

20 Defendants, did on or between September 20, 2007, and December 31, 2007, with
21 intent to cheat and defraud, wilfully, unlawfully, feloniously, knowingly, designedly, and by
22 use of false pretenses, obtain \$250.00, or more, lawful money of the United States from
23 GWENDOLYN MARTIN and/or PACIFICARE, within Las Vegas, Clark County, Nevada,
24 in the following manner, to-wit: by falsely representing that the billed anesthesia times
25 and/or charges for the endoscopic procedures performed on GWENDOLYN MARTIN were
26 more than the actual anesthetic times and/or charges, said false representation resulting in the
27 payment of money to Defendants and/or the medical practice and/or the racketeering
28 enterprise, which exceeded that which would have normally been allowed for said

1 procedures Defendants being responsible under one or more of the following principles of
2 criminal liability, to wit: (1) by directly committing said acts; and/or (2) aiding or abetting
3 each other in the commission of the crime by directly or indirectly counseling, encouraging,
4 hiring, commanding, inducing, or procuring each other, and/or others to commit said acts,
5 Defendants acting with the intent to commit said crime, and/or (3) pursuant to a conspiracy
6 to commit this crime.

7 COUNT 28 - OBTAINING MONEY UNDER FALSE PRETENSES

8 Defendants, did on or between September 21, 2007, and December 31, 2007, with
9 intent to cheat and defraud, wilfully, unlawfully, feloniously, knowingly, designedly, and by
10 use of false pretenses, obtain \$250.00, or more, lawful money of the United States from
11 SONIA ORELLANA-RIVERA and/or CULINARY WORKERS HEALTH FUND, within
12 Las Vegas, Clark County, Nevada, in the following manner, to-wit: by falsely representing
13 that the billed anesthesia times and/or charges for the endoscopic procedures performed on
14 SONIA ORELLANA-RIVERA were more than the actual anesthetic times and/or charges,
15 said false representation resulting in the payment of money to Defendants and/or the medical
16 practice and/or the racketeering enterprise, which exceeded that which would have normally
17 been allowed for said procedures Defendants being responsible under one or more of the
18 following principles of criminal liability, to wit: (1) by directly committing said acts; and/or
19 (2) aiding or abetting each other in the commission of the crime by directly or indirectly
20 counseling, encouraging, hiring, commanding, inducing, or procuring each other, and/or

21 ///

22 ///

23 ///

24 ///

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27 ///


28 ///

1 others to commit said acts, Defendants acting with the intent to commit said crime, and/or
2 (3) pursuant to a conspiracy to commit this crime.

3 DATED this 3rd day of June, 2010.

4
5 DAVID ROGER
6 DISTRICT ATTORNEY
7 Nevada Bar #002781

8 BY


9 MICHAEL V. STAUDAHER
10 Chief Deputy District Attorney
11 Nevada Bar #008273

12 ENDORSEMENT: A True Bill

13 
14 Foreperson, Clark County Grand Jury

1 Names of witnesses testifying before the Grand Jury:
2 CARRERA, HILARIO
3 DESAI, SAEHAL
4 RIVERA, SONIA ORELLONO
5 ZIYAD, SHARRIEFF
6 MEANA, RODOLFO
7 RUBINO, KENNETH
8 WASHINGTON, MICHAEL
9 GRUESKIN, CAROLE
10 MARTIN, GWENDOLYN
11 HUTCHINSON, STACY
12 ASPINWALL, PATTY
13 CAROL, CLIFFORD
14 LANGLEY, GAYLE, CDC PHYSICIAN
15 SCHAEFER, MELISSA, CDC PHYSICIAN
16 DROBENINE, JAN, CDC LAB SUPERVISOR
17 KHUDYAKOV, YURY, CDC
18 ARMOUR, PATRICIA, NV. HEALTH DISTRICT
19 LABUS, BRIAN, NV HEALTH DISTRICT
20 HAWKINS, MELVIN
21 YEE, THOMAS, ANESTHESIOLOGIST
22 SHARMA, SATISH, ANESTHESIOLOGIST
23 DUENAS, YERENY, INSURANCE CLAIMS
24 YOST, ANNE, NURSE
25 SAGENDORF, VINCENT, CRNA
26 CERDA, RYAN, HEALTH CARE BUSINESS SOLUTIONS
27 VANDRUFF, MARION, MEDICAL ASSISTANT
28 MYERS, ELAINE, CLAIMS DIRECTOR

1 SPAETH, CORRINE, CLAIMS DIRECTOR
2 GONZALES, PATRICIA, BLUE CROSS DIRECTOR DEPT.
3 SAMPSON, NANCY, LVMPD
4 SAMS, JOANNE, VET ADMIN. CODER
5 LOBIANBO, ANNAMARIE, CRNA
6 NEMEC, FRANK, GASTROENTEROLOGIST
7 CAMPBELL, LYNETTE, RN
8 SIMS, DOROTHY, BUREAU OF LICENSING AND CERTIFICATION
9 KALKA, KATIE, UNITED HEALTH GROUP INV.
10 KRUEGER, JEFFREY ALEN, RN
11 RUSHING, TONYA, OFFICE MGR.
12 Additional witnesses known to the District Attorney at time of filing the Indictment:
13 WHITELY, R. LVMPD
14 FORD, MIKE, LVMPD
15 HANCOCK, L., LVMPD #7083
16 KELLEY, J., LVMPD #3716
17 COE, DANIEL, LVMPD
18 ARNONE, ANTHONY, LVMPD
19 GRAY, WARREN, LVMPD
20 MCILROY, ROBIN, FBI
21 DESAI, DIPAK, 3093 RED ARROW, LVN 89135
22 LAKEMAN, RONALD, 700 SHADOW LN #165B, LVN 89106
23 MATHAHS, KEITH, 10220 BUTTON WILLOW DR., LVN 89134
24 HERRERO, CARMELO, 1864 WOODHAVEN DR., HNV 89074
25 KHAN, IKRAM, 3006 S. MARYLAND PKWY, #465 LVN 89109
26 ANWAR, JAVAID, 3006 MARYLAND PKWY #400, LVN 89109
27 FISHCHER, GAYLE, 1600 CLIFTON MAIL STOP #G37, ATLANTA, GA. 30333
28 SHARMA, VISHVINDER, DR. 3212 CEDARDALE PL., LVN 89134

1 COHAN, DR. CHARLES, POB 4144, SAYLORSBURG, PA
2 LOPEZ, J. JULIAN, 7106 SMOKE RANCH RD. #120 LVN 89128
3 MALEY, KATIE, 4275 BURNHAM #101, LVN
4 HANSEN, IDA
5 PETERSON, KAREN, 2138 FT. SANDERS ST., HNV
6 BIEN, KATHY, 3800 DALECREST DR. #1117, LVN 89129
7 CAVETT, JOSHUA, 7829 TATTERSALL FLAG ST., LVN 89139
8 HARRIS, ORELENA (HOLLEMAN), 2816 DESERT SONG, LVN 89106
9 GREGORY, MARTHA
10 HIGUERA, LILIA, 3504 FLOWER, NLVN 89030
11 CARAWAY, ANTOINETTE, 1407 BAREBACK CT., HNV 89014
12 DRURY, JANINE
13 JOHNSON, SHONNA S., 22 VIA DE LUCCIA, HNV 89074
14 BAILEY, PAULINE, 3416 MONTE CARLO DR., LVN 89121
15 FALZONE, LISA, 8024 PEACEFUL WOODS STREET, LVN 89143
16 IRVIN, JOHNNA
17 MCDOWELL, RALPH, 388 SANTA CANDIDA ST., LVN
18 RICHVALSKY, KAREN, 3325 NIGUL WAY, LVN 89117
19 HUBBARD, LINDA, 515 PARK ROYAL DR., NLVN 89031
20 MURPHY, MAGGIE, 10175 W. SPRING MTN RD. #2012 LVN 89117
21 RUSSOM, RUTA, 4854 MONTERREY AVE., LVN 89121
22 SCHULL, JERRY, 5413 SWEET SHADE ST., LVN
23 MCDOWELL, RALPH, 388 SANTA CANDIDA ST., LVN 89138
24 SUKHDEO, DANIEL, 3925 LEGEND HILLS ST. #203, LVN 89129
25 CLEMMER, DANA MARIE, 4913 FERRELL ST., NLVN 89034
26 WEBB, KAREN, 1459 S. 14TH ST., OMAHA, NE
27 MIONE, VINCENT, 2408 W. EL CAMPO GRANDE AVE., NLVN 89031
28 CHAFFEE, ROD, 9303 GILCREASE #1080, LVN 89149

1 MCGOWAN, SHANNON, 5420 CARNATION MEADOW ST., LVN 89130
2 KOSLOY, LESLEE, RN, HEALTH FACILITIES SURVEYOR
3 HOWARD, NADINE, HEALTH FACILITIES SURVEYOR
4 WHITAKER, GERALDINE, 701 CARPICE DR. #17B, BOULDER CITY, NV 89005
5 HUYNH, NGUYEN, 3004 HAZY MEADOW LN., LVN 89108
6 MANTHEI, PETER, 7066 AZURE BEACH AZURE ST., LVN 89148
7 PRESTON, LAWRENCE, 801 S. RANCHO DR., STE C-1, LVN
8 SHEFNOFF, NEIL, 755 E. MCDOWELL RD., PHOENIX, AZ 85006
9 GREER, MARY, 3462 SHAMROCK AVE., LVN 89120
10 SCAMBIO, JEAN, 2920 YUKON FLATS CT., NLVN 89031
11 LATHROP, CAROL, 1741 AUGUSTA ST., PAHRUMP, NV 89048
12 PHELPS, LISA, 784 MORMON PEAK ST., OVERTON, NV 89040
13 ZIMMERMAN, MARILYN, 550 SEASONS PKWY, BELVIDERE, IL 89040
14 BLEMMINGS, RENATE, 2100 PLAIN ST., PAHRUMP, NV 89060
15 ELLEN, DIANE
16 CARRERA, ELADIO, 612 CANYON GREENS DR., LVN 89144
17 CARROLL, CLIFFORD, 10313 ORKINEY DR., LVN 89144
18 JONES, LISA, CHIEF NSB OF LICENSURE AND CERTIFICATION (BLC)
19 WILLIAMS, SKLAR, RESIDENT AGENT, 8363 W. SUNSET RD. #300, LVN 89113
20 DESAI, KUSAM, MD
21 FARIS, FRANK
22 WAHID, SHAHID, MD
23 NAYYAR, SANJAY, MD
24 MUKHERJEE, RANADER, MD
25 OM, HARI, LLC MGR
26 COOPER, DOUG, CHIEF INV., NV. ST. BOARD OF ME
27 MASON, ALBERT
28 HIGGINS, HEATHER, INV. NV. ST. BOARD OF ME

1 HUGHES, LAURA, AG S/A
2 FRANKS, LISA, PHYSICIAN ASST.
3 ECKERT, PHYSICIAN ASST.
4 KAUL, DR.
5 PATEL, DR.
6 QUANNAH, LAKOTA
7 HUYNH, NGUYEN
8 COOK, KATIE, FBI S/A
9 VAZIRI, DR.
10 BUI, DR.
11 SAMEER, DR. SHEIKH
12 MANUEL, DR. DAVID
13 MANUEL, DR.
14 RICHVALSKY, KAREN, RN
15 CALVALHO, DANIEL CARRERA
16 JURANI, DR.
17 CASTLEMAN, DR. STEPHANIE
18 SENI, DR.
19 FALZONE, NURSE
20 TONY, DR.
21 LOPEZ, DR.
22 ALFARO-MARTINEZ, SAMUEL
23 WISE, PATTY
24 TERRY, JENNIFER, LVMPD INTERPRETER
25 MOORE, DAVID
26 DIAZ, ALLEN, LVMPD INTERPRETER
27 LEWIS, DR. DANIEL
28 O'REILLY, TIM

1 O'REILLY, JOHN
2 MARTIN, LOVEY
3 MALMBERG, GEORGE
4 ASHANTE, DR.
5 KNOWLES, DR.
6 SAPP, BETSY, PHLEBOTOMIST
7 PAGE-TAYLOR, LESLIE, CDC
8 HUBBARD, LINDA, CRNA
9 ROSEL, LINDA, FBI SA
10 LOBIONDA, CRNA
11 YAMPOLSKY, MACE
12 POMERANZ, AUSA
13 FIGLER, DAYVID
14 BUNIN, DANIEL
15 TAGLE, PEGGY, RN
16 BLEMINGS, RENATE
17 LUKENS, JOHN
18 KOSLOY, LESLEE, RN
19 HAHN, JASON, LVMPD
20 SMITH, CHARNESSA
21 HITTI, DR. MIRANDA
22 NAZARIO, DR. BRUNILDA
23 BARCLAY, DR. ROBERT
24 REXFORD, KEVIN
25 CAVETT, JOSHUA, GI TECH
26 ARBOREEN, DAVE, LVMPD
27 BURKIN, JERALD, FBI SA
28 NAZAR, WILLIAM

1	PHELPS, LISA
2	HARPER, TIFFANY
3	SCAMBIO, JEAN, NURSE
4	HUGHES, LAURA, AG INV.
5	MAANOVA, PETER, RN
6	MILLER, JAMES
7	CRANE, AUSA
8	DIBUDUO, CHARLES
9	GLASS-SERAN, BARBARA, CRNA
10	PENSAKOVIC, JOAN
11	KIRCH, MARLENE
12	KAUSHAL, DR. DHAN
13	LATHROP, CAROL
14	LATHROP, WILLIAM
15	SHARMA, DR. SATISH
16	STURMAN, GLORIA
17	GASKILL, SARA
18	BROWN, DAVID
19	DORAME, JOHN
20	GENTILE, DOMINIC
21	ARMENI, PAOLA
22	CREMEN, FRANK
23	SAGENDORF, VINCENT
24	TAGLE, PEGGY
25	IRVIN, JOHNNA
26	SOOD, RAJAT
27	09BGJ049A-C/10F03793A-C/GJ/mj
28	LVMPD EV #080229-2576 (TK11)

EXHIBIT B

1 IND

2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 MICHAEL STAUDAHER
6 Chief Deputy District Attorney
7 Nevada Bar #008273
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

FILED

AUG 10 12 31 PM '12

Ann D. Schuman
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,

11 Plaintiff,

12 -vs-

13 DIPAK KANTILAL DESAI, #1240942
14 RONALD ERNEST LAKEMAN,
15 #2753504
16 KEITH H. MATHAHS, #2753191

Defendant(s).

CASE NO: C-12-283381-3

DEPT NO: XXIII

INDICTMENT

17 STATE OF NEVADA }
18 COUNTY OF CLARK } ss.

19 The Defendant(s) above named, DIPAK KANTILAL DESAI, RONALD ERNEST
20 LAKEMAN, KEITH H. MATHAHS, accused by the Clark County Grand Jury of the crime
21 of MURDER (SECOND DEGREE) (Category A Felony - NRS 200.010, 200.020, 200.030,
22 200.070, 0.060, 202.595, 200.495), committed at and within the County of Clark, State of
23 Nevada, on or between September 21, 2007 and April 27, 2012 as follows: Defendants did
24 then and there willfully, feloniously, without authority of law, and with malice aforethought,
25 kill RODOLFO MEANA, a human being, by introducing Hepatitis C virus into the body of
26 RODOLFO MEANA, based upon the following principles of criminal liability, to-wit: (1)
27 by the killing occurring under circumstances showing an abandoned and malignant heart;
28 and/or (2) during the commission of an unlawful act, to-wit: criminal neglect of patients,

and/or performance of an unlawful act in reckless disregard of persons or property, which in its consequences, naturally tends to destroy the life of a human being; and/or (3) the killing being committed in the prosecution of a felonious intent, to-wit: criminal neglect of patients, and/or performance of an act in reckless disregard of persons or property, which in its consequences, naturally tends to destroy the life of a human being, by directly or indirectly using and/or introducing contaminated medical instruments, supplies, and/or drugs upon or into the body of RODOLFO MEANA which were contaminated with the Hepatitis C virus; Defendants being responsible under one or more of the following principles of criminal liability, to wit: (1) by directly committing said acts; and/or (2) by aiding or abetting each other and/or others including uncharged confederates in the commission of the crime(s) of criminal neglect of patients, and/or performance of an act in reckless disregard of persons or property by directly or indirectly counseling, encouraging, hiring, commanding, inducing, or procuring each other, and/or others to utilize a patient care delivery system which directly or indirectly limited the use of medical instruments, and/or supplies, and/or drugs; scheduled and/or treated an unreasonable number of patients per day, and/or rushed patients or patient procedures all at the expense of patient safety and/or well being, and which resulted in substandard care and/or jeopardized the safety of RODOLFO MEANA, Defendants acting

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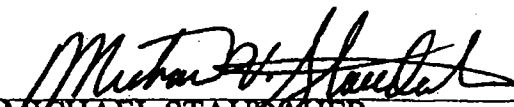
///

1 with the intent to commit the crime(s) of criminal neglect of patients, and/or performance of
2 an act in reckless disregard of persons or property; and/or (3) pursuant to a conspiracy to
3 commit the crime(s) of criminal neglect of patients, and/or performance of an act in reckless
4 disregard of persons or property, Defendants acting in concert throughout.

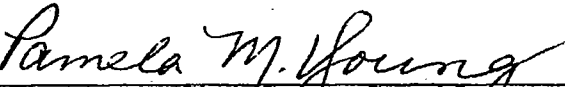
5 DATED this ____ day of August, 2012.

6
7 STEVEN B. WOLFSON
Clark County District Attorney
8 Nevada Bar #001565

9
10 BY


11 MICHAEL STAUDAHER
Chief Deputy District Attorney
12 Nevada Bar #008273

13 ENDORSEMENT: A True Bill

14 
15 Foreperson, Clark County Grand Jury
16
17
18
19
20
21
22
23
24
25
26
27
28

Names of witnesses testifying before the Grand Jury:

BAGANG, MAYNARD, LVMPD

OLSON, ALANE, MEDICAL EXAMINER

Additional witnesses known to the District Attorney at time of filing the Indictment:

09BGJ119A-C/ed

EXHIBIT C

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEITH MATHAHS,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
VALERIE ADAIR, DISTRICT JUDGE,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 61359

FILED

AUG 06 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

ORDER DIRECTING ANSWER

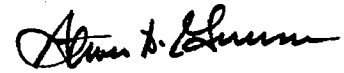
This original petition for a writ of mandamus or prohibition requests this court to order the district court dismiss an indictment. Having reviewed the petition, it appears that an answer may assist the court in resolving the petition. Accordingly, the real party in interest, on behalf of respondents, shall have 20 days from the date of this order to file an answer, including authorities, against issuance of the requested writ.

It is so ORDERED.

Cherry, C.J.

cc: Hon. Valerie Adair, District Judge
Gordon & Silver, Ltd.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

EXHIBIT D



CLERK OF THE COURT

1 MTS
GORDON SILVER
2 MICHAEL V. CRISTALLI
Nevada Bar No. 6266
3 Email: mcristalli@gordonsilver.com
EUNICE M. MORGAN
4 Nevada Bar No. 10382
Email: emorgan@gordonsilver.com
5 3960 Howard Hughes Pkwy., 9th Floor
Las Vegas, Nevada 89169
6 Tel: (702) 796-5555
Fax: (702) 369-2666
7 Attorneys for Keith Mathahs

8
9 DISTRICT COURT
10 CLARK COUNTY, NEVADA

11 THE STATE OF NEVADA,

12 Plaintiff,

13 vs.

14 KEITH MATHAHS,

15 Defendant.

CASE NO. C-12-283381-3
DEPT. XXIII

Date of Hearing:
Time of Hearing:

8-22-12

16
17 **MOTION TO STAY PROCEEDINGS PENDING RESOLUTION OF WRIT**
18 **PROCEEDINGS PURSUANT TO NRAP 8(a)**

19 Defendant KEITH MATHAHS, by and through his undersigned attorney MICHAEL V.
20 CRISTALLI, ESQ., of the law firm of Gordon Silver, respectfully files his Motion for Stay of
21 Proceedings Pending Resolution of Writ Proceedings Pursuant to NRAP 8(a) (the "Motion").
22
23
24
25
26
27
28

1 This Motion is based upon the pleadings and papers on file, the following Memorandum of
2 Points and Authorities, and evidence and/or argument presented at a hearing on this matter.

3 DATED this 20th day of August, 2012.

4 
GORDON SILVER

6 MICHAEL V. CRISTALLI

Nevada Bar No. 6266

EUNICE M. MORGAN

Nevada Bar No. 10382

3960 Howard Hughes Pkwy., 9th Floor

Las Vegas, Nevada 89169

(702) 796-5555

Attorneys for Defendant Mathahs

12 **ORDER SHORTENING TIME**

13 It appearing to the satisfaction of the Court, and good cause appearing;

14 IT IS HEREBY ORDERED that the **MOTION FOR STAY OF PROCEEDINGS**
15 **PENDING RESOLUTION OF WRIT PROCEEDINGS PURSUANT TO NRAP 8(a)** shall
16 be heard on the 20th day of August, 2012, at the hour of 9:30 A.M., in Department
17 23.

18 DATED the 20th day of August, 2012.

19 
20 GORDON SILVER


DISTRICT COURT JUDGE

23 MICHAEL V. CRISTALLI

Nevada Bar No. 6266

EUNICE M. MORGAN

Nevada Bar No. 10382

3960 Howard Hughes Pkwy., 9th Floor

Las Vegas, Nevada 89169

(702) 796-5555

Attorneys for Keith Mathahs

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **STATEMENT OF FACTS**

4 In the case at bar, the June 4, 2010 Indictment (the "First Indictment") was filed in Case
5 No. 10C265107-3. The First Indictment is currently before Department XXI. The First
6 Indictment states (in part) that Mr. Mathahs is being charged (along with his two co-Defendants)
7 with criminal neglect of patient stemming from his employment with Dr. Desai. One of the
8 patients alleged to have been harmed, as charged in the First Indictment, was Mr. Meana, by
9 Defendants' purportedly infecting him with Hepatitis-C.

10 Recently, a "Second" Indictment was filed, which is before this Court. The "Second"
11 Indictment states, in relevant part, that between September 21, 2007, and April 27, 2012,
12 Defendants killed Mr. Meana by introducing Hepatitis C into his body during the commission of
13 an unlawful act, to wit: criminal neglect of patient.

14 Mr. Mathahs filed a Motion to Dismiss the June 4, 2010, Indictment in Dept. XXI, Case
15 No. 10C265107-3. After this motion was denied by the lower court, on July 27, 2012, Mr.
16 Mathahs filed a petition to the Supreme Court for an extraordinary writ pursuant to NRS 34.330
17 (the "Writ").

18 The Writ presents two issues:

- 19 I. WHETHER A PETITION FOR AN EXTRAORDINARY WRIT IS THE APPROPRIATE
20 VEHICLE TO CHALLENGE THE DISTRICT COURT'S JURISDICTION TO
21 PROCEED BASED ON THE CRIMINAL CHARGES PENDING AGAINST
PETITIONER REGARDING PETITIONER'S ARGUMENT THAT THE INDICTMENT
IS CONSTITUTIONALLY AND STATUTORY DEFECTIVE.
- 22 II. WHETHER THE INDICTMENT MUST BE DISMISSED AS AGAINST MATHAHS
23 BECAUSE IT IS CONSTITUTIONALLY AND STATUTORILY DEFECTIVE AND
24 DOES NOT PROVIDE ADEQUATE NOTICE SUFFICIENT FOR MATHAHS TO
DEFEND HIMSELF AGAINST THE CHARGES ALLEGED.

25 On August 6, 2012, the Supreme Court issued an Order Directing Answer. (Exhibit A).
26 Counsel for Mr. Mathahs filed an Emergency Motion for Stay (of Case No. 10C265107-3) Under
27 NRAP 8(a) with the Nevada Supreme Court pending resolution of this Writ. (Exhibit B).

28 Trial, as to the First Indictment, is currently set for October 22, 2012. It is imperative

1 that trial be stayed until the Nevada Supreme Court reaches a determination so that counsel for
2 Mr. Mathahs can understand how to proceed, not only with the First Indictment but with the
3 Second Indictment (which is before this Court). The language of the Second Indictment
4 essentially piggy-backs on the language of the First Indictment and if the Nevada Supreme Court
5 determines that the First Indictment cannot stand, then logic follows that the Second Indictment
6 fails as well.¹

7 Counsel for Mr. Mathahs is unable to properly prepare for trial without knowing the
8 outcome of the Supreme Court's decision on the issues presented before it. As trial is rapidly
9 approaching, counsel for Mr. Mathahs respectfully requested the 10C265107-3 case be stayed
10 until the Nevada Supreme Court provides some guidance as to how the case should proceed (if at
11 all). By this same logic, it is respectfully requested all proceedings in this case be stayed as well
12 because if the Nevada Supreme Court decides that the First Indictment is fatally deficient, then
13 the Second Indictment cannot stand.

14 II.

15 LEGAL AUTHORITY

16 NRAP 8(a)(1)(A) states that a party must ordinarily move first in the district court for the
17 following relief:

18 (A) A stay of the judgment or order of, or proceedings in, a district court pending
19 appeal or resolution of a petition to the Supreme Court for an extraordinary writ.

20 As stated above, Mr. Mathahs is seeking extraordinary relief from the denial of his motion
21 in Department XXI to dismiss the racketeering count, the criminal neglect of patient counts, and
22 the reckless endangerment counts. The Second Indictment, which is before this Court, piggy-
23 backs the same language as that set forth in the First Indictment. The issue whether the First
24

25 ¹ To the extent the State attempts to argue that the Second Indictment is now a separate murder charge
26 based on "different" facts, Mr. Mathahs was already charged with violation of NRS 200.495, in 10C265107-3,
27 which includes a penalty for if the patient dies as a result of the Defendant's actions. As such, literally nothing has
28 changed from the First Indictment to the Second Indictment except for the re-phrasing of the crime, from "criminal
neglect resulting in death" to "murder". None of the facts that gave rise to the circumstances putting Mr. Mathahs
on trial are different.

1 Indictment is fatally defective, warranting dismissal, is currently before the Supreme Court.

2 A petition for an extraordinary writ is the appropriate method for challenging the district
3 court's jurisdiction to proceed with the criminal charges pending against Mr. Mathahs. NRS
4 34.160 provides that a writ of mandamus may be issued by this Court to compel the performance
5 of an act which the law especially enjoins as a duty resulting from an office, trust or station.
6 NRS 34.170 provides that the writ shall be issued in all cases where there is not a plain, speedy
7 and adequate remedy in the ordinary course of the law. Similarly, NRS 34.320 provides that a
8 writ of prohibition is available to arrest the proceedings of any tribunal, corporation, board or
9 person exercising judicial functions, when such proceedings are without or in excess of the
10 jurisdiction of such tribunal, corporation, board or person. NRS 34.330 provides that this Court
11 may issue a writ of prohibition in all cases where there is not a plain, speedy and adequate
12 remedy in the course of the law.

13 A petition for an extraordinary relief is the proper method for challenging the blatantly
14 defective indictment. The district court lacks jurisdiction to proceed on the indictment due to the
15 numerous and significant statutory and constitutional defects in the indictment.

16 As the Nevada Supreme Court concluded long ago, "It is hard to conceive of a greater
17 legal wrong which might be imposed upon a person charged with a grave and serious offense
18 than to compel him to undergo trial by a court or under a procedure wholly void in law." *Bell v.*
19 *District Court*, 28 Nev. 280, 295, 81 P. 875 (1905) (availability of an appeal following a
20 judgment of conviction not an adequate remedy; writ of prohibition is appropriate remedy to
21 prohibit the trial court from conducting criminal proceedings based upon an unconstitutional
22 statute). The fact that an appeal might be available from a judgment of conviction does not
23 preclude issuance of the writ, particularly in the circumstances presented here because the district
24 court has exceeded its jurisdiction by permitting proceedings based upon the obviously defective
25 indictment. *See G.M. Properties v. District Court*, 95 Nev. 301, 304, 594 P.2d 714 (1979).

26 A petition for a writ of prohibition is the proper method of challenging this defective
27 indictment. In fact, if Mr. Mathahs did not present the Writ, he would arguably waive the right
28 to hereafter challenge the Grand Jury proceedings. *Simpson v. District Court*, 88 Nev. 654, 661,

1 503 P.2d 1225 ("An element of waiver is involved, when an accused proceeds to trial without
2 challenging the indictment. Thereafter, he should not be heard to complain if the indictment . . .
3 gave notice of what later transpired at trial[.]"). Further, NRS 174.105(3) provides that "Lack of
4 jurisdiction of the failure of the indictment, information or complaint to charge an offense shall
5 be noticed by the court at any time during the pendency of the proceeding."

6 In the case at bar, extrajudicial relief is merited. There are significant issues of
7 procedural and substantive due process (as related to both Indictments). There are also issues of
8 first impression presented in the Writ in regard to the fatally defective First Indictment. As
9 addressed previously, the Second Indictment relies entirely on the First Indictment to support its
10 allegations. If the First Indictment fails, then so does the Second.

11 The Writ from the denial of Mr. Mathahs' Motion to Dismiss, filed in Case No.
12 10C265107-3 also presents issues of first impression regarding the sufficiency of the charging
13 language and notice provided to the Defendants of the charges with which they have to defend
14 themselves, especially Mr. Mathahs, who the State concedes was not the alleged "criminal
15 mastermind" who created an "atmosphere" of negligence and/or corruption. The vague,
16 unsubstantiated, undefinable accusations in the Indictment, as charged, make it impossible for
17 Mr. Mathahs to defend himself because he does not know what he is defending himself against.

18 Mr. Mathahs contends that Department XXI exceeded its jurisdiction by implicitly
19 amending the racketeering account to incorporate by reference the substantive insurance fraud
20 counts. Although the Nevada Supreme Court has not squarely addressed this issue, it is a well-
21 established rule of due process that each count of the indictment must stand on its own and
22 cannot be supplemented by reference to another count unless done so expressly. *See U.S. v.*
23 *Rodriguez-Gonzalez*, 358 F.3d 1156, 1159 (9th Cir. 2004). Although NRS 173.075(2) permits
24 allegations in one count to incorporate by reference another count, the Court cannot properly
25 imply this pleading device. *Id.* Part of the basis for Mr. Mathahs' Writ is the defectiveness of
26 the Indictment, including but not limited to the issues that: the racketeering count does not
27 incorporate by reference the substantive insurance fraud counts and otherwise fails to set forth
28 the essential elements of the predicate offenses.

1 Should the Nevada Supreme Court grant the petition, the Indictment could be dismissed
2 or at the very least, the charges could be amended. It is improper to force Mr. Mathahs to
3 continue defending himself in the matter before this Court on what could be determined to be
4 facially defective counts. Resolution by the Nevada Supreme Court regarding whether the
5 Indictment in Case No. 10C265107-3 is defective is necessary prior to proceeding with trial in
6 Case No. 10C265107-3, which is why Mr. Mathahs filed the Emergency Motion for Stay Under
7 NRAP 8(a) before the Nevada Supreme Court. Resolution by the Nevada Supreme Court
8 regarding whether the First Indictment is defective will also effect whether the Second
9 Indictment must be dismissed as well.

10 Every court has the inherent power to stay proceedings. *Landis v. North American Co.*,
11 299 U.S. 248, 254 (1936). This power “is incidental to the power inherent in every court to
12 control the disposition of the causes on its docket with economy of time and effort for itself, for
13 counsel, and for litigants.” *Id.*

14 Furthermore, a court may consolidate any action involving common questions of fact “to
15 avoid unnecessary costs or delay.” NEV. R. CIV. P. 42(a); *see also Carter v. State*, 102 Nev. 164,
16 166, 717 P.2d 1111, 1111 (1986) (noting that the trial court consolidated two separate actions in
17 the interest of judicial economy where both cases “involved essentially the same parties,
18 witnesses, and circumstances”).

19 As stated above, in the Second Indictment, the State relies on the exact facts that formed
20 the basis for the initial Indictment against Petitioner. The charge forming the basis for murder
21 (criminal neglect) is the same exact charge contained in the June 4, 2010, Indictment (or First
22 Indictment). (Exhibit C). As indicated to the Nevada Supreme Court in Mr. Mathahs’
23 Emergency Motion for Stay Under NRAP 8(a), there is a strong possibility that Mr. Mathahs’
24 counsel will file a motion to consolidate the Indictments into a single proceeding. However,
25 resolution of the Writ dismissing the Indictment is the first step to determine how either case can
26 proceed. This is why Mr. Mathahs is requesting that both cases be stayed pending resolution
27 from the Supreme Court on the issue of whether the First Indictment is fatally defective.

28 Thus, it is requested that Mr. Mathahs’ Motion for a stay be granted and that all further

1 proceedings cease until the Nevada Supreme Court has ruled on the issues as to whether the First
2 Indictment must be dismissed for being fatally defective. This request includes any
3 determination of bail by this Court as the two cases may eventually be consolidated, depending
4 on the determination made by the Nevada Supreme Court as to whether the First Indictment is
5 dismissed.²

6 III.

7 CONCLUSION

8 Based on the foregoing, it is respectfully requested Mr. Mathahs' Motion be granted and
9 that the proceedings be stayed pending resolution of the Writ that is currently pending before the
10 Nevada Supreme Court

11 Dated this 20th day of August, 2012.

12 
13 ~~GORDON SILVER~~

14 MICHAEL V. CRISTALLI

15 Nevada Bar No. 6266

16 EUNICE M. MORGAN

17 Nevada Bar No. 10382

18 3960 Howard Hughes Pkwy., 9th Floor

19 Las Vegas, Nevada 89169

20 (702) 796-5555

21 *Attorneys for Defendant Mathahs*

22 ² If the cases were consolidated, Department XXI would determine whether any additional bail needs to be
23 set beyond the bail that has already been set, considering the facts and circumstances at issue. As set forth
24 previously, the State has attempted to argue that this is now a murder charge. However, Defendant Mathahs was
25 already charged with violation of NRS 200.495, which includes a penalty for if the patient dies as a result of the
26 Defendant's actions. As such, despite the State's best efforts to posture that this is a different case arising from
27 different facts, the truth of the matter is that literally nothing has changed except for the re-phrasing of the crime,
28 from "criminal neglect resulting in death" to "murder". Thus, the case before this Court may eventually be
consolidated with 10C265107-3 and because of this eventuality, it is requested that this Court refrain from making
any rulings in the case before it until the Nevada Supreme Court provides some guidance as to the next step.

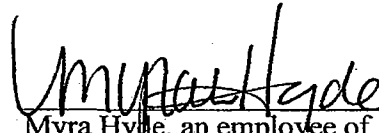
CERTIFICATE OF SERVICE

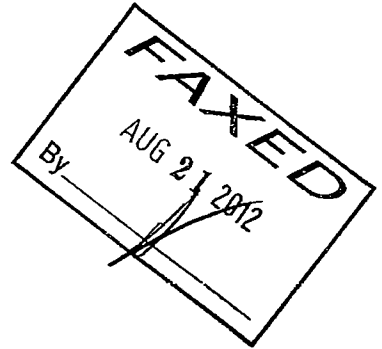
The undersigned, an employee of Gordon Silver, hereby certifies that on the 21st day of August, 2012, she served a copy of the Motion for Stay of Proceedings Pending Resolution of Writ Proceedings Pursuant to NRAP 8(a), by facsimile addressed to:

RICHARD A. WRIGHT, ESQ.
Counsel for Desai
Facsimile No.: (702) 382-4800

FREDERICK A. SANTACROCE, ESQ.
Counsel for Lakeman
Facsimile No.: (702) 948-1202

MICHAEL V. STAUDAHER
Chief Deputy District Attorney
State of Nevada
Facsimile No.: (702) 477-2994


Myra Hyle, an employee of
GORDON SILVER



Facsimile Transmittal Sheet

Date: August 21, 2012

To:

Fax No:

Michael Staudaher
Chief Deputy District Attorney

(702) 477-2994

Richard A. Wright, Esq.

(702) 382-4800

Frederick A. Santacroce, Esq.

(702) 948-1202

From: Michael V. Cristalli, Esq.

File No.: 103451-001

Subject: The State of Nevada v. Keith Mathahs
Case No.: C-12-283381-3

Number of pages
incl. cover page: 10

- | | | |
|---|---|--|
| <input type="checkbox"/> Please see attached | <input type="checkbox"/> Per your request | <input type="checkbox"/> For your review |
| <input type="checkbox"/> Please review, sign and return | <input type="checkbox"/> Please acknowledge receipt | <input type="checkbox"/> For your information or records |

Message: Enclosed please find a Motion to Stay Proceedings Pending Resolution of Writ
Proceedings Pursuant to NRAP 8(a), without exhibits.

The following pages are confidential communications intended only for the person or persons named above. If you are not that person, or the employee or agent responsible for the delivery of the following information, you are hereby notified that any dissemination, distribution or copying of this communication is prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original message to us by mail. We will gladly reimburse your telephone and postage expenses.

103451-001/Document in ProLaw

 *** MULTI TX/RX REPORT ***

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 (1) 4772994
 (2) 3824800
 (3) 9481202
 ERROR INFORMATION -----



Facsimile Transmittal Sheet

Date: August 21, 2012

To:

Fax No:

Michael Staudahe
 Chief Deputy District Attorney

(702) 477-2994

Richard A. Wright, Esq.

(702) 382-4800

Frederick A. Santacrocce, Esq.

(702) 948-1202

From: Michael V. Cristalli, Esq.
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Number of pages
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☐ Please see attached ☐ Per your request ☐ For your review
☐ Please review, sign and return ☐ Please acknowledge receipt ☐ For your information or records

Message: Enclosed please find a Motion to Stay Proceedings Pending Resolution of Writ
 Proceedings Pursuant to NRAP 8(a), without exhibits.

The following pages are confidential communications intended only for the person or persons named above. If you are not that person, or the employee or agent responsible for the delivery of the following information, you are hereby notified that any dissemination, distribution or copying of this communication is prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original message to us by mail. We will gladly reimburse your telephone and postage expenses.

EXHIBIT E

1 LAS VEGAS, CLARK COUNTY, NV., THURS., AUG. 9, 2012

2
3 THE COURT: State versus Keith Mathahs. We have Mr. Mathahs who's
4 present out of custody with Mr. Cristalli. And we have Mr. Santacroce and his client.

5 And we also have Ms. Stanish, and your client Dr. Desai is not here.

6 MS. STANISH: Your Honor, this -- our petition is not on.

7 THE COURT: Right, I understand. You're just --

8 MS. STANISH: We're here to spectate, and if Your Honor does want to
9 address it or the government --

10 THE COURT: That's fine. I mean, I know he was ordered to be at all the
11 court proceedings, but since this isn't your matter, he is not required to be here
12 today. Just the record should reflect that you are here listening and observing.

13 MS. STANISH: Thank you, Your Honor.

14 THE COURT: All right. This is the defendant's motion for stay of proceedings
15 pending the resolution of the writ.

16 We did not receive an opposition to this.

17 MR. STAUDAHER: No, Your Honor, we do oppose it, but I think that the -- it's
18 actually just an issue for the Court to decide. We really don't have any case law or
19 anything to say that they're not entitled to it if they feel that there's some legal
20 reason for them to bring it before the Court, and we don't -- we don't want to lose
21 our trial date. We know it's up at the Supreme Court, and we've been ordered to
22 answer, but we would oppose a continuance, obviously, at this point.

23 THE COURT: Mr. Cristalli?

24 MR. STAUDAHER: Or rather a stay, I'm sorry, Your Honor.

25 MR. CRISTALLI: Well, Judge, obviously procedurally once the petition is filed

1 in the Supreme Court they have ordered the State to now respond, 20 days to
2 respond. We'll have a period, I think, to reply to that. As a matter of procedure we
3 filed the State --

4 THE COURT: Right, you have to file it here before you can request it with the
5 Supreme Court. You know, my feeling is, you know, I stand by the decision that I
6 made. The Supreme Court, of course, may not agree. Not surprisingly they found
7 that there was a reason to order an answer in this case, but I think at this level I'm
8 going to deny the motion for a stay, which of course gives you now the opportunity
9 to request it in the Supreme Court, and then the Supreme Court can make the
10 determination if they feel the proceedings should be stayed for the October trial
11 date. That's of course likely that they may do that; although they may have --

12 You were given 30 days to respond to the petition --

13 MS. STANISH: We were given 20.

14 MR. STAUDAHER: 20 days, Your Honor.

15 THE COURT: How many?

16 MR. STAUDAHER: 20 days.

17 THE COURT: 20 days and then there was no reply ordered or --

18 MR. CRISTALLI: No.

19 THE COURT: Okay. So it's possible they'll look at that and make a decision
20 one way or the other and decide not to stay it. I don't know how long they're going
21 to take. So I'm not going to -- I'm -- you know, it's kind of up to them how long they
22 take. So I'm not going to issue a stay at this level.

23 That was a long winded way of saying your request for a stay is denied.

24 MR. CRISTALLI: Your Honor, I don't know whether or not we need an order
25 from Your Honor in order to --

1 THE COURT: You can submit an order that, you know, your motion for a stay
2 was denied.

3 MR. CRISTALLI: Okay.

4 THE COURT: I'm happy to sign it.

5 MR. CRISTALLI: All right. Thanks.

6 THE COURT: Or the State can submit it.

7 MR. STAUDAHER: And either way, Your Honor, but the question I had was
8 there was mention of at least Mr. -- or rather Dr. Desai's motion, is it calendared? I
9 don't have it on calendar for --

10 THE COURT: No, the only -- the only motion that's on calendar for today is
11 Mr. Mathahs's motion. I mentioned Dr. Desai that he wasn't required to be here
12 today because it's not his motion but that Ms. Stanish is present today.

13 MR. STAUDAHER: I believe that they -- but my indication was not that it was
14 on today but that there was one filed; is that correct?

15 MS. STANISH: We filed it, served it, I believe it was June 7th by way of
16 petition. There was no response. We were going to just wait to see before we
17 prompted it, but since this issue's been decided, I did speak with Ms. Wexler --
18 sorry.

19 THE COURT: Weckerly.

20 MS. STANISH: -- Weckerly beforehand, and I don't believe the State would
21 have any objection if you want to address our petition so that we can move forward
22 as well.

23 MS. WECKERLY: Assuming they're -- I mean their petition is for the -- they
24 want a stay as well; I assume the Court would make the same decision. It's fine
25 with the State if they want to submit an order as well so they have the same

1 opportunity to request the stay if that's acceptable to the Court.

2 THE COURT: That's fine. I mean, like I said, you know, it's -- I don't know
3 how long the Supreme Court is going to take. I mean, they did order an answer, you
4 know, in a rather speedy fashion. So this may be something that they're going to
5 look at right away and make a decision right away. So if that's the case, then I don't
6 want to give up the October 22nd trial date as of right now. So I think -- well, you
7 know, we'll see. There may be other --

8 MR. CRISTALLI: The future may dictate something different.

9 THE COURT: I know. I read the papers too, Mr. Cristalli, but, you know,
10 there's nothing new in this department as far as I'm concerned as of right now. So
11 like I said, you can't trust what you read in the papers, can you.

12 MR. CRISTALLI: That's for sure.

13 THE COURT: So we may or may not have that date. All I'm saying is I don't
14 know how quickly the Supreme Court is going to decide this, and they may decide it
15 rather quickly. I don't know.

16 That's the only thing we had on for today.

17 MR. SANTACROCE: Can I inquire when the next date is for this? Is there a
18 status check?

19 THE COURT: Ms. Husted would have to look that up when our next status
20 check date is. We have, of course, the calendar call on October 18th.

21 THE CLERK: There's nothing else set until the trial.

22 THE COURT: We don't have any more status checks.

23 MR. STAUDAHNER: We probably should set one.

24 THE COURT: Yeah, let's set one a couple of weeks before the calendar call
25 date just to make sure there's no last-minute issues.

1 MR. STAUDAHER: Well, can we set it out at least 21 days so if there's an
2 issue with expert notices or anything, 'cause we have not received any notices at all.

3 THE COURT: Okay.

4 THE CLERK: 21 days from now?

5 MR. STAUDAHER: No, at least from back from the calendar call or trial date.

6 THE CLERK: September 27th at 9:30.

7 MR. STAUDAHER: Thank you, Your Honor.

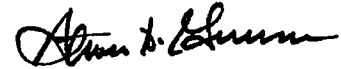
8 THE COURT: Thank you.

9 -oOo-

10 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video
11 proceedings in the above-entitled case.

12 
13 JANIE L. OLSEN
14 Recorder/Transcriber
15
16
17
18
19
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24
25

EXHIBIT F



CLERK OF THE COURT

1 MTS
GORDON SILVER
2 MICHAEL V. CRISTALLI
Nevada Bar No. 6266
3 Email: mcristalli@gordonsilver.com
EUNICE M. MORGAN
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5 3960 Howard Hughes Pkwy., 9th Floor
Las Vegas, Nevada 89169
6 Tel: (702) 796-5555
Fax: (702) 369-2666
7 Attorneys for Defendant Mathahs

8
9 DISTRICT COURT

10 CLARK COUNTY, NEVADA

11 STATE OF NEVADA

12 Plaintiff,

CASE NO. C265107
DEPT. XXI

13 vs.

14 KEITH MATHAHS,

Hearing Date:
Hearing Time:

15 Defendant.
16

17 **MOTION FOR STAY OF PROCEEDINGS PENDING RESOLUTION OF WRIT**

18 **PROCEEDINGS**

19 Defendant KEITH MATHAHS, by and through his undersigned attorney MICHAEL V.
20 CRISTALLI, ESQ., of the law firm of Gordon Silver, respectfully files his Motion for Stay of
21 Proceedings Pending Resolution of Writ Proceedings Pursuant to NRAP 8(a)(1)(A) (the
22 "Motion").

23

24

25

26

27

28

1 This Motion is based upon the pleadings and papers on file, the following Memorandum of
2 Points and Authorities, and evidence and/or argument presented at a hearing on this matter.

3 DATED this 24 day of July, 2012.

4 GORDON SILVER

5 

6 MICHAEL V. CRISTALLI

7 Nevada Bar No.

8 EUNICE M. MORGAN

9 Nevada Bar No.

10 Nevada Bar No.

11 3960 Howard Hughes Pkwy., 9th Floor

12 Las Vegas, Nevada 89169

13 (702) 796-5555


14 Attorneys for Defendant Mathahs

15 **NOTICE OF MOTION**

16 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will
17 bring the foregoing motion on for setting before the above entitled Court, in Department XIV
18 thereof, on the 9th day of ^{August} ~~July~~, 2012, at ^{9:30 AM} ~~9:00 a.m.~~, or as soon thereafter as counsel may be heard.

19 DATED this 24 day of July, 2012.

20 GORDON SILVER

21 

22 MICHAEL V. CRISTALLI

23 Nevada Bar No.

24 EUNICE M. MORGAN

25 Nevada Bar No.

26 Nevada Bar No.

27 3960 Howard Hughes Pkwy., 9th Floor

28 Las Vegas, Nevada 89169

(702) 796-5555

Attorneys for Defendant Mathahs

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **STATEMENT OF FACTS**

4
5 Trial in this matter is currently set for October 22, 2012. On June 1, 2012, the order was
6 filed denying Mr. Mathahs' Motion to Dismiss Indictment. On July 27, 2012, Mr. Mathahs filed
7 a petition to the Supreme Court for an extraordinary writ pursuant to NRS 34.330 (the "Writ").

8 The Writ presents two issues:

- 9 I. WHETHER A PETITION FOR AN EXTRAORDINARY WRIT IS THE APPROPRIATE
10 VEHICLE TO CHALLENGE THE DISTRICT COURT'S JURISDICTION TO
11 PROCEED BASED ON THE CRIMINAL CHARGES PENDING AGAINST
12 PETITIONER REGARDING PETITIONER'S ARGUMENT THAT THE INDICTMENT
13 IS CONSTITUTIONALLY AND STATUTORY DEFECTIVE.
14
15 II. WHETHER THE INDICTMENT MUST BE DISMISSED AS AGAINST MATHAHS
16 BECAUSE IT IS CONSTITUTIONALLY AND STATUTORILY DEFECTIVE AND
17 DOES NOT PROVIDE ADEQUATE NOTICE SUFFICIENT FOR MATHAHS TO
18 DEFEND HIMSELF AGAINST THE CHARGES ALLEGED.

19 **II.**

20 **LEGAL AUTHORITY**

21 NRAP 8(a)(1)(A) states that a party must ordinarily move first in the district court for the
22 following relief:

- 23 (A) A stay of the judgment or order of, or proceedings in, a district court pending
24 appeal or resolution of a petition to the Supreme Court for an extraordinary
25 writ.

26 As stated above, Mr. Mathahs is seeking extraordinary relief from the denial of his motion
27 to dismiss the racketeering count, the criminal neglect of patient counts, and the reckless
28 endangerment counts.

29 A petition for an extraordinary writ is the appropriate method for challenging the district
30 court's jurisdiction to proceed with the criminal charges pending against Mr. Mathahs. NRS
31 34.160 provides that a writ of mandamus may be issued by this Court to compel the performance
32 of an act which the law especially enjoins as a duty resulting from an office, trust or station.
33 NRS 34.170 provides that the writ shall be issued in all cases where there is not a plain, speedy

1 and adequate remedy in the ordinary course of the law. Similarly, NRS 34.320 provides that a
2 writ of prohibition is available to arrest the proceedings of any tribunal, corporation, board or
3 person exercising judicial functions, when such proceedings are without or in excess of the
4 jurisdiction of such tribunal, corporation, board or person. NRS 34.330 provides that this Court
5 may issue a writ of prohibition in all cases where there is not a plain, speedy and adequate
6 remedy in the course of the law.

7 A petition for an extraordinary relief is the proper method for challenging the blatantly
8 defective indictment. The district court lacks jurisdiction to proceed on the indictment due to the
9 numerous and significant statutory and constitutional defects in the indictment.

10 As the Nevada Supreme Court concluded long ago, "It is hard to conceive of a greater
11 legal wrong which might be imposed upon a person charged with a grave and serious offense
12 than to compel him to undergo trial by a court or under a procedure wholly void in law." *Bell v.*
13 *District Court*, 28 Nev. 280, 295, 81 P. 875 (1905) (availability of an appeal following a
14 judgment of conviction not an adequate remedy; writ of prohibition is appropriate remedy to
15 prohibit the trial court from conducting criminal proceedings based upon an unconstitutional
16 statute). The fact that an appeal might be available from a judgment of conviction does not
17 preclude issuance of the writ, particularly in the circumstances presented here because the district
18 court has exceeded its jurisdiction by permitting proceedings based upon the obviously defective
19 indictment. *See G.M. Properties v. District Court*, 95 Nev. 301, 304, 594 P.2d 714 (1979).

20 A petition for a writ of prohibition is the proper method of challenging this defective
21 indictment. In fact, if Mr. Mathahs did not present this writ, he would arguably waive the right
22 to hereafter challenge the Grand Jury proceedings. *Simpson v. District Court*, 88 Nev. 654, 661,
23 503 P.2d 1225 ("An element of waiver is involved, when an accused proceeds to trial without
24 challenging the indictment. Thereafter, he should not be heard to complain if the indictment . . .
25 gave notice of what later transpired at trial[.]"). Further, NRS 174.105(3) provides that "Lack of
26 jurisdiction of the failure of the indictment, information or complaint to charge an offense shall
27 be noticed by the court at any time during the pendency of the proceeding."

28

1 In the case at bar, extrajudicial relief is merited. There are significant issues of
2 procedural and substantive due process. There are also issues of first impression presented in
3 regard to the fatally defective Indictment. As set forth in Dr. Desai's Motion to Stay Proceedings
4 in District Court ("Dr. Desai's Motion"), the manner in which the charges were pled raise
5 constitutional issues left open by the *Aesoph* Court concerning the adequacy of due process
6 notice when the State alleges numerous alternative theories of prosecution or means by which a
7 crime has been committed. See *Sheriff v. Aesoph*, 100 Nev. 477, 479 n. 3, 686 P.2d 237, 239
8 (1984).

9 The Writ also presents issues of first impression regarding the sufficiency of the charging
10 language and notice provided to the Defendants of the charges with which they have to defend
11 themselves, especially Mr. Mathahs, who the State concedes was not the alleged "criminal
12 mastermind" who created an "atmosphere" of negligence and/or corruption. The vague,
13 unsubstantiated, undefinable accusations in the Indictment, as charged, make it impossible for
14 Mr. Mathahs to defend himself because he does not know what he is defending himself against.

15 Finally, Mr. Mathahs contends that this Court exceeded its jurisdiction by implicitly
16 amending the racketeering account to incorporate by reference the substantive insurance fraud
17 counts. As set forth in Dr. Desai's Motion, although the Nevada Supreme Court has not squarely
18 addressed this issue, it is a well-established rule of due process that each count of the indictment
19 must stand on its own and cannot be supplemented by reference to another count unless done so
20 expressly. See *U.S. v. Rodriguez-Gonzalez*, 358 F.3d 1156, 1159 (9th Cir. 2004). As discussed
21 in Dr. Desai's Motion, although NRS 173.075(2) permits allegations in one count to incorporate
22 by reference another count, the Court cannot properly imply this pleading device. *Id.* Part of the
23 basis for both Dr. Desai's (pending) Writ and Mr. Mathahs' Writ is the defectiveness of the
24 Indictment, including but not limited to the issues that: the racketeering count does not
25 incorporate by reference the substantive insurance fraud counts and otherwise fails to set forth
26 the essential elements of the predicate offenses.

27

28

Should the Nevada Supreme Court grant the petition, the Indictment could be dismissed or at the very least, the charges could be amended. It is improper to force Mr. Mathahs to go to trial on what could be determined to be facially defective counts. Resolution by the Nevada Supreme Court regarding whether the Indictment is defective is necessary prior to proceeding with trial in this matter.

As such, it is requested that Mr. Mathahs' Motion for a stay be granted and that further proceedings cease until the Nevada Supreme Court has ruled on the issues as to whether the Indictment must be dismissed for being fatally defective.

III.

CONCLUSION

Based on the foregoing, it is respectfully requested Mr. Mathahs' Motion be granted and that the proceedings be stayed pending resolution of the Writ that is currently pending before the Nevada Supreme Court

Dated this 30 day of July, 2012.

~~GORDON~~ SILVER

MICHAEL V. CRISTALLI

Nevada Bar No.

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(702) 796-5555

Attorneys for Defendant Mathahs

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2
3 KEITH MATHAHS,

4 Petitioner,

NO. 61359

Electronically Filed
Sep 10 2012 08:36 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

5 vs.

6 THE EIGHTH JUDICIAL DISTRICT
7 COURT OF THE STATE OF NEVADA,
8 IN AND FOR THE COUNTY OF
9 CLARK; AND THE HONORABLE
10 VALERIE ADAIR, DISTRICT JUDGE,

11 Respondent.

12 and

13 THE STATE OF NEVADA,
14 Real Party in Interest.

15 Petition for Writ of Mandamus
16 From the Eighth Judicial District Court
17 The Honorable Sefany Miley, District Judge
18 District Court Case. C-12-283381-3

19
20 **EMERGENCY MOTION FOR STAY UNDER NRAP 8(a)**
21 **IMMEDIATE ACTION NECESSARY – PRIOR TO COURT’S DECISION**
22 **ON WRIT OF MANDAMUS IN DISTRICT COURT CASE NO. C-12-**
23 **283381-3**

24 GORDON SILVER

25 MICHAEL V. CRISTALLI
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Attorneys for Keith Mathahs

1 Petitioner/defendant Keith Mathahs, ("Mr. Mathahs"), by and through his
2 counsel, the law firm of Gordon Silver, hereby moves for an emergency stay of the
3 Honorable Stefany Miley's August 22, 2012, Order pending this Court's ruling on
4 Petitioner's Petition for Writ of Mandamus filed on July 27, 2012, in Case No. 10-
5 C-265107-3.

6 **MEMORANDUM OF POINTS AND AUTHORITIES**

7 **I. STATEMENT OF FACTS**

8 Petitioner respectfully requests that this Court immediately stay the district
9 court proceedings in C-12-283381-3 (the "Second Indictment Matter") pending
10 this Court's ruling on Petitioner's Petition for Writ of Mandamus in C-10-265107-
11 3 (the "First Indictment Matter"). This stay is requested in compliance with
12 Nevada Rule of Appellate Procedure 8(a).

13 In the case at bar, the June 4, 2010 Indictment (the "First Indictment") was
14 filed in Case No. 10C265107-3. See Exhibit A. The First Indictment is currently
15 before Department XXI. The First Indictment states (in part) that Mr. Mathahs is
16 being charged (along with his two co-Defendants) with criminal neglect of patient
17 stemming from his employment with Dr. Desai. One of the patients alleged to
18 have been harmed, as charged in the First Indictment, was Mr. Meana, by
19 Defendants' purportedly infecting him with Hepatitis-C.

20 Recently, a "Second" Indictment was filed in Case No. C-12-283381-3 (the
21 "Second Indictment"). See Exhibit B. The Second Indictment states, in relevant
22 part, that between September 21, 2007, and April 27, 2012, Defendants killed Mr.
23 Meana by introducing Hepatitis C into his body during the commission of an
24 unlawful act, to wit: criminal neglect of patient. The Second Indictment is truly a
25 superceding indictment, although the State chose to file it as a separate case,
26 presumably for tactical reasons.

27

1 To the extent the State attempts to argue that the Second Indictment is now a
2 separate murder charge based on “different” facts, Mr. Mathahs was already
3 charged with violation of NRS 200.495, in the First Indictment Matter, which
4 includes a penalty for if the patient dies as a result of the Defendant’s actions. As
5 such, literally nothing has changed from the First Indictment to the Second
6 Indictment except for the re-phrasing of the crime, from “criminal neglect resulting
7 in death” to “murder”. None of the facts that gave rise to the circumstances putting
8 Mr. Mathahs on trial are different.

9 Mr. Mathahs filed a Motion to Dismiss the First Indictment in Dept. XXI,
10 Case No. 10C265107-3. After this motion was denied by the lower court, on July
11 27, 2012, Mr. Mathahs filed a petition to the Supreme Court for an extraordinary
12 writ pursuant to NRS 34.330 (the “Writ”).

13 The Writ presents two issues:

- 14 I. WHETHER A PETITION FOR AN EXTRAORDINARY WRIT
15 IS THE APPROPRIATE VEHICLE TO CHALLENGE THE
16 DISTRICT COURT’S JURISDICTION TO PROCEED BASED
17 ON THE CRIMINAL CHARGES PENDING AGAINST
18 PETITIONER REGARDING PETITIONER’S ARGUMENT
19 THAT THE INDICTMENT IS CONSTITUTIONALLY AND
20 STATUTORY DEFECTIVE.
21 II. WHETHER THE INDICTMENT MUST BE DISMISSED AS
22 AGAINST MATHAHS BECAUSE IT IS
23 CONSTITUTIONALLY AND STATUTORILY DEFECTIVE
24 AND DOES NOT PROVIDE ADEQUATE NOTICE
25 SUFFICIENT FOR MATHAHS TO DEFEND HIMSELF
26 AGAINST THE CHARGES ALLEGED.

27 On August 6, 2012, the Supreme Court issued an Order Directing Answer.
28 See Exhibit C.

29 On July 30, 2012, Mr. Mathahs filed a Motion for Stay of Proceedings in
30 Pending Resolution of Writ Proceedings in the First Indictment Matter. See
31 Exhibit D. At the hearing on the Motion for Stay in the First Indictment Matter, on
32 August 9, 2012, the Court entered an oral ruling denying Mr. Mathahs’ Motion.

28

1 See Exhibit E. Accordingly, Mr. Mathahs brought a Motion to Stay Proceedings
2 Pending Resolution of Writ Proceedings in the Supreme Court.

3 On August 21, 2012, Mr. Mathahs filed a Motion to Stay Proceedings
4 Pending Resolution of Writ Proceedings Pursuant to NRAP 8(a) in the Second
5 Indictment Matter (the "Motion"). See Exhibit F. Mr. Mathahs argued as follows:

6 Trial, as to the First Indictment, is currently set for October 22, 2012. It
7 is imperative that trial be stayed until the Nevada Supreme Court
8 reaches a determination so that counsel for Mr. Mathahs can understand
9 how to proceed, not only with the First Indictment but with the Second
10 Indictment (which is before this Court). The language of the Second
Indictment essentially piggy-backs on the language of the First
Indictment and if the Nevada Supreme Court determines that the First
Indictment cannot stand, then logic follows that the Second Indictment
fails as well.

11 Counsel for Mr. Mathahs is unable to properly prepare for trial without
12 knowing the outcome of the Supreme Court's decision on the issues
13 presented before it. As trial is rapidly approaching, counsel for Mr.
14 Mathahs respectfully requested the 10C265107-3 case be stayed until
15 the Nevada Supreme Court provides some guidance as to how the case
should proceed (if at all). By this same logic, it is respectfully
requested all proceedings in this case be stayed as well because if the
Nevada Supreme Court decides that the First Indictment is fatally
deficient, then the Second Indictment cannot stand.

16 See Exhibit F.

17 On August 22, 2012, the parties came before the court in the Second
18 Indictment Matter on Mr. Mathahs' Motion to Stay Proceedings.

19 See Exhibit G.

20 Counsel for Mr. Mathahs argued as follows:

21 The charge for which we're before your Honor is a charge of second-
22 degree murder arising out of the death of Mr. Meana who is . . . one of
23 the . . . alleged named victims in the criminal. . . indictment. . . that is
pending before Judge Adair.

24 He is contained in one of the indictments which is criminal neglect.
25 In that charge as that particular charge statutorily has a provision
26 which increases the penalty if death occurs subsequent to the
allegations of neglect.

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1 The indictment, the way it's pled in this case, is identical to the way
2 it's pled in the case in front of Judge Adair as it relates to the criminal
3 neglect. That issue is currently up in front of the Nevada Supreme
4 Court as it's challenging the legality of that indictment and how that
5 indictment was pled.

6 So depending on what the Nevada Supreme Court does in that case,
7 meaning if they decide that we are correct and that the indictment is
8 flawed inherently and instruct the State accordingly and dismiss that
9 indictment or force the State to go back before the grand jury and
10 present evidence and get an indictment returned according to the
11 instructions of the Nevada Supreme Court, that directly affects the
12 indictment in this case.

13 I don't see any argument that alters that theory as to how this case will
14 play out. So it's our request because of the way that this indictment is
15 pled, identical to the one that's pled in front of Judge Adair that's
16 currently pending up in front of the Nevada Supreme Court, which
17 ultimately will be influenced by the determination of the Supremes,
18 that these proceedings be stayed.

19 Once there's a determination by the Nevada Supreme Court as it
20 relates to that indictment, those issues and that directive will also
21 influence this Court's determination on the indictment that's currently
22 pending before Your Honor.

23 So for those reasons, we're asking that all proceedings be stayed until
24 after there's been a determination on the issue currently before the
25 Nevada Supreme Court on the writ of mandamus.

26 See Exhibit G, pp. 2-4.

27 Counsel continued:

28 [T]o say these two cases are unrelated is just denying the realities of
the current situation. All I can do is encourage the Court to compare
the two indictments. The language contained in those indictments as
far as the theory of liability are identical. It is very unusual for the
State to do procedurally what they did. . . . [C]ertainly, the normal
procedure for them would have been to get a superseding
indictment. . . and amend it to include a charge of second-degree

1 murder.

2 See Exhibit G, pp. 7-8.

3
4 The Court responded:

5 All right. I'm going to deny the request for a stay. I believe with the
6 State's position that there is no legal basis for a stay in this particular
7 case.

8 See Exhibit G, p. 9.

9 Counsel for Dr. Desai argued:

10 This is a de facto superseding indictment. We know in the law that
11 we look at facts, not labels to determine what something is. Mr.
12 Staudaher can call a dog a pig, and we can look and see what it is.
13 This is truly a superseding indictment. This went back to the same
14 grand jury and they only heard two witnesses for the indictment
15 before this Court, and I am presuming without having seen the
16 transcript that the only additional fact that was presented to the same
17 grand jury was the fact that Mr. Meana, who previously had
18 substantial bodily injury from having hepatitis C virus, died in the
interim; so therefore, they put on proof of Mr. Meana's death and both
probable evidence that it was caused by hepatitis C. Two witnesses
in, I think, an hour or so and they returned an indictment.

19 It should have been what we call a superseding indictment in the same
20 case before the same judge. It's the same facts, circumstances,
21 transaction. The only addition is the patient died. . . .

22 See Exhibit G, pp. 15-16.

23 **II. LEGAL STANDARD**

24 Nevada Rule of Appellate Procedure 8(a) governs motions for stay in the
25 Supreme Court. Nevada Rule of Appellate Procedure 8(a)(2) provides that a
26 motion to stay in the Supreme Court shall:

27 (i) show that moving first in the district court would be impracticable;
28 or

1 (ii) state that, a motion having been made, the district court denied
2 the motion or failed to afford the relief requested and state any reasons
3 given by the district court for its action.

4 (B) The motion shall also include:

5 (i) the reasons for granting the relief requested and the facts relied on;

6 (ii) originals or copies of affidavits or other sworn statements
7 supporting facts subject to dispute; and

8 (iii) relevant parts of the record.

9 NEV. R. APP. P. 8(a)(2).

10 III. LEGAL ARGUMENT

11 A. The District Court Previously Denied Petitioner's Motion for Stay

12 On August 21, 2012, Mr. Mathahs filed a Motion for Stay of Proceedings
13 Pending Resolution of Writ Proceedings in the Second Indictment Matter. See
14 Exhibit F. At the hearing on the Motion for Stay on August 22, 2012, the trial
15 court entered an oral ruling denying Petitioner's Motion. See Exhibit G, p. 9. The
16 trial court denied the motion on the grounds that the First Indictment Matter and
17 the Second Indictment Matter were two different proceedings, agreeing with the
18 State's argument that the alleged charge of murder of Mr. Meana resulting from
19 "criminal neglect" in the Second Indictment, was somehow "different" from the
20 alleged criminal neglect resulting in the death of Mr. Meana, as set forth in the
21 First Indictment. See Exhibit G, p. 9. The court made this ruling despite the fact
22 that the State itself referred to the First Indictment Matter as the "underlying case".
23 See Exhibit G, p. 20. Mr. Mathahs respectfully disagrees with the lower court's
24 decision and thus brings the instant Motion to Stay in the Supreme Court.

25 B. The District Court Proceedings Should be Stayed

26 Mr. Mathahs filed his Petition for Writ of Mandamus in the First Indictment
27 Matter on August 3, 2012. On August 6, 2012, the Supreme Court issued an Order
28 Directing Answer. See Exhibit C. In its Order, the Supreme Court noted that "an
answer may assist the court in resolving the petition" and "the real party in interest,
on behalf of respondents, shall have 20 days from the date of this order to file an

1 answer” *See id.* Originally, the answer to the petition was not due until
2 August 26, 2012; however the State requested an additional 20 days beyond
3 August 26, 2012, with which to file its answer. See Exhibit H. Mr. Mathahs’ trial
4 in the First Indictment Matter is set for October 2012. However, the State will not
5 even file its answer to the Writ until mid-September.

6 Currently, the First Indictment is extraordinarily vague and ambiguous. It
7 fails to provide Mr. Mathahs with proper notice of what he is charged with
8 committing and fails to even differentiate Mr. Mathahs from the co-defendants.
9 For example, the three Defendants were charged without distinction in the
10 Indictment. As such, it appears that Mr. Mathahs is being charged with criminal
11 liability for patients he did not even see, for dates and times of service where he
12 was not even working (he was only a part-time employee), and for utilizing
13 medical equipment that may have been in the possession or control of another
14 defendant but were not utilized by the CRNAs.

15 Because Mr. Mathahs is unable to prepare any meaningful defense due to the
16 defective indictment, he requested the First Indictment Matter be stayed until this
17 Court resolves the pending Writ.

18 The Second Indictment is entirely predicated on the First Indictment. Thus,
19 if the First Indictment fails, then so does the Second Indictment.

20 As stated above, Mr. Mathahs is seeking extraordinary relief from the denial
21 of his motion in the First Indictment Matter to dismiss the racketeering count, the
22 criminal neglect of patient counts, and the reckless endangerment counts. The
23 Second Indictment piggy-backs the same language as that set forth in the First
24 Indictment. The issue whether the First Indictment is fatally defective, warranting
25 dismissal, is currently before the Supreme Court.

26 In the case at bar, extrajudicial relief is merited. There are significant issues
27 of procedural and substantive due process (as related to both Indictments). There
28

1 are also issues of first impression presented in the Writ in regard to the fatally
2 defective First Indictment. As addressed previously, the Second Indictment relies
3 entirely on the First Indictment to support its allegations. If the First Indictment
4 fails, then so does the Second Indictment.

5 The Writ from the denial of Mr. Mathahs' Motion to Dismiss, filed in the
6 First Indictment Matter, also presents issues of first impression regarding the
7 sufficiency of the charging language and notice provided to the Defendants of the
8 charges with which they have to defend themselves, especially Mr. Mathahs, who
9 the State concedes was not the alleged "criminal mastermind" who created an
10 "atmosphere" of negligence and/or corruption. The vague, unsubstantiated,
11 undefinable accusations in the Indictment, as charged, make it impossible for Mr.
12 Mathahs to defend himself because he does not know what he is defending himself
13 against.

14 Mr. Mathahs contends that Department XXIII exceeded its jurisdiction by
15 refusing to stay proceedings until this Court makes a determination as to whether
16 Department XXI erred by allowing the First Indictment to go forward even though
17 it is fatally defective. The Second Indictment is entirely predicated on the First
18 Indictment.

19 Should the Nevada Supreme Court grant the Writ, the First Indictment could
20 be dismissed or at the very least, the charges could be amended. The Second
21 Indictment Matther should not continue forward until this Court makes a
22 determination as to whether the First Indictment can even proceed. It is improper
23 to force Mr. Mathahs to continue defending himself in the matter before any court
24 on what could be determined to be facially defective counts. Resolution by this
25 Court regarding whether the First Indictment is defective is necessary prior to
26 proceeding with either the First Indictment or the Second Indictment.

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1 Every court has the inherent power to stay proceedings. *Landis v. North*
2 *American Co.*, 299 U.S. 248, 254 (1936). This power “is incidental to the power
3 inherent in every court to control the disposition of the causes on its docket with
4 economy of time and effort for itself, for counsel, and for litigants.” *Id.*

5 Furthermore, a court may consolidate any action involving common
6 questions of fact “to avoid unnecessary costs or delay.” NEV. R. CIV. P. 42(a); *see*
7 *also Carter v. State*, 102 Nev. 164, 166, 717 P.2d 1111, 1111 (1986) (noting that
8 the trial court consolidated two separate actions in the interest of judicial economy
9 where both cases “involved essentially the same parties, witnesses, and
10 circumstances”).

11 As stated above, in the Second Indictment, the State relies on the exact facts
12 that formed the basis for the First Indictment against Petitioner. The charge
13 forming the basis for murder (criminal neglect) is the same exact charge contained
14 in the First Indictment. See Exhibit A. As indicated to this Court in Mr. Mathahs’
15 Emergency Motion to stay proceedings in the First Indictment Matter, there is a
16 strong possibility that Mr. Mathahs’ counsel will file a motion to consolidate the
17 Indictments into a single proceeding. However, resolution of the Writ dismissing
18 the Indictment is the first step to determine how either case can proceed. This is
19 why Mr. Mathahs is requesting that both cases be stayed pending resolution from
20 the Supreme Court on the issue of whether the First Indictment is fatally defective.

21 Thus, it is requested that Mr. Mathahs’ Motion for a stay be granted and that
22 all further proceedings cease until the Nevada Supreme Court has ruled on the
23 issues as to whether the First Indictment must be dismissed for being fatally
24 defective.

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IV. CONCLUSION

Based on the foregoing, Mr. Mathahs respectfully requests that this Court stay the proceedings below pending its ruling on Petitioner's Petition for Writ of Mandamus in the First Indictment Matter.

Dated this 17th day of September, 2012.

GORDON SILVER

GORDON SILVER

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Nevada Bar No. 6266

Eunice M. Morgan

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Attorneys for Keith Mathahs

1 **NRAP 27(e) CERTIFICATE**

2 **A. The telephone numbers and office addresses of the attorneys for the**
3 **parties are:**

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19 Counsel for Richard Lakeman

20
21 **B. Facts showing the existence and nature of the claimed emergency:**

22 The lower court has refused to stay the proceedings. Mr. Mathahs' writ to
23 dismiss the indictment in 12-C-283381-3 was ordered by the Court to be filed 21
24 days after the grand jury transcripts in 12-C-283381-3 were filed. Upon
25 information and belief, the State has agreed to a continuance of this date.

26 It is requested that the Nevada Supreme Court decide whether the
27 proceedings in 12-C-283381-3 be stayed prior to the date the writ for the Second
28 Indictment Matter is due as the Nevada Supreme Court's decision regarding the

1 writ for the First Indictment Matter will directly affect the relief requested in the
2 writ for the Second Indictment Matter.

3 The writ currently before the Nevada Supreme Court in the First Indictment
4 Matter will significantly affect the relief requested in the writ for the Second
5 Indictment Matter as the Second Indictment cannot stand if the First Indictment
6 fails.

7 The State has not yet even responded to the writ filed by Mr. Mathahs in the
8 First Indictment Matter.

9 Mr. Mathahs currently has two cases going forward based on what could
10 potentially be determined by the Supreme Court as defective Indictments that
11 cannot stand. Thus, it is requested Mr. Mathahs' Motion to Stay the Second
12 Indictment Matter be determined on an emergency basis and that a stay be allowed
13 so that Mr. Mathahs is not forced to file a second writ on some of the exact same
14 issues as those brought forth in the writ regarding the First Indictment Matter
15 before the writ in the First Indictment Matter is decided.

16 **C. When and how counsel for the other parties were notified and**
17 **whether they have been served with the motion; or, if not notified**
18 **and served, why that was not done:**

19 A copy of this Emergency Motion for Stay and shall be to the District
20 Attorney's office and co-Defendants' counsel concurrent with the filing of this
21 Motion.

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IV. CONCLUSION

Based on the foregoing, Mr. Mathahs respectfully requests that this Court stay the proceedings below pending its ruling on Petitioner's Petition for Writ of Mandamus in the First Indictment Matter.

Dated this 7th day of September, 2012.

GORDON SILVER

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Eunice M. Morgan
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3960 Howard Hughes Pkwy., 9th Floor
Las Vegas, Nevada 89169
Attorneys for Keith Mathahs

1 **CERTIFICATE OF COMPLIANCE**

2 We, the undersigned Petitioner/Defendant's counsel, hereby certify that we
3 have read the foregoing Emergency Motion for Stay, and to the best of our
4 knowledge, information and belief, it is not frivolous or interposed for any
5 improper purpose. We further certify that this brief complies with all applicable
6 Nevada Rules of Appellate Procedures, in particular NRAP 28(e), which requires
7 every assertion in the brief regarding matters in the record. We understand we may
8 be subject to sanctions in the event this brief is not in conformity with the
9 requirements of the Nevada Rules of Appellate Procedure as required by NRS
10 223B.133.

11 Dated this 7th day of September, 2012.

12 
GORDON SILVER

13
14 MICHAEL V. CRISTALLI

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EUNICE M. MORGAN

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Attorneys for Keith Mathahs

1 **CERTIFICATE OF SERVICE**

2 I, the undersigned, declare under penalty of perjury, that I am over the age of
3 eighteen (18) years, and I am not a party to, nor interested in, this action.
4 On September ___, 2012, I caused to be served a true and correct copy of the
5 foregoing **EMERGENCY MOTION FOR STAY** by the method indicated:
6

- 7 ☒ **BY FAX:** by transmitting via facsimile the document(s) listed above
8 to the fax number(s) set forth below on this date before 5:00 p.m.
9 pursuant to EDCR Rule 7.26(a). A printed transmission record is
10 attached to the file copy of this document(s).
11 ☒ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed
12 envelope with postage thereon fully prepaid, in the United States mail
13 at Las Vegas, Nevada addressed as set forth below.
14 ☐ **BY OVERNIGHT MAIL:** by causing document(s) to be picked up
15 by an overnight delivery service company for delivery to the
16 addressee(s) on the next business day.
17 ☐ **BY PERSONAL DELIVERY:** by causing personal delivery of the
18 document(s) listed above to the person(s) at the address(es) set forth
below.
☐ **BY ELECTRONIC SUBMISSION:** submitted to the above-entitled
Court for electronic filing and service upon the Court's Service List
for the above-referenced case.

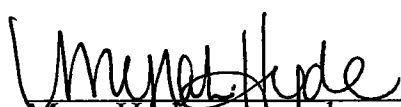
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Myra Hyde, an employee of
GORDON SILVER

Facsimile Transmittal Sheet



Date: September 7, 2012

To:

Fax No:

SCANNED

Honorable Judge Valerie Adair
District Court, Department 21

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From: Michael V. Cristalli, Esq.

File No.: 103451-002

Subject: The State of Nevada v. Keith Mathahs, et al.

Number of pages
incl. cover page: 18

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Message: Enclosed please find an Emergency Motion for Stay Under NRAP 8(a) Immediate Action Necessary – Prior to Court's Decision on Writ of Mandamus in District Court Case, without exhibits.

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Honorable Judge Valerie Adair
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Number of pages

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Facsimile Transmittal Sheet

Date: September 7, 2012

To:

Fax No:

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File No.: 103451-002

Subject: The State of Nevada v. Keith Mathahs, et al.

Number of pages

incl. cover page: 18

☒ Please see attached ☐ Per your request ☐ For your review
☐ Please review, sign and return ☐ Please acknowledge receipt ☐ For your information or records

Message: Enclosed please find an Emergency Motion for Stay Under NRAP 8(a) Immediate Action Necessary – Prior to Court's Decision on Writ of Mandamus in District Court Case, without exhibits.