

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

2
3 KEITH MATHAHS,

4 Petitioner,

5 vs.

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

9 Respondent.

10 and

11 THE STATE OF NEVADA,
12 Real Party in Interest.

No. 61359

Electronically Filed
Jan 04 2013 09:56 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

13 **DEFENDANT MATHAHS' RESPONSE TO SUPREME COURT ORDER**
14 **TO SHOW CAUSE**

15 Comes Now the Petitioner/Defendant, Keith Mathahs, by and through his
16 attorney of record, Michael V. Cristalli, Esq., and Eunice M. Morgan, Esq., and
17 files Defendant Mathahs' Response to Supreme Court Order to Show Cause.

18 On December 10, 2012, Mr. Mathahs' guilty plea agreement ("GPA") was
19 filed in open court. (*See* Guilty Plea Agreement, attached hereto as Exhibit A). As
20 a result of the GPA, Mr. Mathahs pled guilty to Count 1-Criminal Neglect of
21 Patients Resulting in Death; Count 2-Criminal Neglect of Patients; Count 3-
22 Insurance Fraud; Count 4-Obtaining Money Under False Pretenses; and Count 5-
23 Conspiracy to Commit Racketeering. (Exhibit A).

24 On December 21, 2012, the Nevada Supreme Court issued an order (the
25 "Order") granting (in part) Dr. Desai's petition for writ of mandamus or
26 prohibition (the "Writ"). (*See* Order Granting Petition in Part, attached hereto as
27 Exhibit B). The Nevada Supreme Court stated that the district court should grant
28

1 the petition for a writ of habeas corpus with respect to the count alleging
2 racketeering. (Exhibit B). The Court continued that the State should be permitted
3 to amend the counts alleging criminal neglect of patients. (Exhibit B).

4 Given the Nevada Supreme Court's Order that the racketeering count is
5 unsustainable as a matter of law and should be dismissed, and the criminal neglect
6 counts were pled too ambiguously and with too many theories of liability, an issue
7 has arisen specifically in regard to Mr. Mathahs' pleading guilty to a crime
8 (conspiracy to commit racketeering) that the Nevada Supreme Court has found
9 fails to state an offense (the racketeering count).

10 Although Mr. Mathahs fully intended to withdraw his petition given the
11 terms of the plea agreement, the fact that the Nevada Supreme Court has now
12 rendered one count unsustainable as against the Defendants in this matter, and
13 there are issues with the criminal neglect count(s) in this matter, Mr. Mathahs has
14 not withdrawn the petition in an abundance of caution. In essence, Mr. Mathahs
15 has pled guilty to a count which this Court has found to be constitutionally
16 defective.

17 It is unknown how the district court will factor in the Nevada Supreme
18 Court's decision at the time of sentencing and/or whether modifications will be
19 made as a result of the Nevada Supreme Court's decision.

20 A district court may, in its discretion, grant a defendant's motion to
21 withdraw a guilty plea for any "substantial reason" if it is "fair and just." *Woods v.*
22 *State*, 114 Nev. 468, 475, 958 P.2d 91, 95 (1998); *State v. District Court*, 85 Nev.
23 381, 385, 455 P.2d 923, 926 (1969). Moreover, the Court has held that the district
24 court must also look to the totality of the circumstances and the entire record.
25 *Woods*, 114 Nev. at 475, 958 P.2d at 95; *Michell v. State*, 109 Nev. 137, 140-41,
26 848 P.2d 1060-1061-62 (1993).

1 In fact, the district court previously acknowledged that Mr. Mathahs
2 appeared to have a stronger argument for dismissal of charges, as opposed to Dr.
3 Desai. On May 22, 2012, the parties came before the district court on Mr.
4 Mathahs' motion to dismiss, wherein the district court stated:

5 THE COURT: . . . I mean, I've already said I think it could have been pled
6 much better. And I think that, you know, I think in a way it's a more
7 compelling argument as to your client than it is to Dr. Desai. You know, the
8 State doesn't really try to distinguish why the argument applies to the nurse
9 clients, you know.

10 Here's the thing. I mean, as I understand it. I mean, basically they're
11 saying, oh, well, it's all part of a conspiracy, so everybody's on the hook for
12 everything.

13 (See May 22, 2012, Transcript of Proceedings, attached hereto as Exhibit C, p. 2).

14 In response, counsel for Mr. Mathahs raised the same points made by the
15 Nevada Supreme Court in granting Dr. Desai's petition. (Exhibit C, pp. 3-6).

16 In the Order, the Nevada Supreme Court held that the racketeering count
17 failed to allege necessary elements and was inadequately pled. (Exhibit B, p. 4). It
18 continued that the alternative theory charged pursuant to NRS 207.400(1)(a) was
19 incomplete as it omitted the essential element concerning the use of proceeds to
20 acquire real property or interest in another enterprise. (Exhibit B, p. 4). In
21 addition, the use of disjunctive language severed the description of racketeering
22 activity, a necessary element of the previously alleged theories. (Exhibit B, p. 4).
23 Lastly, the allegations were inadequately pled as the first alternative act (causing
24 and/or pressuring employees to falsify patient records) failed to allege a crime
25 related to racketeering. (Exhibit B, p. 4).

26 As to the criminal neglect count(s), amendment was required because the
27 allegations were not sufficiently plain, concise, and definite. (Exhibit B, p. 3).
28 Specifically, the allegations listed numerous acts taken as principals and aiders and
abettors but failed to specifically identify what acts were attributed to each
defendant; therefore, it was insufficiently precise as to "who is alleged to have

1 done what.” (Exhibit B, p. 3).

2 In light of the Nevada Supreme Court’s Order, it would be inherently unfair
3 and unjust to force Mr. Mathahs to plead guilty to a crime (conspiracy to commit
4 racketeering) when the Nevada Supreme Court determined that, as a matter of law,
5 the racketeering count was unsustainable.

6 As such, in response to the Order to Show Cause, Mr. Mathahs respectfully
7 submits that the Writ petition is not moot until the above issues are resolved.

8 Dated this 3rd day of January, 2013.

9 
GORDON SILVER

10
11 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

CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on the 3rd day of January, 2013. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

CATHERINE CORTEZ MASTO
Nevada Attorney General

RYAN J. MACDONALD
Deputy District Attorney

BY:

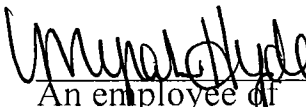

An employee of
Gordon Silver

EXHIBIT A

1 **GPA**

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

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

DEC 10 2012

BY, Louisa Garcia
LOUISA GARCIA, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

12 KEITH H. MATHAHS,
13 #2753191

14 Defendant.

CASE NO: 10C265107-3

DEPT NO: XXI

15 **GUILTY PLEA AGREEMENT**

16 I hereby agree to plead guilty to: **COUNT 1 - CRIMINAL NEGLECT OF**
17 **PATIENTS RESULTING IN DEATH (Category B Felony - NRS 0.060, 200.495);**
18 **COUNT 2 - CRIMINAL NEGLECT OF PATIENTS (Category B Felony - NRS 0.060,**
19 **200.495); COUNT 3 - INSURANCE FRAUD (Category D Felony - NRS 686A.2815);**
20 **COUNT 4 - OBTAINING MONEY UNDER FALSE PRETENSES (Category B Felony**
21 **- NRS 205.265, 205.380) and COUNT 5 - CONSPIRACY TO COMMIT**
22 **RACKETEERING (Gross Misdemeanor - NRS 199.480, 199.490, 207.350, 207.360,**
23 **207.370, 207.380, 207.390, 207.400), as more fully alleged in the charging document**
24 **attached hereto as Exhibit "1".**

25 My decision to plead guilty is based upon the plea agreement in this case which is as
26 follows:

27 The State will retain the right to argue at sentencing within the parameters set forth
28 hereinafter, but will not oppose concurrent time between the counts. Defendant agrees to

1 testify truthfully and completely about matters in the instant case at the trial of co-
2 defendants, Dipak Desai and/or Ronald E. Lakeman. Defendant further agrees that he is
3 subject to the jurisdiction of Nevada if he is physically outside of Nevada at the time of the
4 issuance of any subpoena for such purposes. The State and Defendant agree that the
5 sentencing of Defendant will be postponed until after the State trial and/or plea and/or
6 sentencing of co-defendants, Dipak Desai and/or Ronald E. Lakeman. Defendant expressly
7 agrees to waive defects, if any, in the pleadings and to withdraw any petition(s) to the
8 Nevada Supreme Court that he may have filed or joined in for this matter. In exchange for
9 Defendant's plea, the State agrees not to prosecute the Defendant for the murder of victim,
10 Rodolfo Meana. The State further agrees not to argue for greater than a twenty-eight (28) to
11 seventy-two (72) month maximum term on Count 1 related to Rodolfo Meana. The State
12 further agrees to dismiss all remaining charges contained in the Second Amended
13 Indictment. Defendant agrees to pay appropriate restitution, if any, to the named victim(s),
14 in all counts contained in the Third Amended Indictment. The parties agree that restitution
15 shall be strictly contingent upon proof adduced at a separate hearing prior to sentencing and
16 shall not duplicate any amounts paid as civil awards or settlement agreements.

17 If the Court elects not to follow this negotiation, the State agrees that the Defendant
18 may withdraw his plea and proceed to trial on the original charges contained in the Second
19 Amended Indictment. At the time of the entry of change of plea pursuant to this Agreement,
20 the parties shall place on the record in open court that this Agreement contemplates that the
21 Court shall retain the discretion to reject the sentencing limitations consistent with the
22 State's right to argue, as set forth above, and therefore refuse to accept the Defendant's
23 change of plea, but that should the Court determine to accept the Defendant's change of plea
24 and elect not to sentence the Defendant consistent with the limitations of the State's right to
25 argue, as set forth above, the Defendant shall be permitted to withdraw his plea of guilty.

26 I agree to the forfeiture of any and all weapons or any interest in any weapons seized
27 and/or impounded in connection with the instant case and/or any other case negotiated in
28 whole or in part in conjunction with this plea agreement.

1 I understand and agree that, if I fail to interview with the Department of Parole and
2 Probation, fail to appear at any subsequent hearings in this case, or an independent
3 magistrate, by affidavit review, confirms probable cause against me for new criminal charges
4 including reckless driving or DUI, but excluding minor traffic violations, that the State will
5 have the unqualified right to argue for any legal sentence and term of confinement allowable
6 for the crime(s) to which I am pleading guilty, including the use of any prior convictions I
7 may have to increase my sentence as an habitual criminal to five (5) to twenty (20) years, life
8 without the possibility of parole, life with the possibility of parole after ten (10) years, or a
9 definite twenty-five (25) year term with the possibility of parole after ten (10) years.

10 Otherwise I am entitled to receive the benefits of these negotiations as stated in this
11 plea agreement.

12 CONSEQUENCES OF THE PLEA

13 I understand that by pleading guilty I admit the facts which support all the elements of
14 the offense(s) to which I now plead as set forth in Exhibit "1".

15 **As to Count 1** - I understand that as a consequence of my plea of guilty the Court
16 must sentence me to imprisonment in the Nevada Department of Corrections for a minimum
17 term of not less than ONE (1) year and a maximum term of not more than TWENTY (20)
18 years. The minimum term of imprisonment may not exceed forty percent (40%) of the
19 maximum term of imprisonment.

20 **As to Count 2** - I understand that as a consequence of my plea of guilty the Court
21 must sentence me to imprisonment in the Nevada Department of Corrections for a minimum
22 term of not less than ONE (1) year and a maximum term of not more than SIX (6) years.
23 The minimum term of imprisonment may not exceed forty percent (40%) of the maximum
24 term of imprisonment. I understand that I may also be fined up to \$5,000.00.

25 **As to Count 3** - I understand that as a consequence of my plea of guilty the Court
26 must sentence me to imprisonment in the Nevada Department of Corrections for a minimum
27 term of not less than ONE (1) year and a maximum term of not more than FOUR (4) years.
28 The minimum term of imprisonment may not exceed forty percent (40%) of the maximum

1 term of imprisonment. I understand that I may also be fined up to \$5,000.00.

2 **As to Count 4** - I understand that as a consequence of my plea of guilty the Court
3 must sentence me to imprisonment in the Nevada Department of Corrections for a minimum
4 term of not less than ONE (1) year and a maximum term of not more than SIX (6) years.
5 The minimum term of imprisonment may not exceed forty percent (40%) of the maximum
6 term of imprisonment. I understand that I may also be fined up to \$10,000.00.

7 **As to Count 5** - I understand that as a consequence of my plea of guilty the Court
8 must sentence me to imprisonment in the Nevada Department of Corrections for a minimum
9 term of not less than ONE (1) year and a maximum term of not more than SIX (6) years.
10 The minimum term of imprisonment may not exceed forty percent (40%) of the maximum
11 term of imprisonment. I understand that I may also be fined up to \$5,000.00.

12 I understand that the law requires me to pay an Administrative Assessment Fee. I
13 understand that, if appropriate, I will be ordered to make restitution to the victim of the
14 offense(s) to which I am pleading guilty and to the victim of any related offense which is
15 being dismissed or not prosecuted pursuant to this agreement. I will also be ordered to
16 reimburse the State of Nevada for any expenses related to my extradition, if any.

17 I understand that I am eligible for probation for the offense(s) to which I am pleading
18 guilty. I understand that, except as otherwise provided by statute, the question of whether I
19 receive probation is in the discretion of the sentencing judge.

20 I also understand that I must submit to blood and/or saliva tests under the Direction of
21 the Division of Parole and Probation to determine genetic markers and/or secretor status.

22 I further understand that if I am pleading guilty to charges of Burglary, Invasion of
23 the Home, Possession of a Controlled Substance with Intent to Sell, Sale of a Controlled
24 Substance, or Gaming Crimes, for which I have prior felony conviction(s), I will not be
25 eligible for probation and may receive a higher sentencing range.

26 I understand that if more than one sentence of imprisonment is imposed and I am
27 eligible to serve the sentences concurrently, the sentencing judge has the discretion to order
28 the sentences served concurrently or consecutively.

1 I also understand that information regarding charges not filed, dismissed charges, or
2 charges to be dismissed pursuant to this agreement may be considered by the judge at
3 sentencing.

4 I have not been promised or guaranteed any particular sentence by anyone. I know
5 that my sentence is to be determined by the Court within the limits prescribed by statute.

6 I understand that if my attorney or the State of Nevada or both recommend any
7 specific punishment to the Court, the Court is not obligated to accept the recommendation.

8 I understand that if the offense(s) to which I am pleading guilty was committed while
9 I was incarcerated on another charge or while I was on probation or parole that I am not
10 eligible for credit for time served toward the instant offense(s).

11 I understand that if I am not a United States citizen, any criminal conviction will
12 likely result in serious negative immigration consequences including but not limited to:

- 13 1. The removal from the United States through deportation;
- 14 2. An inability to reenter the United States;
- 15 3. The inability to gain United States citizenship or legal residency;
- 16 4. An inability to renew and/or retain any legal residency status; and/or
- 17 5. An indeterminate term of confinement, with the United States Federal
18 Government based on my conviction and immigration status.

19 Regardless of what I have been told by any attorney, no one can promise me that this
20 conviction will not result in negative immigration consequences and/or impact my ability to
21 become a United States citizen and/or a legal resident.

22 I understand that the Division of Parole and Probation will prepare a report for the
23 sentencing judge prior to sentencing. This report will include matters relevant to the issue of
24 sentencing, including my criminal history. This report may contain hearsay information
25 regarding my background and criminal history. My attorney and I will each have the
26 opportunity to comment on the information contained in the report at the time of sentencing.
27 Unless the District Attorney has specifically agreed otherwise, the District Attorney may
28 also comment on this report.

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1 I am signing this agreement voluntarily, after consultation with my attorney, and I am
2 not acting under duress or coercion or by virtue of any promises of leniency, except for those
3 set forth in this agreement.


4 I am not now under the influence of any intoxicating liquor, a controlled substance or
5 other drug which would in any manner impair my ability to comprehend or understand this
6 agreement or the proceedings surrounding my entry of this plea.

7 My attorney has answered all my questions regarding this guilty plea agreement and
8 its consequences to my satisfaction and I am satisfied with the services provided by my
9 attorney.

10 DATED this 10 day of December, 2012.

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13 
KEITH H. MATHAAS
Defendant

14 AGREED TO BY:

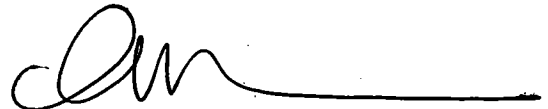
15 
16 MICHAEL V. STAUDAHER
17 Chief Deputy District Attorney
Nevada Bar #008273
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1 CERTIFICATE OF COUNSEL:

2 I, the undersigned, as the attorney for the Defendant named herein and as an officer of the
3 court hereby certify that:

- 4 1. I have fully explained to the Defendant the allegations contained in the
charge(s) to which guilty pleas are being entered.
- 5 2. I have advised the Defendant of the penalties for each charge and the
6 restitution that the Defendant may be ordered to pay.
- 7 3. I have inquired of Defendant facts concerning Defendant's immigration status
and explained to Defendant that if Defendant is not a United States citizen any
8 criminal conviction will most likely result in serious negative immigration
consequences including but not limited to:
- 9 a. The removal from the United States through deportation;
- 10 b. An inability to reenter the United States;
- 11 c. The inability to gain United States citizenship or legal residency;
- 12 d. An inability to renew and/or retain any legal residency status; and/or
- 13 e. An indeterminate term of confinement, by with United States Federal
14 Government based on the conviction and immigration status.
- 15 Moreover, I have explained that regardless of what Defendant may have been
told by any attorney, no one can promise Defendant that this conviction will
16 not result in negative immigration consequences and/or impact Defendant's
ability to become a United States citizen and/or legal resident.
- 17 4. All pleas of guilty offered by the Defendant pursuant to this agreement are
18 consistent with the facts known to me and are made with my advice to the
Defendant.
- 19 5. To the best of my knowledge and belief, the Defendant:
- 20 a. Is competent and understands the charges and the consequences of
pleading guilty as provided in this agreement,
- 21 b. Executed this agreement and will enter all guilty pleas pursuant hereto
22 voluntarily, and
- 23 c. Was not under the influence of intoxicating liquor, a controlled
24 substance or other drug at the time I consulted with the Defendant as
certified in paragraphs 1 and 2 above.

25 Dated: This 10 day of December, 2012.

26 

27 ATTORNEY FOR DEFENDANT

28 sam-MVU

1 **AIND**

2 **STEVEN B. WOLFSON**
3 **Clark County District Attorney**
4 **Nevada Bar #001565**

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**

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 **THE STATE OF NEVADA,**

15 **Plaintiff,**

16 **-vs-**

17 **KEITH H. MATHAHS,**
18 **#2753191**

19 **Defendant.**

20 **Case No. 10C265107-3**
21 **Dept. No. XXI**

22 **THIRD AMENDED**
23 **INDICTMENT**

24 **STATE OF NEVADA** }
25 **COUNTY OF CLARK** } **ss.**

26 **The Defendant(s) above named, KEITH H. MATHAHS accused by the Clark County**
27 **Grand Jury of the crime(s) of CRIMINAL NEGLECT OF PATIENTS RESULTING IN**
28 **DEATH (Category B Felony - NRS 0.060, 200.495); CRIMINAL NEGLECT OF**
29 **PATIENTS (Category B Felony - NRS 0.060, 200.495); INSURANCE FRAUD**
30 **(Category D Felony - NRS 686A.2815); OBTAINING MONEY UNDER FALSE**
31 **PRETENSES (Category B Felony - NRS 205.265, 205.380) and CONSPIRACY TO**
32 **COMMIT RACKETEERING (Gross Misdemeanor - NRS 199.480, 199.490, 207.350,**
33 **207.360, 207.370, 207.380, 207.390, 207.400), committed at and within the County of Clark,**
34 **State of Nevada, on or between June 3, 2005, and May 5, 2008, as follows:**

35 ***EXHIBIT "1"***

1 COUNT 1 - CRIMINAL NEGLECT OF PATIENTS RESULTING IN DEATH

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

COUNT 2 - CRIMINAL NEGLECT OF PATIENTS

Defendant with RONALD ERNEST LAKEMAN and DIPAK KANTILAL DESAI, being professional caretakers of MICHAEL WASHINGTON and/or STACY HUTCHINSON and/or PATTY ASPINWALL and/or SONIA ORELLANA-RIVERA and/or CAROLE GRUESKIN and/or GWENDOLYN MARTIN, did act or omit to act in an aggravated, reckless or gross manner, failing to provide such service, care or supervision as is reasonable and necessary to maintain the health or safety of said MICHAEL

1 WASHINGTON and/or STACY HUTCHINSON and/or PATTY ASPINWALL and/or
2 SONIA ORELLANA-RIVERA and/or CAROLE GRUESKIN and/or GWENDOLYN
3 MARTIN, resulting in substantial bodily harm to MICHAEL WASHINGTON and/or
4 STACY HUTCHINSON and/or PATTY ASPINWALL and/or SONIA ORELLANA-
5 RIVERA and/or CAROLE GRUESKIN and/or GWENDOLYN MARTIN, said acts or
6 omissions being such a departure from what would be the conduct of an ordinarily prudent,
7 careful person under the same circumstances that it is contrary to a proper regard for danger
8 to human life or constitutes indifference to the resulting consequences, said consequences of
9 the negligent act or omission being reasonably foreseeable; said danger to human life not
10 being the result of inattention, mistaken judgment or misadventure, but the natural and
11 probable result of said aggravated reckless or grossly negligent act or omission, by
12 performing one or more of the following acts: (1) by directly or indirectly instructing
13 employees of the Endoscopy Center of Southern Nevada, (ECSN) to administer one or more
14 doses of the anesthetic drug Propofol from a single use vial to more than one patient contrary
15 to the express product labeling of said drug and in violation of universally accepted safety
16 precautions for the administration of said drug; and/or (2) by creating an employment
17 environment in which said employees were pressured to administer one or more doses of the
18 anesthetic drug Propofol from a single use vial to more than one patient contrary to the
19 express product labeling of said drug and in violation of universally accepted safety
20 precautions for the administration of said drug; and/or (3) by directly or indirectly instructing
21 said employees, and/or creating an employment environment in which said employees were
22 pressured to reuse syringes and/or needles and/or biopsy forceps and/or snares and/or bite
23 blocks contrary to the express product labeling of said items, and/or in violation of
24 universally accepted safety precautions for the use of said items; and/or (4) by 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 directly or indirectly instructing said employees, and/or
28 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 SHARRIEFF ZIYAD to patient MICHAEL WASHINGTON, and/or said act(s) or omission(s) causing the transmission of Hepatitis C virus from patient KENNETH RUBINO to patient STACY HUTCHINSON and/or said act(s) or omission(s) causing the transmission of Hepatitis C virus from patient KENNETH RUBINO to patient PATTY ASPINWALL, and/or said act(s) or omission(s) causing the transmission of Hepatitis C virus from patient KENNETH RUBINO to patient SONIA ORELLANA-RIVERA and/or said act(s) or omission(s) causing the transmission of Hepatitis C virus from patient KENNETH RUBINO to patient CAROLE GRUESKIN and/or 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; Defendant with RONALD ERNEST LAKEMAN and DIPAK KANTILAL DESAI 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 others to commit said acts, Defendant with RONALD ERNEST LAKEMAN and DIPAK KANTILAL DESAI acting with the intent to commit said crime, and/or (3) pursuant to a conspiracy to commit this

1 crime.

2 COUNT 3 - INSURANCE FRAUD

3 Defendant with RONALD ERNEST LAKEMAN and DIPAK KANTILAL DESAI,
4 did knowingly and willfully present, or cause to be presented a statement as a part of, or in
5 support of, a claim for payment or other benefits under a policy of insurance issued pursuant
6 to Title 57 of the Nevada Revised Statutes, knowing that the statement concealed or omitted
7 facts, or contained false or misleading information concerning a fact material to said claim;
8 and/or did assist, abet, solicit or conspire to present or cause to be presented a statement to
9 an insurer, a reinsurer, a producer, a broker or any agent thereof, knowing that said statement
10 concealed or omitted facts, or did contain false or misleading information concerning a fact
11 material to a claim for payment or other benefits under such policy issued pursuant to Title
12 57 of the Nevada Revised Statutes, by falsely representing to ANTHEM BLUE CROSS
13 AND BLUE SHIELD that the billed anesthesia time and/or charges for the endoscopic
14 procedure performed on SHARRIEFF ZIYAD and/or by falsely representing to VETERANS
15 ADMINISTRATION that the billed anesthesia time and/or charges for the endoscopic
16 procedure performed on MICHAEL WASHINGTON and/or by falsely representing to
17 ANTHEM BLUE CROSS AND BLUE SHIELD that the billed anesthesia time and/or
18 charges for the endoscopic procedure performed on KENNETH RUBINO and/or by falsely
19 representing to HEALTH PLAN OF NEVADA that the billed anesthesia time and/or charges
20 for the endoscopic procedure performed on STACY HUTCHINSON and/or by falsely
21 representing to SECURE HORIZONS and/or PACIFICARE that the billed anesthesia time
22 and/or charges for the endoscopic procedure performed on RODOLFO MEANA and/or by
23 falsely representing to ANTHEM BLUE CROSS AND BLUE SHIELD that the billed
24 anesthesia time and/or charges for the endoscopic procedure performed on PATTY
25 ASPINWALL and/or by falsely representing to CULINARY WORKERS HEALTH FUND
26 that the billed anesthesia time and/or charges for the endoscopic procedure performed on
27 SONIA ORELLANA-RIVERA and/or by falsely representing to HEALTH PLAN OF
28 NEVADA/SENIOR DIMENSIONS that the billed anesthesia time and/or charges for the

1 endoscopic procedure performed on CAROLE GRUESKIN and/or by falsely representing to
2 PACIFICARE that the billed anesthesia time and/or charges for the endoscopic procedure
3 performed on GWENDOLYN MARTIN were more than the actual anesthetic times and/or
4 charges, said false representation resulting in the payment of money to Defendant with
5 RONALD ERNEST LAKEMAN and DIPAK KANTILAL DESAI and/or their medical
6 practice and/or the racketeering enterprise which exceeded that which would have normally
7 been allowed for said procedure; Defendant with RONALD ERNEST LAKEMAN and
8 DIPAK KANTILAL DESAI being responsible under one or more of the following principles
9 of criminal liability, to wit: (1) by directly committing said acts; and/or (2) aiding or abetting
10 each other in the commission of the crime by directly or indirectly counseling, encouraging,
11 hiring, commanding, inducing, or procuring each other, and/or others to commit said acts,
12 Defendant with RONALD ERNEST LAKEMAN and DIPAK KANTILAL DESAI acting
13 with the intent to commit said crime, and/or (3) pursuant to a conspiracy to commit this
14 crime.

15 COUNT 4 - OBTAINING MONEY UNDER FALSE PRETENSES

16 Defendant with RONALD ERNEST LAKEMAN and DIPAK KANTILAL DESAI,
17 did with intent to cheat and defraud, wilfully, unlawfully, feloniously, knowingly,
18 designedly, and by use of false pretenses, obtain \$250.00, or more, lawful money of the
19 United States from GWENDOLYN MARTIN, SONIA ORELLANA-RIVERA, STACY
20 HUTCHINSON, KENNETH RUBINO, PATTY ASPINWALL, SHARRIEFF ZIYAD,
21 MICHAEL WASHINGTON, CAROLE GRUESKIN and RODOLFO MEANA, and/or
22 PACIFICARE, CULINARY WORKERS HEALTH FUND, ANTHEM BLUE CROSS
23 AND BLUE SHIELD, HEALTH PLAN SOLUTIONS, HEALTH PLAN OF
24 NEVADA/SENIOR DIMENSIONS, HEALTHCARE PARTNERS OF NEVADA, UNITED
25 HEALTH SERVICES, HEALTH PLAN OF NEVADA, VETERANS ADMINISTRATION
26 and SECURE HORIZONS within Las Vegas, Clark County, Nevada, in the following
27 manner, to-wit: by falsely representing that the billed anesthesia times and/or charges for the
28 endoscopic procedures performed on GWENDOLYN MARTIN, SONIA ORELLANA-

1 RIVERA, STACY HUTCHINSON, KENNETH RUBINO, PATTY ASPINWALL,
2 SHARRIEFF ZIYAD, MICHAEL WASHINGTON, CAROLE GRUESKIN and RODOLFO
3 MEANA were more than the actual anesthetic times and/or charges, said false representation
4 resulting in the payment of money to Defendant with RONALD ERNEST LAKEMAN and
5 DIPAK KANTILAL DESAI and/or the medical practice and/or the racketeering enterprise,
6 which exceeded that which would have normally been allowed for said procedures
7 Defendant with RONALD ERNEST LAKEMAN and DIPAK KANTILAL DESAI being
8 responsible under one or more of the following principles of criminal liability, to wit: (1) by
9 directly committing said acts; and/or (2) aiding or abetting each other in the commission of
10 the crime by directly or indirectly counseling, encouraging, hiring, commanding, inducing,
11 or procuring each other, and/or others to commit said acts, Defendant with RONALD
12 ERNEST LAKEMAN and DIPAK KANTILAL DESAI acting with the intent to commit
13 said crime, and/or (3) pursuant to a conspiracy to commit this crime.


14 COUNT 5 – CONSPIRACY TO COMMIT RACKETEERING

15 Defendant with RONALD ERNEST LAKEMAN and DIPAK KANTILAL DESAI,
16 did then and there meet with each other and between themselves, and each of them with the
17 other, wilfully and unlawfully conspire and agree to commit a crime, to-wit: racketeering,
18 and in furtherance of said conspiracy, Defendant with RONALD ERNEST LAKEMAN and
19 DIPAK KANTILAL DESAI, did then and there, within Clark County, Nevada knowingly,
20 willfully and feloniously while employed by or associated with an enterprise, conduct or
21 participate directly or indirectly in racketeering activity through the affairs of said enterprise;
22 and/or with criminal intent receive any proceeds derived, directly or indirectly, from
23 racketeering activity to use or invest, whether directly or indirectly, any part of the proceeds
24 from racketeering activity; and/or through racketeering activity to acquire or maintain,
25 directly or indirectly, any interest in or control of any enterprise; and/or intentionally
26 organize, manage, direct, supervise or finance a criminal syndicate; and/or did conspire to
27 engage in said acts, to-wit: by directly or indirectly causing and/or pressuring the employees
28 and/or agents of the Endoscopy Center of Southern Nevada to falsify patient anesthesia

1 records from various endoscopic procedures; and/or to commit insurance fraud by directly or
2 indirectly submitting said false anesthesia records to various insurance companies for the
3 purpose of obtaining money under false pretenses from said insurance companies and/or
4 patients; said fraudulent submissions resulting in the payment of monies to Defendant with
5 RONALD ERNEST LAKEMAN and DIPAK KANTILAL DESAI and/or their medical
6 practice and/or the enterprise, which exceeded the legitimate reimbursement amount allowed
7 for said procedures; Defendant with RONALD ERNEST LAKEMAN and DIPAK
8 KANTILAL DESAI being responsible under one or more of the following principles of
9 criminal liability, to wit: (1) by directly committing said acts; and/or (2) aiding or abetting
10 each other in the commission of the crime by directly or indirectly counseling, encouraging,
11 hiring, commanding, inducing, or procuring each other, and/or others to commit said acts,
12 Defendant with RONALD ERNEST LAKEMAN and DIPAK KANTILAL DESAI acting
13 with the intent to commit said crime.

14 DATED this 7th day of December, 2012.

15
16 STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

17
18 BY 
19 MICHAEL V. STAUDAHER
20 Chief Deputy District Attorney
Nevada Bar #008273

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27 09BGJ049C/10F03793C/sam-MVU
28 LVMPD EV #0802292576
(TK11)

EXHIBIT B

IN THE SUPREME COURT OF THE STATE OF NEVADA

DIPAK KANTILAL DESAI,
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. 61230

FILED

DEC 21 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Angela*
DEPUTY CLERK

ORDER GRANTING PETITION IN PART

This original petition for a writ of mandamus or prohibition challenges an order of the district court denying petitioner Dipak Kantilal Desai's pretrial petition for a writ of habeas corpus challenging the sufficiency of the indictment. Desai argues that the charges alleged in the indictment fail to give him sufficient notice to defend against the State's allegations. See NRS 34.160; NRS 34.320; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981).

For the reasons discussed below, the district court should grant the petition for a writ of habeas corpus with respect to the count alleging racketeering (Count 1). It should also permit the State to amend the counts alleging criminal neglect of patients (Counts 4, 8, 11, 14, 18, 21, and 24) and performance of an act with reckless disregard to persons (Counts 3, 7, 10, 13, 17, 20, and 23) to reduce the number of theories of liability alleged and resolve ambiguity regarding how Desai engaged in the remaining theories. Our decision does not affect the remaining counts

of the indictment that allege insurance fraud (Counts 2, 5, 6, 9, 12, 15, 16, 19, 22, and 25), theft (Count 26), and obtaining money under false pretenses (Counts 27 and 28), which Desai does not challenge in this petition. It further does not affect the murder count charged in a separate indictment.

Desai contends that the charging document is inadequate. Specifically, he contends that the counts alleging the performance of an act with reckless disregard to persons are impermissibly vague as each count charges three defendants with seven alternative theories of liability. The criminal-neglect-of-patient counts allege eight alternative means, including one that the defendants directly or indirectly caused the harm by "methods unknown." In addition, each defendant is charged as a principal, aider and abettor, and coconspirator. Desai contends that the numerous alternatives permit the State to alter its theory of prosecution. Moreover, as the counts are based on a statute that does not specifically define the prohibited conduct, the indictment should have a more particular statement of facts. He also contends that the racketeering count is defective as the charge omitted elements of the offense, included an alternate theory that did not charge an offense under the statute, and failed to allege sufficient facts to indicate which defendant performed what acts regarding each theory of criminal liability.¹

¹Desai also contends that facts adduced before the grand jury do not support many of the alternative theories. These claims concerning whether the State produced sufficient evidence to support the allegations in the indictment are not appropriate grounds for extraordinary relief. See Kussman v. District Court, 96 Nev. 544, 545-46, 612 P.2d 679, 680 (1980) (providing that this court's review of a pretrial probable cause determination through an original writ petition is disfavored).

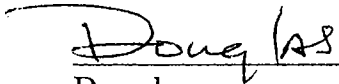
Both the United States and Nevada Constitutions require an indictment to allege a criminal offense in a manner that is sufficient to put the defendant on notice of the nature of the offense charged and the essential facts constituting the offense "in order to permit adequate preparation of a defense." Jennings v. State, 116 Nev. 488, 490, 998 P.2d 557, 559 (2000); see NRS 173.075(1) ("The indictment or the information must be a plain, concise and definite written statement of the essential facts constituting the offense charged."). To that end, this court has held that a charging document "which alleges the commission of the offense solely in the conclusory language of the statute is insufficient." Sheriff v. Levinson, 95 Nev. 436, 437, 596 P.2d 232, 233 (1979); see Earlywine v. Sheriff, 94 Nev. 100, 575 P.2d 599 (1978). Instead, the indictment must include "a statement of the acts constituting the offense in ordinary and concise language" and put the defendant on notice of the State's theory of prosecution. Viray v. State, 121 Nev. 159, 162, 111 P.3d 1079, 1082 (2005) (quoting Jennings, 116 Nev. at 490, 998 P.2d at 559). Where one offense may be committed by one or more specified means, an accused must be prepared to defend against all means alleged. See State v. Kirkpatrick, 94 Nev. 628, 630, 584 P.2d 670, 671-72 (1978).


We conclude that extraordinary relief is warranted because the challenged allegations are not sufficiently plain, concise, and definite for the following reasons. First, the criminal-neglect and reckless-disregard counts charge each defendant as a principal, aider and abettor, and coconspirator and further list numerous acts of aiding and abetting, which allege that the defendants aided and abetted each other as well as aided and abetted other unnamed individuals to commit the reckless or negligent acts. Barren v. State, 99 Nev. 661, 668, 669 P.2d 725, 729 (1983)

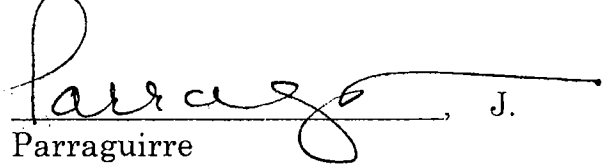
(noting that an indictment may charge a defendant as both a principal and as an aider and abettor provided that it contains "additional information as to the specific acts constituting the means of aiding and abetting so as to afford the defendant adequate notice to prepare his defense"). The allegations list numerous acts taken as principals and aiders and abettors but fail to specifically identify what acts are attributed to each defendant. Therefore, these counts are insufficiently precise as to "who is alleged to have done what." State v. Hancock, 114 Nev. 161, 165, 955 P.2d 183, 185 (1998) (internal quotations omitted). Second, the racketeering count fails to allege necessary elements and is inadequately pleaded. The alternative theory charged pursuant to NRS 207.400(1)(a) is incomplete as it omits the essential element concerning the use of proceeds to acquire real property or interest in another enterprise. In addition, the use of disjunctive language severed the description of racketeering activity, a necessary element of the previous alleged theories under NRS 207.400(1)(a)-(d), (j) (prohibiting acts done in conjunction with racketeering activity) into a separate theory of the offense, which was not sufficient to plead any violation of NRS 207.400 in and of itself. Lastly, even if the allegations of racketeering activity are interpreted as relating to each alleged theory under NRS 207.400(1)(a)-(d), (j), those allegations are inadequately pleaded as the first alternative act (causing and/or pressuring employees to falsify patient records) fails to allege a crime related to racketeering. Accordingly, we

ORDER the petition GRANTED IN PART AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to grant the pretrial petition for a writ of habeas corpus with respect to the racketeering count. The district court

should permit the State to amend the patient-neglect and reckless disregard counts to narrow the breadth of those charges and provide more detail as to how Desai engaged in the remaining theories.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. Valerie Adair, District Judge
Wright Stanish & Winckler
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

EXHIBIT C



ORIGINAL

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CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,

Plaintiff,

vs.

RONALD E. LAKEMAN, KEITH
H. MATHAHS,

Defendants.

CASE NO. C265107-2
C265107-3

DEPT NO. XXI

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE VALERIE P. ADAIR, DISTRICT COURT JUDGE

MOTIONS

TUESDAY, MAY 22, 2012

APPEARANCES:

For the State:

PAMELA WECKERLY, ESQ.
Chief Deputy Distict Attorney
MICHAEL V. STAUDAHER, ESQ.
Chief Deputy District Attorney

For Defendant Lakeman:

FREDERICK A. SANTACROCE, ESQ.

For Defendant Mathahs:

MICHAEL V. CRISTALLI, ESQ.

RECORDED BY JANIE OLSEN, COURT RECORDER
TRANSCRIBED BY: KARR Reporting, Inc.

KARR REPORTING, INC.

1 **LAS VEGAS, NEVADA, TUESDAY, MAY 22, 2012, 9:57 A.M.**

2 THE COURT: State versus Ronald Lakeman, who joined
3 in the motion, and Keith Mathahs, who -- whose motion this is.
4 It is the defendant's motion to dismiss, and we do have the
5 defendants for Mathahs present. All right. I've reviewed
6 everything.

7 MR. CRISTALLI: I understand, and I know that the
8 Court has an understanding on the arguments. Whether or not
9 the Court agrees with the arguments are another story in its
10 entirety.

11 THE COURT: Well, I mean, I would agree with
12 you on -- I mean, I've already said I think it could have been
13 pled much better. And I think that, you know, I think in a
14 way it's a more compelling argument as to your client than it
15 is to Dr. Desai. You know, the State doesn't really try to
16 distinguish why the argument applies to the nurse clients, you
17 know.

18 Here's the thing. I mean, as I understand it. I
19 mean, basically they're saying, oh, well, it's all part of a
20 conspiracy, so everybody's on the hook for everything.

21 MR. CRISTALLI: Right. And that's the only way that
22 they obviously can make the case the way that they have
23 pled it. So we understand that that's certainly the argument
24 that they're going to continue to foster.

25 I mean, first of all, if we just look at the

1 racketeering charge first and foremost as it's pled in the
2 indictment, if you look at the unlawful acts as it's
3 articulated in the NRS 207.400, it says, "It is unlawful for a
4 person who has with criminal intent received any proceeds
5 derived, directly or indirectly, from racketeering activity to
6 use or invest, whether directly or indirectly, any part of the
7 proceeds, or the proceeds derived from the investment or use
8 thereof, in the acquisition of."

9 Okay. In the indictment, it doesn't have that final
10 portion of the language contained in the statute, Judge. It
11 just says, To use or invest, whether directly or indirectly,
12 any part of the proceeds. The important part of that is, if
13 you continue on, after the acquisition of it says, "Number 1.
14 Any title to or any right, interest or equity in real
15 property; or Number 2. Any interest in or the establishment
16 or operation of any enterprise."

17 I think on its face the way that the racketeering
18 charge is pled in the indictment, number one, is deficient
19 because it doesn't properly put forth all of the language
20 contained within the statute, which they absolutely have to
21 do.

22 But if you do read on, as the language is contained
23 in the NRS 207.400, it fails miserably as it relates to
24 Mr. Mathahs, because they cannot squeeze Mr. Mathahs or the
25 conduct alleged against Mr. Mathahs into the elements of that

1 racketeering statute.

2 So on its face, just looking at the racketeering,
3 forget about the predicate acts, the way it's pled it's
4 deficient. And if it's not deficient and it becomes
5 inclusive, it still fails. Because they can't make the case
6 as it relates to Mr. Mathahs with regard to those particular
7 elements.

8 THE COURT: Well, let's set aside two issues. I
9 mean, right now we're on a motion to dismiss. We're looking
10 at the sufficiency of a pleading. We're not looking at well,
11 what did they prove and did they prove everything at the grand
12 jury. Because that, you know --

13 MR. CRISTALLI: I understand.

14 THE COURT: -- that horse has left the barn. That
15 was already, you know, that you -- that was a different judge,
16 but that was, you know, denied.

17 So all we're looking at, not whether or not they can
18 prove it or not. We can't look at that. All we can look at
19 is well, what do they have to prove. Are they alleging
20 sufficiently putting him on notice as to what they have to
21 prove? And obviously, you know, if they go forward with their
22 case in chief and at the conclusion of that they don't have
23 any evidence and they haven't met that, then you move, you
24 know, you can make a motion to dismiss at that time.

25 So let's, you know -- I mean, and again, just to

1 reiterate, we have to focus on not what they're able to prove
2 or not what evidence they presented, but just on the
3 sufficiency of the pleading. And you know, I think we all
4 kind of bring into our analysis of that what we already know,
5 what we know everybody's role is.

6 And but, you know, really it's notice and, you know,
7 are they putting him -- is this sufficient to tell him what
8 they need to prove. And you know, again, if they don't
9 prove it, if they don't present any evidence of that, forget
10 prove it beyond a reasonable doubt, but if there is no
11 evidence then, you know, the time at the conclusion of their
12 case in chief, you know, is to move for dismissal.

13 MR. CRISTALLI: And I understand that, and that was
14 the secondary part of my argument. But it doesn't
15 eliminate -- if we're just talking about on its face, in the
16 four corners of the indictment, if you look at the statute, if
17 you look at NRS 207.400, if you look at how it's pled in the
18 indictment, there is a significant omission with regard to a
19 portion of the unlawful provision as it relates to
20 racketeering under A.

21 Okay. It stops when it goes to whether directly or
22 indirectly any part of the proceeds, and it does not go on to
23 include or the proceeds derived from the investment or use
24 thereof, in the acquisition of, "Number 1, any title to or any
25 right, interest or equity in real property, or Number 2, any

1 interest in or the establishment or operation of any
2 enterprise."

3 The failure or the omission as it relates to the
4 content of that statute certainly is a problem as far as our
5 ability to defend against the charges alleged against
6 Mr. Mathahs. It doesn't exist. They didn't put it in the
7 content.

8 Whether or not you want to assume that it's in there,
9 and you don't want to then go into an analysis and say, oh, my
10 gosh, how does this apply to Mr. Mathahs, it doesn't really
11 seem to based on the theory of prosecution by the State, based
12 on his involvement in the centers. But just on its face, the
13 language and the omission of pertinent portions of the statute
14 is material to our ability to defend.

15 And certainly that should have been presented in its
16 entirety in front of the grand jury. Just not a portion of
17 it, but in its entirety. I mean, the grand jury has to make a
18 determination as to a racketeering charge against Mr. Mathahs.
19 They'd have to be informed as it relates to the entirety of
20 the law, and not to mention the fact that we have to within
21 the indictment understand what we're being charged with, and
22 it's not clear.

23 That's just on racketeering. Not talking about the
24 predicate acts right now. I do have some things to say about
25 that, if you want me to continue.

1 THE COURT: Well, I mean, you know, I read
2 everything. I understand what your arguments are. I mean,
3 again -- oh, go ahead.

4 MR. CRISTALLI: As far as the fraud, I mean, you have
5 insurance fraud. Not talking about what happened during the
6 course of the grand jury and the evidence presented, but the
7 individuals that Mr. Mathahs treated who are in the
8 indictment, or who he billed are in the indictment are one,
9 two, three people; Miana [phonetic], Rubino [phonetic] and
10 Rivera [phonetic].

11 The other counts for which he's charged with as it
12 relates to fraud are Counts 1, 2, 3, 4, 5, 7, 8, 9, 13, 14,
13 15, 16, 21, 22, 23, 24, 25, 26 and 27. He never treated or
14 billed for any of those patients, yet he's charged in the
15 fraud as it relates to them. I mean, certainly there's
16 nothing contained within the indictment to suggest why we're
17 charged with that, with those charges.

18 There's no information contained within the
19 indictment to put us on notice to defend against as it relates
20 to the evidence when it comes in with regard to the billing
21 fraud. What am I going to do when they get up there? Sit on
22 my hands, say we didn't treat them? I would assume that's
23 what I'm going to do.

24 THE COURT: I would assume so. I mean, here's the
25 thing. You know, had this been, you know, more specifically

1 so and so treated this patient on this day and by using the
2 Propofol, you know, by re-using it thereby infected him, blah,
3 blah, blah, yes. And I said that last time.

4 The thing is, I mean, I think what they're -- I mean,
5 isn't -- to me it's relatively clear. No, we don't know from
6 the indictment all of that. But it's relatively clear on the
7 theories of liability, to me, that what they're saying is they
8 were all part of this overall over-reaching conspiracy
9 where -- and I get it, you know, you're saying, well, what's
10 the benefit.

11 I mean, to me that goes to their defense, that they
12 don't prove an individual benefit to either of -- either your
13 client or Mr. Santacroce's client. But I mean, if you read,
14 doesn't it put you on notice that this is their idea, that
15 they're a part of this conspiracy with Dr. Desai that they'll
16 make for the clinic extra money to -- by, you know, re-using
17 this stuff, or double dose, double-dipping, I guess, if you
18 will.

19 MR. CRISTALLI: The unfortunate part of this is that
20 there is -- this is -- and this is, you know, ignoring the big
21 huge elephant in the room, is that we know why they're here
22 and sitting here. It's not because they engaged in some type
23 of conspiracy or racketeering organization with Mr. Mathahs.

24 It's because Keith Mathahs treated the source patient
25 on the day in question. That's why they're there. I mean, we

1 know that. The physicians that profited millions of dollars
2 in this organization or associated organizations are not here.
3 They didn't treat the source patient.

4 As far as the fraud is concerned, there is a number
5 of fraud charges contained in this indictment that we don't
6 believe have been pled with particularity, and we don't
7 believe that they should be alleged against Mr. Mathahs. Why
8 is he being charged with a myriad of counts as it relates to
9 patients he never even saw or billed? I mean, and I
10 understand it's a little more tenuous in terms of the fraud
11 argument, and we'll switch gears.

12 Because the reason why we're here, as far as my
13 representation of Mr. Mathahs, is because of the fact he
14 treated the source patient. That's why we're here. So the
15 biggest and most important thing for us is we need to know
16 what the jury returns a verdict on. Okay. If it's an adverse
17 verdict. We need to know what the grand jury made a
18 determination on as it relates to evidence with regard to the
19 injury counts. We don't know that. Even if you -- we don't
20 know that.

21 Okay. If the theory against Mr. Mathahs is that he
22 re-used Propofol inconsistent with aseptic techniques, which
23 ultimately caused the infections associated with these days in
24 question, or this day in question -- there's another day that
25 he's being charged which he wasn't even on, as far as the

1 infection counts were concerned. But then they should plead
2 that. They should plead it that way.

3 I should know from the grand jury that the grand jury
4 reviewed that evidence as it relates to the Propofol charge,
5 related to the Propofol allegations, and we should have an
6 indictment that the jury will read and look at as it relates
7 to those allegations. And then when they come back with a
8 verdict on a concise and properly pled indictment, then we are
9 then on notice of what the returned verdict is for.

10 The way that it's pled now, and it's stipulated by
11 the State, because they made the argument because they have to
12 as it relates to Desai on the injury counts, that this is
13 not -- there's a myriad of alternative theories, because we
14 need it to be that way in case the jury doesn't believe that
15 Desai knew what happened as far as the contamination was
16 concerned on that date.

17 So we need to make it look like there's a myriad of
18 problems associated with this organization, which led to
19 aseptic techniques within the organization. But in reality,
20 as the charge and the theory of the case goes for Mr. Mathahs
21 and Mr. Lakeman, is that there was -- there was a failure to
22 use aseptic techniques as it related to the Propofol on that
23 day in question, which led to an infection. That's it.

24 Why do I have to defend against bite block
25 allegations? Why do I have to defend about scope allegations?

1 Why do I have to defend against hours being too long and too
2 arduous? Why do I have to defend about there was a policy and
3 procedure in place to cut corners, when I represent a salaried
4 employee who at the time -- who's 76 years of age now, at the
5 time was only a part-time employee?

6 THE COURT: Well, I think that's your best argument,
7 truthfully, Mr. Cristalli. But you know, I mean, I think,
8 again, getting to what they're putting him on notice of, to me
9 it's pretty clear that they're saying --

10 I mean, it's just like, you know, you can take it in
11 a simple case of a robbery or something like that, where
12 everybody wears masks and they're linked to the robbery but,
13 you know, it's never quite established who was who, you know,
14 who's wearing which mask so to speak. But we know they were
15 all part of it. Maybe somebody's a getaway driver. Maybe
16 somebody, you know, is the lookout person. Somebody's
17 actually doing it.

18 And the State doesn't -- you know, to look at it in a
19 simple thing, I think maybe that's what they're saying. You
20 know, this is complicated. But the idea is that they're all
21 involved in this conspiracy, and sometimes it's your client
22 that's using the unsanitary practices. And sometimes, you
23 know, it's another employee who's using the unsanitary
24 practices. It was part of the culture of that organization.

25 And I think some of the thing -- I mean, I think

1 you've made -- like I said, I think your best point is it's so
2 broad that, you know, do you have to separate each and every
3 thing. I think some of the things that you're saying really
4 don't go to the sufficiency of the pleading. They go to your
5 defense.

6 You know, why would he be involved in this
7 conspiracy. He's a part-time 76-year-old salaried employee.
8 That goes to the defense and what you want to introduce to the
9 jury. Why is he doing this when he's not making any money,
10 you know. I mean, that's all defense issues. That's not
11 stuff that they, as you know, they need to plead, you know.

12 MR. CRISTALLI: No. But we shouldn't ignore it
13 either. We shouldn't live in a bubble on it.

14 THE COURT: Well, I'm just saying, you know --

15 MR. CRISTALLI: We have to look at it in its
16 entirety, I think.

17 THE COURT: Does the State want to respond?

18 MR. STAUDAHER: Your Honor, I think that we made our
19 arguments last time. We also believe that all the arguments
20 that have been made now were essentially made last time, and
21 my argument that he joined in. So I think he's actually
22 precluded from bringing those back before the Court. And even
23 though --

24 THE COURT: Well, I don't think -- I mean, he can
25 join in the other motion and say he agrees with that and he

1 thinks it ought to be dismissed, and he's entitled to bring
2 separate and unique arguments for his own client --

3 MR. STAUDAHER: But I haven't heard it.

4 THE COURT: -- even though it was a joinder.

5 Well, I've heard different arguments. You know, with
6 all due respect to the State, I've heard different arguments
7 from Mr. Cristalli today about, you know, the unique position
8 and that, you know, Dr. Desai is kind of the umbrella of this
9 thing but, you know, he wants to focus just on the patients
10 that his client actually handled. I mean, I think those are
11 different arguments.

12 But I think, you know, again, some of this goes to
13 proof issues. You know, is the State going to be able to
14 prove that this was all a big conspiracy involving nurses who
15 apparently had no financial motivation. Are they really
16 conspiring to be part of this whole agreement. Are they
17 really aiding and abetting and encouraging other people to --
18 because that's what you pled, to observe less than antiseptic
19 practices.

20 And those to me are proof issues which again, you
21 know, that's already been ruled on by a different judge. And
22 so I think a lot of this goes to well, how believable is the
23 theory with respect to, you know, what we're dealing with
24 today, Mr. Cristalli's client.

25 You know, they can throw out just factually, which

1 isn't really what we're dealing with, well, maybe he did it to
2 make his employer happy. Maybe he did it so he'd continue to
3 work and work the shifts he wanted to work.

4 I mean, there's a lot of motivations people may have
5 to engage in a conspiracy which may seem, you know, not that
6 great to us, but that to the person, you know, they feel that
7 that is of benefit to them even though they're not making
8 millions of dollars like the physician, Dr. Desai, allegedly
9 was making.

10 So I think a lot of this goes to proof issues, which
11 the State, they pled it. Now they got to prove it this way.
12 And I think just on the issue of the sufficiency of the
13 notice, could it have been better? Certainly. I think
14 they've met the threshold. And so, Mr. Cristalli, it's denied
15 as to your claim as well the joinder is denied.

16 MR. CRISTALLI: Yes.

17 THE COURT: All right. Thank you.

18 MR. CRISTALLI: Thank you, Your Honor.

19 MR. STAUDAHER: [Inaudible] Mr. Santacrocce
20 [inaudible]?

21 THE COURT: Right. Exactly. To my knowledge that
22 would be the only joinder that was filed.

23 (Hearing concluded at 10:17 a.m.)

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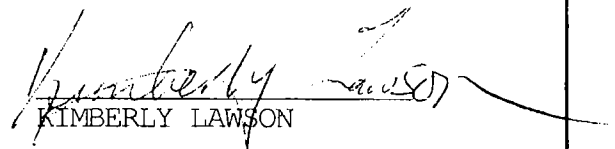
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