

## **Exhibit 10**

**Transcript of Calendar Call, 4/16/13  
(#142-182)**



CLERK OF THE COURT

TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

|                        |   |                      |
|------------------------|---|----------------------|
| STATE OF NEVADA,       | ) |                      |
|                        | ) |                      |
| Plaintiff              | ) | CASE NO. C265107-1,2 |
|                        | ) | CASE NO. C283381-1,2 |
| vs.                    | ) | DEPT. NO. XXI        |
|                        | ) |                      |
| DIPAK KANTILAL DESAI,  | ) |                      |
| RONALD ERNEST LAKEMAN, | ) |                      |
|                        | ) | Transcript of        |
| Defendants             | ) | Proceedings          |

BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE

**CALENDAR CALL (ALL)**  
**STATE'S MOTION TO ADMIT EVIDENCE OF OTHER CRIMES**

TUESDAY, APRIL 16, 2013

APPEARANCES:

|                        |                                                                                        |
|------------------------|----------------------------------------------------------------------------------------|
| FOR THE STATE:         | MICHAEL V. STAUDAHER, ESQ.<br>PAMELA WECKERLY, ESQ.<br>Chief Deputy District Attorneys |
| FOR DEFENDANT DESAI:   | RICHARD A. WRIGHT, ESQ.<br>MARGARET M. STANISH, ESQ.                                   |
| FOR DEFENDANT LAKEMAN: | FREDERICK A. SANTACROCE, ESQ.                                                          |

RECORDED BY: JANIE OLSEN, COURT RECORDER  
TRANSCRIBED BY: JULIE POTTER, TRANSCRIBER

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1 LAS VEGAS, NEVADA, TUESDAY, APRIL 16, 2013, 9:51 A.M.

2 (Court was called to order)

3 THE COURT: Desai. All right. This is the time for  
4 State versus Dipak Desai and Ronald Lakeman. The record should  
5 reflect the presence of Dipak Desai along with his attorneys,  
6 Mr. Wright and Ms. Stanish, the presence of Mr. Lakeman along  
7 with Mr. Santacroce, and we have Ms. Weckerly and Mr. Staudaher  
8 for the State.

9 As you all know, the report from the expert was  
10 received by the Court late yesterday afternoon. It was I  
11 believe 28 pages. We did -- I had my JEA disseminate that  
12 immediately to the attorneys and then to call and confirm that  
13 you all received the report from the expert.

14 I, of course, read the report from the expert, and  
15 while the expert does confirm that in February of 2013 Dr. Desai  
16 did suffer a minor stroke, I find nothing in this report to  
17 suggest that a further competency evaluation is warranted at  
18 this time. I would note that the evaluator indicates that there  
19 may be some difficulties with speech as a result of the new  
20 stroke. Certainly this Court will make whatever reasonable  
21 accommodations are necessary in view of this disability.

22 Additionally, the Court would just note that there are  
23 other ways of communicating besides the spoken word. There's  
24 obviously handwriting. There's obviously texting and, you know,  
25 typing on a laptop or something like that, and technology being

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1 what it is, those items certainly can be present in the  
2 courtroom to assist Dr. Desai.

3           Again, we'll make whatever reasonable accommodations  
4 are necessary. If we need to take breaks throughout the  
5 proceedings, certainly, you know, Mr. Wright and Ms. Stanish  
6 whenever they need a break to confer privately with your client  
7 just make the Court aware of that, and we will, you know, take  
8 whatever breaks are necessary.

9           The only other thing I just -- I think the report  
10 speaks for itself. I don't need to summarize it or parse it out  
11 in any way. It's going to be, obviously, an exhibit with the  
12 court, and it stands alone. I would just note that noted in the  
13 report was the fact that his ability to read and write had  
14 previously been intact prior to the 2013 stroke following the  
15 2008 stroke, which according to the evaluator was the most  
16 severe of the several strokes that Dr. Desai has suffered.

17           So I think in view of that, I don't see any reason to  
18 delay the trial. I don't see any reason for any further  
19 evaluation or to send this to competency court.

20           As you know, we moved the calendar call from Thursday  
21 to today, so today is the time for calendar call. And in view  
22 of the fact that we did get the report ahead of time, I've  
23 reviewed it. Those are, you know, that's what I think the  
24 report says. That's what I think it means, and so I see no  
25 reason not to go forward with the trial which is set for this

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1 Monday.

2           And I believe, Ms. Stanish, you had indicated at a  
3 meeting in chambers you had a federal appearance in the morning  
4 on Monday; is that correct?

5           MS. STANISH: I think the schedule you gave us will  
6 permit us --

7           THE COURT: Okay.

8           MS. STANISH: -- to do our --

9           THE COURT: So if we start at 9:30 with jury  
10 selection, would that be sufficient?

11           Okay. And basically as we discussed, the way we're  
12 going to do this is we're not going to have hundreds of people  
13 show up on the first day. We'll limit the first day's number of  
14 jurors to 30 or 35 to inconvenience people who have been  
15 summoned as perspective jurors as little as possible.  
16 Hopefully, so that people won't have to wait around needlessly  
17 while questioning the jurors. And I think we discussed the  
18 particulars of selection in chambers, and so if anyone has any  
19 additional questions we can deal with that Monday morning with  
20 how we're going to do jury selection.

21           So that's the calendar call. Does anyone have  
22 anything that they'd like to say just relating to that issue?

23           State, are you ready to go? You've got everybody --

24           MR. STAUDAHER: Yes.

25           MS. WECKERLY: We're ready.

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1 THE COURT: -- geared up? All right.  
2 Mr. Santacroce?  
3 MR. SANTACROCE: Mr. Lakeman is ready to proceed, Your  
4 Honor.  
5 THE COURT: All right. Mr. Wright?  
6 MR. WRIGHT: I -- I am not ready to proceed discussing  
7 the competency.  
8 THE COURT: Okay.  
9 MR. WRIGHT: The -- I would request a hearing and the  
10 testimony from Dr. Palestrant. Obviously, I read the report  
11 different than the Court reads the report. As I read the report  
12 he concludes that on February 24th it looks like a shower of  
13 small embolic strokes in the left middle cerebral artery  
14 distribution. The biggest of these strokes involving the left  
15 parietal area.  
16 The anticipated damage from these involves problems  
17 with comprehension, both expressive aphasia and receptive  
18 aphasia. The doctor's expectation is that the symptoms will  
19 improve over time. Whether he will get back to his real  
20 non-embellished premorbid functional status is unclear at this  
21 point, but I do expect him to make significant gains. Most  
22 recovery from stroke occurs in the first three to nine months,  
23 but can take up to 18 months out.  
24 The -- his -- I'm reading. His new strokes in  
25 February 2013 involve the speech cortex with a resultant

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1 expressive and receptive aphasia. Again, questions of some  
2 degree of embellishment of the systems -- symptoms have been  
3 raised. Memory should not be further compromised by the new  
4 stroke. However, these strokes are small. It is my expectation  
5 he will make significant gains and return close to his level of  
6 function prior to February 2013. Most of his gains in  
7 neurologic function will be seen in the first nine months, but  
8 still recovery can take up to 18 months.

9           My reading of the report is that this raises an issue  
10 as to his competence presently to proceed with the trial.

11           THE COURT: All right. Well, Mr. --

12           MR. WRIGHT: He --

13           THE COURT: I'm sorry.

14           MR. WRIGHT: He cannot communicate with me. I spent  
15 30 minutes with him this morning communicating about the month  
16 distinguishing between endoscopy and anesthesia and trying to  
17 get what month it was, what day it is, and trying to get him,  
18 other than checking yes or no on papers, to communicate with me.  
19 He has not been able to communicate with me now for 50 days  
20 since his discharge from the hospital.

21           I have a presently not competent, within that meaning  
22 of Drusky, client. He is not able to communicate with me both  
23 expressively, and he's not able to comprehend what I am talking  
24 about. I spoke with him about the motion on calendar this  
25 morning and former patients. He had no recognition cognizance

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1 of what I was even talking about. He's not competent presently  
2 in my judgment, and as I read the report of the doctor, in his  
3 judgment.

4 THE COURT: I read it completely differently, and at  
5 the end of the day it's how this Court reads it. As I said, the  
6 report, you know, for whatever reviewing court may look at this,  
7 the report stands on its own. But he, you know, acknowledges  
8 the strokes. He says that they're small strokes.

9 The report is replete with references to higher  
10 executive function, which is manifested by the fact that he's  
11 able -- Dr. Desai is able to feign and exaggerate symptoms for  
12 the purposes of secondary gain, which, according to Dr. Pemsurit  
13 (phonetic), indicates high executive function. You know, if you  
14 read the whole thing it says he's had some difficulty with  
15 speech. As I said, we can make reasonable accommodations to  
16 deal with that.

17 And let me just put this out there, Mr. Wright. You  
18 know, you have to report the situation as you perceive it. Dr.  
19 Desai is in full and complete control if he -- if he has the  
20 ability to communicate as to how he chooses to communicate. And  
21 so the fact that he doesn't communicate with you, you know,  
22 doesn't understand the difference between endoscopy or  
23 gastroenterology and anesthesia, that's within his control.

24 And, you know, if you read the rest of the paragraph  
25 that you started, Dr. Desai presented on February 23rd, once

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1 again -- and this is referring to the professionals at Summerlin  
2 Hospital. Once again, members of his treatment team have  
3 notices inconsistencies between his observed functional ability  
4 and his performance during formal examination. This was  
5 apparent from the exams performed by the physical therapist.

6           And, you know, he talks again about, you know,  
7 malingering, and the fact that the symptoms reported are not  
8 consistent with what would be caused from strokes of this type.  
9 So that's how I'm reading the report. Again, you know, I'm  
10 happy to entertain argument, but the report was prepared to --  
11 to, you know, educate the Court and to provide this Court to  
12 determine whether or not a competency exam was -- was -- was  
13 needed, and whether there was really anything new here affecting  
14 Dr. Desai's competency.

15           And I would just note, I mean, you know, if you go  
16 back to your first appearances in here after this case was  
17 transferred from Judge Mosley's department because of his, you  
18 know, impending retirement, you know, you were saying, you know,  
19 he's cognitively impaired and has difficulty. So, I mean,  
20 again, the issue is, you know, he's been thoroughly evaluated.  
21 And the issue is what's new here that requires a delay of this  
22 trial.

23           And does the State wish to respond?

24           Or, Mr. Wright, complete your --

25           MR. WRIGHT: I wasn't finished yet.

JRP TRANSCRIPTION

1 THE COURT: I'm sorry. Go ahead.

2 MR. WRIGHT: What's new here is he has had a fifth

3 stroke in the left portion of the brain. That's the finding in

4 there. I want a hearing. I don't want to debate your reading

5 of sentences to my reading of sentences. I want to ask Dr.

6 Palestrant if he thinks for the last 50 days and presently he

7 has expressive aphasia or doesn't, and is he going to improve?

8 Which, the way I read it, the answer is yes. And is he

9 presently able? That's -- that's what I want to know. And the

10 issue is is there even a question about that. Has a question

11 arisen as to his abilities? And a debilitating small shower of

12 strokes raises no question?

13 THE COURT: Well, debilitating --

14 MR. WRIGHT: I want --

15 THE COURT: -- Mr. Wright --

16 MR. WRIGHT: I want a hearing --

17 THE COURT: -- is your word.

18 MR. WRIGHT: -- not -- I would like a hearing.

19 THE COURT: Well, Mr. Wright --

20 MR. WRIGHT: And I'd like to be sworn in.

21 THE COURT: First of all --

22 MR. WRIGHT: I would like to be sworn in.

23 THE COURT: Okay. Well, debilitating --

24 MR. WRIGHT: And give testimony.

25 THE MARSHAL: Mr. Wright, when the Judge starts

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1 talking, you stop.

2 THE COURT: Okay. Debilitating is your word. I  
3 didn't see that. It said a series of small embolic strokes.  
4 And I understand. I would just note that there -- you know,  
5 there hasn't been any affidavits. I understand there's a  
6 situation with Ms. Stanish, but we never had actually a formal  
7 filing in this case seeking a transfer to competency court.

8 MR. WRIGHT: I filed a motion in December. I renewed  
9 the motion.

10 THE COURT: Right.

11 MR. WRIGHT: Okay. I renewed a motion.

12 THE COURT: Well, there was the letter. There was the  
13 letter, and based on the close proximity to the trial date, the  
14 action was taken that was taken.

15 State, do you wish --

16 I'm sorry. Have you completed?

17 MR. WRIGHT: No.

18 THE COURT: All right.

19 MR. WRIGHT: I renew the motion right now for -- I --  
20 a question has arisen as to his competency and I renew the  
21 motion for a competency evaluation. I asked for a hearing, a  
22 hearing on the motion, a hearing in which we can ask Dr.  
23 Palestrant these questions. I'll -- I'd like to be sworn in.

24 THE COURT: At this time?

25 MR. WRIGHT: Yes.

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1 THE COURT: The clerk will swear him -- well, let's  
2 hear argument first --  
3 MR. WRIGHT: Okay.  
4 THE COURT: -- and then --  
5 MR. WRIGHT: Okay. Well --  
6 THE COURT: -- we'll determine how --  
7 MR. WRIGHT: -- I'll make representations --  
8 THE COURT: Okay.  
9 MR. WRIGHT: -- if the Court -- I mean --  
10 THE COURT: And, again, Mr. Wright, I'm not  
11 distrusting you. But, again, you are reporting your  
12 perceptions.  
13 MR. WRIGHT: I understand that, and I want to explain  
14 them. And I -- I have been dealing with clients for 40 years,  
15 longer than you've practiced. And I -- I understand and have  
16 dealt with stroke patients.  
17 My partner has had a stroke and I know expressive  
18 aphasia and receptive aphasia and I know when I am talking with  
19 a man for 30 minutes and he is agonizing and struggling, I can  
20 tell, whether the Court likes it or not, I can tell fakers from  
21 not fakers. I can tell someone that's impaired at the present  
22 time and isn't.  
23 And I am telling the Court, he is pathetically not  
24 competent at the present time and cannot assist me. And this  
25 stroke and this report supports that. And that's my reading.

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1 You read it differently. That's why in courts we have  
2 evidentiary hearings and that's what I'm asking for.

3 THE COURT: State, would you like to respond?

4 MR. STAUDAHER: Yes, Your Honor, a couple things.  
5 First of all, I read this report fairly carefully yesterday, as  
6 I'm sure the Court did as well. I did not see a single  
7 reference to there being called into question any issue  
8 regarding his competency. And I talk -- I'm referring to Dr.  
9 Desai.

10 Specifically, I believe, on the -- in the second  
11 paragraph under the neurologic symptoms section after the  
12 February 2013 stroke -- or 2013 stroke, it specifically says in  
13 the middle of that paragraph memory and executive function  
14 should not be affected by these new strokes.

15 Now, that's the kind of issue that they're concerned  
16 about, whether or not he knows who the players are and he can  
17 assist and do so. If he needs a reasonable accommodation, as  
18 the Court said, it would be granted because there is some  
19 additional effect based on the fact that he may have more  
20 difficulty communicating verbally with Mr. Wright. Certainly  
21 the Court is willing to give him that, and I think that's  
22 completely appropriate.

23 There is no indication, or no question, rather, that,  
24 as the Court has pointed out, that he isn't driving the bus on  
25 whether or not his symptoms, whatever they truly are, how they

1 manifest from an observed position by the Court or by anybody  
2 else. What he exhibits to Mr. Wright, what he exhibits to other  
3 people may vary depending on his -- his particular situation, as  
4 even was evidence by the caregivers at Sunrise -- or Mountain  
5 View Hospital -- or, excuse me, Summerlin Hospital when he was  
6 there most recently.

7 I went back and looked at the speech pathology notes  
8 and the physical therapy notes and so forth, and that's what Dr.  
9 Palestrant picked up on. He read those. He saw that when they  
10 go into do an examination that they're confused by this because  
11 the level of impairment that he's exhibiting to them when he's  
12 doing things that aren't directly interacting with them, they  
13 see him do things that show that he has understanding.

14 Mr. Wright came into court and said that he goes to  
15 see Dr. Desai, and when he appears to him his arms are  
16 outstretched and he's just moaning, has no ability to speak  
17 whatsoever. There is a -- there is a passage under one of the  
18 speech pathology notes where there's actually, albeit very short  
19 words given back and forth between the therapist and Dr. Desai,  
20 he clearly is acknowledging that he understands the question and  
21 he responds appropriately to the question with words.

22 Those kinds of inconsistencies, the fact that he  
23 supposedly doesn't have motor control in certain areas, but all  
24 of the results of his tests show that he has no impairment of  
25 motor function on either side of his body, upper or lower

1 extremities, yet he rolls into this court immediately after the  
2 stroke, a few days later after he's been discharged, in a  
3 wheelchair with his arm gnarled up complaining of left-sided  
4 symptoms, when, in fact, his stroke is supposedly on the left  
5 side.

6           There's nothing new on his right side. And if there  
7 was any motor impairment from this stroke, it would be on the  
8 opposite side of his body. So it's not even the same thing.  
9 The issue with Dr. Desai as from the outset, he has embellished  
10 his symptoms, he has malingered, this has been picked up by  
11 professionals in his regular care situations, as well as Lakes  
12 Crossing and before this Court. Even Your Honor has observed  
13 some of these inconsistencies.

14           Now, one of the main questions here is after we had  
15 Dr. Desai come in, the State asked the Court to essentially  
16 order that if there was any further follow up treatment that  
17 needed to be done, any further therapy that needed to be done,  
18 that because he's out of custody, that he actually afford  
19 himself those opportunities and get it done.

20           I've not heard that he's been out there undergoing  
21 speech pathology or speech -- speech therapy or occupational  
22 therapy or physical therapy or anything and that there has been  
23 some sort of finding or lack of improvement or anything like  
24 that. I'd like to know what he's done in the last 50 days to  
25 try to improve himself.

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1 Dr. Palestrant, in his -- in his report says that the  
2 most improvement that would take place, the most marked  
3 improvement would occur within the first three to nine months,  
4 that all stroke victims show some improvement, although that  
5 clearly varies, depending on the type of stroke, the location of  
6 the stroke, the severity of the stroke, and its proximity to  
7 actually when this event is that he's having to perform in.

8 We do know that the most severe stroke that Dr.  
9 Palestrant refers to, Dr. Desai was going to take himself out of  
10 his practice for six months. When he came back and found out  
11 that, gosh, they were dropping the numbers at the clinic, he was  
12 back within a couple of weeks starting to do things. And he was  
13 back in when it was suiting him to be back in, even when he had  
14 the most severe observable, demonstrable impairment to his  
15 brain.

16 Clearly he's had strokes. Clearly he has medical  
17 conditions. But we have many people come before the courts that  
18 have committed crimes, and that does not absolve them from their  
19 crimes or being held accountable for those. So from the State's  
20 perspective, we think the Court has read it completely right,  
21 that there is nothing in this report that calls into question  
22 anything to do with his competency.

23 In fact, the areas that the strokes took place  
24 supposedly have no effect on the memory or executive function  
25 which is what would be really concerning to the Court, I would



1 think, at this point was if he had a stroke that did, in fact,  
2 impair his ability to think or function appropriately, whether  
3 or not he can get out words. If he needs to use an iPad, a  
4 typewriter, whatever, he can do that. The Court will give the  
5 accommodation. We think the Court has gotten right, and we  
6 would submit.

7 THE COURT: Anything the State wants to be heard -- or  
8 add on the issue of an evidentiary hearing.

9 MR. STAUDAHER: We think that that's not necessary  
10 based on this report and the Court's findings at this point.  
11 There's nothing new. And we still don't know if anything has  
12 happened to try and better his situation since the time he  
13 actually had this stroke in the first place.

14 THE COURT: Mr. Wright?

15 MR. WRIGHT: Yes. The having -- number one, what  
16 treatment is he presently having? He's having physical therapy  
17 treatments and speech therapy treatments. He has since the  
18 stroke up to and including this week and going forward. Has  
19 there been improvement in his abilities with me? The answer is,  
20 yes, he is improving.

21 The fact that he has motor skills or executive skills  
22 has nothing to do with the stroke in his speech vortex or  
23 wherever. It affects his comprehension and his speech  
24 abilities. And -- and when you have expressive aphasia and  
25 receptive aphasia, it isn't simply the words don't come out.

1 It's the brain part that puts them together and gets it out of  
2 your trapped brain what you want to say or put out. And whether  
3 you have an iPad or a computer or can write makes no difference  
4 in drawing it out.

5           Ten years after my partner's stroke he still cannot  
6 speak, not can he write it, nor can he email it. And that's  
7 what we're talking about, aphasia. That is exactly the area he  
8 had the stroke. That is what the doctor says the manifestations  
9 would be for a genuine stroke, which he said is that area, and  
10 he needs time to heal. And hopefully he will heal to his  
11 premorbid state prior to the stroke in 2013. But I want a  
12 hearing to ask Dr. Palestrant these questions that we're talking  
13 about. He didn't give a competency evaluation.

14           THE COURT: Right, because the --

15           MR. WRIGHT: That wasn't what he was asked to do.

16           THE COURT: Correct. That was --

17           MR. WRIGHT: So he didn't discuss Drusky. He didn't  
18 discuss the Wilson factors on a complex case.

19           THE COURT: Mr. Staudaher?

20           MR. STAUDAHER: I think we'll submit it, Your Honor.

21           THE COURT: All right. Well, first of all, he was not  
22 asked to specifically discuss competency. However, he was asked  
23 to evaluate the extent of the stroke, whether there had been a  
24 stroke, the area of the brain that had been impacted by the  
25 stroke, the difference in the impact from or the exacerbation or

1 the manifestation of new symptoms that could be observed from  
2 either the records or the radiological images and other things  
3 from the 2013 stroke comparing that to the earlier strokes.

4           Part of that, I think, necessarily entails evaluating  
5 areas such as cognition, memory, executive function, and things  
6 that are directly related to competency. So while the request  
7 was certainly not for a competency evaluation, per se, the  
8 information and what we were looking for, I think, speaks to  
9 that. And, again, speaks to the need as to whether or not to  
10 delay this.

11           Because I think what's been established, not from what  
12 I have observed or what the Courts have observed or the judges  
13 thing, but what's actually out there in the medical records,  
14 what the professional clinicians are writing about and observing  
15 and, you know, physicians, therapists, other people, is that  
16 there's an exaggeration of symptoms here. And I think that  
17 there is only one conclusion, and that is Dr. Desai has the goal  
18 of postponing this trial as long as possible.

19           And even in this report, again, you know, it says Dr.  
20 Desai's claimed degree of neurologic dysfunction or  
21 neuropsychiatric testing performances between 2009 to 2013 are  
22 far worse than would be expected and not corroborated by the  
23 extent and anatomic distributions of his strokes. In my opinion  
24 there has been a significant amount of embellishment of his  
25 symptoms and incomplete efforts on neuropsychiatric testing.

JRP TRANSCRIPTION

1           So, you know, the inquiry was to see whether or not  
2 there was a need to refer this for additional testing and  
3 evaluation beyond what has been done already. I do not believe  
4 that based on this extensive report and what is here. Again,  
5 there is no dispute that there have been additional strokes.  
6 But I don't think that there is further question of -- of his  
7 competency to stand trial. This -- you know, the 2013 stroke  
8 cannot be looked at in a vacuum. It has to be looked at, you  
9 know, in the totality of everything that's gone before, and the  
10 history of Dr. Desai and the history of, you know, his  
11 performance with other medical evaluators.

12           And so, again, I think the report speaks for itself.  
13 You know, both sides can parse out what they think is more  
14 favorable to their position, but I think the report has to be  
15 looked at in its totality. I, you know, thoroughly read this  
16 when it came in yesterday. And after reading it I concluded  
17 that there was no need for need for any further inquiry on that  
18 point.

19           I think that includes the need for an evidentiary  
20 hearing. I think the report is pretty clear. Again, this was  
21 ordered -- well, I don't need to state. We all know why. I  
22 don't see a need for any further proceedings on this in this  
23 court. And so the trial date stands and we'll begin with jury  
24 selection.

25           And as I said, Mr. Wright, you know, there is

1 reference here that he has other motor -- you know, he has motor  
2 functioning, he has the ability to think, and while he may have  
3 difficulty forming words, he may have difficulty recalling  
4 words, certainly accommodations can be made so that you're given  
5 ample time and he can sort through that.

6           Now, I understand that you're saying, you know, he's  
7 not speaking at all. He's just making sounds and noises. Well,  
8 that's --

9           MR. WRIGHT: No, I did not say that.

10           THE COURT: Okay. That was said at one time. And  
11 that's --

12           MR. WRIGHT: That was said at the time I came in 50  
13 days ago.

14           THE COURT: All right.

15           MR. WRIGHT: And I told you he's improving.

16           THE COURT: All right. Well --

17           MR. WRIGHT: And I didn't say he isn't presently  
18 speaking and is just making noises.

19           THE COURT: All right. Well, --

20           MR. WRIGHT: Is my --

21           THE COURT: -- I misspoke. All right. And I'm sorry.  
22 But as I said, you know, if it takes him a long time to come up  
23 with the words or to form words, you know, technology, of  
24 course, can address the issue of forming words and speech itself  
25 through, you know, using a computer and whatnot.

JRP TRANSCRIPTION

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1           If the issue goes to actually recalling certain words  
2 and things like that, you know, again, we can make  
3 accommodations with breaks and other things to allow you time to  
4 confer with your client, recognizing that it may take him a  
5 little bit longer to communicate --

6           MR. WRIGHT: Of course --

7           THE COURT: -- communicate --

8           MR. WRIGHT: -- the accommodation I'd like is that  
9 computer that will make him speak and communicate with me. I'd  
10 like that as soon as possible for my office and for here in the  
11 courtroom.

12          THE COURT: All right.

13          MR. WRIGHT: So is my motion --

14          THE COURT: Your motion? Well, there was no formal --  
15 I guess your oral --

16          MR. WRIGHT: No, I am formally renewing --

17          THE COURT: Your making an oral motion.

18          MR. WRIGHT: Okay. I am renewing my previously filed  
19 motion.

20          THE COURT: All right.

21          MR. WRIGHT: And filing a motion because I believe a  
22 question has been raised to his present competency. And the --  
23 what I am requesting is an evidentiary hearing so that we can  
24 actually hear witnesses. I disagree with the assertions that  
25 caregivers, plural, at Summerlin said they saw and believed he

1 was embellishing. I disagree with that. I want an evidentiary  
2 hearing on that. I want an evidentiary hearing. I want  
3 testimony of this doctor.

4 I don't understand our aversion to having a hearing.  
5 I -- I like something where we argue about it, we take evidence  
6 on it, and then the Court decides it, as opposed to we walk in  
7 and I've read it and here's what I've decided. So I -- is my  
8 request to put on evidence for an evidentiary hearing denied?

9 THE COURT: I mean, Mr. Wright, I'm relying on what's  
10 in the report and you want the opportunity to cross-examination  
11 the expert on what's --

12 MR. WRIGHT: Correct.

13 THE COURT: -- in the report. And the point of  
14 retaining this expert was to say we want someone independent who  
15 has not been retained by either side to, you know, look at  
16 these, someone that's very well respected in the field, as this  
17 person appears to have been.

18 You know, you -- both sides agreed on this person.  
19 And I just don't see a reason for further inquiry. And I don't  
20 believe anyone said that, you know, the physical therapist or  
21 anyone else at Summerlin Hospital actually said he was  
22 embellishing. I think what was stated in the report was that it  
23 was inconsistent or they observed inconsistencies.

24 So I don't think any of them formed the conclusion  
25 that, oh, he's embellishing. I think that that's the -- then,

1 you know, that's what he, the reviewer can conclude. But they  
2 found inconsistencies, and that was noted in their reports, as  
3 it should have been noted in their reports.

4 State, Mr. Staudaher, on the issue of hearing  
5 additional evidence and calling witnesses on the Summerlin  
6 Hospital records as Mr. Wright seems to be requesting.

7 MR. STAUDAHER: Clearly, the reviewer in California,  
8 Dr. Palestrant, reviewed the medical record which contains the  
9 exact reports and the inconsistent kinds of things that those  
10 individuals at Summerlin Hospital saw when they went in to treat  
11 and deal with Dr. Desai.

12 We think based on the fact that they -- that it's part  
13 of the record, part of the medical record, that thing that he  
14 relied on, and they do not come back and say that he was  
15 malingering, faking, lying, doing whatever. They're just  
16 saying, you know, as the Court pointed out, that their  
17 evaluation of him is inconsistent and difficult because of those  
18 inconsistencies.

19 When, you know, he supposedly is impaired, but then --  
20 and not able to do something that they ask him to do, but they  
21 turn around and watch him do something else which requires the  
22 same type of motor skills and cognitive ability. Those are  
23 inconsistencies. You can take those for what they mean.

24 The actual person who watched those and documented  
25 them is not the one who evaluates their significance. Dr.

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1 Palestrant was the one who did that. He looked at that  
2 information in conjunction with the actual physical films  
3 themselves of the damage and the areas that the damage took  
4 place, the prior results of studies and testing that took place.

5 And I think that the passage that Your Honor pointed  
6 out was one of the more pointed ones in that his bottom line  
7 assessment was that the areas, even though he acknowledges that  
8 there's injury from prior strokes, the sort of symptoms that are  
9 displayed by Dr. Desai he believes far and exceed what would be  
10 expected. And that's the person that we went to, a stroke  
11 specialist, a person who deals with these kinds of things who  
12 knows what the significance of a particular finding, a test  
13 result, an MRI, and how to expect to have that manifested from  
14 somebody who might have those kinds of injuries.

15 That's not what he found. There's no reason to have  
16 an evidentiary hearing to have him come in to be cross-examined  
17 on those portions. He gave an independent review of this  
18 medical record. We think that that's sufficient.

19 MR. WRIGHT: Your Honor?

20 THE COURT: Yes.

21 MR. WRIGHT: Your all's ability to speculate and  
22 extrapolate without hearing witnesses just astonishes me. I --  
23 I don't understand why we do not ask Dr. Palestrant what are the  
24 accommodations that we can do for someone who's had a stroke  
25 like this, instead of just, well, there's computers or there's

1 machines and things. We need a hearing on it. We need  
2 testimony. I need to know what it is. And Dr. Palestrant can  
3 say, yes, here's what can be done. And I can say, well, is he  
4 presently, as we speak, competent right now to assist and go  
5 forward with a trial.

6 THE COURT: I --

7 MR. WRIGHT: And what accommodations can be made, if  
8 any.

9 THE COURT: Mr. Wright, Dr. Desai is currently under  
10 the care of a neurologist of in this community. He's seen other  
11 professionals for therapy and other things. I don't understand,  
12 you know, why you or Dr. Desai's family can't make those  
13 inquiries of those professionals.

14 MR. WRIGHT: We have.

15 THE COURT: We are going to trial and, you know, the  
16 judge has refused to continue this and so how can we assist Dr.  
17 Desai in communicating? You know, I don't know that we need to  
18 have an evidentiary hearing to ask those questions. And I would  
19 just note, you know, as Mr. Staudaher pointed out, Dr.  
20 Palestrant is an expert in stroke. He was the director of the  
21 stroke and neurocritical care program at Cedars-Sinai. He's a  
22 board certified neurologist, vascular neurologist.

23 I don't know that there's any -- you know, again, he  
24 was retained and asked to do this for a specific purpose, to  
25 have someone look at the, you know, records, the images, and

1 say, you know, is there something new here, is there something  
2 new here justifying new inquiry into the area of competency.  
3 And I -- and I just don't see it.

4           And so, you know, again, the report speaks for itself.  
5 We can all pull out sentences and this and that, but, you know,  
6 you have to look at the totality of the report which, you know,  
7 you disagree with me. I read this as carefully as I could, you  
8 know, with an open mind. I had no idea what it was going to  
9 say, obviously. I never communicated with him, I didn't choose  
10 him, I didn't know anything about him beforehand.

11           And when I read the conclusion, you know, to me,  
12 looking at the conclusion, looking at the totality of the  
13 report, it seemed quite clear to me that there was no issue  
14 here, nothing new justifying a reexamination of Dr. Desai's  
15 competency. And so, you know, I would agree with you on one  
16 thing. You know, you summarizing and taking out of the report  
17 and Mr. Staudaher doing that and me doing that, you know, the  
18 report is what it is, and I think at the end of the day we have  
19 to look at, you know, the medical professionals and what they're  
20 saying. And so -- and I'm sorry I cut you off.

21           MR. WRIGHT: As for what we -- what we have been doing  
22 and his professionals, they tell me he needs to continue with  
23 his motor therapy and his speech therapy and he may then regain  
24 in -- in months, months, just the same recommendation as the  
25 doctor, as Dr. Palestrant, in 9 to 18 months he will regain

1 those abilities. We are doing all of that. No one has told me  
2 about this magic computer that I can utilize --

3 THE COURT: Well, Mr. --

4 MR. WRIGHT: -- with him.

5 THE COURT: You know --

6 MR. WRIGHT: And he is --

7 THE COURT: -- I'm going to ignore your facetiousness.  
8 But you and I both know that he can sit there with a laptop and  
9 use one finger and his motor skills are not impaired,  
10 notwithstanding the fact -- you know, with his finger he can  
11 still, you know, type out messages right there at counsel table  
12 to you during the course of the trial. So that's all I was  
13 saying. You know, if he has difficulty making words, forming  
14 words, and he's difficult to understand, that's all I was  
15 saying.

16 So, you know, your facetiousness really is not called  
17 for here. Because, you know, they're directly talking about  
18 speech, and I understand speech encompasses not just the spoken  
19 word, but the ability to recall language and form sentences and  
20 other things. If you read this in its totality, however, Dr.  
21 Palestrant speaks to some of that. And that's why I said, you  
22 know, the report has to -- you know, it has to stand on its own.

23 MR. WRIGHT: Well --

24 THE COURT: Again, I don't see the reason here for any  
25 additional inquiry -- you know, inquiry on this.

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1 MR. WRIGHT: I just wanted to hear from the  
2 well-credentialed doctor and examine him. I don't think the  
3 report speaks for itself. It spoke to you differently than it  
4 spoke to me. And when you and I say you and I both know he  
5 could sit there and peck out words on the typewriter, I -- I  
6 don't know that and I disagree with you on that and that  
7 directly effects his ability.

8 The problem is what wants to come out can't come out  
9 of the head because of the receptive and expressive aphasia.  
10 And that's what I believe Dr. Palestrant would testify to.  
11 Would the Court entertain a stay so I can -- while I seek  
12 appellate relief?

13 THE COURT: That request is denied. I can't find it  
14 in the report, but, you know, now apparently Dr. Desai has been  
15 seeking therapy, but I think there was a reference, and I can't  
16 find it, somewhere here in the report that he didn't follow  
17 through with his recommended care earlier. And I was looking  
18 for exactly where it is. I just recall that. I can't find it  
19 at this point in the report.

20 But I remember reading that there was some reference  
21 to that that -- that there wasn't a follow through and there was  
22 also reference to the fact that maybe some of these reported  
23 symptoms weren't event related to his previous strokes, now  
24 we're going back, but were, in fact, related to his depression.

25 And may I just editorialize here, but I think

1 depression is a perfectly natural reaction to the fact that, you  
2 know, what's occurred with respect to the endoscopy clinic and  
3 publicity and the charges against Dr. Desai. I think depression  
4 would be just an absolutely normal reaction to all of that. I  
5 can find it in the report again. It's 28 pages. But I do  
6 recall, I don't know if anyone else recalls seeing that, but I  
7 do believe I saw that in report as well.

8 State, anything else on the request for an evidentiary  
9 hearing the need to call Dr. Palestrant and possibly --

10 MR. STAUDAHER: No, Your Honor.

11 THE COURT: -- other witnesses?

12 MR. STAUDAHER: No, Your Honor.

13 MR. WRIGHT: Can I mark the exhibit? And I'll explain  
14 what it is. It's part of my -- part of my proffer to the Court.

15 THE COURT: We'll mark this Defense A.

16 MR. WRIGHT: Yes, I'd like to have marked the work  
17 product of Dr. Desai of the -- even though it was like a half  
18 hour, it was actually like a 20-minute session with Dr. Desai  
19 and myself and me telling him to answer various questions and  
20 the questions that comport with that.

21 And it took 20 minutes to get the answers. Day of the  
22 week, Monday. Page, 60. Month, February or March. This is all  
23 his own handwriting as he would sit there and do this. The  
24 speech therapist, man. What is her name, lady, L-A-D-Y. Tell  
25 me the names of the doctors you worked with. Ultimately I got

1 Sharma and temple. And my best understanding is that it's Dr.  
2 Sharma who attends the same temple. And I can't remember what  
3 T-H-A-R-G or E was an answer to. Thank you.

4 THE COURT: Anything else, Mr. Wright?

5 MR. WRIGHT: No. I will offer myself for  
6 cross-examination if there is any question about my  
7 representation.

8 THE COURT: State, anything else --

9 MR. STAUDAHER: No, Your Honor.

10 THE COURT: -- on the need to swear Mr. Wright in  
11 and --

12 MR. STAUDAHER: No.

13 THE COURT: -- make a statement before the Court under  
14 oath?

15 MR. STAUDAHER: I don't think that's necessary.

16 THE COURT: All right. Therefore, again, your renewed  
17 oral request to open the issue of competency and refer Dr. Desai  
18 to competency court is denied. Your request for a stay is  
19 denied. The trial date stands at Monday -- as Monday, April  
20 22nd at 9:30 to begin jury selection.

21 And we also have pending today, or what was calendared  
22 for today, the State's motion to admit evidence of other crimes.  
23 We did not receive a written opposition to that.

24 MR. SANTACROCE: Yes, there was one filed by you.

25 MS. STANISH: Oh. Yes, Your Honor. We filed it on

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30

1 Monday.

2 THE COURT: Oh. Okay. I'm sorry. I didn't get that.

3 I'll look at that and --

4 MR. SANTACROCE: And for the record, I filed a joinder

5 yesterday. As I advised the Court on Friday I had not received

6 the motion.

7 THE COURT: All right.

8 MR. SANTACROCE: I did receive it Friday afternoon and

9 filed a joinder yesterday so I want the record clear that Mr.

10 Lakeman is in opposition to the State's motion.

11 THE COURT: Okay. I had read the State's motion not

12 knowing there was an opposition. I had some concerns not even

13 reading an opposition. I'm sure some of those were addressed,

14 but, you know, I'll just take it under advisement, read

15 everything, and then issue a decision from chambers. But what

16 was not -- what was not clear from the State's motion, to me

17 anyway, was the complaints filed about Dr. Desai with the Nevada

18 State Board of Health Examiners. Did you just want to introduce

19 the complaints, or were you going to call the complaining

20 witnesses, or what was your plan on that?

21 MS. WECKERLY: The complaining witnesses --

22 THE COURT: Okay.

23 MS. WECKERLY: -- in the instances that --

24 THE COURT: Okay.

25 MS. WECKERLY: -- that are factual. There's 37, but

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1 there's only three that are factually discussed.

2 THE COURT: Right. The three that you mentioned.

3 Okay. And then on the Rexford lawsuit, how are you planning on

4 presenting that?

5 MS. WECKERLY: From reading Ms. Stanish's opposition,

6 I don't think there's an opposition to that coming into

7 evidence.

8 THE COURT: Okay.

9 MS. WECKERLY: So I think that would just be through

10 testimony of the -- of the percipient witnesses, you know, why

11 they were looking at certain documents and what they noticed at

12 the time.

13 THE COURT: Okay. So there is no objection.

14 And is that also true for Mr. Lakeman --

15 MR. SANTACROCE: No, Your Honor.

16 THE COURT: -- Mr. Santacroce, on the -- on the

17 Rexford lawsuit?

18 MR. SANTACROCE: Yes. I have a problem with -- well,

19 first of all, the Court needs to be cognizant of the fact that

20 there are two men on trial here.

21 THE COURT: Right.

22 MR. SANTACROCE: And Mr. Lakeman is constitutionally

23 entitled to a fair and impartial trial. Now, whatever the Court

24 rules as it relates to Mr. Desai is going to be prejudicial to

25 Mr. Lakeman.

1           For example, the State cites some 37 complaints. One  
2 of those occurred by Lisa Phelps in July of 2000. Mr. Lakeman  
3 was not even employed until 2005, and there's some highly  
4 inflammatory language that the State uses. I don't know if they  
5 intend to try to admit that, whereas there's allegations that  
6 Desai instructed his staff to hold her arms down while the  
7 procedure was going on.

8           The Court needs to differentiate here and we need some  
9 protection if the Court does allow these bad acts to come in  
10 because most of them, if not all of them, do not apply to Mr.  
11 Lakeman. So I don't know how the Court is going to reason that  
12 out, but at the very least, the Court should issue a cautionary  
13 instruction to the jury that it should not hold these bad acts  
14 against Mr. Lakeman, unless we have a Petrocelli hearing where  
15 they can show that Mr. Lakeman was directly involved, and I  
16 think that we need to have that hearing.

17           THE COURT: All right. And just on the -- well, as I  
18 said, the issue of the complaints, I had some concerns even  
19 without looking at an opposition just from my reading. So I'm  
20 going to read the opposition, consider it, and issue a decision  
21 from chambers.

22           On the Rexford lawsuit, Ms. Stanish, you're not  
23 opposed to that?

24           MS. STANISH: Your Honor, I of course base that on the  
25 representation that it was going to be offered for the, what I

1 understood to be, just the limited purpose of showing that there  
2 was a litigation. You know, to the extent that the State is  
3 going to go beyond that and we have to like relitigate this  
4 issue --

5 THE COURT: Right. We --

6 MS. STANISH: -- it was very limited was -- my  
7 opposition was quite limited based on what was stated.

8 THE COURT: Okay. Well, I don't know, then, if we  
9 would need to have a hearing, like a Petrocelli type hearing to  
10 see what the scope would be.

11 Or maybe for purposes of at least today, Ms. Weckerly,  
12 you can tell us what you intend to do with respect to the  
13 Rexford lawsuit and then we can hear whether or not Ms. Stanish  
14 and Mr. Santacroce have any objections if you proceed that way.

15 MS. WECKERLY: What -- what we were seeking to  
16 introduce is the existence of the lawsuit, not whether -- not  
17 its legitimacy or not, which caused a witness to review certain  
18 records and what came to that witness's attention as a result of  
19 preparing for the lawsuit. And then -- I mean, I don't think  
20 that we need to get into the details of the lawsuit, but more  
21 that it was in existence and that caused this witness to --

22 THE COURT: Right. There was this lawsuit, so I had  
23 to do a records review. And then once I began the records  
24 review, I noticed --

25 MS. WECKERLY: This is what I noticed.

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1 THE COURT: -- A, B, and C. I don't see --  
2 Ms. Stanish, you're fine with that?  
3 MS. STANISH: That's correct.  
4 THE COURT: Okay. Mr. --  
5 MR. SANTACROCE: I object to that as far as Mr.  
6 Lakeman is concerned. Mr. Lakeman wasn't even a party to that  
7 lawsuit. And, again, it's going to be more prejudicial than  
8 probative as it relates to Mr. Lakeman.  
9 THE COURT: Well, I think what we can do is in the  
10 questioning it can be made clear that Mr. Lakeman wasn't a  
11 party, he wasn't involved in that lawsuit.  
12 MS. WECKERLY: He was --  
13 MR. STAUDAHER: He was involved --  
14 MS. WECKERLY: -- deposed in it.  
15 MR. STAUDAHER: -- in that lawsuit.  
16 THE COURT: You know, that he wasn't a party, that he  
17 was never sued in connection with that matter, or something like  
18 that, and maybe clean it up --  
19 MR. STAUDAHER: That's fine.  
20 THE COURT: -- that way. And then so that -- that's  
21 the only remaining issue, then, is the complaints.  
22 And, again, the purpose for which the State seeks to  
23 introduce those, as I understand them, Ms. Weckerly, is to show  
24 that there is a financial motive here with the insurance fraud?  
25 Which I think --

1 MS. WECKERLY: That's -- well --  
2 MR. STAUDAHER: Well --  
3 THE COURT: I think there's always a financial motive.  
4 MS. WECKERLY: Not just the insurance fraud, but the  
5 whole -- the reason why --  
6 THE COURT: The way they're running --  
7 MS. WECKERLY: -- the treatment --  
8 THE COURT: -- the clinic and that --  
9 MS. WECKERLY: -- was the way it was.  
10 THE COURT: -- they're doing these really quickly --  
11 MS. WECKERLY: Right.  
12 THE COURT: -- is because there was a profit motive  
13 above all else. That's your point. And the way you intend to  
14 do this would be to call the actually complaining witnesses and  
15 they would testify this happened to me and I filed a  
16 complaint --  
17 MS. WECKERLY: Yes.  
18 THE COURT: -- or the doctor would say I filed a  
19 complaint.  
20 MS. WECKERLY: That's correct. And we don't dispute  
21 that if the Court gives us a preliminary admissibility ruling  
22 that we would have to have a Petrocelli hearing.  
23 THE COURT: Right. Exactly. Basically all I'm going  
24 to be looking at the motion and the opposition, at this point,  
25 is to say whether or not if proven by clear and convincing

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1 evidence I even think it's relevant and it's more probative than  
2 prejudicial on these questions, if I don't even answer yes to  
3 that, then obviously there's no need for a Petrocelli hearing.  
4 Okay?

5           And, you know, jury selection is going to take some  
6 time, so we can just schedule that hearing sometime some morning  
7 or something like that. We don't need to, obviously, delay jury  
8 selection in any way to do that. So I think that that covers  
9 everything that was pending for this morning. Again, we'll see  
10 you all here, assuming we don't get something from the Supreme  
11 Court.

12           Yes?

13           MR. WRIGHT: Will the Court please indulge me. I'm  
14 not rearguing it. Just two points. The three witnesses we are  
15 talking about are the witnesses I tried to discuss with Dr.  
16 Desai this morning on this motion we just addressed.  
17 Technically I just want to articulate that my request for a  
18 hearing and my motion is to have evidence presented on whether  
19 there is a doubt that has arisen as to his countenance. I don't  
20 care if that is transferred to competency court or it's this  
21 court --

22           THE COURT: Right. I understand.

23           MR. WRIGHT: -- or wherever. All I'm saying is I -- I  
24 -- as the record stands, I have never had a hearing on where  
25 I've been allowed to call witnesses. As the Court will recall,

1 I was denied the hearing by Judge Delaney, and I took it up on  
2 writ to the Supreme Court.

3           And then the Supreme Court said in a footnote that if  
4 any motion is made challenging his competency to stand trial  
5 presently based upon interactions and evaluations since his  
6 return from Lakes Crossing, then a broader inquiry would be  
7 required. And so I am still waiting for a chance to examine and  
8 put on evidence. It is that I am asking the hearing on, not a  
9 competency hearing.

10           THE COURT: Well, I understand. I mean, thank you for  
11 correcting the record, and then I would just note that the first  
12 motion that was a formal motion filed, the Court denied that  
13 based on the fact that there is nothing new medically, no new  
14 strokes, no heart attacks, nothing like that that was new  
15 medically to say that there was a change in Dr. Desai's  
16 circumstances from the time he was evaluated and found to be  
17 competent until the time that that motion was filed. And I  
18 don't recall the exact date.

19           And then there was the new neurological event in  
20 February 2013, which the State and Court was alerted to by way  
21 of letter from Mr. Wright and the request that there be a  
22 competency evaluation. And basically the Court said, look,  
23 there may have been strokes, but that doesn't necessarily mean  
24 that there has been a change in cognitive function to the extent  
25 that we have to reopen the competency issue.

1           And so that was the point of having an independent  
2 medical review by a neutral expert agreed to by both sides, and  
3 that was Dr. Palestrant. And so that is the state of where --  
4 of where we are.

5           State, anything else you need to add?

6           MR. STAUDAHER: No, Your Honor.

7           THE COURT: All right.

8           MR. STAUDAHER: I think you summarized it.

9           THE COURT: All right. Okay. Well, thank you all and  
10 we'll -- assuming we don't hear anything otherwise, we'll be  
11 prepared to begin Monday at 9:30.

12          MR. STAUDAHER: Thank you, Your Honor.

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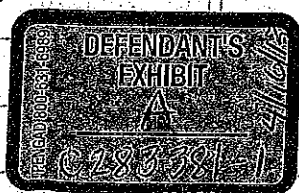
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1 ATTEST: I hereby certify that I have truly and correctly  
2 transcribed the audio/video proceedings in the above-entitled case to  
3 the best of my ability.

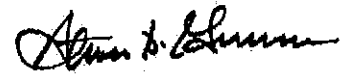
4   
5 JULIE POTTER  
6 TRANSCRIBER

|   |                         |              |   |   |
|---|-------------------------|--------------|---|---|
| 1 | MON - - - - -           | 2            | 2 | ✓ |
| 2 | Age                     | 60?          |   |   |
|   | Mother                  | Feb or March |   |   |
|   | LADY                    |              |   |   |
|   | THARGRE                 |              |   |   |
|   | <u>SARMA</u> - TEMPLE - |              |   |   |



## **Exhibit 9**

**Order Appointing IME, 3/13/13  
(#138-141)**

  
CLERK OF THE COURT

1  
2 ORDER

3  
4 DISTRICT COURT  
5 CLARK COUNTY, NEVADA  
6

7  
8  
9 THE STATE OF NEVADA,  
Plaintiff,

10 -vs-

11 DIPAK KANTILAL DESAI,  
#1240942,  
12 RONALD ERNEST LAKEMAN,  
#2753504,  
13

14 Defendants.

CASE NO.: 10C265107-1

DEPT. XXI

15  
16 ORDER

17 Upon the request of the parties in the above entitled action:

18 IT IS HEREBY ORDERED that Christina Green make the necessary  
19 arrangements with DAVID PALESTRANT, MD, of the Cedars-Sinai Medical Center  
20 in California to perform an independent medical evaluation of DIPAK KANTILAL  
21 DESAI, the scope of which is detailed as follows:

22 1. The primary objective of the independent medical evaluation is to  
23 determine the nature and extent of any changes to Desai's brain from the date of his  
24 release from Lake's Crossing on or about October 7, 2011, to the date upon which he  
25 was released from Summerlin Hospital on March 1, 2013. Dr. Palestrant should review  
26 all radiological studies pertaining to DIPAK KANTILAL DESAI, either independently  
27 or in collaboration with a neuroradiologist or other similar expert of his choosing, to  
28 determine the objective findings, if any, of any neurological injury sustained by

VALERIE ADAIR  
DISTRICT JUDGE  
DEPARTMENT XXI

1 DIPAK KANTILAL DESAI over time, whether or not said injuries are chronic or  
2 acute in nature, as well as the stability of any injury patterns observed.

3 In addition, Dr. Palestrant should, to the extent possible, review said  
4 radiological studies specifically to determine the nature and extent of any new  
5 radiological findings, and/or the evolution of any pre-existing findings following  
6 DIPAK KANTILAL DESAI's return to Las Vegas, Nevada, on October 7, 2011, after  
7 his discharge from Lake's Crossing Center.

8 2. Dr. Palestrant should review the medical records of DIPAK KANTILAL  
9 DESAI as necessary, including those from the University of California, Los Angeles in  
10 July of 2008, in reference to his previously documented strokes. Dr. Palestrant should,  
11 in addition to reviewing said records, specifically review the observations and testing  
12 results documented by personnel at the Lake's Crossing Center of DIPAK  
13 KANTILAL DESAI. Dr. Palestrant should, to the extent possible, determine the  
14 legitimate physical and psychological manifestations of said strokes to DIPAK  
15 KANTILAL DESAI.

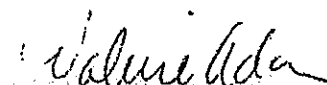
16 3. Dr. Palestrant should also review the medical records of DIPAK  
17 KANTILAL DESAI to the extent necessary to determine the outcome of any post-  
18 stroke recommended treatment or therapy. In addition, Dr. Palestrant should, to the  
19 extent possible, determine whether or not DIPAK KANTILAL DESAI appropriately  
20 adhered to any said treatment regime and whether or not DIPAK KANTILAL  
21 DESAI's efforts, or lack thereof, have had any impact on his current level of alleged  
22 impairment.

23 4. Dr. Palestrant should also specifically review the two neuroradiological  
24 studies performed on DIPAK KANTILAL DESAI between the time of his return from  
25 the Lake's Crossing Center on October 7, 2011, and his February 24, 2013  
26 hospitalization.

27 5. Finally, Dr. Palestrant should specifically review the medical records of  
28 DIPAK KANTILAL DESAI from his most recent hospitalization on February 24,  
2013, to determine the extent of any neurological injury and the correlation, if any,

1 with DIPAK KANTILAL DESAI's currently reported physical and psychological  
2 impairment. In addition, Dr. Palestrant should, to the extent possible, opine as to the  
3 reasonably expected physical and psychological manifestations of an individual with a  
4 similar injury pattern.

5  
6 DATED this 13<sup>th</sup> day of March, 2013.

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9 DISTRICT JUDGE  
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VALERIE ADAIR  
DISTRICT JUDGE  
DEPARTMENT XXI

Certificate of Service

I hereby certify that on the date filed, I placed a copy of this Order in the attorney's folder in the Clerk's Office, mailed or faxed a copy to:

Michael V. Staudahe  
Chief Deputy District Attorney

Richard A. Wright  
~~Wright Stanish & Winckler~~

Frederick A. Santacroce  
Santacroce, Ltd.

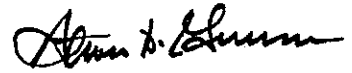
Christina Green

  
Sharry Frascarelli  
Judicial Executive Assistant

## **Exhibit 8**

**Transcript of Status Hearing  
on IME, 3/7/13  
(#112-137)**





CLERK OF THE COURT

1 TRAN

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA  
5

6 STATE OF NEVADA,

7 Plaintiff,

8 vs.

9 DIPAK KANTILAL DESAI, RONALD  
10 E. LAKEMAN,

11 Defendants.  
12

CASE NO. C265107-1,2  
CASE NO. C283381-1,2  
DEPT. XXI

13 BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE

14 THURSDAY, MARCH 7, 2013

15 TRANSCRIPT RE: STATUS CHECK: EXPERTS (ALL)

16  
17 APPEARANCES:

18 FOR THE STATE:

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

19  
20 FOR DEFENDANT DESAI:

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

21 FOR DEFENDANT LAKEMAN:

FREDERICK A. SANTACROCE, ESQ.  
22  
23  
24

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

1 LAS VEGAS, CLARK COUNTY, NV., THURSDAY, MARCH 7, 2013

2  
3 THE COURT: All right. This is the time for State versus Dipak Desai and  
4 Ronald Lakeman. The record should reflect the presence of Defendant Desai along  
5 with his counsel, Ms. Stanish and Mr. Wright, and we have Mr. Santacroce whose  
6 client's appearance for today for the status check will be waived.

7 I'd like the record to note that we did previously have a status check set  
8 for today on the matter of trial readiness; however, on Friday, the Court along with  
9 Mr. Staudaher received a letter from Mr. Wright informing the Court that the  
10 defendant had been transported by ambulance to the Summerlin Hospital where he  
11 was in the intensive care unit for some days, and I believe he was released Friday;  
12 is that correct?

13 MR. WRIGHT: Yes, Your Honor.

14 THE COURT: All right. According to the letter this recent stroke had caused  
15 Dr. Desai to suffer additional cognitive impairment. Mr. Wright requested that based  
16 on the recent stroke the Court stay this matter, which as we know is set for trial on  
17 April 22<sup>nd</sup>, and refer Dr. Desai either to competency court or for a competency  
18 evaluation.

19 While I would normally take such a letter at face value, in this particular  
20 case given its history, given the fact that Dr. Desai has already been found to be a  
21 malingerer and an exaggerator, I must look at this recent request with suspicion.  
22 Therefore, while I will accept that Dr. Desai was transported by ambulance and that  
23 Dr. Desai received care at the Summerlin Hospital, I am unwilling to accept at face  
24 value that Dr. Desai has suffered a stroke resulting in significant additional cognitive  
25 impairment such as to change his condition requiring an additional competency

1 evaluation.

2 I am unwilling at this point to consider sending it for a competency  
3 evaluation unless there is an independent medical evaluation and independent  
4 evidence establishing that there has been a stroke and that there is new and  
5 additional brain impairment which would affect Dr. Desai's ability to be competent  
6 and to stand trial in this matter. Then and only then with such additional information  
7 will this Court even consider sending Dr. Desai for competency evaluation and  
8 delaying the trial and issuing the requested stay.

9 So based on the information we have before us right now, again, I'm  
10 considering the history of the case and findings that have been made, requests that  
11 have been made and denied in the past, I'm unwilling to issue the stay. I'm not  
12 moving the trial date from April 22<sup>nd</sup>, and I expect counsel to prepare with their  
13 experts, their witnesses, the jury questionnaire and what have you.

14 Now, an independent medical evaluation may be in order, and I  
15 understand that the State would be -- is in agreement with that.

16 Mr. Staudaher?

17 MR. STAUDAHER: Yes.

18 THE COURT: And then, Mr. Wright, obviously you and Ms. Stanish will be  
19 heard as well.

20 MR. STAUDAHER: The State concurs with all the things that Your Honor has  
21 just said.

22 THE COURT: All right. Mr. Wright, anything that you would like to add to this  
23 part of the record?

24 MR. WRIGHT: Yes. I did provide the Court -- I did write the letter that the  
25 Court indicates, and I did --

1 THE COURT: And this will be, you know, made a court's exhibit. Obviously,  
2 his condition has to be reviewed publicly because it's -- it's been made as an issue.  
3 So your letter of March 1<sup>st</sup> will become a court's exhibit.

4 Additionally, the letter we received yesterday would also become a  
5 court's exhibit, and that related to the fact that -- from his neurologist that his recent  
6 stroke, his recent ischemic stroke has caused him to be confused, disoriented, and  
7 he has expressive language problems as well as weakness on, I believe, the left  
8 side.

9 Did you receive that letter?

10 MR. STAUDAHER: I did, Your Honor.

11 THE COURT: Okay. I'm sorry, Mr. Wright, please continue.

12 MR. WRIGHT: Yes. The purpose of that letter was to waive his presence  
13 here today because Dr. Veerappan stated that this was detrimental and could cause  
14 him further cerebral damage to even appear here. So the letter wasn't to state his  
15 medical condition, it was to ask to waive his appearance to be here today.

16 THE COURT: I understand that.

17 MR. WRIGHT: And that request was denied by the Court.

18 THE COURT: Okay. And again, you know, I saw nothing in the letter  
19 indicating that having to appear in court would cause some sort of a condition,  
20 additional harm. I mean, frankly, Dr. Desai is under Indictment for murder and being  
21 a murder defendant simply put is probably not good for one's health, but I did not  
22 see anything in this letter that suggested that he should be treated in such a way  
23 that any other defendant under indictment, such as this defendant, would be treated.

24 You know, frankly, you know, weakness and language problems and  
25 confusion to me does not suggest that someone cannot be brought into court. And

1 frankly, Mr. Wright, you know, we can look at this two ways. If Dr. Desai is unaware  
2 of the proceedings as you have been repeatedly suggesting so that he doesn't really  
3 comprehend and understand what's going on, then this would not be stressful in my  
4 view for Dr. Desai.

5           Conversely, if he is aware and he does understand and his symptoms  
6 are being exaggerated, then it would be stressful for him. And so, you know, you  
7 kind of can't have it both ways. I would just say that it was never articulated to the  
8 Court's satisfaction as to how coming to court could be detrimental, and so for that  
9 reason his appearance was not waived, you know, today.

10           I would just note, you know, he was released in under a week and was  
11 not released to a sub-acute facility, wasn't released to a rehabilitation hospital.  
12 Now, I'm no expert. I'm no physician, obviously, but, you know, that's something I  
13 think in just common, general understanding people might anticipate. Again, I say  
14 that clearly as a layperson. I don't pretend to have any expert knowledge one way  
15 or the other, but he is not in a facility at this point in time like many people who do  
16 suffer massive brain injuries whether it be by stroke or some kind of traumatic injury  
17 of another sort are sent. So I would just note that in an effort, Mr. Wright, to explain  
18 the Court's reasoning in this matter.

19           MR. WRIGHT: Thank you, Your Honor.

20           I'm a layperson also, and that's why I submitted the letter of Dr.  
21 Veerappan dated March 6<sup>th</sup>, which states, In my professional opinion I believe that  
22 Dr. Desai is not in a position both physically and mentally to make a court  
23 appearance so soon after his stroke as this would be -- as this would place  
24 excessive strain on his recovery and may lead to reoccurrence of another cerebral  
25 vascular event. That wasn't my opinion. I'm a layperson also so I rely on the

1 treating physicians and neurologist to report to the Court his condition.

2           Additionally, on --

3           THE COURT: And I was looking at the part of the letter that said, Dr. Desai  
4 suffered a multifocal ischemic stroke within the left cerebral hemisphere. This has  
5 caused him to be confused, disoriented and has expressive language problems with  
6 left arm and leg weakness. He needs to have therapy for language, physical and  
7 occupational therapy. In my professional opinion I believe that Dr. Desai is not in a  
8 position both physically and mentally to make a court appearance so soon after his  
9 stroke.

10           And again, you know, these are the types of letters we get all the time  
11 in a typical case, of course, but the Court is not looking at this event in a vacuum.  
12 The Court is looking at the long-standing history of this case where Dr. Desai has  
13 been found to be an exaggerator and a malingerer and to have feigned, essentially  
14 feigned symptoms. And so, you know, this may be a case of the boy who cried wolf,  
15 but unfortunately, you know, the defense is stuck with the record that has already  
16 been made in this case, which are those things.

17           Now, I don't know what happened. Like I said, all I know is he was  
18 transported by ambulance, and he was treated. The rest we need to have explained  
19 to us by an independent medical evaluation by a physician who is completely neutral  
20 and whose opinion I think the Court can rely upon.

21           So that's all I'm saying, and, you know, again, it's the history of the  
22 case, what has transpired previously that, you know, I have to consider as well.

23           MR. WRIGHT: What has transpired previously was never any suggestion that  
24 the strokes were feigned, fabricated, malingered. Even --

25           THE COURT: That is correct. He had --

1 MR. WRIGHT: -- even doctor --

2 THE COURT: -- he had two strokes. I'm talking about the symptoms, and if I  
3 didn't say the word symptoms, I apologize. I meant to say the symptoms, not the  
4 strokes themselves. Those have been verified. The State agrees they've been  
5 verified. There was never a dispute, and if I in any suggested that I didn't believe  
6 that, then I apologize. But I thought I said symptoms, not the fact of strokes  
7 themselves. So I just want to make that clear in any event, Mr. Wright.

8 MR. WRIGHT: Okay. Additionally, what was submitted to the Court, so you  
9 weren't just taking my letter and my layperson's opinion that he had a stroke, I  
10 submitted to the Court the MRI results of February 24, Sunday, read by -- or  
11 performed by Dr. Diane Mazu (phonetic) at Summerlin Hospital, verified by Dr.  
12 Mazu. The MRI report showing the stroke also submitted to the court the MRI head  
13 without contrast report of February 25 on Monday performed by Dr. Raznish  
14 Agrawal, A-g-r-a-w-a-l, additionally, U.S. carotid duplex bilateral report of February  
15 25 by Dr. Robert Polander (phonetic). So it was not simply me sending some letter  
16 saying I think he had a stroke and went by hospital -- to the hospital, and I told you I  
17 went and visited him three times in the hospital, and he was unable to communicate  
18 with me or say an intelligible word.

19 And so that is what I brought to the Court, just to make the record more  
20 complete, and I have no disagreement with an independent medical evaluation.

21 THE COURT: And the issue, Mr. Wright, if I didn't make that already clear,  
22 you know, again, we all agree he's had strokes in the past, and there was some  
23 cognitive deficit. The issue is whether or not that affects his competency to stand  
24 trial, and the important issue for the Court is, has this new neurological event, this  
25 new stroke, what kind of damage has that caused, and has that caused a change in

1 essentially Dr. Desai's brain that creates a different situation than what has already  
2 existed in the past and what was thoroughly evaluated because the defense has  
3 been maintaining that Dr. Desai is incompetent and that he's had difficulty, I guess,  
4 communicating with you and recalling events and other things.

5           So the issue again is, you know, okay, there was a neurological event.  
6 What's the outcome? What's different here? Because, you know, he's already  
7 been evaluated and in a sense has been given a roadmap based on the last  
8 competency hearing and what occurred in front of Judge Delaney. And so, you  
9 know, that's what the Court's interest is to see, well, all right, there's been an event.  
10 What does that mean according to the medical experts? What's changed here?  
11 What can we ascertain through objective findings based not just on the recent MRIs  
12 but a comparison of any recent MRIs to past MRIs?

13           Because of course, you know, the MRI showed something in the past,  
14 and not being a medical expert I can't evaluate Dr. Mazu's report. I don't know that  
15 it even indicates a comparison to what has happened in the past, and to me, that's  
16 the critical inquiry. What were his brain injuries before that were found to not have  
17 created such a cognitive deficit that he couldn't stand trial, and what are his brain  
18 injuries now? To me, that's really the inquiry here not whether there was an event,  
19 not whether he was hospitalized, but what if anything was the impact of that event?  
20 And I certainly don't, while we go into this inquiry, I certainly don't want to delay this  
21 trial any further.

22           Now, obviously, if it is a situation where it does get sent to competency  
23 court, then that's how it is, but in the meantime, I'm not willing to grant a stay and tell  
24 the lawyers to stop working and that we're not going to trial.

25           State, do you have anything that you'd like to place on the record, Mr.



1 Staudaher?

2 MR. STAUDAHER: A couple of things. First of all, there was no comparison  
3 of prior studies according to at least the reports that we did receive, and we just  
4 have those reports of the acute event, at least the radiologic studies that were done  
5 at the time he was hospitalized in Summerlin.

6 That being said, we agree with the Court that there should be an  
7 independent medical evaluation done of him to see what, if any, impact his most  
8 recent event has on his status. I mean, it's been clearly the defense's position that  
9 regardless of what the evaluators have said at Lakes, regardless of what anybody  
10 has said with regard to his testing in the past that he's not competent. He can't  
11 communicate.

12 As the Court's aware, there's a -- there's a significant subjective  
13 component to that, meaning that the testing and everything else that had been done  
14 in the past is entirely reliant on his efforts as -- in his good-faith efforts in evaluation.  
15 I would note that even after the second stroke, the one that is postdating the events  
16 in this particular case, not the most recent event, that the recommendation was for  
17 him to undergo the same kinds of recommendations that he has currently from Dr.  
18 Veerappan based on that letter, that he undergo speech pathology, or speech  
19 therapy, cognitive therapy, that he has occupational therapy.

20 All these things were recommended at that time, and to my knowledge  
21 we don't have any reports or records that indicate that he's ever attempted to avail  
22 himself of those things, and he's been out of custody. It's not like he's sitting in  
23 Clark County Detention Center and he somehow does not have the access to those  
24 types of treatments and help.

25 The records we show just the opposite, that he has not tried to help

1 himself or make himself better. In fact, it's the State's position -- one of the reasons  
2 why we concur with the independent medical evaluation ordered by the Court -- that  
3 sounds like it's going to be ordered by the Court -- is that it is in his best interest to  
4 not have someone look at him on a regular basis, in his best interest to not try and  
5 get better, if in fact there is a legitimate impairment based on his objective findings  
6 on the ct scans and the MRIs and the like.

7           So because of that, we feel that his past record over literally years has  
8 not shown him to be actively trying to get himself over the hump, so to speak, and to  
9 help his attorney or attorneys in this particular case, and because of that the Court  
10 feels that if he is ordered to do the medical evaluation that the Court is anticipating  
11 here that he also be ordered to undergo the therapies that are recommended so that  
12 he can overcome whatever legitimate impairment that he does have.

13           With that regard, we do know that there was a most recent MRI study. I  
14 think the last time we were in court on this particular issue, it's indicated that that  
15 was done in October. There was not indication there was any marked change from  
16 the previous studies before that. Clearly all of these studies would be necessary to  
17 have someone critically evaluate whether or not we're looking at old damage, new  
18 damage, the extent of the new damage, if there's evolution of existing problems that  
19 were there or whether or not these are really anything that's significant and if they  
20 manifest in the manner that Dr. Desai is showing today.

21           Now, I know that this is the first time that he has appeared in court in a  
22 wheelchair. I would note that he's not on oxygen, and he's not on -- there's no  
23 caregivers next to him hoping that he's going to be able to make it through this  
24 particular hearing. So I think the Court was actually accurate in saying based on the  
25 reports that the Court has that this isn't as stressful an event as it might well have

1 been indicated in the medical letter that was sent by Dr. Veerappan.

2           However, with this one issue out there with regard to the evaluation, the  
3 Court has indicated that this needs to be a completely independent evaluation. The  
4 State would concur with that completely. To that end, I think we need to address at  
5 least at some point how the Court wishes to order that evaluation to be done and  
6 who is to be the person or persons that would do the evaluation and what role, if  
7 any, I mean, I obviously would believe that the Court would be the one who would  
8 receive the records, would kind of direct where this needs to be so that it doesn't  
9 look like the State used its experts or the defense used their experts to make the  
10 evaluation.

11           I don't know if that needs to be at another time, but it's certainly  
12 something that needs to be addressed in a relatively short order. I know that Mr.  
13 Wright has indicated that he is in the process of obtaining the medical records, the  
14 films and so forth from this most recent hospitalization. We would certainly like to  
15 see those, and he's indicated that he can forward them to us as well when he  
16 receives them.

17           If it is necessary, the State would ask the Court to issue an order for the  
18 release of those records to facilitate them if in fact there's any delay for any reason.  
19 I don't see that a relatively short six-day hospital stay that they should have  
20 voluminous records that would be difficult obtain in a relatively short order. And so  
21 we would expect those to be with or at least accessible to us in the very near future.

22           THE COURT: And, Mr. Wright, you have no problem doing whatever you  
23 need to do to expedite that, correct?

24           MR. WRIGHT: Whatever orders you all want to issue. I'm not sure we need  
25 another doctor. Listening to the State, it sounds like he has it all solved. I'm a

1 layperson. I represent a client with diminished capacity. The decisions being made  
2 are mine, not his. Ethically, I'm required to do this --

3 THE COURT: Right.

4 MR. WRIGHT: -- you can cast aspersions on him all you want; the decisions  
5 are mine, and I will keep making them. He is not capable right now. Get whatever  
6 orders --

7 THE COURT: Well, has he --

8 MR. WRIGHT: -- you want. I'm happy to --

9 THE COURT: Has a guardian been --

10 MR. WRIGHT: -- have them.

11 THE COURT: Has a guardian been appointed then if he --

12 MR. WRIGHT: Yes. Mrs. Desai's a guardian. Under the ethics, I have a  
13 client with diminished capacity. I'm not saying incompetence. I'm saying I have to  
14 make the decisions. You say continue to prepare for trial. I can't even speak to my  
15 client, but I will continue to prepare for trial without a client who can communicate  
16 with me. And I welcome any court orders to expedite all the medical records plus.

17 THE COURT: And, Mr. Wright, with all due respect, this is what we've been  
18 hearing. The previous judge, Judge Mosley sent him -- I believe it was Judge  
19 Mosley -- sent him for a competency evaluation. As we know, he went to Lakes  
20 Crossing. He was evaluated. There was a hearing in front of Judge Delaney. The  
21 scope of the hearing was upheld, and he was found to be competent.

22 So a lot of the claims are the same claims that have been made in the  
23 past and have been rejected. Now, I understand, just to reiterate, and I think Mr.  
24 Staudaher put it better, that, you know, the issue is, was there a stroke? What was  
25 the damage that can be viewed, and how significant is that? To me, before we even

1 get to the competency evaluation, that is the issue, and, you know, to the extent --  
2 and again, I understand you have to rely on what your client is manifest -- your client  
3 and your client's wife are telling you, in the case of the wife, and manifesting to you  
4 in the case of your client.

5 MR. WRIGHT: And his doctors that I met with.

6 THE COURT: And I understand that. While I have what I have, you know,  
7 whatever other communication you have, I don't know. I'm not privy to that. I  
8 understand that you're doing ethically what you are bound to do, and I'm in no way  
9 intending to disparage you or the work that you and Ms. Stanish are doing on this  
10 case. But again, your information, a lot of it, is based on what you're able to  
11 observe Dr. Desai demonstrating and doing.

12 And I would note for the record that Judge Mosley made an order,  
13 specifically made the order that Dr. Desai have to appear at all of the hearings  
14 because he wanted to be able to observe him in the courtroom setting, and, yes, he  
15 is in a wheelchair today, and this is the first time that he has come to court in a  
16 wheelchair. However, you know, I'm looking at him, his appearance otherwise, I  
17 mean, he's a little, actually, his color isn't, I guess, as good, I would say, but in terms  
18 of being downcast and not looking around the courtroom and other things, his  
19 demeanor is largely the same as what we have seen throughout the hearings, and  
20 I'll just kind of note that, and the only reason he's even here again is because of  
21 Judge Mosley's ongoing order, that Judge Mosley had ordered that he wanted him  
22 here for that very purpose to observe him.

23 So I think that we do need to appoint someone who is independent.  
24 Any conflicts can be vetted by the State to make sure, you know, it's not someone  
25 who's in the -- had been in the country club with Dr. Desai or some other

1 connection. My understanding is that a neuroradiologist would be the appropriate  
2 person to look at this and possibly a neurologist.

3 MR. STAUDAHER: I believe it may be a neurologist certainly, possibly a  
4 neuropsychiatrist or neuropsychologist, and I assume that they would also require a,  
5 at least a neuro-radiologic evaluation, films and --

6 THE COURT: Yeah. The neuropsychologist might be more relevant if we go  
7 to a competency determination as opposed to the preliminary determination what  
8 changes, if any, are evident through objective testing.

9 MR. STAUDAHER: The State did, after our hearing in court, Your Honor, no,  
10 excuse me, in chambers --

11 THE COURT: -- meeting after the letter with everyone.

12 MR. STAUDAHER: -- last week. The State did start to make inquiries around  
13 not necessarily locally because it's hard for us to determine what connections, if  
14 any, people may have or what influences there may be. So inquiries were made up  
15 north. Inquiries were made in California as well for individuals who might be able to  
16 evaluate and do an independent evaluation.

17 Again. It's not -- the purpose of us doing that was not to try and find a  
18 person that was aligned with the State just to come up with names. I don't know if  
19 the Court has anybody in mind in particular or evaluators, but we would certainly  
20 pass those along to the Court if the Court -- I assume the Court is going to make the  
21 determination.

22 THE COURT: Right, and I'd rather do this sooner rather than later because,  
23 again, you know, it's the Court's desire to go forward with this case. It was the  
24 Court's desire to go forward last time with the case. Had we done that, maybe we  
25 wouldn't be in this position. We can all, you know, quibble about that.

1           What I would suggest and what I would ask is for the State and the  
2 defense, Mr. Wright and Ms. Stanish to get together and see if you can agree on a  
3 name. I would ask that if it's a person who has testified as an expert witness in the  
4 past that it obviously not be for either side and that if you -- if they do do much  
5 expert testimony, it not be somebody who strongly favors one side or the other, at  
6 least in the criminal arena. You know, if it's in the civil arena I don't really think  
7 that's as relevant.

8           If you can't agree, then just submit names and the Court will make a  
9 determination of who to select. Can both sides agree to do that?

10          MR. STAUDAHER: Yes, and the State has somebody in mind and we'll  
11 submit those to both counsel, and I think it would be appropriate to just go ahead at  
12 the same time and submit them to the Court so the Court's aware of independent  
13 inquiries. I've never worked with any of these individuals before, and we're certainly  
14 still in the process of trying to garner some names of individuals who may be, one,  
15 available to do that kind of work. And so we'll certainly submit that to counsel and  
16 the Court. That's what the State will do. I'll be able to have that by the end of the  
17 day.

18          THE COURT: Okay. And then I don't know that we have to formally have  
19 another hearing to make the appointment. Perhaps since time is of -- I want to  
20 move this along. Perhaps we can just agree to have a meeting in chambers or a  
21 conference call, anything that's, you know, if it seems like it's -- any issues that need  
22 to be made part of the record, then, of course, we'll just put it on calendar as soon  
23 as possible and have it public. But if we can all agree, I think we can maybe do that  
24 informally by way of a conference call or something like that.

25          And, Ms. Stanish, you're nodding.

1 Mr. Wright, would that be agreeable with the defense to move this  
2 along?

3 MR. WRIGHT: Yes, Your Honor.

4 THE COURT: Is that agreeable with the State?

5 MR. STAUDAHER: Yes, Your Honor.

6 THE COURT: Okay. I don't want to say let's wait till Tuesday because if we  
7 can do it Friday or Monday, let's by all means get that done.

8 All right. Anything else we need to discuss on the issue of the recent  
9 medical events concerning Dr. Desai and how we're going to go forward at this  
10 point?

11 MR. STAUDAHER: Not from the State, Your Honor.

12 THE COURT: All right. Again, I think I've made it pretty clear that at this point  
13 in time anyway, the trial date will stand. Is there anything -- it was on for status  
14 check, anyway today, is there anything -- we have a pending motion in limine from  
15 the State set for March 12<sup>th</sup>. Is there anything else that we need to discuss  
16 regarding --

17 Anything from you, Mr. Santacroce?

18 Is everyone moving forward?

19 Last time, Ms. Stanish, you'd indicated you had three medical experts  
20 on retainer. Have you been moving forward? I mean, this is only the last week that  
21 this medical event has occurred. Have you been moving forward getting those  
22 experts ready and making sure they're going to be available whichever ones that  
23 you're going to use?

24 MS. STANISH: Yes, Your Honor.

25 THE COURT: All right. The jury questionnaire, where are we on the jury



1 questionnaire?

2 MS. WECKERLY: Your Honor, I sent two versions of the questionnaire to  
3 counsel. I think they just want to review it. I think we still are pretty good on time on  
4 the questionnaire. I'm just waiting for -- they can email me their input, and then I'll  
5 finalize it.

6 THE COURT: All right. Ms. Stanish, have you -- are you the one that, I'm  
7 assuming, that --

8 MS. STANISH: Well, we both have already reviewed it, and there's just a few  
9 minor things that we can discuss after with the State.

10 THE COURT: Okay. And then, Mr. Santacroce, have you received that and  
11 reviewed the questionnaire as well?

12 MR. SANTACROCE: I have, and I've expressed the last time we were here  
13 my concern about the time on the questionnaire as to how long the trial would be.

14 THE COURT: Right.

15 MR. SANTACROCE: And I don't know if that's been rectified or not.

16 MS. WECKERLY: I can, I mean, the time is the easiest thing to change. If  
17 Ms. Stanish has substantive changes I'm sure she can get those to me, and we'll  
18 work that out.

19 THE COURT: Right. On the time, I mean, you said a month. One thing, you  
20 know, a lot of times when we say it's going to take this long we include jury selection  
21 in that. Because of the way the number of questionnaires we're going to have, the  
22 way we're going to be having, you know, we're not going to have 500 people show  
23 up on the same day.

24 MS. WECKERLY: Right.

25 THE COURT: The way we're going to be doing jury selection is a little bit

1 different than what we'd do in most cases. And so for that reason, let's say,  
2 somebody, you know, the first 20 who come on the first Monday, if one of those  
3 people is chosen, they may not have to come back for two weeks until we get the  
4 jury. So for that reason, you know, if we just focus on the actual trial time excluding  
5 the time for jury selection, because as I said, people won't have to come back each  
6 and every day until we qualify enough so that we can have, you know, our 12 jurors,  
7 4 or 5 alternates, and, you know, enough people for all of the peremptory  
8 challenges, you know, it's not as much time as what, you know, you would ordinarily  
9 consider.

10           So if we exclude, say, five days or seven days or whatever for jury  
11 selection, then we might be closer to five weeks or four weeks. We can always put  
12 down six weeks out of an abundance of caution as well, and if people indicate that's  
13 a conflict, we can vet that out through the selection process.

14           Yes?

15           MR. WRIGHT: I think it will be longer. The -- as doctor -- assuming we go  
16 forward and his condition remains as it is, I mean Dr. Desai, and assuming he's in  
17 the same condition as he was when he was evaluated at Lakes Crossing, I think it  
18 was Dr. Zurkowski (phonetic) who stated that additional time would be necessary for  
19 communication with the client because I'm not able to communicate with him, but in  
20 between witnesses, I am looking at -- the Court will obviously rule as it sees, but I  
21 will be looking at taking recesses in efforts to communicate. If his condition is the  
22 same way it was, Dr. Zurkowski said that's what we'll have to do. So I'm just  
23 advising the Court of that because I could see it going longer.

24           THE COURT: Okay. The other thing, you know, to address is Mr. Staudaher  
25 pointed out, you know, Dr. Desai was advised to do this therapy and other things

1 that apparently he hasn't been doing. We discussed this at the last --

2 MR. WRIGHT: That's not true.

3 THE COURT: Okay. We discussed it at the last hearing, and I think it was  
4 mentioned, well, you know, there is therapy, and I said, Well, he's out of custody,  
5 you know, why hasn't he done it. So to the extent that there is therapy out there  
6 than can benefit him, I think he ought to be doing it. You know, not rely on the fact  
7 that he's not improving and then say, well, I'm not improving, but I didn't go to  
8 therapy. I didn't do what was recommended to me by my physician.

9 And so, you know, to the extent that things as indicated by the letter  
10 have been recommended, I think Dr. Desai ought to do it because I'm not going to,  
11 you know, again say, Well, he's incompetent or he can't communicate or he has  
12 difficulty communicating, but we won't know. Could he have improved had he done  
13 the recommended therapy and training and other things that are indicated in the  
14 letter? So I would just add that.

15 Anything else from the defense?

16 MR. WRIGHT: Yeah, I disagree with the State's representations. As the  
17 Court knows from having read Dr. Bitker's finding that he's presently incompetent  
18 before the most recent stroke, he had been down to UCLA again to see about any  
19 rehabilitative efforts, and those were unsuccessful. So it is not that he has done  
20 nothing despite the State's representations to the contrary.

21 THE COURT: Mr. Staudaher.

22 MR. STAUDAHER: Well, I would just point out that's one example. When he  
23 came back after UCLA there was the recommendation that he undergo -- one of the  
24 biggest problems he has is the speech issue, his ability to come up with the names  
25 of objects that are -- that he knows, for example, a pen, coming up with the name

1 pen. That was one of the main issues supposedly from that.

2           One of the things that was recommended was that he undergo speech  
3 therapy. He did go and have the evaluation at a local speech therapy provider. I  
4 actually myself went and looked at the records of that provider. He came for the  
5 original evaluation. There was a recommendation that he undergo weeks of therapy  
6 afterward. He did not avail himself of that. In fact, there were indications in that  
7 record that that organization had called him, had tried to communicate with him not  
8 once, not twice, but multiple times trying to set up times for him to start his therapy.  
9 The last entry in the record in that regard was that he informed them or through --  
10 somebody informed them for him that he would not be treating with them. So that is  
11 what I'm -- that's in part the kind of thing that I'm basing what I said on.

12           Secondly, I don't have any record that he, aside from his maybe to  
13 travel down to UCLA for a single or two separate evaluations there that he's  
14 attempted to undergo any evaluations locally or treatment locally or gone anywhere  
15 else. I know he is restricted based on the fact that he is a criminal defendant in a  
16 case, that he can't just go free will outside the state borders, but that doesn't mean  
17 that he's not at least able to go locally to find people to help him and to do that. To  
18 my knowledge and at least the records that I have do not indicate that he's done any  
19 of that.

20           MR. WRIGHT: That's not --

21           MR. STAUDAHER: So there's no basis --

22           MR. WRIGHT: -- records report --

23           THE MARSHAL: One at a time.

24           THE COURT: All right. Well, what he's done in the past is the past. I would  
25 just note according to the letter from Dr. Veerappan dated March 6<sup>th</sup>, it says, He

1 needs to have therapy for language, physical and occupational therapy. That's, you  
2 know, March 6<sup>th</sup>. That was the situation by his long-time neurologist. I'm sorry,  
3 according to his long-time neurologist, that's what his long-time neurologist  
4 recommends as of yesterday.

5 And so to me if that's what's been recommended, all I'm saying is, you  
6 know, if there are improvements that can be made, the fact that improvements aren't  
7 made if as a result of his failure to avail himself of available therapy, will certainly be  
8 taken into account by the Court. That's all I'm suggesting. And again, you know,  
9 long-time neurologist, at least five years, says, He needs to have this therapy. So I  
10 don't know, it seems to indicate he needs to have the -- some therapy or may  
11 benefit from therapy or at least could potentially benefit from therapy.

12 Yes, Mr. Wright.

13 MR. WRIGHT: We told you all of that in the meeting in chambers, but  
14 everything that's in that letter was told to you on Monday or Tuesday and Mr.  
15 Staudaher and that it was being scheduled, all of the things recommended, that he  
16 was seeing the speech therapist, the occupational therapist, everything requested.

17 So it's not like these things just came up and we're doing nothing. All of  
18 this has been made through disclosure. I'm sitting here thinking, Were you in the  
19 meeting in chambers? I --

20 THE COURT: Well, Mr. Wright, you know --

21 MR. WRIGHT: I object to characterizing --

22 THE COURT: -- perhaps the Court and Mr. Staudaher don't have the perfect  
23 recall that you may have because we discussed a lot of things, and now that you  
24 say it, yes, I recollect that that was discussed.

25 MR. STAUDAHER: Your Honor, it's not that I don't believe that Mr. Wright

1 would, you know, actively not make efforts on the part of -- on behalf of his client to  
2 have him undergo therapy, but based on the track record, there's a  
3 recommendation; he's looking into it. We just want to make sure there's follow  
4 through. That's all.

5 I'm not saying that he -- that no efforts are being made initially to  
6 schedule things, but he's been out of the hospital. It seems like he can get  
7 scheduled for treatment. If it's important to him, he needs to get it done. We're just  
8 asking that the Court monitor whether or not that follow up was ever done. We don't  
9 want to be in a situation, you know, down the road a month, two months, or  
10 whatever it is from this point forward where again he just didn't get it done. And  
11 that's where we're at.

12 THE COURT: All right. Going forward. Basically, what I'd like the State  
13 today, early tomorrow and Mr. Wright and Ms. Stanish to do is to get together with  
14 those names, see if you can reach an agreement and then perhaps we can have  
15 some kind of a conference call or something like that tomorrow afternoon to see  
16 where we are.

17 Thank you.

18 MR. STAUDAHER: Thank you, Your Honor.

19 (Proceedings adjourned 10:39 a.m.)  
20  
21  
22  
23  
24  
25

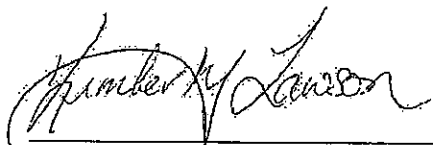
**CERTIFICATION**

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

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(702) 382-4004 (PH)  
(702) 382-4800 (fax)

March 1, 2013

The Honorable Valerie Adair  
District Court Judge, Department 21  
Regional Justice Center  
200 Lewis Avenue  
Las Vegas, NV 89101

**Hand-Delivered**

Michael V. Staudaheer  
Chief Deputy District Attorney  
Major Violators Unit  
301 East Clark Place  
10th Floor  
Las Vegas, NV 89155

**RE: Client's Present Incapacity  
State v. Dipak Desai, Consolidated Case Nos. C -12-283381 and C265107**

Dear Judge Adair and Mr. Staudaheer:

I am writing to inform you that Dr. Desai suffered another stroke which has further aggravated his inability to assist in his defense.

Early in the morning of Sunday, February 24, 2013, Dr. Desai suffered a stroke and was transported by ambulance to Summerlin Hospital. He was placed in the Intensive Care Unit from Sunday to Wednesday. On Wednesday, he was transferred to the Intermediate Care Unit. He was discharged earlier this afternoon and returned home where he will receive constant monitoring and care by family members.

Neurological imaging and testing confirmed that Dr. Desai suffered acute multifocal infarction, which affected multiple areas of his brain. He has been administered various medications and therapists have been evaluating and treating him. He will require substantial outpatient treatment and follow-up as recommended by his neurologist and other providers.

I visited with my client on three occasions this week. Based on my observations, his speech has been severely affected, as he was unable to converse or speak recognizable words during my visits. As an officer of the court, I can tell you that Dr. Desai does not have the present ability to assist in his defense. This stroke has further exacerbated his inability to assist in his defense. My understanding is that there is additional and severe damage to the areas of the brain controlling executive functions, including speech, memory, and cognition. I understand that this new stroke is a symptom of a progressive and deadly condition from which he is unlikely to recover.

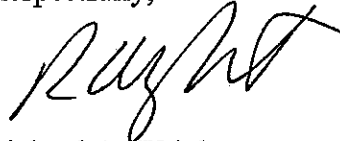
I believe that it will be necessary to stay the proceedings and appoint competency evaluators pursuant to NRS 178.405 and 178.415. Out of concern for my client's health and respect for his family, I request that his health care information remain confidential for the time being to afford him time to recuperate. We are awaiting receipt of his hospital records, which we will promptly provide to both the Court and Mr. Staudaheer. Upon receipt of the records, the



The Honorable Valerie Adair  
Michael V. Staudaher  
March 1, 2013  
Page 2

competency issue can be more fully addressed. In the meantime, I am glad to meet and confer with you to discuss procedural issues.

Respectfully,

A handwritten signature in black ink, appearing to read "R Wright", written in a cursive style.

Richard A. Wright

WRIGHT STANISH & WINCKLER

RICHARD A. WRIGHT  
KAREN C. WINCKLER  
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March 6, 2013

The Honorable Valerie Adair  
District Court Judge, Department 21  
Regional Justice Center  
200 Lewis Avenue  
Las Vegas, NV 89010

**Hand-Delivered**

RE: Request to Waive Client's Presence  
State v. Dipak Desai, Consolidated Case Nos. C -12-283381 and C265107

Dear Judge Adair:

I request that you waive Dr. Desai's presence at tomorrow's status check hearing based on the attached letter of his treating neurologist, Venkat Veerappan, M.D. Due to the multifocal stroke suffered last week, Dr. Desai is weak and vulnerable to reoccurrence of another cerebral vascular episode.

Respectfully,



Richard A. Wright

Attach. Veerappan Letter, 5/6/13

cc: Michael Stauderhar (w/ attch)  
Chief Deputy District Attorney



# Desert Neurology

**Venkat Veerappan, M.D. M.R.C.P.**  
Clinical Associate Professor, Touro University  
Neurology Residency Program Director  
Stroke Director, Valley Hospital

## Neurology Residents

Shaharoh Bonyadi D.O.  
Laura Marcu Buck D.O.  
Robert Balsiger D.O.  
May Mahajan D.O.  
Anthony DiCamillo D.O.  
Cyndi Tran D.O.

## Diagnostic Testing

Cognitive Testing  
DBS Interrogation  
EEG - Ambulatory  
EEG - Routine  
Evoked Potentials  
Nerve Conduction Studies/EMG  
Sleep Studies  
VNS Interrogation

## Office Location

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2020 Goldring Avenue, Suite 202  
Las Vegas, NV 89106

Phone: (702) 732-2600  
Fax: (702) 732-2622  
Email: desertneurology@yahoo.com

March 6, 2013

To whom it may concern:

I am Dr. Desai's neurologist and have been since 2007, and was his treating physician during his recent hospital stay at Summerlin Hospital Medical Center. Dr. Desai suffered a multifocal ischemic stroke within the left cerebral hemisphere. This had caused him to be confused, disoriented, and has expressive language problems, with left arm and leg weakness. He needs to have therapy for language, physical, and occupational therapy. In my professional opinion, I believe that Dr. Desai is not in a position, both physically and mentally, to make a court appearance so soon after his stroke; as this would place excessive strain on his recovery and may lead to recurrence of another cerebral vascular event.

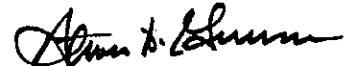
Thank you,



Venkat Veerappan, M.D.M.R.C.P.

## **Exhibit 7**

**Transcript of Hearing on Motion  
for Competency Evaluation, 1/11/13  
(#93-111)**



CLERK OF THE COURT

1 RTRAN

2 DISTRICT COURT

3 CLARK COUNTY, NEVADA

4  
5 STATE OF NEVADA,

6 Plaintiff,

7 vs.

8 DIPAK KANTILAL DESAI, RONALD E  
9 LAKEMAN,

10 Defendants.

} CASE NO. C265107-1  
} CASE NO. C265107-2  
} CASE NO. C283381-1  
} CASE NO. C283381-2  
} DEPT. XXI

11  
12 BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE

13 TUESDAY, JANUARY 8, 2013

14 RECORDER'S TRANSCRIPT OF HEARING RE:  
15 DEFENDANT DESAI'S MOTION FOR COMPETENCY EVALUATION  
16 STATUS CHECK: EXPERTS/TRIAL READINESS (ALL)

17 APPEARANCES:

18 FOR THE STATE:

MICHAEL V. STAUDAHER, ESQ.  
Chief Deputy District Attorney  
PAM WECKERLY, ESQ.  
Chief Deputy District Attorney

21 FOR DEFENDANT DESAI:

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

23 FOR DEFENDANT LAKEMAN:

FREDERICK A. SANTACROCE, ESQ.

24  
25 RECORDED BY: JANIE L. OLSEN, COURT RECORDER/TRANSCRIBER

1 LAS VEGAS, CLARK COUNTY, NV., TUES., JAN. 8, 2013

2  
3 THE COURT: This is the time set for Defendant Desai's motion and notice of  
4 motion for competency evaluation. Dr. Desai is present in custody -- I'm sorry, out  
5 of custody with Mr. Wright and Ms. Stanish, and we have Mr. Santacroce here  
6 although the motion pertains to Dr. Desai.

7 I have reviewed everything, Mr. Wright. I've reviewed the affidavit. I  
8 went back and I reviewed the record from Lake's Crossing, the findings made by  
9 Judge Delaney, everything that had been before the competency court, and as I  
10 read NRS 178.405, If doubt arises as to the competence of the defendant, it is doubt  
11 with the Court. Doubt is created with the Court, not with Dr. Desai, not with you  
12 because you've essentially been maintaining that your client is not competent, and,  
13 you know, if we go back over the various hearings, I think you've alluded to that  
14 several times.

15 I would just note for the record we did not receive an opposition or any  
16 response from the State in writing. So I'm assuming at this point the State is not  
17 taking a position on this matter.

18 MR. STAUDAHER: That is correct, Your Honor. The -- and I don't know --  
19 the interpretation, I think, certainly could be argued one way or the other, but I think  
20 from our perspective that we cannot thwart any efforts on the part of the defense to,  
21 at least at this stage, to at least raise the issue, and whether the Court makes an  
22 evaluation of that I think is up to the Court. So that is why we did not respond.

23 THE COURT: Okay. So, Mr. Wright, the Court's point is this, that you have to  
24 establish doubt to the Court for me to either do the competency evaluation here or  
25 send it to competency court, which I checked with the Chief Judge I'm not required

1 to do. That, as you know, is a relatively new creation.

2 So as I said, as I prefaced all of this, I reviewed everything, and frankly I  
3 don't see anything new here. I don't see anything that wasn't raised before, really,  
4 before he went to Lake's Crossing. And so, you know, what's new, what's different  
5 here that hasn't been thoroughly addressed and wasn't litigated before Judge  
6 Delaney? I know the defense disagrees with the way that hearing was conducted,  
7 but, of course, as we all know, the parameters of that hearing were upheld by the  
8 Nevada Supreme Court. So they were satisfied with the way Judge Delaney  
9 maintained that hearing.

10 And so my question to you after reviewing everything is what's new?  
11 What's different because I frankly don't see that anything's different, anything's  
12 changed from what was presented before, and you're free to address that.

13 MR. WRIGHT: Okay. Dr. Bittker examined -- I've attached his report.

14 THE COURT: Right.

15 MR. WRIGHT: Dr. Bittker had never seen Dr. Desai ever until, let's see, the  
16 report is December 1<sup>st</sup>, two months ago.

17 THE COURT: Right.

18 MR. WRIGHT: And he personally evaluated, tested Dr. Desai in Reno, had  
19 additional tests done by Dr. Wu that he -- is referenced in there that he relied upon,  
20 and Dr. Bittker made the determination that Dr. Desai is presently not competent  
21 under the standards of Dusky based upon his evaluation and testing post Lake's  
22 Crossing. None of that was at the last hearing.

23 THE COURT: Here's the thing, Mr. Wright. I mean, I see Dr. Bittker is out of  
24 Reno, but let's face it, you know, you could get numerous physicians to evaluate Dr.  
25 Desai and to come in with a finding and an opinion and a report that he's not

1 competent at the present time. And so the concern -- I mean, we could just keep  
2 going ad infinitum with different experts who would opine that, and that would not be  
3 surprising to the Court, and I'm not, you know, critical of Dr. Bittker. I'm sure he did  
4 this in good faith to the best of his ability.

5 But my question is -- and I think we all recognize that we could go on  
6 forever with new reports and findings -- what is different? Why do we need to go  
7 back and do the same thing that has already been done and, you know, assess him  
8 again. Because as I read this, I don't see what's different. I don't see really  
9 anything -- new diagnostic testing. I don't see any evidence of change.

10 I would just point out, of course, the Court recognizes that with age Dr.  
11 Desai's cognitive abilities may deteriorate just like all of our cognitive abilities may  
12 deteriorate, and Dr. Desai, you know, he does have damage to his brain. He had  
13 strokes; that's not disputed. And so maybe that would exacerbate some kind of  
14 cognitive decline. But other than just what's going to happen with the progression of  
15 time, we can all argue over why that's occurred in this case and whatnot. I just don't  
16 see that there's anything new or different here that wasn't considered before -- I  
17 mean, I understand this report wasn't considered before, but that there's been a  
18 change, that there's anything to create doubt with this Court that there's really  
19 something different and that we need to go --

20 MR. WRIGHT: The question --

21 THE COURT: -- through the process again because that's how I read the  
22 statute. Again, it's not your doubt. It's not Dr. Desai's doubt. It's doubt, and who's  
23 to find the doubt? It's me to find the doubt, and that's where I am, and I'm just being  
24 very candid with you, Mr. Wright. That's where I am. I just don't see what's different  
25 here to cause us to go back where we've already been.



1 MR. WRIGHT: The question isn't is something different. The question is, is  
2 there a doubt as to his competence. You have a report from a psychiatrist who  
3 evaluated him, had him tested, gave him tests, sent him to Dr. Wu for imaging, and  
4 that doctor certifies to a medical degree of certainty that the man is not competent.  
5 If that doesn't raise a doubt as to present competence, I don't know what does.

6 Mr. -- Dr. Desai thinks he's still in front of a nice judge, man, that keeps  
7 us from arguing who is Judge Mosley.

8 THE COURT: Mr. Wright, I would just point out --

9 MR. WRIGHT: He also thinks that --

10 THE COURT: -- that Dr. Desai can answer those questions however he  
11 chooses to answer those questions, and if you go back and read the evaluation from  
12 Lake's Crossing as I did, you know, there's a belief that he's not trying to answer the  
13 questions to the best of his ability. There's a finding that, yes, he does have  
14 impairment with the ability to come up with words and things like that, but he  
15 controls the answers to those questions.

16 So if he wants to appear incompetent, he certainly can say, oh, yeah, a  
17 jury is just a group of people and the prosecutor is that guy that fights with Mr.  
18 Wright, and, you know, the Judge is a nice guy that keeps quiet in the courtroom or  
19 something to that effect that he said. That doesn't mean that he's incompetent.

20 What I'm saying is, you know, we could keep going over the same  
21 terrain over and over again with another report, another doctor, another assessment  
22 that he's incompetent at the present time. And so why go through the process again  
23 and send him back and do everything that has been fully litigated.

24 You know, Judge Delaney had a day-long hearing, and, again, I  
25 understand you disagree with the parameters of that hearing, but the Nevada

1 Supreme Court upheld those parameters. So why go back over the same ground.  
2 You know, the way I read it is I don't know that we have to say, oh, well, any time  
3 there's a report that's essentially what we've seen already that we have to say now  
4 there's new doubt.

5 My feeling is that this issue has been thoroughly litigated on Dr. Desai's  
6 competency. He spent a significant period of time at Lake's Crossing. He was  
7 found to -- while he -- you know, no one disputes he suffered two strokes, one of  
8 which, at least, he again continues working, but no one's disputing the strokes. The  
9 consistent opinion is that there are deficits with respect to language and his ability to  
10 think of words and whatnot that, you know, many of us suffer from from time to time.

11 You know, he was evaluated and found to be, you know, malingering  
12 and not trying hard to answer some of these questions, and I think that maybe  
13 manifested with response to some of the questions about, you know, what's the  
14 Judge do and what's the jury do and whatnot.

15 And so, frankly, the way I read this, Mr. Wright, just because you come  
16 to the Court again with a new affidavit from a different doctor, essentially the same  
17 kinds of things that we've already heard about, I don't know that that creates new  
18 doubt and necessitates us going back to square one. That's my concern.

19 MR. WRIGHT: Okay. It's not a new affidavit from a new doctor. It is a  
20 current evaluation as to his mental competency, and this is a request under 405,  
21 and as the Supreme Court noticed, the prior hearing before Judge Delaney was  
22 under 460, and I had no right to present the evidence of Dr. Bittker at the hearing  
23 because it was under 460. And the Supreme Court said that any motion challenging  
24 petitioner's present competency, not past, based upon interactions and evaluation  
25 since his return from Lake's Crossing would require a broader inquiry should the

1 motion create sufficient doubt as to petitioner's competency to stand trial.

2           So you're saying the motion does not create sufficient doubt because  
3 Dr. Bittker may be a liar?

4           THE COURT: No, I --

5           MR. WRIGHT: May be on the take?

6           THE COURT: Excuse me, Mr. Wright. I never said that. In fact, in explicitly  
7 said I had no reason not to believe that Dr. Bittker evaluated Dr. Desai, and he's  
8 somewhat dependent on how Dr. Desai responds to these questions. Dr. Desai is  
9 largely controlling a lot of the testing, which has been recognized, that Dr. Desai is  
10 attempting -- not by me, not recognized by me, recognized by doctors, recognized  
11 by experts that he's largely controlling this, and I believe, you know, looking over  
12 this, there was even reference to the fact that people normally with cognitive  
13 impairments don't answer the questions this way, and in fact, they try harder.

14           A lot of times it's difficult, and we can all think of past cases, to discern  
15 when someone is cognitively impaired because they try so hard to hide it. That's  
16 not what Dr. Desai is doing in this case. That's not me opining. That's the experts  
17 opining, Mr. Wright.

18           So what I am saying is after reviewing everything I don't see that --  
19 someone said he was incompetent before. What is different? That is, you know,  
20 and you don't agree with that or whatever, and I just want to correct the record. I  
21 explicitly say I have no reason at this point in time to think that Dr. Bittker is a liar, to  
22 think that Dr. Bittker is unethical, and I never suggested that.

23           So I'm accepting the affidavit of Dr. Bittker as made in good faith to the  
24 best of his ability, but reading that and comparing it with the previous affidavits and  
25 what has already been said, why -- I mean, to me we're back to square one. We're

1 back with the same opinions that led to him being -- and I think rightfully so -- sent to  
2 Lake's Crossing. I think that the Judge in that case did the appropriate thing, and he  
3 was evaluated there. And so we've litigated this.

4           So now you have another doctor saying he's presently not competent.  
5 He's been, Mr. Wright, he's been found competent. You don't agree with that. You  
6 have never agreed with that. You've maintained his incompetence at numerous  
7 hearings in front of me, and so I just don't know why we need to go back to square  
8 one and litigate what's already been litigated because I don't see that there's any  
9 change here, that there's anything new, that there's new diagnostics. There's no  
10 evidence of any change, and so that's my position.

11           And I'm asking you, well, what other than Dr. Bittker saying he's  
12 presently not competent, what's different other than the normal progression of time  
13 and aging, which we can expect to see? And so --

14           MR. WRIGHT: The deterioration from a stroke, that's what Dr. Bittker said.  
15 He didn't say it was normal aging. He said looking at the report of Dr. Wu, which  
16 was another MRI, that the deterioration from the stroke has resulted in his inability to  
17 assist counsel, and what he has additionally you can swear me in or take my  
18 representations.

19           THE COURT: Mr. Wright, I'm accepting your representations --

20           MR. WRIGHT: I'm going to give you additionally. You asked for what's  
21 additional. What's additional is the Supreme Court has said, Look at his counsel  
22 and the counsel's ability to interact with the client, and I am telling you he doesn't  
23 understand the difference between the Federal charges and the State charges. He  
24 thinks the Federal Judge in this case is Sandy Bustos who is his pretrial services  
25 officer, okay. Maybe he's lying about that to me, right?

1 THE COURT: Maybe.

2 MR. WRIGHT: Why not have a hearing and find out instead of making all  
3 these pronouncements simply by reading things. That's what due process is for, to  
4 hear the evidence, hear the --

5 THE COURT: Mr. Wright, aren't we also supposed to rely on the written  
6 material that's been submitted to the Court, which I have done? And so --

7 MR. WRIGHT: Did you read Dr. Kinsora's report?

8 THE COURT: I've read everything that was submitted to me and everything --  
9 I reviewed everything from the record that was before Judge Delaney.

10 MR. WRIGHT: She wouldn't allow us to use Dr. Krelstein's report or Dr.  
11 Kinsora's report.

12 THE COURT: And what I'm saying is that, the parameters were upheld by the  
13 Supreme Court. So we're not going to, you know, address right, wrong, what Judge  
14 Delaney did. She set the parameters, and that was upheld.

15 So what are you asking for at this time? You know, you want to go to  
16 competency court and have two new physicians appointed and start that all over, or  
17 are you asking for an evidentiary hearing with Dr. Bittker?

18 MR. WRIGHT: I am asking --

19 THE COURT: I know your motion asked to be sent to competency court.

20 MR. WRIGHT: I am asking what Section 405 requires. I believe the  
21 evidence, and you accept Dr. Bittker's report as in good faith and accept his findings  
22 so we have --

23 THE COURT: Well, I say I have no reason at this point in time to have a  
24 quarrel with Dr. Bittker.

25 MR. WRIGHT: So you accept that this doctor, licensed, says he is not

1 competent. So I simply looked at 405, If a doubt arises as to competency suspend  
2 the proceeding. Then what? We go to 415. The Court shall appoint two  
3 psychiatrists, two psychologists or one psychiatrist and one psychologist to examine  
4 the defendant.

5 THE COURT: Right.

6 MR. WRIGHT: And the way I read the procedures and what the Supreme  
7 Court was talking about between 405 and 415 and 460 was that this is where we  
8 were previously. We had Kinsora and Krelstein -- pardon me, Dr. Shera Bradley  
9 and Dr. Krelstein were appointed by Judge Glass to evaluate, and they both came  
10 back and determined he was not competent. At that point there would be a 405  
11 hearing once the appointed two doctors make a determination if either party wants a  
12 hearing. Judge Glass didn't want a hearing.

13 THE COURT: He went to Lake's Crossing for thorough evaluation --

14 MR. WRIGHT: Correct. So I am asking --

15 THE COURT: -- and observation in a manner where there was day-to-day  
16 observation and it wasn't just -- well, it wasn't just dependent on, you know, a series  
17 of testing or whatnot.

18 MR. WRIGHT: They warehoused him and didn't do the tests that were  
19 recommended by Dr. Krelstein and Dr. Shera Bradley.

20 THE COURT: Here's what I'm hearing, Mr. Wright, and what concerns this  
21 Court. What I'm hearing is, you know, you disagree with the parameters of the  
22 hearing before Judge Delaney, and it sounds to me like really what you're seeking is  
23 another bite at that apple, another chance to have the hearing that you didn't get to  
24 have in front of Judge Delaney. That is my concern, that that's really, as I hear you  
25 speaking and what you're complaining about, that that's really what you want here.

1           You want what you were not given in the competency court. You want  
2 a chance to revisit all of this in a manner that you were denied previously. That's  
3 what I'm hearing, and --

4           MR. WRIGHT: Well, I'm not articulating myself well.

5           THE COURT: I'm sorry?

6           MR. WRIGHT: I'm not articulating myself well then because what I really want  
7 is my client to be examined, evaluated and treated because there is a doubt as to  
8 his competency. He does not remember the events. He can't communicate or  
9 assist with me, and what -- I don't want another hearing so I can have a hearing. I  
10 want him evaluated and treated, and there's a doubt as to his competency and  
11 that -- competency isn't something where we just find it once and then --

12          THE COURT: No, I understand there's an ongoing thing, and that's why we  
13 get back to the same thing. What is different? What is different today than in the  
14 past? If there were something different today, and I understand you're saying well,  
15 there's been progressive decline and whatnot, but to me, the doubt isn't your doubt.  
16 It's not Dr. Desai's doubt.

17          The Court has to say based on everything I think there's a doubt, and  
18 we need to proceed further. That's how I read NRS 178.405. Whose doubt is it?  
19 It's ultimately the Court has to say there's enough here to create a doubt, and we  
20 need to proceed further.

21          And let me just say this: There's no prohibition -- you know, Dr. Desai  
22 is out of custody -- if he wanted to see a physician and get treatment, he certainly  
23 could do that. There's no court order in place saying, oh, Dr. Desai, you can't get  
24 treatment. You can't help yourself. And so you keep saying, Well, he wants to be  
25 treated. Well, you know, he's out of custody. He's not like these other people who

1 are sitting in custody dependent on what services the jail gives him. If there were  
2 some treatment out there that you keep alluding to, then let him go get it.

3 MR. WRIGHT: He has. He has.

4 THE COURT: No one's preventing him.

5 MR. STAUDAHER: Your Honor, may I --

6 MR. WRIGHT: He has and it has been ineffective, and it's in Dr. Bittker's  
7 supplemental December report.

8 THE COURT: The reason I say that is because you keep saying he wants to  
9 be treated. I'm not saying there's effective treatment or ineffective treatment. All I'm  
10 saying is, you know, if that's the case, let him be treated. Let him be treated. I  
11 mean, I just think it's either another bite at the apple, more continuances, more  
12 delays in this matter.

13 Mr. Staudaher.

14 MR. STAUDAHER: A couple of things. First of all, some of the items that  
15 counsel has referred to, the -- apparently the study of Dr. Wu, the letter from Dr. Wu,  
16 the telephone conversation with Dr. Wu, the interview with Kusum Desai that he was  
17 relying on in part, he had a -- as far as I can tell from this report, a single or at least  
18 a very limited interaction with Dr. Desai. The Lake's Crossing thing was six months  
19 long, and they watched him when he wasn't in front of people --

20 THE COURT: That was the point.

21 MR. STAUDAHER: -- that was the reason why -- one of the reasons that they  
22 believed he was malingering.

23 As far as the treatment issue is concerned, when he came back from --  
24 and I'm talking about pre Lake's Crossing and after UCLA he comes back one of the  
25 things that they wanted him to do was to follow up with a speech pathologist. So he



1 goes to a speech pathologist here, and he gets evaluated, and they recommend a  
2 course of treatment. Dr. Desai never engaged in that. He never went back. They  
3 telephoned him; he just didn't respond.

4           The whole attitude of this man from the get go has been don't get  
5 anybody -- don't get in front of anybody that's going to recommend treatment, and if  
6 they do, I'm either not going to pursue it or I'm going to pursue it in a halfway  
7 manner, and then if they order a drug for me, I'm going to have serious side effects  
8 with the drug so I can't take it so I cannot be treated.

9           He has made no significant efforts at all in any report I have ever seen  
10 that indicate that he has sought out or wanted treatment for any supposed deficit  
11 that he may have. This whole evaluation by Dr. Wu, there's nothing in here that  
12 says that there has been evidence of an additional stroke or deterioration further  
13 from an objective review of the MRI data before that individual that he had  
14 deteriorated from one study to the next, and therefore, there is a reason for him to  
15 essentially have a problem.

16           Everybody is relying, everybody is relying on that man's words and his  
17 actions before the evaluators, which are completely crafted, as the Court's pointed  
18 out, to get what he wants. He is crazy like a fox. He's as competent as you and I  
19 are. He knows exactly what's going on, and he's using the system, and he's using it  
20 through his attorneys -- I'm not necessarily saying anything about Mr. Wright or Ms.  
21 Stanish in this case -- but he knows exactly what he's doing, and as long as he acts  
22 like a babbling idiot he's going to get what he wants. That's what he thinks.

23           One of the reasons why the Court -- or the State has asked this Court  
24 and the Court agreed to have Dr. Desai come in for every single hearing was so that  
25 the Court could observe and evaluate him. And I will point out one point.

1           One time back a number of hearings ago when there were a lot of  
2 individuals in this courtroom. We were all at the table, all the defense attorneys  
3 were there, all the defendants including -- excuse me, I think it was Nurse Mathahs  
4 as well as Mr. Cristalli, and I don't know if Eunice Morgan was here, but there was a  
5 crowd of people here. Dr. Desai was sitting in the back of the courtroom. Dr. Desai  
6 was sitting in the back of the courtroom with his wife. Your Honor asked Mr. Wright  
7 this question, directed at Mr. Wright, not directed at Dr. Desai but directed at Mr.  
8 Wright.

9           You said, shouldn't your client be sitting with you. That's all you said. I  
10 don't know if the Court remembers this or not or observed this, but what happened  
11 immediately following that question, Mr. Wright didn't turn around and ask his client  
12 to come up. Ms. Stanish didn't do that. His wife didn't say anything to him. He  
13 immediately got up himself from the back of the courtroom, walked out, walked  
14 around, stood right next to his client (sic). He completely understood the words  
15 being said by the Court, that what the Court was saying related to him, and that's an  
16 example and one of the reasons why we wanted him here on every event.

17           I think that the Court is right in the sense that the Court makes the  
18 evaluation, and again, I have not heard or seen anything based on what counsel has  
19 argued that shows that he is any different from an objective, physiologic perspective  
20 other than one individual who saw this person on a limited basis, and it's completely  
21 susceptible and dependent on the responses by Dr. Desai.

22           There's not also any indication whatsoever that there was any  
23 malingering testing done by this individual or anybody else, and that was paramount  
24 even in the pre Lake's Crossing evaluations where they said they didn't know  
25 because they did some of that testing. Lake's did.

1 I think at this point the Court is able to make the determination with the  
2 information that's presented, and I would submit that as far as what I've heard today  
3 that they have not met their burden.

4 THE COURT: All right. Here's the thing. The way I read NRS 178.40, if  
5 doubt arises, that means there has to be at least some threshold finding that there is  
6 doubt, and who has to find the doubt? The doubt isn't controlled by the defendant.  
7 The doubt isn't controlled by the defense team, and I don't need to go over the  
8 history of this case or possible motivations, but for obvious reasons that's not  
9 controlled by them. There has to be a finding, and I find that there is no evidence  
10 that anything has changed. There's no new, you know, objective diagnostics as Mr.  
11 Staudaher has pointed out.

12 You know, if there had been a new stroke, if there had even been a  
13 major medical event, open-heart surgery or something like that where you could  
14 say, well, maybe that's something that could have, you know, a diabetic emergency  
15 where we had something linking some kind of, you know, extreme medical event to  
16 cognitive decline, I would say, well, okay, we need to visit this. We need to evaluate  
17 this. There's something here. But there's no evidence of that. There's no evidence  
18 of any change. There's no evidence that there's anything different than what led Dr.  
19 Desai to be in front of Judge Glass, however long ago that was, and then to be sent  
20 to Lake's Crossing.

21 And when I prepared everything and reviewed everything I thought,  
22 well, do we need to have some kind of testimony from Dr. Bittker, and that's why for  
23 purposes of today I think accepting that he's an ethical man, he's obviously, you  
24 know, a medical doctor in good standing in this state, everything like that, you know,  
25 I can accept the evaluation.

1 But as we've all pointed -- or the Court has pointed out, a lot of the  
2 responses are completely controlled by Dr. Desai. And, you know, Judge Mosley, I  
3 believe, is the one who ordered that Dr. Desai come to court, and he does have  
4 reactions to what I say, you know, and so that tells me that he is listening, and he  
5 tries to look down or he does look down, you know, whether he's trying or not trying,  
6 you know, there's reaction going on. And I think it was a very -- I guess the State  
7 had requested it, but I think Judge Mosley's order that Dr. Desai appear was very  
8 well founded for that reason.

9 And so the motion to refer this matter to competency court is denied for  
10 the reasons that I have stated. I don't find anything here that justifies at this point in  
11 time additional inquiry, additional evaluation by professionals, or as I said, additional  
12 inquiry by this Court at this time. And so for that reason the matter is denied.

13 Now --

14 MR. WRIGHT: Just for clarification, I didn't care whether it went to  
15 competency court or this court --

16 THE COURT: No, it doesn't go to competency court, and I'm not required to  
17 send it --

18 MR. WRIGHT: Right.

19 THE COURT: -- and your request to send it to competency court is denied.

20 MR. WRIGHT: Right, and also my request to -- for appointment -- I mean,  
21 whether you do it or competency court --

22 THE COURT: Right. You're asking --

23 MR. WRIGHT: -- I mean, I didn't care, but does the Court do it --

24 THE COURT: -- that he have other experts appointed --

25 MR. WRIGHT: Right.

1 THE COURT: -- that then to go through the evaluation process and to have  
2 another hearing whether I do it or whether the competency court does it I think is  
3 largely immaterial, but I'm denying that request.

4 I don't see a reason. I don't find that the doubt is here based on my  
5 review of everything, the history of the case, the six months at Lake's Crossing, the  
6 fact that there's really nothing different in his change and looking, studying the  
7 affidavits that have been prepared in the past. And so for all of those reasons, I  
8 hope I have articulated this to -- so that all of you can understand the rationale for  
9 my ruling, if you take it up on a writ, hopefully the Nevada Supreme Court whether  
10 they agree or disagree will understand the basis for my ruling. I'm not saying never  
11 in the future if there is, you know, a change, a stroke, a major medical event,  
12 something else, obviously you can revisit this.

13 At this point in time, I don't find -- I don't find the doubt that would justify  
14 this, and I don't -- again, there's no change here as I evaluate this, and I don't see  
15 the need for further inquiry at this point in time. Again, I'm not saying you -- of  
16 course there's an ongoing obligation as the defense attorney, and there can be  
17 ongoing review. But at this point I just don't see that there's anything different.

18 So I hope I've explained myself well enough regardless of whether  
19 people agree or disagree, but that's my finding at this point in time.

20 State would prepare the order on that, and if you need a transcript to  
21 reflect my findings you can get that.

22 MR. STAUDAHER: I think I will ask for it, Your Honor.

23 THE COURT: All right. Moving on. We also had a status check for today  
24 regarding the experts and trial readiness, and Mr. Cristalli is not here.

25 MR. STAUDAHER: Mr. Cristalli, Your Honor?

1 MS. MORGAN: I'm actually here on something else.

2 THE COURT: Well, it was for the status check as to everybody.

3 MR. STAUDAHER: He's no longer in the case.

4 THE COURT: Oh, that's right. I'm sorry.

5 Where are we on the experts because this was an issue last time  
6 before the trial date?

7 MS. STANISH: Correct, and since our previous status check, I think I  
8 reported that we had three experts retained. Now we have four experts on retainer,  
9 Your Honor, who are still, you know, reviewing materials.

10 THE COURT: Okay. How many additional experts do you anticipate that  
11 you're going to need in order to be ready for trial?

12 MS. STANISH: I'm not sure until these four experts conclude their review.

13 THE COURT: Okay. So in other words that may be sufficient, or you may  
14 need additional experts --

15 MS. STANISH: Correct.

16 THE COURT: -- and these experts may direct you, I guess, to other experts?

17 MS. STANISH: That's correct.

18 THE COURT: Okay, 'cause you would rely on, like, them as to who's good in  
19 the field and that sort of thing?

20 MS. STANISH: Correct.

21 THE COURT: All right. Let's set another status check for six weeks.

22 And, Mr. Santacroce, where are you with respect to experts? Are you  
23 going to be using the same experts or --

24 MR. SANTACROCE: Yes, we're working on a joint defense regarding the  
25 experts.

1 THE COURT: All right. So you won't have any additional experts then, is that  
2 correct?

3 MR. SANTACROCE: I might have. I'm waiting on the review of these  
4 experts.

5 THE COURT: All right. We'll set a status check for six weeks.

6 THE CLERK: March 7<sup>th</sup> at 9:30.

7 THE COURT: All right. Thank you.

8 MR. STAUDAHER: Thank you, Your Honor.

9 -oOo-

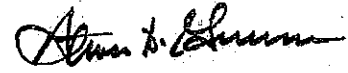
10 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video  
11 proceedings in the above-entitled case.

12   
13 JANIE L. OLSEN  
14 Recorder/Transcriber

## **Exhibit 6**

**Desai's Motion for Competency  
Evaluation, 12/21/12  
(#76-92)**



  
CLERK OF THE COURT

MOTN  
RICHARD A. WRIGHT, ESQUIRE  
Nevada Bar No. 886  
MARGARET M. STANISH  
Nevada Bar No. 4056  
WRIGHT STANISH & WINCKLER  
300 S. Fourth Street, Suite 701  
Las Vegas, NV 89101  
(702) 382-4004  
Attorneys for Dipak Desai

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DIPAK KANTILAL DESAI, #1240942,

Defendant.

C-12-283381-1

CASE NO. C265107

DEPT. NO. XXI

DATE OF HEARING: 1/8/13

TIME OF HEARING: 9:30 AM

DEFENDANT DESAI'S MOTION  
AND NOTICE OF MOTION  
FOR COMPETENCY EVALUATION

DIPAK KANTILAL DESAI, by and through his attorney, Richard A. Wright, WRIGHT STANISH & WINCKLER, moves for a competency evaluation. Based on counsel's interactions with Desai and the attached psychiatric evaluation, a bona fide doubt exists as to Desai's present ability to assist counsel at trial.

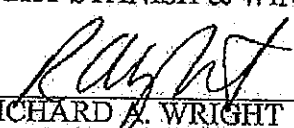
This motion is based upon the Due Process clauses of the Fifth and Fourteenth Amendments and the Right to Counsel clause in the Sixth Amendment to the United States Constitution and the corresponding clauses in Article 1, Section 8, of the Nevada Constitution; NRS 178.415; Order in Desai v. Eighth Jud. Distr. Ct., No. 60038 (Nev. Sup. Ct., Jan. 24,

1  
2  
3 2012); and the following Points and Authorities.  
4

5 DATED this 21, day of December 2012.  
6

7 Respectfully Submitted,

8 WRIGHT STANISH & WINCKLER

9  
10 BY   
11 RICHARD A. WRIGHT  
12 Counsel for DESAI  
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3 NOTICE OF MOTION

4 PLEASE TAKE NOTICE that the above Motion will be brought on for hearing in  
5 District Court, Department 21, on the 08 day of JANUARY, \_\_, at the hour of  
6 9 : 30 A, or as soon thereafter as counsel may be heard.

7 Dated this \_\_\_\_ day of \_\_\_\_\_, \_\_.  
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3 **POINTS AND AUTHORITIES**

4 **A. Procedural Facts**

5 On or about June 16, 2010, the State filed an unopposed motion to transfer this matter to  
6 Competency Court. On February 8, 2011, the Competency Court ruled that Desai was deemed  
7 incompetent by the two court-appointed evaluators, Michael S. Krelstein, M.D., and Shera D.  
8 Bradley, Ph.D. He was sent to Lake's Crossing for a period of approximately six months. On  
9 or about September 20, 2011, Lake's Crossing issued a competency report concluding that Desai  
10 was competent.

11 Desai requested a competency hearing to afford the defense a full opportunity to  
12 examine and challenge the conclusions of the Lake's Crossing evaluators pursuant to NRS  
13 178.460(1). Competency Court set a competency hearing but limited Desai to cross-examining  
14 the Lake's Crossing doctors and presenting only one expert whose testimony would be restricted  
15 to evaluations, if any, occurring after his return from Lake's Crossing.

16 Desai immediately sought extraordinary relief from the Nevada Supreme Court from the  
17 restricted scope of the Section 178.460 competency hearing. By order dated January 24, 2012,  
18 the Nevada Supreme Court denied the petition, holding that the lower court did not abuse its  
19 discretion in limiting the scope of a hearing regarding the conclusions of the Lake Crossing  
20 evaluators pursuant to NRS 178.460. It noted, however, that Desai would be afforded a broader  
21 inquiry into his competency pursuant to a new motion questioning his present competency under  
22 NRS 178.405 and 178.415. The Court stated:

23 We note that any motion challenging petitioner's present competency (based on  
24 interactions and evaluations since his return from lake's Crossing) would require  
25 a broader inquiry should the motion create sufficient doubt as to petitioner's  
26 competency to stand trial to warrant such an inquiry. See State v. Ferguson, 124  
Nev. 795, 805, 192 P.3d 712, 719 (2008); Morales v. State, 116 Nev. 19, 22,  
922 P.2d 252, 254 (2000); NRS 178.405; NRS 178.415. But that inquiry is not  
part of the proceedings under NRS 178.460.

27 Order in Desai, No. 60038, \*2, n. 1.

28 Following a hearing, Department 25 determined that Desai was competent to stand trial

1 by order dated February 2, 2012.

2  
3 **B. Request for Competency Evaluation**

4 Under NRS 178.405, "if doubt arises as to the competence of the defendant, the court  
5 shall suspend the proceedings . . . until the question of competence is determined." Based on  
6 this section and the above-cited authority, Desai requests a suspension of all proceedings  
7 pending a competency determination.<sup>1</sup> Sufficient doubt exists as to Desai's present competency  
8 by virtue of the attached independent neuropsychiatric evaluations of Thomas E. Bittker, M.D.,  
9 dated November 1, 2012 and December 5, 2012. Upon review of medical records and a recent  
10 neuropsychiatric examination, Dr. Bittker concludes that Desai is incompetent under the *Dusky*  
11 standard.

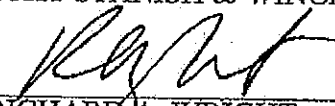
12 Additionally, undersigned counsel continues to express a bona fide doubt as to his  
13 client's competency. See, Nevada v. Calvin, 122 Nev. 1178, 1184, 147 P.3d 1097, 1100 (2006),  
14 citing, Drope v. Missouri, 420 U.S. 162, 177 n. 13 (1975)(counsel's doubts as to client's  
15 competency are especially relevant given close contact).

16 Accordingly, Desai moves for a suspension of all proceedings and transference of the  
17 competency issue to Competency Court for further competency proceedings.

18  
19 DATED this 21st day of December 2012.

20 Respectfully Submitted,

21 WRIGHT STANISH & WINCKLER

22 BY: 

23 RICHARD A. WRIGHT  
24 Counsel for Desai

25  
26 <sup>1</sup> Desai reserves the right to seek (1) reconsideration of the Nevada Supreme Court's  
27 Order Granting Petition in Part in Desai v. Eight Jud. Dist. Ct., No. 61230 (Nev. Dec. 21, 2012);  
28 and (2) seek relief from this Court's denial of his Petition for Writ of Habeas Corpus and  
Alternative Motion to Dismiss the Murder Indictment.

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**CERTIFICATE OF SERVICE OF  
DEFENDANT'S MOTION AND NOTICE OF MOTION  
FOR COMPETENCY EVALUATION**

I HEREBY CERTIFY that on the 21<sup>st</sup> day of December, 2012, I caused a copy of the foregoing *Defendant's Motion and Notice of Motion for Competency Evaluation* to be e-filed, fax or hand-delivered to:

Michael V. Staudaher  
Chief Deputy District Attorney  
200 Lewis Avenue  
Third Floor  
Las Vegas, NV 89101  
702-477-2994

  
An Employee of Wright Stanish & Winckler

*Thomas E. Bittker, M.D., Ltd.*

Diplomate, American Board of Psychiatry and Neurology  
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Richard A. Wright, Margaret Stanish, Karen Winckler  
c/o Wright Stanish & Winckler  
300 South 4<sup>th</sup> Street, Suite 701  
Las Vegas, NV 89101

Phone: (702) 382-4004  
Fax: (702) 382-4800

**INDEPENDENT NEUROPSYCHIATRIC ASSESSMENT**

RE: DESAI, DIPAK  
Date: 11/01/2012

---

**REASON FOR ASSESSMENT:** Richard Wright, attorney for defendant Dipak Desai has requested that I perform an Independent Neuropsychiatric Assessment on Dr. Desai with particular attention to his competence to stand trial.

**BACKGROUND INFORMATION:** Dr. Desai is being charged with several felonies including racketeering, performance of acts in reckless disregard of persons or property, criminal negligence of patients, insurance fraud, and obtaining money under false pretences.

Dr. Desai is a gastroenterologist who is currently disabled coincident to at least two strokes, one which occurred on September 27, 2007 and the second which occurred in July 13, 2008. The strokes have left him with profound deficits in memory, speech, and executive functioning.

**SOURCES OF INFORMATION:**

1. Post-competency hearing argument filed by attorney Richard Wright on January 31, 2012.
2. Assessment of neurocognitive processing performed by Thomas F. Kinsora, Ph.D. in 2009.

INDEPENDENT NEUROPSYCHIATRIC ASSESSMENT

RE: DESAI, DIPAK

Date: 11/01/2012

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3. Staged complaint against defendant filed in June 2010.
4. Competency evaluation performed by Michael S. Krelstein, M.D. on a report filed on February 6, 2011.
5. Competency evaluation by Shera D. Bradley, Ph.D. filed in a report of February 7, 2011.
6. Evaluation of competency performed by Sally Farmer, Ph.D. at Lake's Crossing Center on 09/01/11.
7. Psychiatric evaluation at Lake's Crossing Center performed by Linda Bradley, M.D. on 09/02/11.
8. Social history of Tom Durante, LCSW on 05/09/11.
9. Psychiatric evaluation by Steven J. Zuchowski on 09/06/11.
10. Order Denying Petition by Justice Douglas.
11. Finding of Competency of January 27, 2012 by Judge Kathleen E. Delaney.
12. Discharge summary from Chinese Hospital September 29, 2007.
13. Neurological consultations by V. Veraptan, MD.
14. Neuroimaging studies by V. Veraptan, MD.
15. Outpatient speech pathology assessment by Michelle Gannan of 4/22/2009.
16. Psychological report of Thomas Kinsora of 3/12/09: Assessment of neurocognitive processing.
17. Neurological consultation by David Liebeskind of UCLA.
18. Summerlin Hospital neurological consultations by Dr. Veraptan 6/1/2009.
19. Neurological consultation by William Torch, MD on 9/28/11.
20. Nevada Imaging Center studies including MRI of the brain with and without contrast dated 10/05/2007, 11/02/2007, 02/05/2008, 02/25/2009, 07/02/2010.
21. Neuroimaging studies from UCLA extending from 07/03/2008 to 07/14/2008.
22. Neuroimaging studies and Doppler studies from Summerlin Hospital dated 7/28/1998, and 06/01/2009.
23. MRI study of brain by Anthony Bruno, MD on 6/13/2011.
24. Positron emission tomography study of 11/21/2007.
25. Interview with Dr. Kusum Desai, the wife of Dipak Desai.
26. Psychiatric examination of the defendant by Thomas E. Bittker, MD on 10/01/12.
27. Telephone consultation with Dr. Joseph Wu 10/24/12.
28. Letter from Dr. Joseph C. Wu on 10/24/12.

**BACKGROUND INFORMATION:** Dipak Desai is a 62-year-old married former gastroenterologist who is currently disabled coincident to two strokes, one suffered on September 27, 2007 and the other suffered on July 13, 2008. Dr. Desai is the father of three daughters, ages 26 through 31. He is married to Kusum Desai, a



INDEPENDENT NEUROPSYCHIATRIC ASSESSMENT

RE: DESAI, DIPAK

Date: 11/01/2012

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pulmonologist who practices in Las Vegas. Dr. Desai has been formally disabled since the second stroke, which occurred in July of 2008.

He is confronting multiple criminal charges as outlined above.

Dr. Desai grew up in India and attended medical school in India, completed his residency in New York City, and moved to Las Vegas in 1980 where he established his gastroenterology practice.

From 1993 to 2001 he served on the Nevada State Board of Medical Examiners and had been at the time of his 2008 stroke, the Medical Director of the Department of Gastroenterology at the University Medical Center.

Dr. Desai and his wife state that his primary life stressors have occurred coincident to his medical challenges following the stroke as well as the challenges of his criminal cases. Although numerous observers have commented about Dr. Desai's presumed post-stroke depression, Dr. Desai denies subjective sense of this depression.

**FAMILY HISTORY:** Dr. Desai is the youngest in a sibship of four children. Two of his older sisters immigrated to the United States and one remains in India. His father is deceased coincident to a myocardial infarction, which occurred when his father was 55 years old and when Dr. Desai was in his 30's. His mother is 85 years old, alive, and recently served as Dr. Desai's caretaker.

Dr. Desai and his wife deny any family history of depression, anxiety, or substance abuse problems.

**MEDICAL HISTORY:** Dr. Desai suffered a myocardial infarction at age 37 and underwent coronary artery bypass surgery coincident to that infarction. He suffered his initial venous stroke on September 27, 2007

The second stroke, a massive lacunar stroke, occurred on July 13, 2008. According to Dr. Kusum Desai (Dr. Desai's wife), Dr. Desai demonstrated significant improvement in functioning when he was treated at the UCLA Post-Stroke Intervention Unit for approximately twelve weeks after his July 2008 episode. Over the past year, however, she has noted progressive deterioration in Dr. Desai's memory, evidenced by his inability to recall events of the previous day, as well as increasing confusion. She denies any history of incontinence or seizure.

INDEPENDENT NEUROPSYCHIATRIC ASSESSMENT

RE: DESAI, DIPAK

Date: 11/01/2012

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**MEDICATION ALLERGIES:** Dr. Desai has had a negative response to Coreg, which yielded lightheadedness.

**CURRENT MEDICATIONS:** Include aspirin at 50 mg a day, Persantine 75 mg b.i.d., Ramipril 2.5 mg per day, and Lipitor 20 mg per day. Dr. Desai takes no psychotropic medications.

**PSYCHIATRIC REVIEW OF SYSTEMS:** Dr. Desai denies suicidal ideation. He reports low energy, poor concentration, significant difficulty with memory, and is saddened by the impact that his illness has had on his wife.

**MENTAL STATUS EXAM:** The patient arrived on time for his appointment in the company of his wife. He walked slowly to the interview room. His speech was slow. He had difficulty expressing himself and finding words. He relied on his wife heavily to relate his history.

~~His affect was blunted.~~ His speech pace was slow with increased speech latency and speech lag. Performance on the mini mental status exam indicated significant deficits consistent with a vascular dementia. Dr. Desai was disoriented to year (2011), season (winter), and date, but he did know the day.

He was aware that he was in Nevada and in Reno and knew that he was in a doctor's office. He could register two words out of three, but could only recall one of three words three minutes after registration. He could not perform serial subtraction successfully and when asked to spell "world" backwards, spelled it as "dlow".

He could name a pencil and a watch. He could repeat "no ifs, ands, or buts" and he could follow a three-stage command. He read and obeyed the command "close your eyes". He could write a sentence spontaneously. When asked to copy two intersecting trapezoids he copied them, but did not intersect the two figures. Total score was 16 out of 30.

**COMPETENCY ASSESSMENT:** Dr. Desai offered only a superficial recognition of the role that various court principals play in the trial process. He did not understand the charges he was confronting. He referred to the judge as "a good guy who keeps everybody quiet". He could not recall the function of a jury, other than "lots of people sit there". He referred to the prosecuting attorney's role as "fighting with Richard", and he referred to Mr. Wright's role as "a good guy who holds my

INDEPENDENT NEUROPSYCHIATRIC ASSESSMENT

RE: DESAI, DIPAK

Date: 11/01/2012

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hand". He was unable to appraise the available defenses. He did understand that if convicted he would not be able to see his wife or children and that he would be kept locked up.

Regarding specific procedural competencies necessary to be considered competent, Dr. Desai failed in a number of areas. Specifically, he was unable to appraise legal defenses available. He was unable to plan a legal strategy. His ability to appraise the roles of various participants in the courtroom proceedings was marginal. His understanding of court procedures was marginal. His appreciation of the charges was inadequate. His appreciation of the range of possible penalties was inadequate. His ability to appraise a likely outcome was marginal. His capacity to disclose to the attorney available pertinent facts surrounding his offense was inadequate and likely to be permanently compromised coincident to his memory deficits. His capacity to challenge prosecution witnesses realistically was inadequate. His capacity to testify relevantly was inadequate.

Employing the Dusky criteria, the defendant demonstrated an incapacity to fully understand the nature of the criminal charges with which he is confronted, moderate impairment in his ability to understand the nature and purposes of court proceeds, and severely impaired in his ability to aid and assist counsel.

REVIEW OF PSYCHOLOGICAL TESTING: Dr. Kinsora's testing concludes "Findings in a nutshell - performance on the tests were of indeterminate validity since some of the performance was so poor. This examiner needs to determine if the severity of damage to medial temporal, hippocampal, and anterior occipital regions are such that his performance is plausible. Thus, additional information is needed by this examiner. Severe depression is present that is confounding the clinical picture. He would have difficulty assisting counsel currently just based on his depression, if genuine treatment is recommended".

Subsequent testing concludes "Performance is likely valid and consistent with degree and location of brain damage. Deficits are widespread, but most pronounced in the areas of word finding, memory, and executive control. Depression continues to be significant, but is becoming manageable. He is likely competent based on NRS criteria 178.400, but in the borderline range with regard to assisting counsel he can be considered impaired in his ability to assist counsel, but is not clearly unable to assist counsel".

INDEPENDENT NEUROPSYCHIATRIC ASSESSMENT

RE: DESAI, DIPAK

Date: 11/01/2012

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Dr. Krelstein concludes "Prima Facie, Dr. Desai presents as a demented and procedurally incompetent man with objective neurological findings in support of his cognitive deterioration. At the same time, Dr. Desai has apparently not received aggressive neurocognitive rehabilitation, neurocognitive enhancers, and/or treatment for a secondary post-stroke depression. There remains an element of dissimulation and/or purposeful symptom embellishment that such does not account for the bulk of his impairment in my opinion. Given these findings, Dr. Desai should be strongly considered for admission into Lake's Crossing for aggressive treatment and more comprehensive neurocognitive testing. Given Dr. Desai's previous high level of function and his superior intellect (which theoretically mitigates the cognitive effects of stroke), anticipated response to aggressive treatment and subtracting the suspected elements of symptom embellishment, there is at least a reasonable chance that competency could be restored. Such goals would not be expectedly obtained in an outpatient setting".

According to Dr. Sally Farmer of the Lake's Crossing Center, "It is this evaluator's professional opinion that Dr. Dipak Kantilal Desai possesses the ability to understand the nature of the criminal charges against him, to understand the nature and purpose of the court proceedings, and to aid and assist his counsel in his defense at any time during the proceedings with a reasonable degree of rational understanding. He has been able to do so under less formal settings (such as during legal process classes). Although his strokes have diminished his cognitive abilities to some extent, in this writer's opinion they are sufficiently intact for him to proceed to adjudication.. It is this evaluator's professional opinion that Dr. Dipak Kantilal Desai has demonstrated the ability to understand the nature of the criminal charges against him, to understand the nature and purpose of the court proceedings, and to aid and assist his counsel in his defense at any time during the proceedings with a reasonable degree of rational understanding". Note that this assessment was completed on 09/01/11, approximately 13 months prior to my assessment.

According to Dr. Zuchowski, "Given Dr. Desai's alleged embellishment and failure to cooperate fully with psychological testing, it is impossible to determine the precise extent of his current cognitive deficits, if any. His word-finding difficulty has been consistent from examiner to examiner and over time, this is likely authentic; however this does not have a significant impact on his competency to stand trial status. His alleged deficits and working memory appear heavily embellished,

INDEPENDENT NEUROPSYCHIATRIC ASSESSMENT

RE: DESAI, DIPAK

Date: 11/01/2012

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given his relatively preserved functioning in the hospital milieu. Individuals with as severe deficits as Dr. Desai claims are not able to function well, even in the structured setting in a hospital ward. They would likely appear befuddled, needing considerable guidance from staff surrounding their activities of daily living including personal hygiene, meals, and navigating to and from living areas. . . Although some authentic level of cognitive deficit cannot be ruled out, it is my opinion that his current level of functioning reflects an individual who meets competency to stand trial criteria". Similar to Dr. Farmer's assessment, Dr. Zuchowski's assessment was performed approximately 13 months prior to my assessment of Dr. Desai.

Brain imaging studies confirm the presence of an area of old infarction in the left posterior inferior temporal lobes, bilateral medial occipital lobes, right lateral occipital lobe, left thalamus and left hemiserebellum.

FORMULATION: Dr. Desai presents with a history of two cerebrovascular accidents that have left him with significant deficits in intellectual performance, ability to retain and recall information, thought organization, and adaptive capacities. He is currently reliant on his wife for much of his executive functioning.

He scores poorly on one of the most critical elements in competency, and that is ability to aid and assist counsel, largely coincident to his memory deficits and his inability to integrate new information.

There is a sharp divide between the impressions of the professionals at the Lake's Crossing Center when compared with Dr. Kinsora, Dr. Krelstein & Dr. Shera Bradley. Dr. Desai's performance on the mini mental status exam, in brief, confirms the findings of significant deficits as related in Dr. Kinsora's, and Dr. Krelstein's reports.

He had achieved modest stabilization coincident to the aggressive interventions at the UCLA Stroke Center; however, in recent months, according to his wife, there has been progressive deterioration in his functioning.

DIAGNOSES:

AXIS I: Vascular Dementia with Depressed Mood by History.  
(290.43) The dementia is characterized by memory

INDEPENDENT NEUROPSYCHIATRIC ASSESSMENT

RE: DESAI, DIPAK

Date: 11/01/2012

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impairment (impaired ability to learn new information or to recall previously learned information), and aphasia, apraxia, and disturbances in executive functioning.

Depression Secondary to Medical Condition  
(293.70)

AXIS II: Language Deficit Secondary to Cerebral Vascular Accident.

AXIS III: Status Post Venous and Arterial Strokes.  
Hypertension.  
Hyperlipidemia.

AXIS IV: Stressors - Confronting Felony Charges, Loss of Vocation, Profound Medical Problems.

AXIS V: 40/40.

OPINION REGARDING COMPETENCY TO STAND TRIAL: Dr. Desai unfortunately falls short of a number of key abilities necessary to be competent to stand trial. Specifically, he has only the most superficial awareness of the players in the courtroom process, he cannot recall events sufficient to aid in his defense, he lacks sufficient cognitive flexibility to fully integrate the trial proceedings, and his speech impairments are sufficient to cause him great challenge in expressing his thoughts to his attorney. All of these deficits conspire to undermine his ability to aid and assist counsel sufficiently to allow him to participate effectively in his own defense.

There are a number of complex charges arrayed against Dr. Desai. Because of the complexity of the charges, even with the provision of his historical information by other sources, his ability to appreciate his reasoning at the time of the alleged offenses and to attempt to justify his behaviors have been profoundly impaired by his strokes.

In addition to the above, Dr. Desai is suffering from a significant depression, which is impacting his ability to initiate actions, his attention and concentration, and his motivation. Although previously a trial of antidepressants was initiated, that trial terminated coincident to complications with his various vascular medications. A further trial would be warranted predicated on mutual endorsement of both his treating psychiatrists and his cardiologist.

INDEPENDENT NEUROPSYCHIATRIC ASSESSMENT

RE: DESAI, DIPAK

Date: 11/01/2012

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Finally, according to the history I reviewed, I see no evidence of any aggressive efforts to rehabilitate Dr. Desai following his strokes, save for the initial interventions at UCLA. Intensive neurocognitive treatment and speech therapy would be warranted as part of an integrative comprehensive stroke rehabilitation effort to determine if the deficits presented to me at the time of my examination are reversible and if Dr. Desai's capacities can be restored sufficient to consider him competent to stand trial.

I would welcome reevaluating Dr. Desai following such interventions.

Sincerely,

Thomas E. Bittker, M.D.

TEB/vs/jld

*Thomas E. Bittker, M.D., Ltd.*

Diplomate, American Board of Psychiatry and Neurology  
Distinguished Life Fellow, American Psychiatric Association  
Diplomate in Forensic Psychiatry, American Board of Psychiatry and Neurology

80 Continental Drive, Suite 200  
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December 05, 2012

Margaret Stanish  
c/o Wright Stanish & Winckler  
300 South 4<sup>th</sup> Street, Suite 701  
Las Vegas, NV 89101

Phone: (702) 382-4004  
Fax: (702) 382-4800

RE: DESAI, DIPAK

Dear Ms. Stanish:

Pursuant to your request, I have reviewed the aphasia evaluation performed by the UCLA Outpatient Speech Pathology Department authored by Jennifer H. Bullaro, SLP on November 20, 2012.

According to Ms. Bullaro, "Language, auditory comprehension, biographical yes/no questions, 8/8 correct. The patient hesitated before answering these questions. Simple yes/no questions, 4/8 correct. The patient hesitated before answering; he answered "I don't know" for two questions. Complex yes/no questions, 2/6 correct. The patient asked for repetition of most questions; the patient did not provide yes/no answers; answers were tangential. Commands: The patient followed up with two-step command accurately. He demonstrated a recency effect with three-step commands. Short Story Comprehension: NT. Conversation: The patient did not attempt to participate in conversation. He repeatedly stated "I can't understand what you're saying". Written Comprehension, WAB written commands: The patient followed 2/3 written one-step commands. BDAE, sentence and paragraph completion: The patient was unable to complete simple sentence completion accurately. Spoken Expression Confrontation Naming: The patient accurately named 2/15 pictures. . . Conversation: The patient required clinician encouragement to attempt conversation. He repeatedly stated "I'm sorry". Additionally, he stated "I feel very sad that I cannot come up with the word for people who want to know things". Dr. Desai demonstrates signs and symptoms consistent



RE: DESAI, DIL

Date: 12/05/2012

Page - 2 -

with a diagnosis of aphasia. He is able to understand some questions with reasonable accuracy. His auditory comprehension deteriorates with increased complexity. Spoken expression is halting and filled with paraphasias and circumlocutions. The patient requires encouragement to attempt communication. . . Spoken Language Comprehension: Level II - With consistent maximal cues the individual was able to follow simple directions, respond to simple yes/no questions in context, and respond to simple words or phrases related to personal needs. Spoken Language Expression: Level IV - Individual successfully able to initiate communication using spoken language in simple structured conversations and routine daily activities with familiar communication partners. . . PROGNOSIS FOR IMPROVED LANGUAGE FUNCTION: Prognosis for improved language function through therapy is poor given the amount of time since the patient's neurological insult and his progress to date.

SUMMARY IMPRESSIONS: The finding of the Speech Pathology Center is consistent with the psychological testing of Dr. Thomas Kinsora, is consistent with the competency evaluation of Michael S. Krelstein in his report filed February 6, 2011, the MRI study of the brain by Anthony Bruno, M.D. of 06/13/11, the positron-emission tomography study of 11/21/07, and the reports of Dr. Joseph Wu of 10/24/12. In addition, they confirm the findings in my own neuropsychiatric examination. On the basis of all of the above, I can state with a reasonable degree of medical certainty that Dr. Desai's potential to recapture sufficient cognitive functioning to permit him to be competent to stand trial is remote. In addition, the UCLA study of November 20, 2012 indicates no improvement in Dr. Desai from their assessment at the time of his initial evaluations at UCLA. Consequently, it is unlikely that further rehabilitative interventions will show significant promise in restoring Dr. Desai's mental capacity sufficiently to permit him to stand trial.

Sincerely,

Thomas E. Bittker, M.D.

TEB/vs/jld

## **Exhibit 5**

**Finding of Competency, 2/2/12  
(#72-75)**

1 FFCL

2 DISTRICT COURT

3 CLERK OF THE COURT

4 CLARK COUNTY, NEVADA

5 THE STATE OF NEVADA,

6 Plaintiff,

Case No.: 10C265107-1

Dept. No.: XXV

7 v.

8 DIPAK KANTILAL DESAI, #1240942

9 Defendant.

Date of Hearing: January 27, 2012

Time of Hearing: 9:00 a.m.

10 FINDING OF COMPETENCY

11 IT APPEARING TO THE COURT that, on or about March 24, 2011, the Sheriff  
12 conveyed Defendant, Dipak Kantilal Desai ("Defendant"), into the custody of a designee of  
13 the Administrator of the Division of Mental Health and Developmental Services of the  
14 Department of Health and Human Services for detention and treatment at Lake's Crossing  
15 Center, the Division's secured facility, pursuant to NRS 178.425(1);

16 IT FURTHER APPEARING that, upon Defendant's admission to Lake's Crossing  
17 Center, the Administrator's designee appointed a licensed psychiatrist, Dr. Steven  
18 Zuchowski, and a licensed psychologist, Dr. Sally Farmer, from the treatment team, as well  
19 as a licensed psychiatrist, Dr. Lindell Bradley, who was not a member of the treatment  
20 team, all three of whom were certified pursuant to NRS 178.417, to evaluate the current  
21 competency of Defendant, pursuant to NRS 178.455(1);

22 IT FURTHER APPEARING that, in a letter dated September 20, 2011, the  
23 Administrator's designee reported in writing to the Court that Defendant is of sufficient  
24 mentality to be able to understand the nature of the criminal charge against him and, by  
25  
26  
27  
28

KATHLEEN E. DELANEY  
DISTRICT JUDGE

DEPARTMENT TWENTY FIVE  
LAS VEGAS NV 89155

1 reason thereof, is able to assist his counsel in the defense interposed upon the trial or  
2 against the pronouncement of the judgment thereafter, pursuant to NRS 178.450(2);

3 IT FURTHER APPEARING that Defendant requested, and the Court did, in fact,  
4 hold a hearing on January 27, 2012, at which the District Attorney and Defendant's counsel  
5 were given the opportunity to examine the Lake's Crossing Center evaluators on their  
6 respective reports, pursuant to NRS 178.460(1); and

7  
8 IT FURTHER APPEARING that the Court gave Defendant the opportunity at the  
9 time of the January 27, 2012 hearing to present testimony of any psychologist or  
10 psychiatrist who may have examined Defendant subsequent to his return from Lake's  
11 Crossing Center and who would opine that Defendant was not able to understand the  
12 charges against him or assist counsel in his defense despite his treatment at Lake's Crossing  
13 Center, but Defendant neither identified nor called an additional witness; now, therefore:

14  
15 THE COURT FINDS, pursuant to NRS 178.460(3), that Defendant is competent to  
16 stand trial in the above-entitled matter. The testimony provided by the Lake's Crossing  
17 Center evaluators at the January 27, 2012 hearing consistently and overwhelmingly  
18 established Defendant's sufficient present ability to understand the charges against him and  
19 to assist counsel in his defense, and Defendant provided no credible evidence to the  
20 contrary. None of the evaluators dispute the existence of cognitive deficits secondary to  
21 two strokes suffered by the Defendant in September, 2007 and July, 2008, respectively.  
22 Following approximately six months of observation of the Defendant between March and  
23 September, 2011, however, all three evaluators independently stated to a reasonable degree  
24 of medical certainty that Defendant is competent and obviously exaggerating his symptoms.

25  
26 During Defendant's extended stay at Lake's Crossing Center, the evaluators  
27 regularly observed Defendant's behavior and functional abilities both directly and  
28

1 indirectly, subjected the Defendant to multiple independent psychological tests, and  
2 thoroughly reviewed all of Defendant's medical and legal records. At no time, other than  
3 when directly questioned by his evaluators, did Defendant actually exhibit any cognitive  
4 deficits. As stated on page 5 of Dr. Farmer's report, "[Defendant] easily learned the rules,  
5 restrictions, and schedule in place in the milieu. He has been responsive to staff direction  
6 and cooperative with all procedures. Unlike Lake's Crossing Center clients with serious  
7 memory problems, he has always found his room and various facilities (including the  
8 kitchen, laundry, canteen, barber shop and classrooms) without difficulty." Dr. Farmer  
9 adds later on the same page, "[Defendant] has been compliant with his medication regimen,  
10 and has been able to solve problems (such as receiving food that is not on his vegetarian  
11 diet) that have arisen in his daily life." Similar observations of Defendant's unimpaired  
12 memory function and problem solving abilities were reported by Drs. Zuchowski and  
13 Bradley.  
14

15  
16 The only impediment to competency asserted by the Defendant is self-reported  
17 memory loss, secondary to two strokes, regarding facts relevant to his criminal charges.  
18 Memory loss itself, even if true, is not a bar to prosecution of an otherwise competent  
19 Defendant. Further, there is no indication in the present record that Defendant and his  
20 counsel would be unable to reconstruct the events of the alleged crimes for which he is  
21 accused or to raise any possible defenses to the evidence against him. Finally, Defendant's  
22 performance on at least one independent psychological test administered to him during his  
23 tenure at Lake's Crossing Center, the Test of Memory Malinger (TOMM), which is used  
24 to distinguish between the truly memory impaired and malingerers, suggested Defendant  
25 was feigning his memory deficits to greater degree than would be expected from the  
26 neurological damage caused by his strokes.  
27  
28

1 For all of the reasons stated herein, and based on the arguments of counsel and the  
2 record before the Court,

3  
4 IT IS HEREBY ORDERED that Defendant, Dipak Kantilal Desai, return to  
5 Department XIV of the Eighth Judicial District Court to proceed with adjudication of the  
6 instant criminal case in the normal course;

7 IT IS FURTHER ORDERED that the Court's Order to Release and Readmit to Bail  
8 filed on September 29, 2011, shall remain in effect until further notice by the Court; and

9 IT IS FURTHER ORDERED that all Exhibits admitted into evidence at the time of  
10 the January 27, 2012 hearing shall be entered into the official record of the proceedings.  
11 The Court can find no applicable statutory or regulatory requirement, or otherwise  
12 compelling privacy or safety interest, that outweighs the public interest in access to the  
13 Court record.  
14

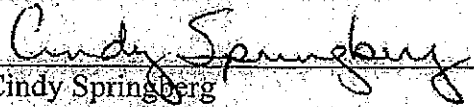
15 Dated this 2<sup>nd</sup> day of February, 2012.

16  
17   
18 KATHLEEN E. DELANEY  
19 District Court Judge

20 **CERTIFICATE OF SERVICE**

21  
22 I hereby certify that on the date filed, this **FINDING OF COMPETENCY**  
23 was E-Served, mailed, or a copy placed in the attorney folders in the Clerk's Office to:

24 Michael Staudaher, Esq., Chief Deputy District Attorney – District Attorney's Office  
25 Richard A. Wright, Esq. – Wright Stanish & Winckler

26   
27 Cindy Springberg  
28 Judicial Executive Assistant

KATHLEEN E. DELANEY  
DISTRICT JUDGE

DEPARTMENT TWENTY FIVE  
LAS VEGAS NV 89155

## **Exhibit 4**

**Excerpts of Minutes  
7/21/10 and 2/8/11  
(#68-71)**

|                                                                                                               |            |        |            |
|---------------------------------------------------------------------------------------------------------------|------------|--------|------------|
| 10.SUBSTANTIAL BODILY HARM.                                                                                   | 0.060      | Felony | 01/01/1900 |
| 11.INSURANCE FRAUD                                                                                            | 686A.291   | Felony | 01/01/1900 |
| 11.SUBSTANTIAL BODILY HARM.                                                                                   | 0.060      | Felony | 01/01/1900 |
| 12.PERFORMANCE OF ACT IN RECKLESS DISREGARD<br>OF PERSONS OR PROPERTY RESULTING IN<br>SUBSTANTIAL BODILY HARM | 202.595.2  | Felony | 01/01/1900 |
| 13.CRIMINAL NEGLIGENCE OF PATIENT RESULTING IN<br>SUBSTANTIAL BODILY HARM                                     | 200.495.2b | Felony | 01/01/1900 |
| 13.SUBSTANTIAL BODILY HARM.                                                                                   | 0.060      | Felony | 01/01/1900 |
| 14.SUBSTANTIAL BODILY HARM.                                                                                   | 0.060      | Felony | 01/01/1900 |
| 14.INSURANCE FRAUD                                                                                            | 686A.291   | Felony | 01/01/1900 |
| 15.INSURANCE FRAUD                                                                                            | 686A.291   | Felony | 01/01/1900 |
| 16.PERFORMANCE OF ACT IN RECKLESS DISREGARD<br>OF PERSONS OR PROPERTY RESULTING IN<br>SUBSTANTIAL BODILY HARM | 202.595.2  | Felony | 01/01/1900 |
| 17.SUBSTANTIAL BODILY HARM.                                                                                   | 0.060      | Felony | 01/01/1900 |
| 17.CRIMINAL NEGLIGENCE OF PATIENT RESULTING IN<br>SUBSTANTIAL BODILY HARM                                     | 200.495.2b | Felony | 01/01/1900 |
| 18.SUBSTANTIAL BODILY HARM.                                                                                   | 0.060      | Felony | 01/01/1900 |
| 18.INSURANCE FRAUD                                                                                            | 686A.291   | Felony | 01/01/1900 |
| 19.PERFORMANCE OF ACT IN RECKLESS DISREGARD<br>OF PERSONS OR PROPERTY RESULTING<br>SUBSTANTIAL BODILY HARM    | 202.595.2  | Felony | 01/01/1900 |
| 20.SUBSTANTIAL BODILY HARM.                                                                                   | 0.060      | Felony | 01/01/1900 |
| 20.CRIMINAL NEGLIGENCE OF PATIENT RESULTING IN<br>SUBSTANTIAL BODILY HARM                                     | 200.495.2b | Felony | 01/01/1900 |
| 21.SUBSTANTIAL BODILY HARM.                                                                                   | 0.060      | Felony | 01/01/1900 |
| 21.INSURANCE FRAUD                                                                                            | 686A.291   | Felony | 01/01/1900 |
| 22.PERFORMANCE OF ACT IN RECKLESS DISREGARD<br>OF PERSONS OR PROPERTY RESULTING IN<br>SUBSTANTIAL BODILY HARM | 202.595.2  | Felony | 01/01/1900 |
| 23.SUBSTANTIAL BODILY HARM.                                                                                   | 0.060      | Felony | 01/01/1900 |
| 23.CRIMINAL NEGLIGENCE OF PATIENTS, RESULTING IN<br>SUBSTANTIAL BODILY HARM                                   | 200.495.2b | Felony | 01/01/1900 |
| 24.SUBSTANTIAL BODILY HARM.                                                                                   | 0.060      | Felony | 01/01/1900 |
| 24.INSURANCE FRAUD                                                                                            | 686A.291   | Felony | 01/01/1900 |
| 25.THEFT                                                                                                      | 205.0835.3 | Felony | 01/01/1900 |
| 26.THEFT-PENALTIES                                                                                            | 205.0835   | Felony | 01/01/1900 |
| 26.OBTAIN MONEY UNDER FALSE PRETENSES                                                                         | 205.380.1a | Felony | 01/01/1900 |
| 27.OBTAINING MONEY UNDER FALSE PRETENSES.                                                                     | 205.380    | Felony | 01/01/1900 |
| 27.IT SHALL BE NO DEFENSE TO A PROSECUTION FOR<br>LARCENY THAT THE ACCUSED WAS                                | 205.265    | Felony | 01/01/1900 |
| 28.OBTAINING MONEY UNDER FALSE PRETENSES                                                                      | 205.380    | Felony | 01/01/1900 |
| 28.IT SHALL BE NO DEFENSE TO A PROSECUTION FOR<br>LARCENY THAT THE ACCUSED WAS                                | 205.265    | Felony | 01/01/1900 |
| 29.MURDER, SECOND DEGREE                                                                                      | 200.030.2  | Felony | 09/21/2007 |

## EVENTS &amp; ORDERS OF THE COURT

|            |                                                                 |
|------------|-----------------------------------------------------------------|
| 07/21/2010 | All Pending Motions (9:00 AM) ()<br>ALL PENDING MOTIONS 7/21/10 |
|            | Minutes<br>07/21/2010 9:00 AM                                   |



- (1) STATE'S MOTION TO COMPEL DISCLOSURE OF MEDICAL PROVIDERS, FOR TRANSFER TO DEPARTMENT FIVE FOR A COMPETENCY EVALUATION AND FOR AN ORDER FOR THE RELEASE OF MEDICAL RECORDS AND ORDER FOR AN INDEPENDENT MEDICAL EVALUATION...(2) DEFT'S MOTION TO QUASH GRAND JURY SUBPONEA AND TO COMPEL DISCLOSURE OF ANY OTHER ABUSE OF GRAND JURY PROCESS...(3) NEVADA MUTUAL INSURANCE COMPANY'S MOTION TO QUASH SUBPONEA AS TO #3: Mr. Bailus appeared on behalf of Nevada Mutual Insurance, advised he has spoken with Mr. Staudaher and requested this be taken OFF CALENDAR. COURT SO ORDERED. AS TO #2: Mr. Wright advised this has already been removed and requested it be taken OFF CALENDAR. COURT SO ORDERED. AS TO #1: Mr. Wright advised there is an issue of Dr. Desai's competency and stated he does not oppose giving the medical records to the Dept. 5 team for their evaluation, however, he does object to giving them to the State as some medical information was "leaked" to the press. Arguments by Mr. Staudaher including that there have been several hearings set for Dr. Desai to testify, however, due to his mental/physical condition, he has been unable to do so. Mr. Staudaher stated he would like to find out if Dr. Desai is malingering and would like to see the records of his condition. Colloquy as to independent physical examination. Mr. Wright had no objection. COURT ORDERED, matter REFERRED to Dept. 5 next week. Mr. Staudaher stated he would like a doctor to verify Dr. Desai's condition and would like some input as to what doctor is selected. Mr. Wright advised he had no objection as long as it was controlled by the Court. Court requested Judge Glass coordinate both physical and mental examinations. COURT ORDERED, Motion held in ABEYANCE until there has been a decision from Dept. 5. Mr. Staudaher requested that Dr. Desai be present for all hearings to show his stature to the Court. Mr. Wright advised he usually does not have Defendants come to Court for motions. FURTHER, any outstanding bench warrant is QUASHED. H.A. 7/29/10 9:30 AM STATUS CHECK: COORDINATE COMPETENCY EXAM

Parties Present

Return to Register of Actions

|                                                                                                               |            |        |            |
|---------------------------------------------------------------------------------------------------------------|------------|--------|------------|
| 10.SUBSTANTIAL BODILY HARM.                                                                                   | 0.060      | Felony | 01/01/1900 |
| 11.INSURANCE FRAUD                                                                                            | 686A.291   | Felony | 01/01/1900 |
| 11.SUBSTANTIAL BODILY HARM.                                                                                   | 0.060      | Felony | 01/01/1900 |
| 12.PERFORMANCE OF ACT IN RECKLESS DISREGARD<br>OF PERSONS OR PROPERTY RESULTING IN<br>SUBSTANTIAL BODILY HARM | 202.595.2  | Felony | 01/01/1900 |
| 13.CRIMINAL NEGLECT OF PATIENT RESULTING IN<br>SUBSTANTIAL BODILY HARM                                        | 200.495.2b | Felony | 01/01/1900 |
| 13.SUBSTANTIAL BODILY HARM.                                                                                   | 0.060      | Felony | 01/01/1900 |
| 14.SUBSTANTIAL BODILY HARM.                                                                                   | 0.060      | Felony | 01/01/1900 |
| 14.INSURANCE FRAUD                                                                                            | 686A.291   | Felony | 01/01/1900 |
| 15.INSURANCE FRAUD                                                                                            | 686A.291   | Felony | 01/01/1900 |
| 16.PERFORMANCE OF ACT IN RECKLESS DISREGARD<br>OF PERSONS OR PROPERTY RESULTING IN<br>SUBSTANTIAL BODILY HARM | 202.595.2  | Felony | 01/01/1900 |
| 17.SUBSTANTIAL BODILY HARM.                                                                                   | 0.060      | Felony | 01/01/1900 |
| 17.CRIMINAL NEGLECT OF PATIENT RESULTING IN<br>SUBSTANTIAL BODILY HARM                                        | 200.495.2b | Felony | 01/01/1900 |
| 18.SUBSTANTIAL BODILY HARM.                                                                                   | 0.060      | Felony | 01/01/1900 |
| 18.INSURANCE FRAUD                                                                                            | 686A.291   | Felony | 01/01/1900 |
| 19.PERFORMANCE OF ACT IN RECKLESS DISREGARD<br>OF PERSONS OR PROPERTY RESULTING<br>SUBSTANTIAL BODILY HARM    | 202.595.2  | Felony | 01/01/1900 |
| 20.SUBSTANTIAL BODILY HARM.                                                                                   | 0.060      | Felony | 01/01/1900 |
| 20.CRIMINAL NEGLECT OF PATIENT RESULTING IN<br>SUBSTANTIAL BODILY HARM                                        | 200.495.2b | Felony | 01/01/1900 |
| 21.SUBSTANTIAL BODILY HARM.                                                                                   | 0.060      | Felony | 01/01/1900 |
| 21.INSURANCE FRAUD                                                                                            | 686A.291   | Felony | 01/01/1900 |
| 22.PERFORMANCE OF ACT IN RECKLESS DISREGARD<br>OF PERSONS OR PROPERTY RESULTING IN<br>SUBSTANTIAL BODILY HARM | 202.595.2  | Felony | 01/01/1900 |
| 23.SUBSTANTIAL BODILY HARM.                                                                                   | 0.060      | Felony | 01/01/1900 |
| 23.CRIMINAL NEGLECT OF PATIENTS, RESULTING IN<br>SUBSTANTIAL BODILY HARM                                      | 200.495.2b | Felony | 01/01/1900 |
| 24.SUBSTANTIAL BODILY HARM.                                                                                   | 0.060      | Felony | 01/01/1900 |
| 24.INSURANCE FRAUD                                                                                            | 686A.291   | Felony | 01/01/1900 |
| 25.THEFT                                                                                                      | 205.0835.3 | Felony | 01/01/1900 |
| 26.THEFT-PENALTIES                                                                                            | 205.0835   | Felony | 01/01/1900 |
| 26.OBTAIN MONEY UNDER FALSE PRETENSES                                                                         | 205.380.1a | Felony | 01/01/1900 |
| 27.OBTAINING MONEY UNDER FALSE PRETENSES.                                                                     | 205.380    | Felony | 01/01/1900 |
| 27.IT SHALL BE NO DEFENSE TO A PROSECUTION FOR<br>LARCENY THAT THE ACCUSED WAS                                | 205.265    | Felony | 01/01/1900 |
| 28.OBTAINING MONEY UNDER FALSE PRETENSES                                                                      | 205.380    | Felony | 01/01/1900 |
| 28.IT SHALL BE NO DEFENSE TO A PROSECUTION FOR<br>LARCENY THAT THE ACCUSED WAS                                | 205.265    | Felony | 01/01/1900 |
| 29.MURDER, SECOND DEGREE                                                                                      | 200.030.2  | Felony | 09/21/2007 |

## EVENTS &amp; ORDERS OF THE COURT

|            |                                                                                                                                                         |
|------------|---------------------------------------------------------------------------------------------------------------------------------------------------------|
| 02/08/2011 | Further Proceedings: Competency (9:30 AM) (Judicial Officer Glass, Jackie)<br>FURTHER PROCEEDINGS: COMPETENCY//STATUS CHECK: RECEIPT OF THE EVALUATIONS |
|            | Minutes<br>02/08/2011 9:30 AM                                                                                                                           |

- APPEARANCES CONTINUED: Christina Greene of the Specialty Courts present. Conference at the Bench. Court stated it had a discussion with counsel regarding procedural matters; the reports came back finding the deft. not competent and in cases where the deft. is found not competent, the deft's are sent to Lakes Crossing in Reno, NV for restoration under NRS 178.425, therefore, the deft. has to be remanded as that is the only way for the deft. to be admitted to Lakes Crossing since there is no mental facility in Clark County. Court further stated that there are people who are severely mentally ill that are on the waiting list and the deft. will be sent to Lakes Crossing in the order the deft. is placed in as this Court will not bump anyone out of order. Court has checked with the jail and the next available transport date is in March, 2011, therefore, the deft. will have to surrender to the Court to be remanded, to have medical testing and a clearance done prior to admission. COURT ORDERED, matter CONTINUED for the deft. to surrender himself; FURTHER ORDERED, deft. is not to travel outside of Clark County. Court stated it will send all documentation that has been gathered and will have it transmitted to Lakes Crossing; deft. will remain in Lakes Crossing until a determination is made that either the deft. is competent and returned or not competent without probability and at that time parties will receive notice and either side can challenge the findings, depending on the findings. Upon Court's inquiry, Mr. Wright stated that he believes the deft's passport has been surrendered. Court Clerk advised the Court that the passport has been surrendered and is being held in the Vault. BAIL (H.A.) 3/17/11 9:30 AM FURTHER PROCEEDINGS: COMPETENCY/SURRENDER

Parties Present

Return to Register of Actions

## **Exhibit 3**

**Independent Medical Evaluation, 4/14/13**  
**[Filed under seal]**  
**(#40-67)**

## **Exhibit 2**

**Supreme Court Order  
Case No. 60038, 1/24/12  
(#37-39)**

IN THE SUPREME COURT OF THE STATE OF NEVADA

DIPAK KANTILAL DESAI, M.D.,  
Petitioner,  
vs.  
THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
KATHLEEN E. DELANEY, DISTRICT  
JUDGE,  
Respondents,  
and  
THE STATE OF NEVADA,  
Real Party in Interest.

No. 60038

**FILED**

JAN 24 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *Tracie K. Lindeman*  
DEPUTY CLERK

ORDER DENYING PETITION

This original petition for a writ of mandamus challenges a district court's evidentiary decision related to a competency hearing under NRS 178.460. Having considered the petition and the State's answer on behalf of respondents, we conclude that our intervention is not warranted.

As a general rule, we will not exercise our discretion to consider a petition for a writ of mandamus when the petitioner has a plain, speedy, and adequate remedy at law such as an appeal. NRS 34.170. Despite that general reluctance, we have considered some issues related to competency hearings where an "important legal issue needs clarification." Sims v. Dist. Ct., 125 Nev. 126, 129, 206 P.3d 980, 982 (2009). We are not convinced that this case presents such an issue.

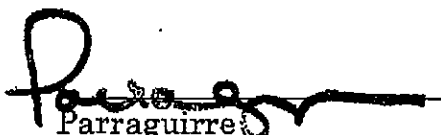
Nor are we convinced that the district court manifestly abused its discretion or exercised its discretion in an arbitrary or capricious

manner. See id. The documents submitted to this court indicate that the upcoming hearing is to examine the members of the Lake's Crossing treatment team on their report pursuant to NRS 178.460(1). The district court's evidentiary decision is consistent with NRS 178.460, which does not include the expansive language that appears in NRS 178.415, and is within the bounds of the law as set forth in our prior decision in Ferguson v. State, 124 Nev. 795, 192 P.3d 712 (2008), which addressed both an untimely motion for a hearing under NRS 178.460 and a subsequent, separate request for a new competency evaluation.<sup>1</sup> See State v. Dist. Ct. (Armstrong), 127 Nev. \_\_\_, \_\_\_, \_\_\_, P.3d \_\_\_, \_\_\_ (Adv. Op. No. 84 at 5, December 29, 2011) (defining manifest abuse of discretion and arbitrary or capricious exercise of discretion). Accordingly, we

ORDER the petition DENIED.<sup>2</sup>

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Parraguirre

<sup>1</sup>We note that any motion challenging petitioner's present competency (based on interactions and evaluations since his return from Lake's Crossing) would require a broader inquiry should the motion create sufficient doubt as to petitioner's competency to stand trial to warrant such an inquiry. See Ferguson, 124 Nev. at 805, 192 P.3d at 719; Calvin v. State, 122 Nev. 1178, 147 P.3d 1097 (2006); Morales v. State, 116 Nev. 19, 22, 922 P.2d 252, 254 (2000); NRS 178.405; NRS 178.415. But that inquiry is not part of the proceedings under NRS 178.460.

<sup>2</sup>We deny the motion for a stay as moot.

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

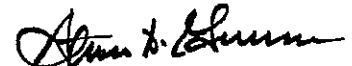


# **Exhibit 1**

**Fourth Amended Indictment**

**2/20/13**

**(#1-36)**

  
CLERK OF THE COURT

**AIND**  
**STEVEN B. WOLFSON**  
Clark County District Attorney  
Nevada Bar #001565  
**MICHAEL V. STAUDAHER**  
Chief Deputy District Attorney  
Nevada Bar #008273  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

**DIPAK KANTILAL DESAI,**  
**#1240942**  
**RONALD ERNEST LAKEMAN,**  
**#2753504**

Defendant(s).

CASE NO: **10C265107-1**

DEPT NO: **XXI**

**FOURTH AMENDED  
INDICTMENT**

STATE OF NEVADA     }  
COUNTY OF CLARK    } ss.

The Defendant(s) above named, **DIPAK KANTILAL DESAI** and **RONALD ERNEST LAKEMAN** accused by the Clark County Grand Jury of the crime(s) of **INSURANCE FRAUD (Category D Felony - NRS 686A.2815); PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS OR PROPERTY RESULTING IN SUBSTANTIAL BODILY HARM (Category C Felony - NRS 0.060, 202.595); CRIMINAL NEGLECT OF PATIENTS RESULTING IN SUBSTANTIAL BODILY HARM (Category B Felony - NRS 0.060, 200.495); THEFT (Category B Felony - NRS 205.0832, 205.0835); OBTAINING MONEY UNDER FALSE PRETENSES (Category B Felony - NRS 205.265, 205.380) and MURDER (SECOND DEGREE) (Category A Felony - NRS 200.010, 200.020, 200.030, 200.070, 202.595, 200.495), committed at and**

1 within the County of Clark, State of Nevada, on or between June 3, 2005, and April 27,  
2 2012, as follows:

3 COUNT 1 - INSURANCE FRAUD

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

25 ///

26 ///

27 ///

28 ///

COUNT 2 - PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS  
OR PROPERTY RESULTING IN SUBSTANTIAL BODILY HARM

Defendants and KEITH MATHAHS did on or about July 25, 2007, then and there willfully and unlawfully perform acts in willful or wanton disregard of the safety of persons or property resulting in substantial bodily harm to MICHAEL WASHINGTON, to wit: transmitting the Hepatitis C virus to MICHAEL WASHINGTON, in the following manner, to wit: by directly or indirectly using and/or introducing contaminated medical instruments, supplies, and/or drugs upon or into the body of MICHAEL WASHINGTON which were contaminated with the Hepatitis C virus; Defendants and KEITH MATHAHS 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 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, Defendants and KEITH MATHAHS acting with the intent to commit said crime in order to fraudulently increase the insurance billing and/or money reimbursement for the medical procedure performed on the said MICHAEL WASHINGTON; specifically, as to DEFENDANT DESAI, that he directly or indirectly both instructed DEFENDANT LAKEMAN, and KEITH MATHAHS and said others to perform said acts and created a work environment where DEFENDANT LAKEMAN, and KEITH MATHAHS and others were pressured to commit the said acts described above; specifically, as to DEFENDANT LAKEMAN, engaging in conduct against universally accepted standards of medical care, that he limited the use of medical supplies, and/or drugs and rushed patients, and/or patient procedures which in turn allowed DEFENDANT DESAI to directly or indirectly treat and/or perform an unreasonable number of patient procedures in a single day all at the expense of patient safety and well being, and which resulted in substandard care and jeopardized the safety of MICHAEL WASHINGTON and/or (3) pursuant to a conspiracy to commit this

1 crime, Defendants and KEITH MATHAHS acting in concert throughout.

2 COUNT 3 - CRIMINAL NEGLECT OF PATIENTS RESULTING IN SUBSTANTIAL  
3 BODILY HARM

4 Defendants and KEITH MATHAHS on or about July 25, 2007, being professional  
5 caretakers of MICHAEL WASHINGTON, did act or omit to act in an aggravated, reckless  
6 or gross manner, failing to provide such service, care or supervision as is reasonable and  
7 necessary to maintain the health or safety of said MICHAEL WASHINGTON, resulting in  
8 substantial bodily harm to MICHAEL WASHINGTON, to wit: transmitting the Hepatitis C  
9 virus to MICHAEL WASHINGTON, said acts or omissions being such a departure from  
10 what would be the conduct of an ordinarily prudent, careful person under the same  
11 circumstances that it is contrary to a proper regard for danger to human life or constitutes  
12 indifference to the resulting consequences, said consequences of the negligent act or  
13 omission being reasonably foreseeable; said danger to human life not being the result of  
14 inattention, mistaken judgment or misadventure, but the natural and probable result of said  
15 aggravated reckless or grossly negligent act or omission, to wit: by directly or indirectly  
16 using and/or introducing contaminated medical instruments, supplies, and/or drugs upon or  
17 into the body of MICHAEL WASHINGTON which were contaminated with the Hepatitis C  
18 virus; Defendants and KEITH MATHAHS 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 utilize a patient care delivery system which directly or indirectly limited the use of  
23 medical instruments, and/or supplies, and/or drugs; scheduled and/or treated an unreasonable  
24 number of patients per day, and/or rushed patients or patient procedures, Defendants and  
25 KEITH MATHAHS acting with the intent to commit said crime in order to fraudulently  
26 increase the insurance billing and/or money reimbursement for the medical procedure  
27 performed on the said MICHAEL WASHINGTON; specifically, as to DEFENDANT  
28 DESAI, that he directly or indirectly both instructed DEFENDANT LAKEMAN, and

1 KEITH MATHAHS and said others to perform said acts and created a work environment  
2 where DEFENDANT LAKEMAN, and KEITH MATHAHS and others were pressured to  
3 commit the said acts described above; specifically, as to DEFENDANT LAKEMAN,  
4 engaging in conduct against universally accepted standards of medical care, that he limited  
5 the use of medical supplies, and/or drugs and rushed patients, and/or patient procedures  
6 which in turn allowed DEFENDANT DESAI to directly or indirectly treat and/or perform an  
7 unreasonable number of patient procedures in a single day all at the expense of patient safety  
8 and well being, and which resulted in substandard care and jeopardized the safety of  
9 MICHAEL WASHINGTON and/or (3) pursuant to a conspiracy to commit this crime,  
10 Defendants and KEITH MATHAHS acting in concert throughout.

11 COUNT 4 - INSURANCE FRAUD

12 Defendants and KEITH MATHAHS did on or about July 25, 2007, knowingly and  
13 willfully present, or cause to be presented a statement as a part of, or in support of, a claim  
14 for payment or other benefits under a policy of insurance issued pursuant to Title 57 of the  
15 Nevada Revised Statutes, knowing that the statement concealed or omitted facts, or  
16 contained false or misleading information concerning a fact material to said claim; and/or  
17 did assist, abet, solicit or conspire to present or cause to be presented a statement to an  
18 insurer, a reinsurer, a producer, a broker or any agent thereof, knowing that said statement  
19 concealed or omitted facts, or did contain false or misleading information concerning a fact  
20 material to a claim for payment or other benefits under such policy issued pursuant to Title  
21 57 of the Nevada Revised Statutes, by falsely representing to VETERANS  
22 ADMINISTRATION that the billed anesthesia time and/or charges for the endoscopic  
23 procedure performed on MICHAEL WASHINGTON were more than the actual anesthetic  
24 time and/or charges, said false representation resulting in the payment of money to  
25 Defendants and KEITH MATHAHS and/or their medical practice and/or the racketeering  
26 enterprise which exceeded that which would have normally been allowed for said procedure;  
27 Defendants and KEITH MATHAHS being responsible under one or more of the following  
28 principles of criminal liability, to wit: (1) by directly committing said acts; and/or (2) aiding

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

5 COUNT 5 - INSURANCE FRAUD

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

27 ///

28 ///

COUNT 6 - PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS  
OR PROPERTY RESULTING IN SUBSTANTIAL BODILY HARM

Defendants and KEITH MATHAHS did on or about September 21, 2007, then and there willfully and unlawfully perform acts in willful or wanton disregard of the safety of persons or property resulting in substantial bodily harm to STACY HUTCHINSON, to wit: transmitting the Hepatitis C virus to STACY HUTCHINSON, in the following manner, to wit: by directly or indirectly using and/or introducing contaminated medical instruments, supplies, and/or drugs upon or into the body of STACY HUTCHINSON which were contaminated with the Hepatitis C virus; Defendants and KEITH MATHAHS 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 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, Defendants and KEITH MATHAHS acting with the intent to commit said crime in order to fraudulently increase the insurance billing and/or money reimbursement for the medical procedure performed on the said STACY HUTCHINSON; specifically, as to DEFENDANT DESAI, that he directly or indirectly both instructed DEFENDANT LAKEMAN, and KEITH MATHAHS and said others to perform said acts and created a work environment where DEFENDANT LAKEMAN, and KEITH MATHAHS and others were pressured to commit the said acts described above; specifically, as to DEFENDANT LAKEMAN, engaging in conduct against universally accepted standards of medical care, that he limited the use of medical supplies, and/or drugs and rushed patients, and/or patient procedures which in turn allowed DEFENDANT DESAI to directly or indirectly treat and/or perform an unreasonable number of patient procedures in a single day all at the expense of patient safety and well being, and which resulted in substandard care and jeopardized the safety of STACY HUTCHINSON and/or (3) pursuant to a conspiracy to commit this crime,



1 Defendants and KEITH MATHAHS acting in concert throughout.

2 COUNT 7 - CRIMINAL NEGLECT OF PATIENTS RESULTING IN SUBSTANTIAL  
3 BODILY HARM

4 Defendants and KEITH MATHAHS on or about September 21, 2007, being  
5 professional caretakers of STACY HUTCHINSON, did act or omit to act in an aggravated,  
6 reckless or gross manner, failing to provide such service, care or supervision as is reasonable  
7 and necessary to maintain the health or safety of said STACY HUTCHINSON, resulting in  
8 substantial bodily harm to STACY HUTCHINSON, to wit: transmitting the Hepatitis C  
9 virus to STACY HUTCHINSON, said acts or omissions being such a departure from what  
10 would be the conduct of an ordinarily prudent, careful person under the same circumstances  
11 that it is contrary to a proper regard for danger to human life or constitutes indifference to  
12 the resulting consequences, said consequences of the negligent act or omission being  
13 reasonably foreseeable; said danger to human life not being the result of inattention,  
14 mistaken judgment or misadventure, but the natural and probable result of said aggravated  
15 reckless or grossly negligent act or omission, to wit: by directly or indirectly using and/or  
16 introducing contaminated medical instruments, supplies, and/or drugs upon or into the body  
17 of STACY HUTCHINSON which were contaminated with the Hepatitis C virus; Defendants  
18 and KEITH MATHAHS being responsible under one or more of the following principles of  
19 criminal liability, to wit: (1) by directly committing said acts; and/or (2) aiding or abetting  
20 each other in the commission of the crime by directly or indirectly counseling, encouraging,  
21 hiring, commanding, inducing, or procuring each other, and/or others to utilize a patient care  
22 delivery system which directly or indirectly limited the use of medical instruments, and/or  
23 supplies, and/or drugs; scheduled and/or treated an unreasonable number of patients per day,  
24 and/or rushed patients or patient procedures, Defendants and KEITH MATHAHS acting  
25 with the intent to commit said crime in order to fraudulently increase the insurance billing  
26 and/or money reimbursement for the medical procedure performed on the said STACY  
27 HUTCHINSON; specifically, as to DEFENDANT DESAI, that he directly or indirectly both  
28 instructed DEFENDANT LAKEMAN, and KEITH MATHAHS and said others to perform

1 said acts and created a work environment where DEFENDANT LAKEMAN, and KEITH  
2 MATHAHS and others were pressured to commit the said acts described above; specifically,  
3 as to DEFENDANT LAKEMAN, engaging in conduct against universally accepted  
4 standards of medical care, that he limited the use of medical supplies, and/or drugs and  
5 rushed patients, and/or patient procedures which in turn allowed DEFENDANT DESAI to  
6 directly or indirectly treat and/or perform an unreasonable number of patient procedures in a  
7 single day all at the expense of patient safety and well being, and which resulted in  
8 substandard care and jeopardized the safety of STACY HUTCHINSON and/or (3) pursuant  
9 to a conspiracy to commit this crime, Defendants and KEITH MATHAHS acting in concert  
10 throughout.

11 COUNT 8 - INSURANCE FRAUD

12 Defendants and KEITH MATHAHS did on or about September 21, 2007, knowingly  
13 and willfully present, or cause to be presented a statement as a part of, or in support of, a  
14 claim for payment or other benefits under a policy of insurance issued pursuant to Title 57 of  
15 the Nevada Revised Statutes, knowing that the statement concealed or omitted facts, or  
16 contained false or misleading information concerning a fact material to said claim; and/or  
17 did assist, abet, solicit or conspire to present or cause to be presented a statement to an  
18 insurer, a reinsurer, a producer, a broker or any agent thereof, knowing that said statement  
19 concealed or omitted facts, or did contain false or misleading information concerning a fact  
20 material to a claim for payment or other benefits under such policy issued pursuant to Title  
21 57 of the Nevada Revised Statutes, by falsely representing to HEALTH PLAN OF  
22 NEVADA that the billed anesthesia time and/or charges for the endoscopic procedure  
23 performed on STACY HUTCHINSON were more than the actual anesthetic time and/or  
24 charges, said false representation resulting in the payment of money to Defendants and  
25 KEITH MATHAHS and/or their medical practice and/or the racketeering enterprise which  
26 exceeded that which would have normally been allowed for said procedure; Defendants and  
27 KEITH MATHAHS being responsible under one or more of the following principles of  
28 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, Defendants and KEITH MATHAHS acting with the intent to commit said crime, and/or (3) pursuant to a conspiracy to commit this crime.

COUNT 9 - PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS OR PROPERTY RESULTING IN SUBSTANTIAL BODILY HARM

Defendants and KEITH MATHAHS did on or about September 21, 2007, then and there willfully and unlawfully perform acts in willful or wanton disregard of the safety of persons or property resulting in substantial bodily harm to RUDOLFO MEANA, to wit: transmitting the Hepatitis C virus to RUDOLFO MEANA, in the following manner, to wit: by directly or indirectly using and/or introducing contaminated medical instruments, supplies, and/or drugs upon or into the body of RUDOLFO MEANA which were contaminated with the Hepatitis C virus; Defendants and KEITH MATHAHS 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 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, Defendants and KEITH MATHAHS acting with the intent to commit said crime in order to fraudulently increase the insurance billing and/or money reimbursement for the medical procedure performed on the said RUDOLFO MEANA; specifically, as to DEFENDANT DESAI, that he directly or indirectly both instructed DEFENDANT LAKEMAN, and KEITH MATHAHS and said others to perform said acts and created a work environment where DEFENDANT LAKEMAN, and KEITH MATHAHS and others were pressured to commit the said acts described above; specifically, as to DEFENDANT LAKEMAN, engaging in conduct against universally accepted standards of medical care, that he obtained the medical supplies, and/or drugs utilized in the treatment of KENNETH

1 RUBINO and RODOLFO MEANA which were subsequently contaminated with the  
2 Hepatitis C virus and thereafter directly or indirectly shared, exchanged or transferred said  
3 contaminated medical supplies, and/or drugs between himself and KEITH MATHAHS  
4 and/or between treatment rooms before, during or after the endoscopic procedure performed  
5 on KENNETH RUBINO which resulted in the transmission of the Hepatitis C virus into the  
6 body of RODOLFO MEANA and others and/or (3) pursuant to a conspiracy to commit this  
7 crime, Defendants and KEITH MATHAHS acting in concert throughout.

8 COUNT 10 - CRIMINAL NEGLECT OF PATIENTS RESULTING IN SUBSTANTIAL  
9 BODILY HARM

10 Defendants and KEITH MATHAHS on or about September 21, 2007, being  
11 professional caretakers of RUDOLFO MEANA, did act or omit to act in an aggravated,  
12 reckless or gross manner, failing to provide such service, care or supervision as is reasonable  
13 and necessary to maintain the health or safety of said RUDOLFO MEANA, resulting in  
14 substantial bodily harm to RUDOLFO MEANA, to wit: transmitting the Hepatitis C virus to  
15 RUDOLFO MEANA, said acts or omissions being such a departure from what would be the  
16 conduct of an ordinarily prudent, careful person under the same circumstances that it is  
17 contrary to a proper regard for danger to human life or constitutes indifference to the  
18 resulting consequences, said consequences of the negligent act or omission being reasonably  
19 foreseeable; said danger to human life not being the result of inattention, mistaken judgment  
20 or misadventure, but the natural and probable result of said aggravated reckless or grossly  
21 negligent act or omission, to wit: by directly or indirectly using and/or introducing  
22 contaminated medical instruments, supplies, and/or drugs upon or into the body of  
23 RUDOLFO MEANA which were contaminated with the Hepatitis C virus; Defendants and  
24 KEITH MATHAHS being responsible under one or more of the following principles of  
25 criminal liability, to wit: (1) by directly committing said acts; and/or (2) aiding or abetting  
26 each other in the commission of the crime by directly or indirectly counseling, encouraging,  
27 hiring, commanding, inducing, or procuring each other, and/or others to utilize a patient care  
28 delivery system which directly or indirectly limited the use of medical instruments, and/or

1 supplies, and/or drugs; scheduled and/or treated an unreasonable number of patients per day,  
2 and/or rushed patients or patient procedures, Defendants and KEITH MATHAHS acting  
3 with the intent to commit said crime in order to fraudulently increase the insurance billing  
4 and/or money reimbursement for the medical procedure performed on the said RUDOLFO  
5 MEANA; specifically, as to DEFENDANT DESAI, that he directly or indirectly both  
6 instructed DEFENDANT LAKEMAN, and KEITH MATHAHS and said others to perform  
7 said acts and created a work environment where DEFENDANT LAKEMAN, and KEITH  
8 MATHAHS and others were pressured to commit the said acts described above; specifically,  
9 as to DEFENDANT LAKEMAN, engaging in conduct against universally accepted  
10 standards of medical care, that he obtained the medical supplies, and/or drugs utilized in the  
11 treatment of KENNETH RUBINO and RODOLFO MEANA which were subsequently  
12 contaminated with the Hepatitis C virus and thereafter directly or indirectly shared,  
13 exchanged or transferred said contaminated medical supplies, and/or drugs between himself  
14 and KEITH MATHAHS and/or between treatment rooms before, during or after the  
15 endoscopic procedure performed on KENNETH RUBINO which resulted in the  
16 transmission of the Hepatitis C virus into the body of RODOLFO MEANA and others and/or  
17 (3) pursuant to a conspiracy to commit this crime, Defendants and KEITH MATHAHS  
18 acting in concert throughout.

19 COUNT 11 - INSURANCE FRAUD

20 Defendants and KEITH MATHAHS did on or about September 21, 2007, knowingly  
21 and willfully present, or cause to be presented a statement as a part of, or in support of, a  
22 claim for payment or other benefits under a policy of insurance issued pursuant to Title 57 of  
23 the Nevada Revised Statutes, knowing that the statement concealed or omitted facts, or  
24 contained false or misleading information concerning a fact material to said claim; and/or  
25 did assist, abet, solicit or conspire to present or cause to be presented a statement to an  
26 insurer, a reinsurer, a producer, a broker or any agent thereof, knowing that said statement  
27 concealed or omitted facts, or did contain false or misleading information concerning a fact  
28 material to a claim for payment or other benefits under such policy issued pursuant to Title

57 of the Nevada Revised Statutes, by falsely representing to SECURE HORIZONS and/or PACIFICARE that the billed anesthesia time and/or charges for the endoscopic procedure performed on RUDOLFO MEANA were more than the actual anesthetic time and/or charges, said false representation resulting in the payment of money to Defendants and KEITH MATHAHS and/or their medical practice and/or the racketeering enterprise which exceeded that which would have normally been allowed for said procedure; Defendants and KEITH MATHAHS 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, Defendants and KEITH MATHAHS acting with the intent to commit said crime, and/or (3) pursuant to a conspiracy to commit this crime.

**COUNT 12 - PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS  
OR PROPERTY RESULTING IN SUBSTANTIAL BODILY HARM**

Defendants and KEITH MATHAHS did on or about September 21, 2007, then and there willfully and unlawfully perform acts in willful or wanton disregard of the safety of persons or property resulting in substantial bodily harm to PATTY ASPINWALL, to wit: transmitting the Hepatitis C virus to PATTY ASPINWALL, in the following manner, 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 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, Defendants and KEITH MATHAHS acting with the intent to commit said crime in order to fraudulently increase the insurance billing and/or money reimbursement for the medical procedure performed on the said PATTY ASPINWALL; specifically, as to DEFENDANT DESAI, that he directly or indirectly both instructed DEFENDANT LAKEMAN, and KEITH MATHAHS and said others to perform

1 said acts and created a work environment where DEFENDANT LAKEMAN, KEITH  
2 MATHAHS and others were pressured to commit the said acts described above; specifically,  
3 as to DEFENDANT LAKEMAN, engaging in conduct against universally accepted  
4 standards of medical care, that he limited the use of medical supplies, and/or drugs and  
5 rushed patients, and/or patient procedures which in turn allowed DEFENDANT DESAI to  
6 directly or indirectly treat and/or perform an unreasonable number of patient procedures in a  
7 single day all at the expense of patient safety and well being, and which resulted in  
8 substandard care and jeopardized the safety of PATTY ASPINWALL and/or (3) pursuant to  
9 a conspiracy to commit this crime, Defendants and KEITH MATHAHS acting in concert  
10 throughout.

11 COUNT 13 - CRIMINAL NEGLIGENCE OF PATIENTS RESULTING IN SUBSTANTIAL  
12 BODILY HARM

13 Defendants and KEITH MATHAHS on or about September 21, 2007, being  
14 professional caretakers of PATTY ASPINWALL, did act or omit to act in an aggravated,  
15 reckless or gross manner, failing to provide such service, care or supervision as is reasonable  
16 and necessary to maintain the health or safety of said PATTY ASPINWALL, resulting in  
17 substantial bodily harm to PATTY ASPINWALL, to wit: transmitting the Hepatitis C virus  
18 to PATTY ASPINWALL, said acts or omissions being such a departure from what would be  
19 the conduct of an ordinarily prudent, careful person under the same circumstances that it is  
20 contrary to a proper regard for danger to human life or constitutes indifference to the  
21 resulting consequences, said consequences of the negligent act or omission being reasonably  
22 foreseeable; said danger to human life not being the result of inattention, mistaken judgment  
23 or misadventure, but the natural and probable result of said aggravated reckless or grossly  
24 negligent act or omission, to wit: (1) by directly committing said acts; and/or (2) aiding or  
25 abetting each other in the commission of the crime by directly or indirectly counseling,  
26 encouraging, hiring, commanding, inducing, or procuring each other, and/or others to utilize  
27 a patient care delivery system which directly or indirectly limited the use of medical  
28 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, Defendants and KEITH MATHAHS acting with the intent to commit said crime in order to fraudulently increase the insurance billing and/or money reimbursement for the medical procedure performed on the said PATTY ASPINWALL; specifically, as to DEFENDANT DESAI, that he directly or indirectly both instructed DEFENDANT LAKEMAN, and KEITH MATHAHS and said others to perform said acts and created a work environment where DEFENDANT LAKEMAN, and KEITH MATHAHS and others were pressured to commit the said acts described above; specifically, as to DEFENDANT LAKEMAN, engaging in conduct against universally accepted standards of medical care, that he limited the use of medical supplies, and/or drugs and rushed patients, and/or patient procedures which in turn allowed DEFENDANT DESAI to directly or indirectly treat and/or perform an unreasonable number of patient procedures in a single day all at the expense of patient safety and well being, and which resulted in substandard care and jeopardized the safety of PATTY ASPINWALL and/or (3) pursuant to a conspiracy to commit this crime, Defendants and KEITH MATHAHS acting in concert throughout.

COUNT 14 - INSURANCE FRAUD

Defendants and KEITH MATHAHS did on or about September 21, 2007, knowingly and willfully present, or cause to be presented a statement as a part of, or in support of, a claim for payment or other benefits under a policy of insurance issued pursuant to Title 57 of the Nevada Revised Statutes, knowing that the statement concealed or omitted facts, or contained false or misleading information concerning a fact material to said claim; and/or did assist, abet, solicit or conspire to present or cause to be presented a statement to an insurer, a reinsurer, a producer, a broker or any agent thereof, knowing that said statement concealed or omitted facts, or did contain false or misleading information concerning a fact material to a claim for payment or other benefits under such policy issued pursuant to Title 57 of the Nevada Revised Statutes, by falsely representing to ANTHEM BLUE CROSS AND BLUE SHIELD that the billed anesthesia time and/or charges for the endoscopic procedure performed on PATTY ASPINWALL were more than the actual anesthetic time



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

10 COUNT 15 - INSURANCE FRAUD

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

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

4 COUNT 16 - PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS  
5 OR PROPERTY RESULTING IN SUBSTANTIAL BODILY HARM

6 Defendants and KEITH MATHAHS did on or about September 21, 2007, then and  
7 there willfully and unlawfully perform acts in willful or wanton disregard of the safety of  
8 persons or property resulting in substantial bodily harm to SONIA ORELLANA-RIVERA,  
9 to wit: transmitting the Hepatitis C virus to SONIA ORELLANA-RIVERA, in the following  
10 manner, to wit: by directly or indirectly using and/or introducing contaminated medical  
11 instruments, supplies, and/or drugs upon or into the body of SONIA ORELLANA-RIVERA  
12 which were contaminated with the Hepatitis C virus; Defendants and KEITH MATHAHS  
13 being responsible under one or more of the following principles of criminal liability, to wit:  
14 (1) by directly committing said acts; and/or (2) aiding or abetting each other in the  
15 commission of the crime by directly or indirectly counseling, encouraging, hiring,  
16 commanding, inducing, or procuring each other, and/or others to utilize a patient care  
17 delivery system which directly or indirectly limited the use of medical instruments, and/or  
18 supplies, and/or drugs; scheduled and/or treated an unreasonable number of patients per day,  
19 and/or rushed patients or patient procedures, Defendants and KEITH MATHAHS acting  
20 with the intent to commit said crime in order to fraudulently increase the insurance billing  
21 and/or money reimbursement for the medical procedure performed on the said SONIA  
22 ORELLANA-RIVERA; specifically, as to DEFENDANT DESAI, that he directly or  
23 indirectly both instructed DEFENDANT LAKEMAN, and KEITH MATHAHS and said  
24 others to perform said acts and created a work environment where DEFENDANT  
25 LAKEMAN, and KEITH MATHAHS and others were pressured to commit the said acts  
26 described above; specifically, as to DEFENDANT LAKEMAN, engaging in conduct against  
27 universally accepted standards of medical care, that he obtained the medical supplies, and/or  
28 drugs utilized in the treatment of KENNETH RUBINO and SONIA ORELLANA-RIVERA

1 which were subsequently contaminated with the Hepatitis C virus and thereafter directly or  
2 indirectly shared, exchanged or transferred said contaminated medical supplies, and/or drugs  
3 between himself and KEITH MATHAHS and/or between treatment rooms before, during or  
4 after the endoscopic procedure performed on KENNETH RUBINO which resulted in the  
5 transmission of the Hepatitis C virus into the body of SONIA ORELLANA-RIVERA and  
6 others and/or (3) pursuant to a conspiracy to commit this crime, Defendants and KEITH  
7 MATHAHS acting in concert throughout.

8 COUNT 17 - CRIMINAL NEGLECT OF PATIENTS RESULTING IN SUBSTANTIAL  
9 BODILY HARM

10 Defendants and KEITH MATHAHS on or about September 21, 2007, being  
11 professional caretakers of SONIA ORELLANA-RIVERA, did act or omit to act in an  
12 aggravated, reckless or gross manner, failing to provide such service, care or supervision as  
13 is reasonable and necessary to maintain the health or safety of said SONIA ORELLANA-  
14 RIVERA, resulting in substantial bodily harm to SONIA ORELLANA-RIVERA, to wit:  
15 transmitting the Hepatitis C virus to SONIA ORELLANA-RIVERA, said acts or omissions  
16 being such a departure from what would be the conduct of an ordinarily prudent, careful  
17 person under the same circumstances that it is contrary to a proper regard for danger to  
18 human life or constitutes indifference to the resulting consequences, said consequences of  
19 the negligent act or omission being reasonably foreseeable; said danger to human life not  
20 being the result of inattention, mistaken judgment or misadventure, but the natural and  
21 probable result of said aggravated reckless or grossly negligent act or omission, to wit: by  
22 directly or indirectly using and/or introducing contaminated medical instruments, supplies,  
23 and/or drugs upon or into the body of SONIA ORELLANA-RIVERA which were  
24 contaminated with the Hepatitis C virus; Defendants and KEITH MATHAHS being  
25 responsible under one or more of the following principles of criminal liability, to wit: (1) by  
26 directly committing said acts; and/or (2) aiding or abetting each other in the commission of  
27 the crime by directly or indirectly counseling, encouraging, hiring, commanding, inducing,  
28 or procuring each other, and/or others to utilize a patient care delivery system which directly

1 or indirectly limited the use of medical instruments, and/or supplies, and/or drugs; scheduled  
2 and/or treated an unreasonable number of patients per day, and/or rushed patients or patient  
3 procedures, Defendants and KEITH MATHAHS acting with the intent to commit said crime  
4 in order to fraudulently increase the insurance billing and/or money reimbursement for the  
5 medical procedure performed on the said SONIA ORELLANA-RIVERA; specifically, as to  
6 DEFENDANT DESAI, that he directly or indirectly both instructed DEFENDANT  
7 LAKEMAN, and KEITH MATHAHS and said others to perform said acts and created a  
8 work environment where DEFENDANT LAKEMAN, and KEITH MATHAHS and others  
9 were pressured to commit the said acts described above; specifically, as to DEFENDANT  
10 LAKEMAN, engaging in conduct against universally accepted standards of medical care,  
11 that he obtained the medical supplies, and/or drugs utilized in the treatment of KENNETH  
12 RUBINO AND SONIA ORELLANA-RIVERA which were subsequently contaminated with  
13 the Hepatitis C virus and thereafter directly or indirectly shared, exchanged or transferred  
14 said contaminated medical supplies, and/or drugs between himself and KEITH MATHAHS  
15 and/or between treatment rooms before, during or after the endoscopic procedure performed  
16 on KENNETH RUBINO which resulted in the transmission of the Hepatitis C virus into the  
17 body of SONIA ORELLANA-RIVERA and others and/or (3) pursuant to a conspiracy to  
18 commit this crime, Defendants and KEITH MATHAHS acting in concert throughout.

19 COUNT 18 - INSURANCE FRAUD

20 Defendants and KEITH MATHAHS did on or about September 21, 2007, knowingly  
21 and willfully present, or cause to be presented a statement as a part of, or in support of, a  
22 claim for payment or other benefits under a policy of insurance issued pursuant to Title 57 of  
23 the Nevada Revised Statutes, knowing that the statement concealed or omitted facts, or  
24 contained false or misleading information concerning a fact material to said claim; and/or  
25 did assist, abet, solicit or conspire to present or cause to be presented a statement to an  
26 insurer, a reinsurer, a producer, a broker or any agent thereof, knowing that said statement  
27 concealed or omitted facts, or did contain false or misleading information concerning a fact  
28 material to a claim for payment or other benefits under such policy issued pursuant to Title

57 of the Nevada Revised Statutes, by falsely representing to CULINARY WORKERS HEALTH FUND that the billed anesthesia time and/or charges for the endoscopic procedure performed on SONIA ORELLANA-RIVERA were more than the actual anesthetic time and/or charges, said false representation resulting in the payment of money to Defendants and KEITH MATHAHS and/or their medical practice and/or the racketeering enterprise which exceeded that which would have normally been allowed for said procedure; Defendants and KEITH MATHAHS 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, Defendants and KEITH MATHAHS acting with the intent to commit said crime, and/or (3) pursuant to a conspiracy to commit this crime.

COUNT 19 - PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS OR PROPERTY RESULTING IN SUBSTANTIAL BODILY HARM

Defendants and KEITH MATHAHS did on or about September 21, 2007, then and there willfully and unlawfully perform acts in willful or wanton disregard of the safety of persons or property resulting in substantial bodily harm to CAROLE GRUESKIN, to wit: transmitting the Hepatitis C virus to CAROLE GRUESKIN, in the following manner, 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 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, Defendants and KEITH MATHAHS acting with the intent to commit said crime in order to fraudulently increase the insurance billing and/or money reimbursement for the medical procedure performed on the said CAROLE GRUESKIN; specifically, as to DEFENDANT DESAI, that he directly or indirectly both instructed DEFENDANT LAKEMAN, and KEITH MATHAHS and said others to perform

1 said acts and created a work environment where DEFENDANT LAKEMAN, and KEITH  
2 MATHAHS and others were pressured to commit the said acts described above; specifically,  
3 as to DEFENDANT LAKEMAN, engaging in conduct against universally accepted  
4 standards of medical care, that he limited the use of medical supplies, and/or drugs and  
5 rushed patients, and/or patient procedures which in turn allowed DEFENDANT DESAI to  
6 directly or indirectly treat and/or perform an unreasonable number of patient procedures in a  
7 single day all at the expense of patient safety and well being, and which resulted in  
8 substandard care and jeopardized the safety of CAROLE GRUESKIN and/or (3) pursuant to  
9 a conspiracy to commit this crime, Defendants and KEITH MATHAHS acting in concert  
10 throughout.

11 COUNT 20- CRIMINAL NEGLECT OF PATIENTS RESULTING IN SUBSTANTIAL  
12 BODILY HARM

13 Defendants and KEITH MATHAHS on or about September 21, 2007, being  
14 professional caretakers of CAROLE GRUESKIN, did act or omit to act in an aggravated,  
15 reckless or gross manner, failing to provide such service, care or supervision as is reasonable  
16 and necessary to maintain the health or safety of said CAROLE GRUESKIN, resulting in  
17 substantial bodily harm to CAROLE GRUESKIN, to wit: transmitting the Hepatitis C virus  
18 to CAROLE GRUESKIN, said acts or omissions being such a departure from what would be  
19 the conduct of an ordinarily prudent, careful person under the same circumstances that it is  
20 contrary to a proper regard for danger to human life or constitutes indifference to the  
21 resulting consequences, said consequences of the negligent act or omission being reasonably  
22 foreseeable; said danger to human life not being the result of inattention, mistaken judgment  
23 or misadventure, but the natural and probable result of said aggravated reckless or grossly  
24 negligent act or omission, to wit: (1) by directly committing said acts; and/or (2) aiding or  
25 abetting each other in the commission of the crime by directly or indirectly counseling,  
26 encouraging, hiring, commanding, inducing, or procuring each other, and/or others to utilize  
27 a patient care delivery system which directly or indirectly limited the use of medical  
28 instruments, and/or supplies, and/or drugs; scheduled and/or treated an unreasonable number

1 of patients per day, and/or rushed patients or patient procedures, Defendants and KEITH  
2 MATHAHS acting with the intent to commit said crime in order to fraudulently increase the  
3 insurance billing and/or money reimbursement for the medical procedure performed on the  
4 said CAROLE GRUESKIN; specifically, as to DEFENDANT DESAI, that he directly or  
5 indirectly both instructed DEFENDANT LAKEMAN, and KEITH MATHAHS and said  
6 others to perform said acts and created a work environment where DEFENDANT  
7 LAKEMAN, and KEITH MATHAHS and others were pressured to commit the said acts  
8 described above; specifically, as to DEFENDANT LAKEMAN, engaging in conduct against  
9 universally accepted standards of medical care, that he limited the use of medical supplies,  
10 and/or drugs and rushed patients, and/or patient procedures which in turn allowed  
11 DEFENDANT DESAI to directly or indirectly treat and/or perform an unreasonable number  
12 of patient procedures in a single day all at the expense of patient safety and well being, and  
13 which resulted in substandard care and jeopardized the safety of CAROLE GRUESKIN  
14 and/or (3) pursuant to a conspiracy to commit this crime, Defendants and KEITH  
15 MATHAHS acting in concert throughout.

16 COUNT 21 - INSURANCE FRAUD

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

charges, said false representation resulting in the payment of money to Defendants and KEITH MATHAHS and/or their medical practice and/or the racketeering enterprise which exceeded that which would have normally been allowed for said procedure; Defendants and KEITH MATHAHS 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, Defendants and KEITH MATHAHS acting with the intent to commit said crime, and/or (3) pursuant to a conspiracy to commit this crime.

COUNT 22 - PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS OR PROPERTY RESULTING IN SUBSTANTIAL BODILY HARM

Defendants and KEITH MATHAHS did on or about September 21, 2007, then and there willfully and unlawfully perform acts in willful or wanton disregard of the safety of persons or property resulting in substantial bodily harm to GWENDOLYN MARTIN, to wit: transmitting the Hepatitis C virus to GWENDOLYN MARTIN, in the following manner, 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 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, Defendants and KEITH MATHAHS acting with the intent to commit said crime in order to fraudulently increase the insurance billing and/or money reimbursement for the medical procedure performed on the said GWENDOLYN MARTIN; specifically, as to DEFENDANT DESAI, that he directly or indirectly both instructed DEFENDANT LAKEMAN, and KEITH MATHAHS and said others to perform said acts and created a work environment where DEFENDANT LAKEMAN, and KEITH MATHAHS and others were pressured to commit the said acts described above; specifically, as to DEFENDANT LAKEMAN, engaging in conduct against



1 universally accepted standards of medical care, that he obtained the medical supplies, and/or  
2 drugs utilized in the treatment of KENNETH RUBINO and GWENDOLYN MARTIN  
3 which were subsequently contaminated with the Hepatitis C virus and thereafter directly or  
4 indirectly shared, exchanged or transferred said contaminated medical supplies, and/or drugs  
5 between himself and KEITH MATHAHS and/or between treatment rooms before, during or  
6 after the endoscopic procedure performed on KENNETH RUBINO which resulted in the  
7 transmission of the Hepatitis C virus into the body of GWENDOLYN MARTIN and others  
8 and/or (3) pursuant to a conspiracy to commit this crime, Defendants and KEITH  
9 MATHAHS acting in concert throughout.

10 COUNT 23 - CRIMINAL NEGLIGENCE OF PATIENTS RESULTING IN SUBSTANTIAL  
11 BODILY HARM

12 Defendants and KEITH MATHAHS on or about September 21, 2007, being  
13 professional caretakers of GWENDOLYN MARTIN, did act or omit to act in an aggravated,  
14 reckless or gross manner, failing to provide such service, care or supervision as is reasonable  
15 and necessary to maintain the health or safety of said GWENDOLYN MARTIN, resulting in  
16 substantial bodily harm to GWENDOLYN MARTIN, to wit: transmitting the Hepatitis C  
17 virus to GWENDOLYN MARTIN, 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, to wit: (1) by directly committing said acts;  
24 and/or (2) aiding or abetting each other in the commission of the crime by directly or  
25 indirectly counseling, encouraging, hiring, commanding, inducing, or procuring each other,  
26 and/or others to utilize a patient care delivery system which directly or indirectly limited the  
27 use of medical instruments, and/or supplies, and/or drugs; scheduled and/or treated an  
28 unreasonable number of patients per day, and/or rushed patients or patient procedures,

Defendants and KEITH MATHAHS acting with the intent to commit said crime in order to fraudulently increase the insurance billing and/or money reimbursement for the medical procedure performed on the said GWENDOLYN MARTIN; specifically, as to DEFENDANT DESAI, that he directly or indirectly both instructed DEFENDANT LAKEMAN, and KEITH MATHAHS and said others to perform said acts and created a work environment where DEFENDANT LAKEMAN, and KEITH MATHAHS and others were pressured to commit the said acts described above; specifically, as to DEFENDANT LAKEMAN, engaging in conduct against universally accepted standards of medical care, that he obtained the medical supplies, and/or drugs utilized in the treatment of KENNETH RUBINO and GWENDOLYN MARTIN which were subsequently contaminated with the Hepatitis C virus and thereafter directly or indirectly shared, exchanged or transferred said contaminated medical supplies, and/or drugs between himself and KEITH MATHAHS and/or between treatment rooms before, during or after the endoscopic procedure performed on KENNETH RUBINO which resulted in the transmission of the Hepatitis C virus into the body of GWENDOLYN MARTIN and others and/or (3) pursuant to a conspiracy to commit this crime, Defendants and KEITH MATHAHS acting in concert throughout.

COUNT 24 - INSURANCE FRAUD

Defendants and KEITH MATHAHS did on or between September 20, 2007 and September 21, 2007, knowingly and willfully present, or cause to be presented a statement as a part of, or in support of, a claim for payment or other benefits under a policy of insurance issued pursuant to Title 57 of the Nevada Revised Statutes, knowing that the statement concealed or omitted facts, or contained false or misleading information concerning a fact material to said claim; and/or did assist, abet, solicit or conspire to present or cause to be presented a statement to an insurer, a reinsurer, a producer, a broker or any agent thereof, knowing that said statement concealed or omitted facts, or did contain false or misleading information concerning a fact material to a claim for payment or other benefits under such policy issued pursuant to Title 57 of the Nevada Revised Statutes, by falsely representing to PACIFIC CARE that the billed anesthesia time and/or charges for the

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

11 COUNT 25 – THEFT

12 Defendants and KEITH MATHAHS did between July 25, 2007 and December 31,  
13 2007, then and there knowingly, feloniously, and without lawful authority, commit theft by  
14 obtaining personal property in the amount of \$250.00, or more, lawful money of the United  
15 States, from STACY HUTCHINSON, KENNETH RUBINO, PATTY ASPINWALL,  
16 SHARRIEFF ZIYAD, MICHAEL WASHINGTON, CAROLE GRUESKIN and RODOLFO  
17 MEANA, and/or ANTHEM BLUE CROSS AND BLUE SHIELD, HEALTHCARE  
18 PARTNERS OF NEVADA, UNITED HEALTH SERVICES, VETERANS  
19 ADMINISTRATION and SECURED HORIZONS, by a material misrepresentation with  
20 intent to deprive those persons of the property, in the following manner, to-wit: by falsely  
21 representing that the billed anesthesia time and/or charges for the endoscopic procedure  
22 performed on STACY HUTCHINSON, KENNETH RUBINO, PATTY ASPINWALL,  
23 SHARRIEFF ZIYAD, MICHAEL WASHINGTON, CAROLE GRUESKIN and RODOLFO  
24 MEANA, were more than the actual anesthetic time and/or charges, said false representation  
25 resulting in the payment of money to Defendants and KEITH MATHAHS and/or their  
26 medical practice and/or the racketeering enterprise, which exceeded that which would have  
27 normally been allowed for said procedure, thereby obtaining said personal property by a  
28 material misrepresentation with intent to deprive them of the property, Defendants and

1 KEITH MATHAHS 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 and KEITH MATHAHS acting with the intent to commit said crime, and/or (3)  
6 pursuant to a conspiracy to commit this crime.

7 COUNT 26 - OBTAINING MONEY UNDER FALSE PRETENSES

8 Defendants and KEITH MATHAHS did on or between September 20, 2007, and  
9 December 31, 2007, with intent to cheat and defraud, wilfully, unlawfully, feloniously,  
10 knowingly, designedly, and by use of false pretenses, obtain \$250.00, or more, lawful money  
11 of the United States from GWENDOLYN MARTIN and/or PACIFICARE, within Las  
12 Vegas, Clark County, Nevada, in the following manner, to-wit: by falsely representing that  
13 the billed anesthesia times and/or charges for the endoscopic procedures performed on  
14 GWENDOLYN MARTIN were more than the actual anesthetic times and/or charges, said  
15 false representation resulting in the payment of money to Defendants and KEITH  
16 MATHAHS and/or the medical practice and/or the racketeering enterprise, which exceeded  
17 that which would have normally been allowed for said procedures Defendants and KEITH  
18 MATHAHS 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 and KEITH MATHAHS acting with the intent to commit said crime, and/or (3)  
23 pursuant to a conspiracy to commit this crime.

24 COUNT 27 - OBTAINING MONEY UNDER FALSE PRETENSES

25 Defendants and KEITH MATHAHS did on or between September 21, 2007, and  
26 December 31, 2007, with intent to cheat and defraud, wilfully, unlawfully, feloniously,  
27 knowingly, designedly, and by use of false pretenses, obtain \$250.00, or more, lawful money  
28 of the United States from SONIA ORELLANA-RIVERA and/or CULINARY WORKERS

1 HEALTH FUND, within Las Vegas, Clark County, Nevada, in the following manner, to-wit:  
2 by falsely representing that the billed anesthesia times and/or charges for the endoscopic  
3 procedures performed on SONIA ORELLANA-RIVERA were more than the actual  
4 anesthetic times and/or charges, said false representation resulting in the payment of money  
5 to Defendants and KEITH MATHAHS and/or the medical practice and/or the racketeering  
6 enterprise, which exceeded that which would have normally been allowed for said  
7 procedures Defendants and KEITH MATHAHS being responsible under one or more of the  
8 following principles of criminal liability, to wit: (1) by directly committing said acts; and/or  
9 (2) aiding or abetting each other in the commission of the crime by directly or indirectly  
10 counseling, encouraging, hiring, commanding, inducing, or procuring each other, and/or  
11 others to commit said acts, Defendants and KEITH MATHAHS acting with the intent to  
12 commit said crime, and/or (3) pursuant to a conspiracy to commit this crime.

13 COUNT 28 – MURDER (SECOND DEGREE)

14 Defendants and KEITH MATHAHS did on or between September 21, 2007 and April  
15 27, 2012, then and there willfully, feloniously, without authority of law, and with malice  
16 aforethought, kill RODOLFO MEANA, a human being, by introducing Hepatitis C virus  
17 into the body of RODOLFO MEANA, based upon the following principles of criminal  
18 liability, to-wit: (1) by the killing occurring under circumstances showing an abandoned and  
19 malignant heart; and/or (2) during the commission of an unlawful act, to-wit: criminal  
20 neglect of patients, and/or performance of an unlawful act in reckless disregard of persons or  
21 property, which in its consequences, naturally tends to destroy the life of a human being;  
22 and/or (3) the killing being committed in the prosecution of a felonious intent, to-wit:  
23 criminal neglect of patients, and/or performance of an act in reckless disregard of persons or  
24 property, which in its consequences, naturally tends to destroy the life of a human being, by  
25 directly or indirectly using and/or introducing contaminated medical instruments, supplies,  
26 and/or drugs upon or into the body of RODOLFO MEANA which were contaminated with  
27 the Hepatitis C virus; Defendants and KEITH MATHAHS 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) by aiding or abetting each other and/or others including uncharged  
2 confederates in the commission of the crime(s) of criminal neglect of patients, and/or  
3 performance of an act in reckless disregard of persons or property by directly or indirectly  
4 counseling, encouraging, hiring, commanding, inducing, or procuring each other, and/or  
5 others to utilize a patient care delivery system which directly or indirectly limited the use of  
6 medical instruments, and/or supplies, and/or drugs; scheduled and/or treated an unreasonable  
7 number of patients per day, and/or rushed patients or patient procedures all at the expense of  
8 patient safety and/or well being, and which resulted in substandard care and/or jeopardized  
9 the safety of RODOLFO MEANA, Defendants and KEITH MATHAHS acting with the  
10 intent to commit the crime(s) of criminal neglect of patients, and/or performance of an act in  
11 reckless disregard of persons or property; and/or (3) pursuant to a conspiracy to commit the  
12 crime(s) of criminal neglect of patients, and/or performance of an act in reckless disregard of  
13 persons or property, Defendants and KEITH MATHAHS acting in concert throughout.

14 DATED this \_\_\_\_ day of February, 2013.

15 STEVEN B. WOLFSON  
16 DISTRICT ATTORNEY  
17 Nevada Bar #001565

18 BY

  
19 MICHAEL V. STAUDAHER  
20 Chief Deputy District Attorney  
21 Nevada Bar #008273  
22  
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28

1 Names of witnesses testifying before the Grand Jury:  
2 ARMOUR, PATRICIA, NV. HEALTH DISTRICT  
3 ASPINWALL, PATTY  
4 BAGANG, MAYNARD, LVMPD  
5 CAMPBELL, LYNETTE, RN  
6 CAROL, CLIFFORD  
7 CARRERA, HILARIO  
8 CERDA, RYAN, HEALTH CARE BUSINESS SOLUTIONS  
9 DESAI, SAEHAL  
10 DROBENINE, JAN, CDC LAB SUPERVISOR  
11 DUENAS, YERENY, INSURANCE CLAIMS  
12 GONZALES, PATRICIA, BLUE CROSS DIRECTOR DEPT.  
13 GRUESKIN, CAROLE  
14 HAWKINS, MELVIN  
15 HUTCHINSON, STACY  
16 KALKA, KATIE, UNITED HEALTH GROUP INV.  
17 KHUDYAKOV, YURY, CDC  
18 KRUEGER, JEFFREY ALLEN, RN  
19 LABUS, BRIAN, NV HEALTH DISTRICT  
20 LANGLEY, GAYLE, CDC PHYSICIAN  
21 LOBIANBO, ANNAMARIE, CRNA  
22 MARTIN, GWENDOLYN  
23 MEANA, RODOLFO  
24 MYERS, ELAINE, CLAIMS DIRECTOR  
25 NEMEC, FRANK, GASTROENTEROLOGIST  
26 OLSON, ALANE, MEDICAL EXAMINER  
27 RIVERA, SONIA ORELLONO  
28 RUBINO, KENNETH

1 RUSHING, TONYA, OFFICE MGR.  
2 SAGENDORF, VINCENT, CRNA  
3 SAMPSON, NANCY, LVMPD  
4 SAMS, JOANNE, VET ADMIN. CODER  
5 SCHAEFER, MELISSA, CDC PHYSICIAN  
6 SHARMA, SATISH, ANESTHESIOLOGIST  
7 SIMS, DOROTHY, BUREAU OF LICENSING AND CERTIFICATION  
8 SPAETH, CORRINE, CLAIMS DIRECTOR  
9 VANDRUFF, MARION, MEDICAL ASSISTANT  
10 WASHINGTON, MICHAEL  
11 YEE, THOMAS, ANESTHESIOLOGIST  
12 YOST, ANNE, NURSE  
13 ZIYAD, SHARRIEFF  
14  
15 Additional witnesses known to the District Attorney at time of filing the Indictment:  
16 ALFARO-MARTINEZ, SAMUEL  
17 ANWAR, JAVAID, 3006 MARYLAND PKWY #400, LVN 89109  
18 ARBOREEN, DAVE, LVMPD  
19 ARMENI, PAOLA  
20 ARNONE, ANTHONY, LVMPD  
21 ASHANTE, DR.  
22 BAILEY, PAULINE, 3416 MONTE CARLO DR., LVN 89121  
23 BARCLAY, DR. ROBERT  
24 BIEN, KATHY, 3800 DALECREST DR. #1117, LVN 89129  
25 BLEMINGS, RENATE, 2100 PLAIN ST., PAHRUMP, NV 89060  
26 BROWN, DAVID  
27 BUI, DR.  
28 BUNIN, DANIEL



1 BURKIN, JERALD, FBI SA  
2 CALVALHO, DANIEL CARRERA  
3 CARAWAY, ANTOINETTE, 1407 BAREBACK CT., HNV 89014  
4 CARRERA, ELADIO, 612 CANYON GREENS DR., LVN 89144  
5 CARROLL, CLIFFORD, 10313 ORKINEY DR., LVN 89144  
6 CASTLEMAN, DR. STEPHANIE  
7 CAVETT, JOSHUA, 7829 TATTERSALL FLAG ST., LVN 89139  
8 CHAFFEE, ROD, 9303 GILCREASE #1080, LVN 89149  
9 CLEMMER, DANA MARIE, 4913 FERRELL ST., NLVN 89034  
10 COE, DANIEL, LVMPD  
11 COHAN, DR. CHARLES, POB 4144, SAYLORSBURG, PA  
12 COOK, KATIE, FBI S/A  
13 COOPER, DOUG, CHIEF INV., NV. ST. BOARD OF ME  
14 CRANE, AUSA  
15 CREMEN, FRANK  
16 DESAI, DIPAK, 3093 RED ARROW, LVN 89135  
17 DESAI, KUSAM, MD  
18 DIAZ, ALLEN, LVMPD INTERPRETER  
19 DIBUDUO, CHARLES  
20 DORAME, JOHN  
21 DRURY, JANINE  
22 ECKERT, PHYSICIAN ASST.  
23 ELLEN, DIANE  
24 FALZONE, LISA, 8024 PEACEFUL WOODS STREET, LVN 89143  
25 FARIS, FRANK  
26 FIGLER, DAYVID  
27 FISHCHER, GAYLE, 1600 CLIFTON MAIL STOP #G37, ATLANTA, GA. 30333  
28 FORD, MIKE, LVMPD

1 FRANKS, LISA, PHYSICIAN ASST.  
2 GASKILL, SARA  
3 GENTILE, DOMINIC  
4 GLASS-SERAN, BARBARA, CRNA  
5 GRAY, WARREN, LVMPD  
6 GREER, MARY, 3462 SHAMROCK AVE., LVN 89120  
7 GREGORY, MARTHA  
8 HAHN, JASON, LVMPD  
9 HANCOCK, L., LVMPD #7083  
10 HANSEN, IDA  
11 HARPER, TIFFANY  
12 HARRIS, ORELENA (HOLLEMAN), 2816 DESERT SONG, LVN 89106  
13 HERRERO, CARMELO, 1864 WOODHAVEN DR., HNV 89074  
14 HIGGINS, HEATHER, INV. NV. ST. BOARD OF ME  
15 HIGUERA, LILIA, 3504 FLOWER, NLVN 89030  
16 HITTI, DR. MIRANDA  
17 HOWARD, NADINE, HEALTH FACILITIES SURVEYOR  
18 HUBBARD, LINDA, 515 PARK ROYAL DR., NLVN 89031  
19 HUGHES, LAURA, AG INV.  
20 HUYNH, NGUYEN, 3004 HAZY MEADOW LN., LVN 89108  
21 IRVIN, JOHNNA  
22 JOHNSON, SHONNA S., 22 VIA DE LUCCIA, HNV 89074  
23 JONES, LISA, CHIEF NSB OF LICENSURE AND CERTIFICATION (BLC)  
24 JURANI, DR.  
25 KIRCH, MARLENE  
26 KAUL, DR.  
27 KAUSHAL, DR. DHAN  
28 KELLEY, J., LVMPD #3716

1 KHAN, IKRAM, 3006 S. MARYLAND PKWY, #465 LVN 89109  
2 KNOWLES, DR.  
3 KOSLOY, LESLEE, RN, HEALTH FACILITIES SURVEYOR  
4 LAKEMAN, RONALD, 700 SHADOW LN #165B, LVN 89106  
5 LATHROP, CAROL, 1741 AUGUSTA ST., PAHRUMP, NV 89048  
6 LATHROP, WILLIAM  
7 LEWIS, DR. DANIEL  
8 LOBIONDA, CRNA  
9 LOPEZ, J. JULIAN, 7106 SMOKE RANCH RD. #120 LVN 89128  
10 LUKENS, JOHN  
11 MAANO, PETER, RN  
12 MALEY, KATIE, 4275 BURNHAM #101, LVN  
13 MALMBERG, GEORGE  
14 MANTHEI, PETER, 7066 AZURE BEACH AZURE ST., LVN 89148  
15 MANUEL, DR. DAVID  
16 MARTIN, LOVEY  
17 MASON, ALBERT  
18 MATHAHS, KEITH, 10220 BUTTON WILLOW DR., LVN 89134  
19 MCDOWELL, RALPH, 388 SANTA CANDIDA ST., LVN 89138  
20 MCGOWAN, SHANNON, 5420 CARNATION MEADOW ST., LVN 89130  
21 MCILROY, ROBIN, FBI  
22 MILLER, JAMES  
23 MIONE, VINCENT, 2408 W. EL CAMPO GRANDE AVE., NLVN 89031  
24 MOORE, DAVID  
25 MUKHERJEE, RANADER, MD  
26 MURPHY, MAGGIE, 10175 W. SPRING MTN RD. #2012 LVN 89117  
27 NAYYAR, SANJAY, MD  
28 NAZAR, WILLIAM

1 NAZARIO, DR. BRUNILDA  
2 OM, HARI, LLC MGR  
3 O'REILLY, JOHN  
4 O'REILLY, TIM  
5 PAGE-TAYLOR, LESLIE, CDC  
6 PATEL, DR.  
7 PENSAKOVIC, JOAN  
8 PETERSON, KAREN, 2138 FT. SANDERS ST., HNV  
9 PHELPS, LISA, 784 MORMON PEAK ST., OVERTON, NV 89040  
10 POMERANZ, AUSA  
11 PRESTON, LAWRENCE, 801 S. RANCHO DR., STE C-1, LVN  
12 QUANNAH, LAKOTA  
13 REXFORD, KEVIN  
14 RICHVALSKY, KAREN, 3325 NIGUL WAY, LVN 89117  
15 ROSEL, LINDA, FBI SA  
16 RUSSOM, RUTA, 4854 MONTERREY AVE., LVN 89121  
17 SAGENDORF, VINCENT  
18 SAMEER, DR. SHEIKH  
19 SAPP, BETSY, PHLEBOTOMIST  
20 SCAMBIO, JEAN, 2920 YUKON FLATS CT., NLVN 89031  
21 SCHULL, JERRY, 5413 SWEET SHADE ST., LVN  
22 SENI, DR.  
23 SHARMA, DR. SATISH  
24 SHARMA, VISHVINDER, DR. 3212 CEDARDALE PL., LVN 89134  
25 SHEFNOFF, NEIL, 755 E. MCDOWELL RD., PHOENIX, AZ 85006  
26 SMITH, CHARNESSA  
27 SOOD, RAJAT  
28 STURMAN, GLORIA

1 SUKHDEO, DANIEL, 3925 LEGEND HILLS ST. #203, LVN 89129  
2 TAGLE, PEGGY, RN  
3 TERRY, JENNIFER, LVMPD INTERPRETER  
4 TONY, DR.  
5 VAZIRI, DR.  
6 WAHID, SHAHID, MD  
7 WEBB, KAREN, 1459 S. 14TH ST., OMAHA, NE  
8 WHITAKER, GERALDINE, 701 CARPICE DR. #17B, BOULDER CITY, NV 89005  
9 WHITELY, R. LVMPD  
10 WILLIAMS, SKLAR, RESIDENT AGENT, 8363 W. SUNSET RD. #300, LVN 89113  
11 WISE, PATTY  
12 YAMPOLSKY, MACE  
13 ZIMMERMAN, MARILYN, 550 SEASONS PKWY, BELVIDERE, IL 89040  
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(TK11)

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

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Apr 22 2013 09:49 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

DIPAK KANTILAL DESAI, )  
)  
Petitioner, )  
)  
vs. )  
)  
THE EIGHTH JUDICIAL DISTRICT )  
COURT OF THE STATE OF NEVADA, )  
COUNTY OF CLARK, DEPARTMENT 21,) )  
)  
Respondent. )  
)  
and )  
THE STATE OF NEVADA, )  
Real Party In Interest. )  
)

No. 63046

(District Court No. 10C265107)

**PETITIONER'S APPENDIX**

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