

1 A Yes.

2 Q Whose are they?

3 A Mine.

4 Q So at the beginning of the day or during the day  
5 if you needed more propofol, you would have to be the one to  
6 go check out additional propofol.

7 A One of the nurses would get it for us, yes.

8 Q But you had to sign for it.

9 A Correct.

10 Q So is there a reason why there are two separate  
11 entries for the propofol on that day? There's one on the 21st  
12 here and then there's another one on the 21st here.

13 A That's one for each room.

14 Q So you would check it out for each room?

15 A In the morning, yeah. I would set each room up  
16 individually, yes.

17 Q Okay. So in this instance, you see that it says  
18 18 bottles, vials were accepted, were given. If we got up  
19 here just so we have -- and these are -- the next column is  
20 return vials. It says zero return.

21 A Correct.

22 Q And this one, 20 were checked out and 14 were  
23 returned.

24 A Okay.

25 Q So clearly used, right?

1 A I'm sorry?

2 Q They were clearly used. There were 18 bottles  
3 used here and six bottles used there.

4 A But that's a different date.

5 Q Okay. Let's just make sure we're clear on this.

6 A I'm sorry.

7 Q So you checked out two separate batches of  
8 propofol, 50 mg bottles -- excuse me, 500 mg bottles, 50 cc  
9 bottles and 18 of them were checked out and none returned.

10 A Okay.

11 Q Twenty checked out, 14 returned, which means an  
12 additional six were used, correct?

13 A That's what it looks like. Sort of scribbling.  
14 I don't know if that's 14 or if it's 11 or what it is.

15 MR. STAUDAHER: May I approach, Your Honor?

16 THE COURT: You may.

17 A I can see it, but I don't -- it's not my  
18 writing, you know.

19 BY MR. STAUDAHER:

20 Q Does that make it clear for you?

21 A It looks like 14, yes.

22 Q And if we go to the 20 cc bottles, it says 200  
23 mg up here, correct?

24 A Right.

25 Q Those would be the 20s, as you said.

1 A Right.

2 Q We go down to the 21st. There's only one entry  
3 this time. Do you see that?

4 A Yeah.

5 Q It goes 19th, 21st.

6 A Right.

7 Q So you would set up both rooms, but in this case  
8 there's only one entry. Your signature again?

9 A Right.

10 Q Let's move across. And it says four bottles  
11 used or checked out and four bottles returned.

12 A Okay.

13 Q So you didn't, at least on the 21st, on this day  
14 the only bottles you used that day were 50s.

15 A I don't know which room they were put in, the  
16 20s were put in. That I can't answer, you know, if it would  
17 have been in Ron's room or if it would have been in my room.

18 Q There were no checked out 20s that were used  
19 that day, according to this.

20 A According to that, no.

21 Q You said your preference was the 20s?

22 A Ordinarily, yes.

23 Q Now, why would -- you said that you -- maybe I  
24 asked this and you said it, I apologize if you did. You said  
25 you preferred the 50s, but the 20s were something that -- I

1 preferred the 20s but the 50s were something that you had  
2 available to you.

3 A Well, they were --

4 Q Did you have any reason why you would not want  
5 to use a 50 versus a 20?

6 A It's a bigger bottle to hang onto and trying to  
7 draw out of and the 20 is just so much smaller and easier to  
8 use. For me it was anyhow.

9 Q Would you acknowledge that using a 50 cc bottle,  
10 which would mean you would have to go into it a lot more  
11 often, would increase the risk of contamination of that bottle  
12 and potentially infection of the patient if that bottle was  
13 used on subsequent patients?

14 A Yes, it could.

15 Q So you had a choice that day to use 20s or 50s  
16 and apparently, according to the record, no 20s were used.

17 A That's what it said.

18 Q Now, you were asked a question by counsel about  
19 did supplies ever get taken from Burnham to Shadow Lane or  
20 Shadow Lane to Burnham. Do you recall that?

21 A Yes.

22 Q And you actually talked about that in your  
23 proffer statement that you gave to the DA's Office and police,  
24 correct?

25 A Okay.



1 Q And I just want to make sure I'm clear on this.  
2 Which direction would supplies go, from Shadow to Burnham or  
3 Burnham to Shadow?

4 A Ordinarily, from Shadow to Burnham, but  
5 occasionally, we'd bring them back up to Shadow. But that  
6 would have been a rare -- for me anyhow.

7 Q So when you said that you were asked sometimes  
8 to take supplies -- you lived out in where? Would that be  
9 something where you would take supplies from Shadow and on  
10 your way home take it to Burnham?

11 A No. On my way -- I lived -- be called, Jeff  
12 would call me and then I would stop in the morning to pick it  
13 up and take it to Burnham on my way to Burnham.

14 Q Is that when you would work at Burnham?

15 A Yes.

16 Q Okay. And how often would that occur in say a  
17 month?

18 A You mean the supplies going back and forth?

19 Q Well, you said --

20 A Or that I worked there?

21 Q Let me take it step by step. If I understand  
22 you correctly, going from Burnham to Shadow was a very rare  
23 occurrence.

24 A Correct.

25 Q It was more likely that if supplies moved at all

1 it would be from Shadow to Burnham.

2 A Yes.

3 Q Depleting the supply of propofol, syringes and  
4 the like at Shadow, if at all?

5 A Yes.

6 Q So if you were to come and pick up supplies from  
7 Shadow, you would be taking it out to Burnham and then you  
8 would be working at Burnham; is that right?

9 A Correct.

10 Q In a typical month, if to the best estimate you  
11 can give me, and that's all I'm entitled to, unless you know  
12 an exact number and I doubt you do, how many times in a month  
13 would you take supply from Shadow to Burnham?

14 A I would say probably maybe two.

15 Q Okay. Now, you were asked some questions about  
16 when I think Dr. Fishcher was there questioning you or -- or  
17 maybe it was Melissa Schaefer that questioned you initially.  
18 Do you recall who it was?

19 A I think --

20 Q The two people from the CDC, the women that were  
21 out there.

22 A The only one I ever saw or talked to was Gayle,  
23 I think, Fishcher was it?

24 Q Fishcher, okay. So you talked with her and told  
25 her what, about the reuse of supplies? Syringes and propofol

1 as we talked about?

2 A I was doing what I was instructed to do.

3 Q And who instructed you to do that?

4 A Well, it was Ann, that's the way she told me and  
5 that's the way Dr. Desai said too.

6 Q So when they told you to reuse the syringes and  
7 propofol, that was both Annamarie Lobianbo and Dr. Desai who  
8 said that?

9 A Yes.

10 Q Now at the time, we're talking about at least  
11 what was observed and Mr. Wright went through that with you,  
12 the observed thing that the CDC saw was you with a patient  
13 drawing up propofol, using that syringe needle combination,  
14 penetrating the hep-lock on a patient connected to the  
15 patient's bloodstream and administering medication. You with  
16 me so far?

17 A Yes.

18 Q And taking that needle syringe combination,  
19 removing the needle, putting a new needle on it and going back  
20 into the bottle of propofol to withdraw additional medication.

21 A Correct.

22 Q And that you would then use -- do however many  
23 other doses you would do. But bottom line is, you went into  
24 the bottle on a couple of different occasions after the  
25 syringe needle combination had gone into a patient.

1 A Correct.

2 Q And then they saw that -- saw you take that  
3 leftover bottle to use on a new patient.

4 A Correct.

5 Q And you said that that scenario was widely used  
6 at Shadow Lane?

7 A Yes.

8 Q And here's one of these things I wanted to ask  
9 you about. How many places did you work in Las Vegas beside  
10 the endoscopy centers?

11 A None.

12 Q So beside your experience in California, 33  
13 years, and your experience here, did you work anyplace else  
14 doing anesthesia work?

15 A No.

16 Q And in California, you worked with all those  
17 other CRNAs, but it sounds like you worked in a variety of  
18 settings as well.

19 A Correct.

20 Q Different doctors, different procedures and the  
21 like.

22 A Correct.

23 Q And you used propofol many times in the past.

24 A Correct.

25 Q Matter of fact, you were I think you said were

1 the one who introduced it to the Shadow -- at least suggested  
2 that it be used at Shadow Lane or the endoscopy centers?

3 A Correct.

4 Q Now, in a situation where you're using the  
5 syringes and the propofol and so forth, you were asked a  
6 question about, well, gosh this is widely used. This -- this  
7 has happened widely in Las Vegas and your answer was, at least  
8 on cross, yes. But I wanted to ask you this. What were you  
9 basing that off of because your experience was just at the  
10 endoscopy centers?

11 A Well, I have friends that are anesthesiologists here  
12 working for Southwest and other areas, anesthesiologists.  
13 That's the practice that was going on in hospitals and surgery  
14 centers here in the valley.

15 Q So you talked to other people about that?

16 A Yes.

17 Q Was this after the case became something of  
18 notoriety or was this before?

19 A After.

20 Q Prior to your seeing -- I mean when you talk  
21 about a lot of other people, how many are we talking about?  
22 Are there a lot of CRNAs here in town?

23 A Southwest has about 15.

24 Q And you went over and called them all or talked  
25 to them?

1           A     No, no, no. I mean, some of them are my  
2 friends. So I, you know, we talked about the situation and  
3 about the multiple dose vials and like I said, I've got  
4 anesthesiologists here in town that are friends and the  
5 multiple dose vials were used in hospitals.

6           Q     Okay. I want to be clear on this though --

7           A     Okay.

8           Q     -- it's important. When you were talking to  
9 them about using propofol multiple times, are you talking  
10 about a single bottle of propofol being used on a single  
11 patient, maybe going in a number of times on the same patient?  
12 Is that what you were asking them about?

13          A     Start over. I'm sorry, I lost you there.

14          Q     When you were talking to these other CRNAs,  
15 anesthesiologists, whatever --

16          A     Yes.

17          Q     -- about reuse of propofol, was it the same  
18 bottle on the same patient? Going in, patient, in, patient,  
19 that kind of thing?

20          A     They were using multiple -- I mean one bottle  
21 could be used on multiple patients.

22          Q     Did you describe for them the actual scenario  
23 that we talked about or was this something where they kept a  
24 bottle and they went in with a brand new needle and syringe  
25 every time?

1           A     That could have been, I'm not sure on that. I  
2 -- I don't know if we discussed that type of thing.

3           Q     Okay. So this wasn't necessarily giving that  
4 scenario of the going back into the same bottle and then using  
5 that bottle that had been accessed -- that had come in contact  
6 with the person's bloodstream to the next patient?

7           A     I was just referring to the fact that bottles  
8 were used on multiple patients.

9           Q     Now, you also were asked some questions about  
10 going to the feds. Do you remember that?

11          A     Yes.

12          Q     And you did a proffer with them.

13          A     Yes.

14          Q     And did they grant you immunity or something in  
15 that case?

16          A     I don't remember immunity, but they said they  
17 weren't interested in me. They wanted me to be a witness for  
18 them.

19          Q     Okay. And when you talked to them you didn't  
20 really talk about the propofol reuse, correct?

21          A     I'm not sure if we did or not. You know, it's  
22 been three to four years ago --

23          Q     Your focus -- was their focus not on the billing  
24 issues and the --

25               MR. WRIGHT: Objection. Leading.

1 THE COURT: Well, overruled.

2 BY MR. STAUDAHER:

3 Q Was their focus on the issue of financial  
4 issues, the anesthesia billing issues, the false times, things  
5 like that?

6 A Probably more so I think, yes.

7 Q Did you acknowledge to them that you knew what  
8 you were doing was wrong? At least from that sense, the  
9 financial side of things?

10 A Yes.

11 Q Okay. Did you acknowledge that you knew that  
12 that information was going to go to insurance companies and  
13 would be used to reimburse?

14 A That's what they decided, yes, that's where it  
15 was going. I mean a lot of things --

16 Q Make sure --

17 A -- lot of things we didn't know.

18 THE COURT: Let him finish.

19 BY MR. STAUDAHER:

20 Q I'm sorry.

21 A I was just going to say a lot of things we  
22 didn't know until afterwards, you know, about billing and all  
23 of that type thing because we weren't -- we weren't privy to  
24 that.

25 Q Did you not tell them that you knew what you



1 were doing was not right?

2 A Yes. I -- I didn't say that. I'm saying that a  
3 lot of things came out that we didn't know about, the billing  
4 factor and all that type of thing afterwards.

5 Q The point is, the things that you were doing  
6 that you knew about --

7 A Yes.

8 Q -- you knew were wrong?

9 A Yes.

10 MR. SANTACROCE: Objection. Asked and answered three  
11 times.

12 MR. STAUDAHER: I don't know that it was ever  
13 definitively answered.

14 THE COURT: Well, he answered now. Move on. It was  
15 overruled.

16 BY MR. STAUDAHER:

17 Q With regard to the things that I have talked to  
18 you about with regard to the propofol and Mr. Wright has  
19 talked to you about with regard to the propofol, you're aware  
20 and you acknowledge that that is wrong.

21 A Yes.

22 Q Never did it before, just here.

23 A Right.

24 MR. STAUDAHER: Court's indulgence, Your Honor.

25 Pass the witness, Your Honor.

1 THE COURT: All right. Recross, Mr. Santacroce.

2 RE-CROSS-EXAMINATION

3 BY MR. SANTACROCE:

4 Q When you just acknowledged from Mr. Staudaher  
5 that the reuse of the propofol you acknowledged was wrong,  
6 you're acknowledging that now after the fact; isn't that  
7 correct? Now that you've come to know all this information?

8 A Yes.

9 Q You didn't think it was wrong at the time you  
10 were doing it, correct?

11 A No, I didn't really.

12 Q I want to just go over these times again because  
13 I'm a little confused. And I'll represent to you that that  
14 chart and the times on it, were prepared by the State. So I  
15 have some questions about that. When you recorded the times  
16 the patients came into the room, that was recorded on a  
17 anesthesia record, correct?

18 A Yes.

19 Q And the machines, when would the machines be  
20 hooked up?

21 A Soon as the tech got to it or we got to it.  
22 After, you know, I had to interview the patient before we  
23 could get anything hooked up.

24 Q So the patient would come into the room.

25 A Yes.

1 Q You would interview him or a tech would hook up  
2 the machines --

3 A Correct.

4 Q -- correct?

5 A Yeah.

6 Q They'd turn on the machines and they would start  
7 to run --

8 A Correct.

9 Q -- correct? And you acknowledged that the start  
10 times on the anesthesia records were accurate; isn't that  
11 correct?

12 A As far as the time that I had would have been  
13 accurate, yes.

14 Q Okay. And the only times that weren't accurate  
15 was the total time of the procedure, that had to be 31 minutes  
16 or more, correct?

17 A Yes.

18 Q Now, so you have the time you got the patients  
19 with an anesthesia record, which you say is accurate.

20 A Yes.

21 Q Then we have somebody hooking up the machines,  
22 which could have been a minute or two later or a minute or two  
23 before you actually wrote down your time, correct?

24 A Yes.

25 Q And then we have some other times recorded. Who

1 recorded the start of the procedure time?

2 A A nurse.

3 Q And that was recorded not on the anesthesia  
4 records, correct?

5 A Correct.

6 Q It was recorded on the nurse's records, correct?

7 A Correct.

8 Q So the procedure times recorded by the nurse are  
9 recorded on her records.

10 A Yes.

11 Q And we went through those the other day.

12 A Yes.

13 Q And those were accurate. There's been no  
14 accusations that any nurses made up times, is there?

15 A No.

16 MR. STAUDAHER: Objection Your Honor.

17 Mischaracterizes the testimony. He doesn't -- he didn't -- I  
18 objected to him being able to testify about that.

19 THE COURT: Right. That's sustained as to the last  
20 question.

21 BY MR. SANTACROCE:

22 Q And then who recorded the times that the  
23 patients went into the recovery room?

24 A I did. If it was my patient I would have.

25 Q Okay. And where would that have been recorded?

1           A     Record of anesthesia.

2           Q     Okay.  There's also another entry, is there not?  
3     What if a nurse took the patient to the recovery room?

4           A     I would have ended it before I went, you know,  
5     left the room.

6           Q     My question is, who would record the time that  
7     the patient went to the recovery room if you didn't take the  
8     patient there?

9           A     Their nurse.

10          Q     And that would be recorded on the nurse's notes.

11          A     Yes.

12          Q     Okay.  So we have a possibility of four people  
13     recording times, correct?

14          A     Yes.

15          Q     You, from the time they come in the room, the  
16     person that hooks up the machine and turns on the machine,  
17     correct?

18          A     Correct.

19          Q     Then you have two nurses, one that records the  
20     procedure start time on her notes and the person that takes  
21     them to the recovery room recording it on the nurse's notes,  
22     correct?

23          A     Correct.  And like I said, there was no standard  
24     clock in the room like this here, so everybody was using their  
25     own timepiece.

1 Q So when counsel, State asked you on Rubino, you  
2 had recorded 9:45 and the machine says 9:49, four minutes.  
3 That's fairly accurate, right?

4 A Pretty close.

5 Q I mean it would take about that long. Correct?

6 A Would be --

7 Q Start the machine and hook it up?

8 A Would be, yes.

9 MR. SANTACROCE: I have no further questions, thank  
10 you.

11 THE COURT: All right. Mr. Wright, recross.

12 RE-CROSS-EXAMINATION

13 BY MR. WRIGHT:

14 Q Mr. Mathahs, your conversations with other CRNAs  
15 and other anesthesiologists in the community --

16 A Yes.

17 Q -- that took place after January, 2008, correct,  
18 sir?

19 A Correct.

20 Q At the time it was a big topic of discussion  
21 within the anesthesia community and medical community.

22 A Yes, it was.

23 Q And it was about how could this have occurred  
24 where there was this transmission of hepatitis C?

25 A Correct.

1 Q And it was in those discussions with your  
2 contemporaries working at Southwest, Sunrise, other hospitals  
3 that you learned that they were all using propofol until it  
4 was empty and throwing it out --

5 A Yes.

6 Q -- correct?

7 A Correct.

8 Q And you had been doing that for the previous  
9 five years, from 2008 to 2003, right?

10 A Yes.

11 Q And you were never consciously aware that you  
12 were jeopardizing patients and putting them at reckless risk  
13 by your practices, correct, sir?

14 A Correct.

15 MR. WRIGHT: No further questions.

16 THE COURT: Mr. Staudaher?

17 MR. STAUDAHER: Just one.

18 FURTHER REDIRECT EXAMINATION

19 BY MR. STAUDAHER:

20 Q I just want to be clear on this.

21 A Okay.

22 Q You said on -- this is another one of these  
23 things where you said one thing on direct and I want to make  
24 sure I've got it clear because I didn't --

25 MR. WRIGHT: Objection. He isn't saying one thing,

1 one thing, one thing.

2 MR. STAUDAHER: Well, I'm just asking. Okay?

3 THE COURT: Okay, Mr. Staudaher, just generally don't  
4 need to --

5 MR. STAUDAHER: That's fine.

6 THE COURT: -- provide commentary or editorializing  
7 before the questions, just ask the questions.

8 MR. STAUDAHER: Thank you, Your Honor.

9 BY MR. STAUDAHER:

10 Q Did you not testify on direct examination that  
11 when Desai told you to do this, reuse stuff that you had never  
12 done before, that you expressed the risk to him and that he  
13 told you to do it anyway?

14 A I don't remember the exact conversation but,  
15 yes, I'm sure it was had, yes.

16 Q So you expressed -- just so we're clear, in  
17 whatever words, you expressed that there was a risk in doing  
18 that to Dr. Desai and he ordered you to do it anyway and you  
19 did it.

20 A Yes.

21 MR. STAUDAHER: Nothing further.

22 THE COURT: Mr. Wright?

23 FURTHER RECROSS-EXAMINATION

24 BY MR. WRIGHT:

25 Q You -- you now know that if the CDC and the



1 Southern Nevada Health District are right on their hypothesis  
2 of how this was transmitted that there could be a risk,  
3 correct?

4 A Correct.

5 Q Back then, before the Labus, Brian Labus  
6 Southern Nevada Health District hypothesis, you were not aware  
7 or cognizant of this risk by your practices, correct?

8 A Not according to that. According to what they  
9 have said now, no, I wasn't.

10 Q Okay. You thought you were practicing safe  
11 protective medicine, anesthesia practice for your patients the  
12 way you were doing it.

13 A Yes.

14 Q And if you thought you were doing something  
15 recklessly, saying hell with it, I'm going to put patients at  
16 risk, you would not have done it, right, sir?

17 A No, I wouldn't. No, I wouldn't have.

18 Q Thank you.

19 THE COURT: Mr. Santacroce?

20 MR. SANTACROCE: No more questions.

21 THE COURT: I've got some juror questions up here.

22 THE WITNESS: Okay.

23 THE COURT: And I'm just going to ask them in no  
24 particular order. Was the call from Pacific Care originally  
25 for you or for Dr. Desai?

1 THE WITNESS: It was originally -- someone came and  
2 told me that I had a phone call.

3 THE COURT: All right. And then if the call was for  
4 you, why did you not object to Desai taking it?

5 THE WITNESS: Because he's in charge, he was the  
6 owner of the facility.

7 THE COURT: Were the syringes used to flush the  
8 scopes labeled single use or multi-use?

9 THE WITNESS: Are we talking about the 50 cc  
10 syringes? I -- I don't know if they would have been -- I'm  
11 sure -- I don't know.

12 THE COURT: Don't speculate if you don't know.

13 THE WITNESS: I can't -- I don't know.

14 THE COURT: Was Dr. Carrol higher ranking than Dr.  
15 Desai or was Dr. Desai Dr. Carrol's boss or what was the  
16 relationship there?

17 THE WITNESS: Dr. Desai was the boss of everyone.

18 THE COURT: All right. Did you thoroughly wash your  
19 hands between patients?

20 THE WITNESS: Many, many, many times.

21 THE COURT: All right. Did you always or were there  
22 times you didn't?

23 THE WITNESS: I always did.

24 THE COURT: All right. Did you change your gloves --  
25 well, first of all, were you wearing latex gloves?

1 THE WITNESS: No.

2 THE COURT: All right. So you handled the patients  
3 and the -- and the needles and syringes gloveless, just with  
4 your bare hands?

5 THE WITNESS: Yes.

6 THE COURT: Okay. Then I'm going to sort of rephrase  
7 the question. Would you touch a brand new needle, same  
8 patient, new needle, would you do that without washing your  
9 hands between taking off the used needle and applying the  
10 clean needle?

11 THE WITNESS: Well, the needles are -- come in a  
12 sterile container so you never touch them with your hands.

13 THE COURT: So you just touch the outside of the  
14 container?

15 THE WITNESS: Well, yeah, the -- the shield. There's  
16 a -- that goes over the top of the sterile needle, yeah. You  
17 never touch the needle itself.

18 THE COURT: What was your hand washing practice? Was  
19 it before the patient and then at the end of the patient or  
20 did you wash your hands sometimes in the middle of a procedure  
21 or did you have a practice regarding hand washing?

22 THE WITNESS: It would have been all three. If you  
23 -- if we got blood on our hands or something, we would have  
24 washed in between but it would have been ordinarily before and  
25 after.

1 THE COURT: All right. Did you know that Mr. Rubino  
2 had hepatitis C before the procedure? Before you began the  
3 procedure with him?

4 THE WITNESS: I would have to look at the chart. I  
5 don't recall.

6 THE COURT: All right. You testified that the  
7 environment at the clinic was horrible. What made you stay so  
8 long? Why did you stay so long?

9 THE WITNESS: The reason I stayed was because we  
10 purchased a home here and I just sort of felt that I was  
11 stuck, you know, I -- that's why I stayed.

12 THE COURT: Did any alarm bells ring to you when the  
13 cost of -- the cost or prices of materials were brought up but  
14 you received a bonus every few months?

15 THE WITNESS: Could you read that again?

16 THE COURT: Well, did you think it was curious or did  
17 an alarm go off that costs seemed to be a factor, yet you were  
18 receiving bonuses periodically?

19 THE WITNESS: I didn't -- never -- it never entered  
20 my mind, no, because, I mean, my -- my bonus was so minimal  
21 compared to what the rest were getting, so.

22 THE COURT: All right. During the history and  
23 physical questioning of each patient before a procedure, were  
24 questions asked on whether the patient had or had been exposed  
25 to hepatitis C or other infectious diseases?

1 THE WITNESS: Yes, it was thoroughly gone through.

2 THE COURT: As a CRNA, are you required to have  
3 education credits during your licensing period? I think that  
4 means like continuing education.

5 THE WITNESS: Yes. It was every -- 30 or 45 units, I  
6 don't recall, every two years we had to have.

7 THE COURT: Okay. And by unit would that equal an  
8 hour?

9 THE WITNESS: It's one hour, one hour.

10 THE COURT: Okay. He answered the next one. Are  
11 there certain classes you were required to take in order to  
12 renew your license or to keep your license current?

13 THE WITNESS: It would just be the continuing  
14 education.

15 THE COURT: Okay. But within that there's not  
16 particular subjects or are there particular subjects that you  
17 must take periodically in order to stay current?

18 THE WITNESS: We took CPR and ACLS, which is Advance  
19 Cardiac Life Support classes and that's put out by the Red  
20 Cross and that was every two years.

21 THE COURT: Every two years?

22 THE WITNESS: Yes.

23 THE COURT: So you were required to take that class  
24 again at two-year intervals?

25 THE WITNESS: Yes.

1 THE COURT: Okay.

2 THE WITNESS: To continue your license with it, yeah,  
3 uh-huh.

4 THE COURT: All right. Thank you. Mr. Santacroce,  
5 do you have any follow-up or any additional questions?

6 MR. SANTACROCE: No, Your Honor.

7 THE COURT: Mr. Wright?

8 MR. WRIGHT: No, Your Honor.

9 THE COURT: Mr. Staudaher?

10 MR. STAUDAHER: No, Your Honor.

11 THE COURT: Do we have any additional juror questions  
12 for this witness? No? All right. Sir, I see no additional  
13 questions. Please don't discuss your testimony with anyone  
14 else who may be a witness in this matter and you are excused.

15 THE WITNESS: Thank you.

16 THE COURT: All right. Thank you. Just follow the  
17 bailiff. And the State may call its next witness.

18 MR. STAUDAHER: Patty Aspinwall, Your Honor.

19 THE COURT: All right.

20 MR. WRIGHT: He's going to handle that. I'm going to  
21 be back in two minutes.

22 THE COURT: That's fine.

23 MR. WRIGHT: Thank you.

24 PATTY ASPINWALL, STATE'S WITNESS, SWORN

25 THE CLERK: Please be seated. Will you please state

1 and spell your first and last name for the record?

2 THE WITNESS: Patty Aspinwall.

3 THE CLERK: And can you spell that for us, please?

4 THE WITNESS: Patty, P-a-t-t-y, Aspinwall,  
5 A-s-p-i-n-w-a-l-l.

6 THE COURT: All right. Thank you. Mr. Staudaher.

7 MR. STAUDAHER: Thank you, Your Honor.

8 DIRECT EXAMINATION

9 BY MR. STAUDAHER:

10 Q Ms. Aspinwall, I'm going to direct your  
11 attention to a few years back to September 21 of 2007. Do you  
12 know that day?

13 A Yes.

14 Q Did you undergo a procedure at the Endoscopy  
15 Center of Southern Nevada on that day?

16 A Yes.

17 Q Can you tell us what kind of a procedure it was?

18 A Just a regular colonoscopy.

19 Q Now, prior to going to the clinic on that day,  
20 how did you end up there?

21 A I had gone to my doctor a week or so prior to  
22 that and she suggested that due to my age it was time to have  
23 a colonoscopy done.

24 Q So the doctor was who?

25 A Dr. Castleman.

1 Q So was this just a screening or were you having  
2 some problem in addition to that?

3 A I was having some -- some issues.

4 Q So it was a combination of the two?

5 A Yes.

6 Q So tell us how it was. You leave Dr.  
7 Castleman's office, do you go over there and just have the  
8 procedure or do you see him in advance?

9 A I see him in advance. Dr. Castleman's office  
10 had made the appointment for me for him. Don't remember the  
11 date, but I went in to see him early one morning. He agreed  
12 with Dr. Castleman that I needed to have a colonoscopy and  
13 scheduled it for September 21st.

14 Q And as far as that's concerned, you go in and  
15 who was the doctor again that you saw?

16 A The first time?

17 Q When you were at the clinic, yes.

18 A Dr. Desai I saw the first time.

19 Q Okay. And do you see him in the courtroom  
20 today?

21 A Yes, I do.

22 Q Can you point to him and describe something that  
23 he's wearing for the record?

24 A He's right there.

25 MR. STAUDAHER: Let the record reflect the identity



1 of Dr. Desai, Your Honor.

2 THE COURT: It will.

3 BY MR. STAUDAHER:

4 Q Now, he said -- you said the first time you went  
5 and saw him.

6 A Right.

7 Q Was there -- were there other times?

8 A Only for my follow-up. I didn't -- well, my  
9 follow-up after my colonoscopy I did not see him, I saw  
10 another doctor.

11 Q Who was that?

12 A I don't recall her name.

13 Q But a female?

14 A Yes.

15 Q Was this back at the medicine side of the  
16 clinic?

17 A Yes.

18 Q Same location though?

19 A Yes.

20 Q Was this at Shadow -- 700 Shadow Lane?

21 A Yes.

22 Q So let's walk through the -- the day that you go  
23 to have the procedure. Tell us what happens.

24 A Well, I went into the --

25 Q First of all, when you arrived, all that, just

1 walk us through it.

2 A Okay. My appointment was set for about 9:15 or  
3 so, we got in there about 9:00, signed in, did all my  
4 paperwork that I -- that was requested and sat down. The room  
5 only had two seats left, that's it. Everybody else, once they  
6 stepped in they all had to stand and wait. I kept going up to  
7 the window and asking them when they were going to take me in  
8 because it kept getting later and later in the morning, my  
9 husband needed to be at work at noon and they kept saying any  
10 time now. They finally came and got me around 11:30ish and  
11 took me back.

12 Q So just so I'm -- I'm clear. When you first  
13 arrived there's that many people in the waiting room?

14 A Yes.

15 Q So you -- did you take the last two seats then?

16 A Yes.

17 Q Now before you get back to the waiting room to  
18 sit down, you said that you had gone up and checked in?

19 A Right.

20 Q Can you describe for us what took place when you  
21 checked in?

22 A Basically, it was just gave my name, they gave  
23 me some paperwork to fill out, name, address, insurance  
24 information and then I turned it back to them.

25 Q Who was your insurance carrier at the time?

1           A     There was United Healthcare and Blue Cross Blue  
2 Shield.

3           Q     At some point after the whole procedure is done,  
4 do you get some paperwork back from them? I mean, something  
5 that showed what the claim was or how much you had to pay,  
6 that kind of thing?

7           A     No. I think I just had to pay a co-pay.

8           Q     Okay. Did you get any paperwork back from  
9 Anthem Blue Cross Blue Shield showing that there had been  
10 anything done?

11          A     Not --

12          Q     Any billing to them, anything like that?

13          A     Not at this -- that I recall.

14          MR. STAUDAHER: Your Honor, may I approach?

15          THE COURT: Sure.

16          BY MR. STAUDAHER:

17          Q     I'm going to show you what's been marked as  
18 proposed State's 96.

19          A     Okay.

20          Q     And ask you if you've ever seen that document,  
21 if that looks familiar?

22          A     Oh, yes, this does, yes.

23          Q     Okay. And what is that?

24          A     This is the service for the anesthesiologist.

25          Q     So did you receive this at some point?

1 A At one point I did, yes.

2 Q Okay. So this is a document that came to you  
3 and that you had in your possession.

4 A Yes.

5 Q And I know that it's not the original, but it's  
6 a facsimile of that?

7 A Yes.

8 MR. STAUDAHER: Move for admission of State's  
9 proposed 96, Your Honor.

10 THE COURT: Any objection?

11 MS. STANISH: No, Your Honor.

12 MR. SANTACROCE: No, Your Honor.

13 THE COURT: All right. That's admitted.

14 (State's Exhibit 96 admitted.)

15 BY MR. STAUDAHER:

16 Q Just so we're clear on this as we go. And let's  
17 just go through it a little bit. It shows your name?

18 A Yes.

19 Q And your insurance carrier, which is  
20 UnitedHealthcare here.

21 A Right.

22 Q And you said Anthem Blue Cross Blue Shield; is  
23 that right?

24 A They were -- they were my secondary at that  
25 point.

1 Q Okay. So these are the secondary insurance  
2 carriers.

3 A This here is my -- my primary insurance.

4 Q Okay. So you had actually two different  
5 insurances.

6 A Yes.

7 Q You mentioned that there was -- I think it was  
8 down here you said an anesthesia charge?

9 A Yes.

10 Q And then obviously the payments that were done  
11 for that, correct?

12 A Right.

13 Q Now the co-pay that you had to pay at the time,  
14 what -- what was that, if you recall?

15 A It could have been \$10 or \$20.

16 Q So there was some money you had to pay up front.

17 A Right.

18 Q When you get to the -- after you pay your  
19 co-pay, do whatever you -- you fill out and sit down, you said  
20 you were there from about nine, what, until about 11:30?

21 A About 11:30 when they took me back.

22 Q During the time that you're in the waiting room,  
23 does it get more crowded?

24 A Yes.

25 Q Noticeably so?

1 A Yes.

2 Q You had mentioned that there were people  
3 standing at some point. Did that happen during that period of  
4 time?

5 A Yes.

6 Q In general, how full was it beyond the seats  
7 that were there?

8 A I know that the wall, there was a door right  
9 there at the wall where people were standing were there and  
10 there were people standing back there.

11 Q So this is a place where these are all patients  
12 going -- waiting to have their procedures done?

13 A Yes.

14 Q Now in -- before you got there that day, had you  
15 had do anything the day before, the night before?

16 A Well, I had to drink the stuff that they make  
17 you drink before. You start about 4:00 in the afternoon to  
18 clean you out.

19 Q When you got there how did you feel?

20 A I felt fine.

21 Q So you had --

22 A Tired but fine.

23 Q -- you had cleaned out and you were just waiting  
24 to go back.

25 A Yes.

1           Q     So when they finally take you back there, tell  
2 me what happens. Does your husband come with you, first of  
3 all?

4           A     He doesn't come with me at -- then. He doesn't  
5 come back with me back there. They take me to a room to  
6 undress. They take me back to another room where I'm to put  
7 my clothes and then they take me to another room where I sit  
8 to put the hep-lock, I think it's called, where they put that  
9 in your arm for the anesthesiologist.

10          Q     And you're motioning on your left arm. Do you  
11 know which arm it was?

12          A     I think it was my left arm because I was sitting  
13 in a chair -- no, I'm sorry, it's my right arm.

14          Q     Okay. And did you watch that procedure take  
15 place?

16          A     Yes.

17          Q     Okay. So you're sitting -- you're sitting in a  
18 chair when it happens. And you -- you kind of motion to your  
19 part right at the crook of your elbow on the inside of your  
20 elbow.

21          A     Right in here, yeah.

22          Q     Is that where they put in the what you termed  
23 hep-lock?

24          A     Yes.

25          Q     Tell us what -- how that went. First of all, do

1 you know who it was that put this in?

2 A I want to think it was a -- it was a nurse, but  
3 there was a gentlemen up talking, explaining what he was doing  
4 and why they were doing what they were doing. That they were  
5 putting this in so that when you got into the room they could  
6 just inject you with the anesthesia -- I can never say that  
7 word correctly.

8 Q Anesthetic?

9 A Yes, thank you. So basically, he said you just  
10 go in. When you come out they'll check your blood pressure  
11 and you'll be ready to go.

12 Q So you think a female actually inserted it but a  
13 male was talking to you when this was going on?

14 A Yes.

15 Q When they were putting this in your arm, again,  
16 did you watch from start to finish what -- what they did or  
17 what she did?

18 A Well, yes and no, because I don't like needles  
19 or anything like that. So I kind of knew they were just  
20 putting something there but I don't know -- actually, I don't  
21 even know how it attached. I know it was just something that  
22 they put there.

23 Q So when they poked you in the arm you weren't  
24 looking at the arm?

25 A No.



1 Q Did you feel it?

2 A Yes.

3 Q After they did that, did you turn and look at  
4 what was going on?

5 A No.

6 Q So at some point do you see that -- what they've  
7 done to your arm? I mean, do you see them tape it down? Do  
8 you see anything like that?

9 A I'm assuming it's taping down but I'm not  
10 positive because it -- it stays there, it doesn't -- it --  
11 because I get up and walk away, so it -- it doesn't fall off  
12 or anything so I think they must have taped it.

13 Q Did you ever see at anytime that you were there,  
14 anybody grab a syringe of anything and inject it with -- with  
15 something?

16 A No.

17 Q Is that something you think you would recall if  
18 you would have seen it?

19 A I think so.

20 Q So they put this in, you don't see the injection  
21 or any injection and then what happens to you?

22 A They take me back to the curtain area where they  
23 put me on a bed. They roll me into the room. They ask me --  
24 a nurse asked me my name, my phone number, so forth. I told  
25 her. She asked me the doctor's name. I couldn't remember my

1 doctor's name for the life of me at that point. I made a joke  
2 to the man that was standing here, he didn't laugh. I guess  
3 that kind of bothered me because I was really nervous. Next  
4 thing you know I'm -- I'm in -- the next thing I know I'm in  
5 my room. Back -- I'm back in the curtain area. I don't -- I  
6 don't remember anything after that.

7 Q So the procedure you don't remember. Do you  
8 remember a doctor coming in and talking to you?

9 A No.

10 Q Now the man that you were talking about, do you  
11 know who was actually going to give you the anesthesia?

12 A Yes. I know he was the one that was going to --  
13 because I -- he turned to me and started counting -- and said  
14 start counting and then that was it.

15 Q Did you see him inject anything into your arm?

16 A No.

17 Q So the man just tells you to start counting and  
18 you count and then you go to sleep.

19 A Uh-huh.

20 THE COURT: Is that a yes? You have to answer a yes  
21 or no --

22 THE WITNESS: I'm sorry, yes.

23 THE COURT: -- because this is being taped.

24 BY MR. STAUDAHER:

25 Q When you wake up, you said you were in some

1 other area.

2 A I'm back in my curtained area.

3 Q The place you had started?

4 A Yes, well, yes, where I started. I wasn't in  
5 the -- I wasn't in the preparation room or the operation room  
6 or whatever you call it anymore. I'm back in the other room  
7 where I had started.

8 Q When you wake up is there anybody there?

9 A No, I'm alone.

10 Q No nurse?

11 A No.

12 Q Did you ever see the man who told you to count  
13 back?

14 A No.

15 Q Did you ever see your doctor come out and talk  
16 to you?

17 A No.

18 Q The whole time you were there?

19 A The whole time I was there I didn't see one  
20 doctor.

21 Q Did you ever see at any time the man who told  
22 you to count back?

23 A No.

24 Q At some point when you're back there what do you  
25 do?

1           A     I woke up and a woman walked in and checked my  
2 blood pressure. She said your blood pressure is really high,  
3 I'll be back. The next minute, there's a gentlemen back, the  
4 guy that actually had taken me from the office to take me into  
5 the curtain area to change, he was back and he was unhooking  
6 the blood pressure cuff. And I said, my blood pressure is  
7 really high, is everything okay. He didn't speak really good  
8 English. He didn't understand what I was asking. So then he  
9 led me over to the nurses' station and had me sit down.

10           When the nurse came out to get me or the -- the woman  
11 who gave me my results, I realized I didn't have a voice. I  
12 couldn't -- I couldn't talk. It was like I woke up with this  
13 voice and I woke up with a -- laryngitis. I wasn't sick when  
14 I went in but I was -- it's almost like I was sick when I came  
15 out. She advised me that they had found a polyp but it was  
16 fine, go home, rest up, come back in a couple of weeks.

17           Well, when I came back I saw the woman doctor, she  
18 advised me that I had irritable bowel syndrome, that there  
19 really wasn't anything that they could do and go home and  
20 that's what I did.

21           Q     And let's go back to the waiting room area now.

22           A     Okay.

23           Q     If I understand you correctly, you've -- you've  
24 gone out and you wake up, there's nobody there initially.  
25 Eventually a nurse comes over and takes a blood pressure, says

1 it's high and then she says she'll be back and leaves.

2 A Uh-huh.

3 Q Now, before this person came out that had  
4 originally led you back into the room, did you see that nurse  
5 again during --

6 A No.

7 Q -- the interim? So she wasn't able to get back  
8 before he came over, unhooked you and led you over to the  
9 place where you were discharged from.

10 A Right.

11 Q Now, that blood pressure thing that you were --  
12 I mean he disconnected you -- disconnected you from that.

13 A Yes.

14 Q The nurse at any point during that process, did  
15 the nurse who originally came out and talked to you, did she  
16 -- did you see her again?

17 A No.

18 Q So you just never saw a nurse after that at all.

19 A No. I walked from the curtained area to the  
20 seating area outside the other nurse's office.

21 Q Were you able to walk fine?

22 A I'm thinking I did, but, yeah.

23 Q Did you have to have help walking out?

24 A I -- I think he might have helped me a little  
25 bit because I was feeling weak, but I don't -- I don't recall

1 really.

2 Q And just so we're clear. The man who -- who led  
3 you to the area where you were told to sit in a chair --

4 A Uh-huh.

5 Q -- who brought you back, is that -- is that the  
6 same man who was in the procedure room who did your anesthesia  
7 stuff?

8 A The man who took me -- the man who brought --  
9 who took me from the -- the room or the -- outside the office  
10 to the dressing room to the room where I laid down on the --  
11 on the bed, he was the one that came back and took me back.  
12 He wasn't the anesthesiologist.

13 Q Okay. That's what I was asking.

14 A Okay.

15 Q So it's a different man.

16 A It was a different man, yes.

17 Q Now, you go home, you come back to the clinic,  
18 you get that information. What happens after that?

19 A October 17th I think was the date that I woke up  
20 feeling really, really sick to my stomach. Had a party  
21 planned for my sister, it was her 60th birthday party, so we  
22 planned to go to that and I was sick the whole day. I thought  
23 I must have some form of bladder infection because when I went  
24 to the restroom my urine was brown. So I went to Dr.  
25 Castleman on Monday after the Saturday and she gave me an --

1 she said it wasn't a urinary tract infection but there was  
2 some kind of bacteria there, so she gave me something for it.  
3 So I started taking that, kept getting worse and worse and  
4 worse.

5           One morning I got up and I said to my husband am I  
6 yellow and he said yes, you need to go to the doctor. So I  
7 went back to Dr. Castleman and at that point she said you need  
8 to go to Mountainview Hospital next door because there's  
9 nothing I can do for you here. They have all the tools, they  
10 have all the equipment in which they can test you very  
11 quickly.

12           Q     So describe for me some -- beside you said  
13 yellow and you said this dark urine, did you have any other  
14 symptoms?

15           A     I had weakness in my legs, my joints hurt, had  
16 trouble going to the restroom and nauseous.

17           Q     So generally sick then?

18           A     Yeah.

19           Q     You go to -- end up at Mountainview Hospital.  
20 What happens to you there?

21           A     I get there about 11:00 in the morning. They  
22 take me in about 9:00 that night. Explained to me that there  
23 was something wrong with my liver, but they didn't really know  
24 what it was. They admitted me. The next day Dr. Seni who was  
25 the doctor who was -- was there at the time, came in, talked

1 to me a little bit, said she hadn't got all the -- the blood  
2 work yet back, she would be back that evening.

3 That evening she came back in, she started  
4 questioning my husband and I -- a lot of different very  
5 personal questions about our lives up until this point. She  
6 started telling us stories about the different types of  
7 hepatitis. At this point I'd never really ever heard of  
8 hepatitis, I've lived a really clean life, always taking very  
9 good care of myself. But now I'm looking at this as oh, my  
10 gosh, what have I -- what have I contracted or what has --  
11 what has transpired in my 40 years, 50 years. So she said  
12 tomorrow Dr. Faris will be coming in and he'll be seeing you  
13 and he'll want to do further testing. She went home.

14 The next morning Dr. Faris comes in and he says, so  
15 tell me what's going on. And I said well, Dr. Seni was here  
16 last night, she said I have hepatitis C. He says you don't  
17 have hepatitis C. He said I don't know what you have, but you  
18 don't have hepatitis C. Why would she tell you you have  
19 hepatitis C? I said, I don't know, I just am going by what  
20 she said I had. So he said well, we need to do further  
21 testing on this.

22 So he had me do more ultrasounds, more x-rays, more  
23 -- more tests and when he came back two days later he never  
24 says anything about what it could possibly be, he just said  
25 well, your RNA hasn't come back yet. I had no idea what an



1 RNA was, let alone hepatitis C at this point.

2 He said well, I'm going to be going on vacation but I  
3 think it's okay for you to go home, there's nothing we can do  
4 for you. I think you should go home, but I'm going to be on  
5 vacation next week but I want you to come in and see me as  
6 soon as you get out because this is very, very serious. So  
7 Dr. Seni came in and she said you're too sick to go home, we  
8 can't -- we can't let you go home. Now this is like a week  
9 before Thanksgiving and this is Friday night so we stayed, I  
10 stayed through Monday.

11 Monday, Dr. Seni finally let me go home. As soon as  
12 I got home I called Dr. Faris's office and they said he's on  
13 vacation. I said, well, he specifically told me that I needed  
14 to call him as soon as I got out of the hospital to come in  
15 and see him because this is very serious and we need to get it  
16 taken care of. So she said well, you can see one of his  
17 assistants. I said well, I want to know what the RNA is and  
18 find out what we need to do -- do next.

19 So I went in on Tuesday, the doctor walked in and  
20 said, you're yellow, you need to be in the hospital. I said I  
21 just got out of the hospital and I'm here to find out what my  
22 RNA results are and what my next step is. He says well, I  
23 can't really help you because that's Dr. Faris's situation and  
24 he's on vacation.

25 Q Where is this at? Where did you go?

1           A     This was at Dr. Faris's office on Tenaya and  
2 Cheyenne.

3           Q     Same group though, correct?

4           A     Pardon me?

5           Q     Same group of doctors that had given you your  
6 procedure?

7           A     Right, right.

8           Q     So go on.

9           A     Okay. So I went home and I made an appointment  
10 to see Dr. Faris the following week when he came back. When  
11 he came in -- well, first, I was in the office and he said I  
12 need to see Patty Aspinwall right now while I was already  
13 there. And so he came in and I said I heard you yell out my  
14 name and I was just getting ready to come to the door and tell  
15 you I'm already here. And he says well, you know this is  
16 really serious, we really need to do something. However,  
17 sometimes hepatitis C will clear itself, so we're not going to  
18 do anything for at least six months. We're not going to do  
19 anything because it will clear itself. So he said we're going  
20 to test you every month and see how it goes.

21           A     So for the next few months -- actually, it really  
22 wasn't a few months because this was in November, December,  
23 January, I had an appointment with Dr. Faris on President's  
24 Day. Three days prior to that I get a call from the CDC  
25 telling me that I got hepatitis C at the Endoscopy Center.

1 The same day that I got that call from the CDC I also got a  
2 call from Dr. Faris's office saying that they could not see me  
3 on Monday because he was going to be going part-time and I  
4 would have to rearrange my schedule to go in with his  
5 schedule. So I started thinking oh, my -- oh, my gosh, what  
6 do I do, you know, now I have this from here.

7 One of the things too that the CDC said was Dr.  
8 Carrol's office will take care of all of the -- all of your  
9 money, anything that you -- all your bills. Anything that  
10 you've incurred, Dr. Carrol's office will take care of that.  
11 Up until then I didn't realize that Dr. Carrol, and Dr. Faris  
12 and Dr. Desai were all one, they were involved together. I  
13 thought it was Dr. Desai and then Dr. Carrol. It wasn't  
14 until later that I found out the three of them were all in  
15 this together.

16 Q So -- okay. So do you -- do you continue to  
17 follow up with them?

18 A Actually, I did not. I got a call from Dr.  
19 Faris on Friday -- I mean, I'm sorry, on Monday, on  
20 President's Day. Earlier that day, I had gone to get my blood  
21 work because when -- I'm sorry, let me go back a little bit.  
22 When I called the doctor back on Thursday, the day after they  
23 called and left a message --

24 Q What doctor? What doctor did you call back?

25 A Dr. Faris's office. I called Dr. Faris's office

1 to reschedule the appointment. She said Dr. Faris will only  
2 be working part time and you can't see him until April. I  
3 said I can't wait until April, I need to see Dr. Faris now.  
4 She said well, you can see a nurse practitioner but you cannot  
5 see Dr. Faris until April. I said fine, I'll find me another  
6 doctor. So I went in looking for another doctor.

7 On Monday, Dr. Faris's office called -- no, I take it  
8 back. Dr. Faris called himself and said I just got your  
9 numbers back and it doesn't look good. You need to come in  
10 and start the medication. He said you have -- you need to  
11 talk to my nurse and she will schedule you an appointment and  
12 you should come in.

13 Q Well, do you know what medicine they were  
14 referring to?

15 A It was interferon and one of the other ones  
16 that --

17 Q [indiscernible]

18 A Yes.

19 Q Okay.

20 A Okay.

21 Q So you -- you at least get told you need to have  
22 this therapy?

23 A Right.

24 Q Did you follow up and get the therapy?

25 A No.

1 Q What did you do?

2 A Well, after I got off the phone with Dr. Faris  
3 I called Dr. Lopez, made an appointment with him for  
4 Wednesday. When I went to Dr. Lopez, he said don't do  
5 anything. He said, you know, you're a healthy woman, don't do  
6 anything at this point. So we didn't. We continued seeing  
7 him. However, we saw four other doctors in the time frame to  
8 get more opinions on what I was given. You know, first I was  
9 told to take it, then I was told not to take it, then I was  
10 told to take it, then I was told not to take it.

11 Q Did you end up taking it at all?

12 A No, I have not.

13 Q So you've never taken the interferon therapy?

14 A No.

15 Q Has it ever been recommended to you by any of  
16 these doctors definitively to go ahead and go through that  
17 therapy?

18 A Only Dr. Faris.

19 Q And as far as that's concerned, did anybody  
20 explain to you what the side affects were, what it meant to go  
21 through that therapy?

22 A Yes, Dr. Lopez did.

23 Q How long would it be and the like?

24 A Yes.

25 Q Okay. Is that why you elected not to do it?

1 A Yes.

2 Q What do you -- what's your situation now?

3 A My enzyme levels are good, they -- they -- they  
4 fluctuate every day, all the time.

5 Q When you say enzyme levels, are you talking  
6 about liver enzymes?

7 A My liver enzyme levels.

8 Q Okay.

9 A I try to keep myself healthy, that's all I can  
10 do at this point. That's all -- that's all I feel I can do at  
11 this point.

12 Q Do you get periodically tested for the virus or  
13 anything like that? I mean, any blood work that goes on?

14 A Every six months I go in for ultrasound and  
15 blood work. And I see a -- now I see Dr. Nemeec because Dr.  
16 Lopez is no longer in town.

17 Q So as far as the treatment, is it just kind of  
18 static? You get tested and -- for the things you mentioned  
19 and you're not on any medication per se at this point?

20 A Right.

21 Q Has anybody ever told you that you're -- you  
22 know, you don't have the virus anymore? It's all -- it's all  
23 gone --

24 A No, no, no. He's always said -- he says every  
25 time I go in there, he says it's active, it's there.

1 Q Okay. And -- and you also have seen the blood  
2 work that shows changes in your enzymes.

3 A Yes. Actually, I go and get my -- my blood  
4 results every six months and can, you know, kind of look at  
5 them together, compare the two.

6 MR. STAUDAHER: Pass the witness.

7 THE COURT: All right. Cross.

8 CROSS-EXAMINATION

9 BY MS. STANISH:

10 Q Good afternoon.

11 A Hi.

12 Q My name's Margaret Stanish, I represent Dr.  
13 Desai. Have you heard that there's new drugs coming out to  
14 treat hepatitis C?

15 A Yes.

16 Q Are you -- do you know at this time whether  
17 you're going to take any of that?

18 A I'm considering it, but I -- I have not  
19 investigated it. My doctor says it's going to be out some  
20 time next year and he will keep me updated on the symptoms and  
21 -- and how well it's been doing with the other subjects.

22 Q So your plan is to -- at least continue what  
23 you're -- have been doing for the past several years, that is  
24 monitor your condition.

25 A Right.

1 Q And you've been doing healthy things like  
2 watching your diet and so on.

3 A Right.

4 Q I just want to clarify a -- a couple points when  
5 you were describing your September 21st visit to the  
6 Colonoscopy Center. All right?

7 A Uh-huh.

8 Q First, you get there and you wait.

9 A Uh-huh.

10 Q Have you waited at the other doctor's offices?

11 A Yes, I have. However, when I went in  
12 specifically because I had talked to other people who had  
13 issues at this particular office, that it takes them a long  
14 time. When I went in, up to the front desk, which I had just  
15 recalled, because I told them my husband had to be to work at  
16 noon and so I needed to be out earlier.

17 Q Okay.

18 A So they said that they would -- they would try  
19 to get me in as soon as possible.

20 Q All right. And the -- I thought I understood  
21 you to say that the waiting room was full of patients,  
22 correct?

23 A Right.

24 Q Is it the case that it wasn't just patients, but  
25 it was also the people who were there to escort them or pick



1 them or drop them off?

2 A I'm sure there -- that was the case as well.

3 Q And kind of jumping around, I know I'm jumping  
4 around a bit. But you had the procedure done, you were in the  
5 recovery room and as I -- and you came to while you were in  
6 the recovery room, correct?

7 A Right.

8 Q And when you came to, were you hooked up to a  
9 monitor or something?

10 A I was hooked up to the blood pressure monitor.

11 Q And then a nurse came by and told you you had --  
12 your pressure looked somewhat high.

13 A Right.

14 Q And then she left and you didn't see that woman  
15 again.

16 A Right.

17 Q At some point, I -- I understood you to say that  
18 a man came and escorted you to where?

19 A Well, he escorted me to the area where the -- a  
20 nurse, I'm assuming she was a nurse, where she provided my  
21 results.

22 Q At --

23 A Some of the results.

24 Q All right.

25 A Okay.

1 Q A discharge nurse?

2 A Right.

3 Q And she gave you written instructions and verbal  
4 instructions.

5 A I think it was verbal. She may have given  
6 written, I don't recall. But she did show me, you know, the  
7 -- the test where they show that there was a polyp that they  
8 had removed, but it was going down for testing for cancer.

9 Q At what -- did you get dressed before visiting  
10 with that discharge nurse or did you get dressed before or  
11 after getting discharged?

12 A After I saw her.

13 Q Okay. So you're in a -- you're in your gown  
14 visiting the discharge nurse. Does that sound right?

15 A Well, my husband was standing -- my husband was  
16 right next to me at that point. I must have dressed, yeah.

17 Q Yeah, you wouldn't have walked out in that gown.

18 A Well, I -- yeah, okay, I probably got dressed in  
19 the room and then walked out because I -- I recall my husband  
20 being there with me.

21 Q All right. So the -- the man who escorted you  
22 from the recovery room took you to a dressing room?

23 A Yes, the same one where I was at before.

24 Q That makes sense.

25 A Yes.

1 MR. STAUDAHER: That wasn't why we were before the  
2 bench.

3 MS. WECKERLY: Just to correct the record, I had no  
4 idea the Court was going to take a break. I -- we want to  
5 tell the Court we're going to treat him as an adverse witness.  
6 I told counsel I don't want anything communicated to him. I  
7 consider him in violation of the agreement. If nothing's  
8 communicated and he gets back up on the stand, it's like we  
9 never took a break and it's harmless. But his counsel is now  
10 on notice that we consider him in breach, which they need to  
11 be because they're representing him.

12 THE COURT: I find that there's been no misconduct  
13 for the reasons Ms. Weckerly stated, the reasons the Court has  
14 stated. If anyone needs to use the facilities let's do it and  
15 get started again.

16 (Court recessed at 10:44 a.m. until 10:48 a.m.)

17 (Outside the presence of the jury.)

18 THE COURT: Just bring your client back and we'll put  
19 him back up on the witness stand.

20 Mr. Mathahs, come on back up here to the witness  
21 stand, please, and have a seat. It's Day 12, Mr. Wright. My  
22 monitor shows your notes, but I'll turn it off. Whether the  
23 other monitors do or not. I'm going to turn it off. I turned  
24 mine -- I turned my monitor off because that's easier than  
25 making you move your notes.

1 MR. WRIGHT: Thanks.

2 THE COURT: I had Janie turn the other monitors off  
3 so you could keep your notes there, but my monitor always has  
4 it.

5 MR. WRIGHT: I was wondering.

6 (Jury reconvened at 10:50 a.m.)

7 THE COURT: All right. Court is now back in session.  
8 Everyone may be seated. Mr. Wright, you may resume your  
9 cross-examination.

10 MR. WRIGHT: Thank you.

11 BY MR. WRIGHT:

12 Q When we left off you were in the Clark County  
13 Jail.

14 A Okay.

15 Q You -- you were released, obviously?

16 A Yes.

17 Q You post bond?

18 A Yes.

19 Q Okay. Did you have to use a bail bondsman?

20 A Yes.

21 Q Okay. Is that expensive?

22 A Very.

23 Q Okay. There -- thereafter you hired a criminal  
24 defense attorney because you realized you had been indicted,  
25 correct?

1 A Correct.

2 Q And do you remember -- who did you hire?

3 A Michael Cristalli.

4 Q Okay. And Mr. Cristalli represented you from  
5 the time you hired him up through the acquittal, correct?

6 A Correct.

7 Q Looking to see if he was here.

8 A I don't think so.

9 Q Okay. His associate is here, correct?

10 A Correct.

11 Q Ms. Morgan?

12 A Correct.

13 Q Okay. And that -- that was June 2010 --

14 A Yes.

15 Q -- that you were charged, correct?

16 A Yes.

17 Q And at the time you were indicted with my  
18 client, Dr. Desai, and with Ron Lakeman, another CRNA you  
19 worked with, correct?

20 A Correct.

21 Q And on the use of propofol, use of propofol  
22 vials. Okay? Using the propofol vial until it's empty.  
23 Okay?

24 A Yes.

25 Q Treating it like a multi-use vial. Okay?

1 A Okay.

2 Q You were aware that that had been a standard  
3 practice to do that, correct?

4 A Correct.

5 Q And you were aware that that had been done at  
6 Dr. Desai's clinics where you were and elsewhere, correct?

7 A Correct.

8 Q And in fact, do you -- do you recall once --  
9 once you're charged June, 2008, your lawyer then files various  
10 motions. Were you aware of that?

11 A Yes.

12 Q Okay. And did you get what we called discovery?

13 A Possible. I don't recall it right at the  
14 moment.

15 Q Okay. Well, the grand jury transcript?

16 A Yes.

17 Q Okay. Did you read that?

18 A Most of it.

19 Q Okay. And discovery means evidence turned over  
20 by the prosecutors.

21 A Okay.

22 Q And did you look at grand jury transcript and  
23 other evidence?

24 A Yes.

25 Q Okay. And do you recall what a writ of habeas

1 corpus is?

2 A No.

3 Q Okay. Do you -- do you recall your lawyer  
4 filing a motion of some type challenging your indictment and  
5 taking the position on your behalf --

6 MR. STAUDAHER: Objection, Your Honor. I think it  
7 violates what we talked about earlier.

8 THE COURT: Well, he -- he can answer the question.  
9 He can ask the question.

10 BY MR. WRIGHT:

11 Q Filing a motion with the court and taking a  
12 position as the lawyer for you that multi-use of propofol  
13 vials with aseptic technique is a standard ongoing practice.

14 A You're asking me if he filed that for me?

15 Q Yeah.

16 THE COURT: If you were aware that he did that.

17 A I am not aware, I'm sorry.

18 THE COURT: All right. Move on, Mr. Wright.

19 BY MR. WRIGHT:

20 Q Okay. That if he did, that is true, correct?

21 A If he did, yes.

22 Q Okay. Right. And what he -- if he filed a  
23 motion on your behalf representing that multi-use of propofol  
24 with aseptic technique is a standard practice that was ongoing  
25 and encouraged at the time of these offenses.

1 MR. STAUDAHER: Objection to the extent of vague and  
2 ambiguous with regard to --

3 THE COURT: Yeah, that's sustained. Well, standard  
4 practice where encouraged, encouraged by -- I mean --

5 MR. STAUDAHER: And also, we haven't established  
6 whether it's patient to patient, within the same patient --

7 THE COURT: Yeah, that -- there -- I mean --

8 MR. WRIGHT: You can establish it on cross.

9 THE COURT: Well, Mr. Wright --

10 BY MR. WRIGHT:

11 Q The multi-use -- the multi-use of single use  
12 propofol within the boundaries of aseptic technique -- let me  
13 see if this refreshes your recollection.

14 MR. WRIGHT: I'm approaching with his writ.

15 THE COURT: Just read it quietly to yourself.

16 THE WITNESS: Okay.

17 MR. STAUDAHER: And I will object as long as the  
18 question stands where it's vague and ambiguous as to whether  
19 it's patient to patient or between patients.

20 MR. WRIGHT: I can restate it.

21 THE COURT: All right. Mr. Wright, I've already told  
22 him he has to restate the question. I felt that his prior  
23 question was vague, ambiguous and overly complex.

24 BY MR. WRIGHT:

25 Q Is the multi-use of single-use propofol vial



1 within the boundaries of aseptic technique a regularly  
2 accepted and encouraged practice at the time of the offense  
3 conduct, meaning 2007?

4 MR. STAUDAHER: Objection. Same objection and the  
5 fact we're now not talking about necessarily the clinic.

6 THE COURT: Okay. Well, ask -- by practice, are you  
7 asking at the clinic or practice in the community as a whole  
8 or -- all right.

9 MR. WRIGHT: I didn't write it.

10 THE COURT: Well, Mr. -- either did Mr. Mathahs.

11 MR. WRIGHT: His lawyer did.

12 THE COURT: Okay. Mr. Wright, rephrase the question.

13 BY MR. WRIGHT:

14 Q Okay. Using propofol, multi-use, between  
15 patients, use propofol not done, use it again on another  
16 patient. Okay?

17 A Okay.

18 Q When I say multi-use, that's what I'm talking  
19 about.

20 A Okay.

21 Q Doing that, I'm going back to 2007, which is the  
22 time of the offense conduct. Okay?

23 A Okay.

24 Q Doing that at that time, using aseptic  
25 technique, that use of propofol was a standard encouraged

1 practice in the community, correct?

2 A I don't know about encouraged, but it was a  
3 standard practice.

4 Q Okay. In the community?

5 A Yes.

6 Q Now we go along, you're indicted June 2010.  
7 There comes a time, if you recall, four years later. Let's  
8 move in to 2012. Okay?

9 A Okay.

10 Q You're still under indictment the whole time,  
11 right?

12 A Correct.

13 Q You were indicted -- do you remember how many  
14 crimes were alleged against you in the original indictment?

15 A Twenty-eight, 29, something like that.

16 Q Okay. And if you add it up -- and that had to  
17 do with billing, correct?

18 A Correct.

19 Q Okay. And reckless endangerment and offenses  
20 for causing the hepatitis C spread to these patients, right?

21 A Correct.

22 Q There were 28 different crimes and they were  
23 totaling -- sentencing --

24 MR. STAUDAHER: Objection, Your Honor.

25 THE COURT: That's sustained, rephrase. Approach.

1 (Off-record bench conference.)

2 BY MR. WRIGHT:

3 Q First indictment. You were charged with 28  
4 crimes, right?

5 A Okay.

6 Q At the -- and you knew those were felonies.

7 A Yes.

8 Q Okay. And you knew those added up to a lot of  
9 years in prison.

10 A Yes.

11 Q Okay. And jumping to 2012, four years later,  
12 case is still pending, right?

13 A Yes.

14 Q Okay. And then you get a notice of intent to  
15 seek another indictment. Do you recall that?

16 A Yes.

17 Q Okay. And that notice in July -- end of July,  
18 2012 was noticing you that the State was intending to do what  
19 to you?

20 A Prosecute us for murder.

21 Q Okay. And the -- that increased the exposure,  
22 the penalties to you, correct?

23 A Correct.

24 Q And based upon that, did you agree to go talk to  
25 the prosecutor?

1 A Yes.

2 Q Okay. Now, had you previously -- I jumped over  
3 something there. Had you previously gone and talked to the  
4 feds, federal prosecutors?

5 A Yes.

6 Q Okay. With that -- that -- do you recall if  
7 that was back in 2010 after you had been indicted by the  
8 State?

9 A Yes.

10 Q Okay. And you -- when I say you went and talked  
11 to the federal prosecutors, you went with your lawyer,  
12 correct?

13 A Correct.

14 Q Okay. Mr. Cristalli?

15 A Correct.

16 Q And the federal prosecutors were contemplating  
17 prosecuting you for billing fraud.

18 A Correct.

19 Q And you went with your lawyer and gave a -- an  
20 interview under terms of a proffer agreement. Do you recall  
21 that?

22 A Yes.

23 Q Okay. Do you know what a proffer agreement is?

24 A Not truly.

25 Q Okay. Well, it was something where you could go

1 in and talk to them and they would hear what you have to say  
2 and then they would decide whether they're going to make you a  
3 witness or a defendant. Is that true?

4 A Okay.

5 Q I mean, was that your understanding of it?

6 A I understand now, yes.

7 Q Okay. And so you -- you went in and talked to  
8 the federal prosecutors with your lawyer, correct?

9 A Correct.

10 Q Okay. And then you -- you were not prosecuted  
11 federally, correct?

12 A Correct.

13 Q But you still have the State case?

14 A Correct.

15 Q Now, jumping back to you getting your notice of  
16 intent to seek murder indictment, you go in and get  
17 interviewed with the prosecutors before they indict you for  
18 murder, correct?

19 A I don't recall.

20 Q Okay. Well, do you -- do you not recall the  
21 date or do you not recall the interview?

22 A I remember talking, you know, in last fall but I  
23 -- I thought it had already been -- I mean the indictment had  
24 already been already.

25 Q Okay. Well, the -- do you recall getting like a

1 notice of intent to seek indictment on July 31, 2012?

2 A I don't recall it, but if you -- I got it I'm  
3 sure I did, yes.

4 Q Okay. And your interview --

5 MR. WRIGHT: Approach the witness?

6 THE COURT: You may.

7 BY MR. WRIGHT:

8 Q Your interview. What's that date?

9 A August 7th, 2012.

10 Q Okay. And you were indicted for murder on  
11 August 10th, 2012.

12 MR. STAUDAHER: Objection, Your Honor. Indicted for  
13 murder?

14 MR. WRIGHT: What'd I say wrong?

15 THE COURT: I'm sorry?

16 MR. WRIGHT: I don't understand.

17 THE COURT: I don't either.

18 MR. STAUDAHER: I'll withdrawal it, Your Honor.

19 THE COURT: Go on.

20 BY MR. WRIGHT:

21 Q Were you indicted for murder three days later?

22 A Yes.

23 Q Okay. And the purpose of the interview with Mr.  
24 Cristalli, that was to enable you to attempt to cooperate with  
25 the prosecutor and get a plea bargain. Is that fair?

1 A Yes.

2 Q Okay. And so that you wouldn't be charged with  
3 murder, right?

4 A Correct.

5 Q And in going in for that cooperation interview,  
6 did -- did you prepare a list of things that you could testify  
7 about?

8 A Probably. I don't recall, but I might have.

9 Q Okay. Did -- did you bring in -- do you recall  
10 bringing in notes and a list of things that you could testify  
11 about for them?

12 A Yes.

13 Q Okay. And was that list of things a lot of the  
14 stuff you testified on direct examination about like bite  
15 blocks, cutting chunks in half, using extra K-Y Jelly and that  
16 kind of stuff?

17 A Yes.

18 Q Okay. Now, were -- were you able -- after you  
19 were interviewed on July 7th, were you able to reach a plea  
20 agreement with the district attorney before you got indicted  
21 again?

22 A Before?

23 Q Yes.

24 A No.

25 Q Okay. You then get indicted for murder,

1 correct?

2 A Correct.

3 Q Along with Dr. Desai and Ron Lakeman.

4 A Correct.

5 Q Okay. And you have to -- did you get arrested

6 again?

7 A No. I think she gave us time to get the bail --

8 Q Okay.

9 A -- taken care of in an afternoon, if I recall.

10 Q Okay.

11 THE COURT: Are you talking about the previous Judge?

12 THE WITNESS: No, you I think did.

13 THE COURT: I've never been confused with Stephanie  
14 Miley before. I should be flattered.

15 THE WITNESS: I thought it was you. If it wasn't,  
16 I'm sorry.

17 BY MR. WRIGHT:

18 Q The -- okay. But in any event, you went before  
19 a judge. You were already out on a half million dollars bail  
20 bond, right?

21 A Correct.

22 Q And now the district attorney is turning up the  
23 heat with a murder indictment, correct?

24 A Correct.

25 Q Okay. And they want more money for bail, right?



1 A Correct.

2 Q How much was that?

3 A I think they got it reduced to \$50,000 for Ron  
4 and I.

5 Q Okay. Did they want 250?

6 A Could have been. I don't recall, you know, the  
7 numbers now, but it could have been.

8 Q Okay. But in any event, you had to get an  
9 additional bail bond --

10 A Yes.

11 Q -- of 50 and you remained out?

12 A Yes.

13 Q Okay. And then you -- within a number of months  
14 with this new murder indictment, you reached a plea bargain,  
15 correct?

16 A Correct.

17 Q And with the murder indictment you -- you knew  
18 you were facing life in prison, correct?

19 A Correct.

20 Q And that entered into your consideration on  
21 going in and making your deal with the prosecutors.

22 A Correct.

23 Q And that -- that deal resulted in a written plea  
24 agreement that we call -- called a plea bargain, right?

25 A Correct.

1 Q And you agreed to plead guilty to certain  
2 charges and the murder would be dismissed, correct?

3 A Correct.

4 Q And did you have negotiations about your  
5 penalty?

6 A I think Mr. Cristalli did. I don't know that I,  
7 you know --

8 Q Okay. Did -- did the -- you were interested in  
9 how long you would go to prison.

10 A Correct.

11 Q And that was negotiated, correct?

12 A Yes, correct.

13 Q Okay. And it ended up in plea bargain where  
14 your sentencing exposure, that means what you could get --

15 A Correct.

16 Q -- is 28 months minimum, 72 months maximum.

17 Does that sound right?

18 A Yes.

19 Q Did -- and of course you could only get that  
20 deal if you entered into another written agreement agreeing to  
21 testify for the State, correct?

22 A Correct.

23 Q And that's why you're here.

24 A Correct.

25 Q Okay. And in that -- that's a -- do you recall

1 the December 10, 2012 -- December 10, last year that you  
2 entered into the agreement and came into Court in front of  
3 Judge Adair and pled guilty and agreed to testify?

4 A I remember it's December. I don't remember  
5 exact date, but if it was the 10th, it was the 10th.

6 MR. WRIGHT: Approach the witness.

7 THE COURT: You may.

8 BY MR. WRIGHT:

9 Q This -- there's a -- a third amended indictment.  
10 That's December 10th, 2012 --

11 A Yes, okay.

12 Q -- okay. They filed something new for you to  
13 plead guilty to, correct?

14 A Correct.

15 Q Your guilty plea agreement is December 10, 2012?

16 A Correct.

17 Q And your agreement to testify December 10, 2012.

18 A Correct.

19 Q And you signed each of those documents, correct?

20 A Correct.

21 Q Now your agreement to testify -- this is an  
22 agreement entered into between yourself and the Clark County  
23 District Attorney's office.

24 A Correct.

25 Q And you agreed to cooperate voluntarily with the

1 Clark County District Attorney's Office and the Las Vegas  
2 Metropolitan Police Department in the investigation and  
3 prosecution of Dr. Desai and Ronald Lakeman, correct?

4 A Correct.

5 Q And you agree you will provide true information  
6 and testify fully and truthfully in all court proceedings.

7 A Correct.

8 Q And -- and you agree that the over -- overriding  
9 all else, it's understood that your obligation is to be  
10 truthful regardless of who is asking you questions.

11 A Correct.

12 Q Now, you had -- before entering into this  
13 agreement to cooperate and plea bargain on December 10th, you  
14 had already been interviewed, debriefed at length on August  
15 7th, correct?

16 A Correct.

17 Q And that's when you told them about all of the  
18 wrongdoing you say you witnessed at the clinic.

19 A Correct.

20 Q And you told them, the police and the district  
21 attorney, this was true and correct, correct?

22 A Correct.

23 Q And so the district attorney, when he enters  
24 into this agreement, already knew what you were going to say,  
25 correct?

1 A I assume --

2 MR. STAUDAHER: Objection. Speculation, Your Honor.

3 THE COURT: Rephrase.

4 BY MR. WRIGHT:

5 Q When you entered into this agreement, you had  
6 already been interviewed for hours in a cooperation interview  
7 to tell them what you could testify about, correct?

8 A Correct.

9 Q And they -- you told them that was the truth,  
10 correct?

11 A Correct.

12 Q And you -- the prosecutor, at the time of the  
13 plea agreement, already knew what you would tell them and  
14 testify to, correct?

15 A Yes.

16 Q And part of the plea agreement, after all your  
17 promises to tell the truth, final clause says, "It is further  
18 understood that this entire agreement, your deal, will become  
19 null and void and Keith Mathahs will lose the benefits of this  
20 agreement for any deviation from the truth," correct?

21 A Okay.

22 Q I mean, do you recall that?

23 A If that's what it says.

24 Q Okay, well --

25 A Okay.

1 Q You -- you understood that if you deviate from  
2 what you had told them you were in jeopardy?

3 MR. STAUDAHER: Objection, Your Honor, that's deviate  
4 what told, no, that's not what it says. It says the truth.

5 THE COURT: All right stick to the language of the --

6 BY MR. WRIGHT:

7 Q Okay. You had already told them what you had,  
8 correct?

9 A What I knew, yes.

10 Q Okay. And you told them that was the truth when  
11 you went in to make your cooperation agreement, correct?

12 A Correct.

13 Q So they knew what you would say, right?

14 A I assume they would, yes.

15 Q Okay. And so part of the deal is it is null and  
16 void if there is any deviation from the truth, right?

17 MR. STAUDAHER: Objection, Your Honor --

18 THE COURT: He said from the truth.

19 MR. STAUDAHER: Okay.

20 BY MR. WRIGHT:

21 Q Correct?

22 A Correct.

23 Q Of course, you had already told them what the  
24 truth was when you went in for your cooperation interview,  
25 right?

1 A Correct.

2 Q When you went -- came into this courtroom and  
3 pled guilty, aside -- aside from your cooperation agreement to  
4 testify, you also have your guilty plea agreement, correct?

5 A Okay.

6 Q That's the one December 10th?

7 A Correct.

8 Q And you came in to this courtroom and pled  
9 guilty, correct?

10 A Yes.

11 Q And do you recall what you pled guilty to?

12 A The exact -- not exactly the different accounts  
13 I don't recall, no.

14 Q Okay. Count One, criminal neglect of patient  
15 resulting in death.

16 A Okay.

17 Q Would -- would that be Mr. Miana?

18 A Yes.

19 Q Okay. Criminal neglect of patients. That would  
20 be the other patients.

21 A Okay.

22 Q Is that correct?

23 A Yes.

24 Q Insurance fraud.

25 A Yes.

1 Q Obtaining money under false pretenses.

2 A Okay.

3 Q And conspiracy.

4 A Okay.

5 Q Is that right? And you were facing -- you had  
6 -- you actually -- first you were facing 28 charges like that,  
7 right?

8 A Yes.

9 Q Then they added murder as a 29th --

10 A Okay.

11 Q -- right?

12 A Yes.

13 Q And then in order to -- after you did your  
14 cooperation interview, they let you plead to five counts,  
15 right?

16 A Correct.

17 Q And you were -- aside from what they promised  
18 you in your plea agreement, you were facing --

19 MR. STAUDAHER: Objection, Your Honor.

20 THE COURT: Well, overruled. Go on with your  
21 question.

22 BY MR. WRIGHT:

23 Q You were facing on Count One, what's that?

24 A Twenty --

25 MR. STAUDAHER: Objection, Your Honor.



1 THE COURT: I'll see counsel up here.

2 (Off-record bench conference.)

3 MS. STANISH: Oh, excuse me. Mr. Santacroce said  
4 that he entered in some exhibits.

5 THE COURT: Oh, I'm sorry. So --

6 MS. STANISH: That'd be his or do you --

7 THE COURT: Right.

8 MS. STANISH: Okay. It's our first.

9 MR. WRIGHT: Besides A?

10 THE COURT: I was asking Ms. Husted because I'm not  
11 aware of what -- so the jury's clear. Let's make Mr.  
12 Lakeman, it will be letters with a 1 following it and Dr.  
13 Desai, defendant Desai, it will be letters with a 2 following  
14 it. That way it's clear for the jury when they get -- get the  
15 exhibits in the back. Because otherwise they'll be two A's  
16 and two B's and two C's, which is impossible or difficult for  
17 them to keep track of and it's confusing in the argument. So  
18 let's do it that way then. Maybe I'm the only one -- right.

19 MR. WRIGHT: A1 and B1.

20 THE COURT: Right.

21 MR. WRIGHT: So we're -- okay, I got you.

22 THE COURT: All right. Then Mr. Lakeman's going to  
23 be two.

24 MR. WRIGHT: Approach the witness, Your Honor.

25 BY MR. WRIGHT:

1 Q Desai's proposed A1, just look at it. Does that  
2 look like your guilty plea agreement? Recognize the  
3 signature?

4 A Right, uh-huh, correct.

5 Q And it's dated December 10, 2012?

6 A Correct.

7 Q Defendant Desai's B1 agreement to testify.  
8 That's your signature?

9 A Yes.

10 Q Thank you. On -- where -- where I was on your  
11 guilty plea agreement --

12 A Okay.

13 Q -- you were facing five charges, correct?

14 A Correct.

15 Q And they had various amounts of years you could  
16 theoretically be facing, but you had entered into an agreement  
17 to a set amount at the most, correct?

18 A Correct.

19 Q And it was agreed at the sentence, any  
20 sentencing would run concurrent rather than consecutive. Do  
21 you recall that?

22 A Yes.

23 Q Okay. And that means even if you got like 28  
24 months on Count One, 28 months on Count Two, 28 months on  
25 Three, 28 months on Four, 28 months on Five, all you'd get is

1 28 months, right?

2 A Correct.

3 Q That's what concurrent means, they're running at  
4 the same time.

5 A Correct.

6 Q And if it was consecutive, it just adds up on  
7 top of each other.

8 A Correct.

9 Q And you understood that this was a conditional  
10 plea agreement, correct?

11 A Correct.

12 Q And it was conditional in the sense you and the  
13 district attorney agreed to it, right?

14 A Correct.

15 Q And agreed to this sentencing exposure that we  
16 just talked about, right?

17 A Yes.

18 Q But Judge Adair ultimately will be sentencing  
19 you possibly, correct?

20 A Correct.

21 Q And what if she said I want to give you more  
22 than 28 under this, 28 months. Okay? What if she said I want  
23 to give you 15 years? You have the right to do what?

24 A Object, I guess. I don't know.

25 Q Well, yeah, that --

1 A I don't know.

2 Q -- plus --

3 THE COURT: And we've seen how well those work in  
4 here.

5 BY MR. WRIGHT:

6 Q You get the -- this is a conditional plea in the  
7 sense that if the Court should not go along with it, you have  
8 the right to withdraw, back up out of the plea bargain and go  
9 back to square one.

10 A Okay. I understand you now, okay.

11 Q Is that -- I mean is that your understanding --

12 A Yes.

13 Q -- of what it was?

14 A Yes.

15 Q Okay. And part -- part of your plea bargain was  
16 you would agree to pay in a restitution. Do you recall that?

17 A Yes.

18 Q Okay. A restitution would be like anything to  
19 victims, right?

20 A Correct.

21 Q But it was also agreed that the restitution  
22 shall not duplicate any amounts paid as civil awards or in  
23 settlements, right?

24 A Correct.

25 Q In other words, you're -- you're aware that

1 various victims in this criminal case have been paid money  
2 through civil lawsuits, right?

3 A Correct.

4 Q And so you -- you don't have to double pay them,  
5 right?

6 A That's correct.

7 Q Now, having entered into this and entered those  
8 pleas, it -- it was also agreed at the same time that your  
9 bail would be reduced, correct?

10 A The half a million would be taken away, yes.

11 Q Okay. Is that because -- were you still paying  
12 a premium on it?

13 A It had been paid when we originally were  
14 indicted.

15 Q Okay. You needed that half million dollar bail  
16 bond reduced, go away, to what if you'd already paid for it?

17 A I don't know. Judge took it away, that's all I  
18 know.

19 Q Did you put up collateral or something?

20 A No, no.

21 Q Okay. So in any event, as part of the plea  
22 bargain was your bail's dropped from 550,000 to 50,000.

23 A Correct.

24 Q And it was agreed -- this was in December, 2012,  
25 but it was agreed the sentencing would be continued until

1 after you perform by cooperating, correct?

2 A Correct.

3 Q Okay. So even though normally sentencings come  
4 like within three months, your deal was you have to wait so  
5 that you can fulfill your cooperation agreement, correct?

6 A Correct.

7 Q And then ultimately you'll be sentenced.

8 A Correct.

9 Q I'm going to go to your testimony regarding 31  
10 minutes anesthesia time. Okay?

11 A Okay.

12 Q The -- as I understand it, you were told to put  
13 down more than 30 minutes on your anesthesia records --

14 A Correct.

15 Q -- correct? I think you testified in here on  
16 direct, Dr. Desai and Ann Lobianbo told you that when they  
17 taught you the ropes when you first started working.

18 A That's correct.

19 Q Okay. And the -- you explained I believe that  
20 Dr. Desai talked to you about there being a global anesthetist  
21 fee under some of the contracts. Do you recall that?

22 A Yes, I do.

23 Q And do you recall that that conversation with  
24 Dr. Desai about a global fee, that that was in the context of  
25 a conversation with him about cost containment?

1           A     I don't recall the cost containment part of it,  
2 no.

3           Q     You don't recall that?

4           A     No.

5           Q     Do you recall telling the federal prosecutors  
6 that that was the genesis, that's what that conversation was  
7 about?

8           A     Well, when I asked, that's what I was told, that  
9 it was a global fee that he was paid for anesthesia services,  
10 which was \$65.

11          Q     Are you aware that like Sierra Health and HPN  
12 paid \$65 a global fee for anesthesia?

13          A     I'm not aware which companies, but I was aware  
14 of the \$65, yes.

15          Q     Okay. And did you tell the federal prosecutor  
16 -- now this, I'm going back to 2010, that's when you were  
17 meeting with the feds with Mr. Cristalli.

18          A     Okay.

19          Q     Did you tell them that you had a conversation  
20 with Dr. Desai, which was in the context of cost containment  
21 when Dr. Desai told you that you got a global -- that he got a  
22 global fee of \$65 for the anesthesia?

23          A     If that's what I said, yes.

24          Q     Okay. Well, is that true?

25          A     Yes. I -- I don't know what you're saying about

1 the containment. That's some verbiage that I don't know that  
2 I would have said, but I mean it might have been added to it  
3 or something.

4 Q Okay. See if this refreshes your recollection.  
5 Read this right there.

6 THE COURT: Just read it to yourself.

7 MR. WRIGHT: Page three.

8 A You know, the containment is what's throwing me  
9 off. I don't --

10 BY MR. WRIGHT:

11 Q Okay. Do you -- do you deny telling the federal  
12 prosecutors that?

13 A If they got it there, no, I can't deny it, I  
14 would have said it. But I don't --

15 Q Okay. Well, would that be in a -- in a  
16 discussion about the -- the costs of procedures, cost  
17 containment discussion?

18 A It would have been for the anesthesia part of  
19 it, yes, uh-huh.

20 Q Okay. I think you also, on direct examination,  
21 must respond to her various anesthesiology -- your charts for  
22 anesthesia were gone through, right?

23 A Correct.

24 Q And on there there were some checks for what I  
25 call vital signs, right?



1 A Correct.

2 Q Okay. And I think you said on direct in here  
3 for the prosecutors that Dr. Desai told you to put those  
4 checks down after, long after the procedure was over.

5 A Dr. D and Dr. -- I mean Ann Lobianbo, that's --  
6 it was the instructions that the chart was supposed to look  
7 like it was a full 30 or 31 minutes, yes.

8 Q Okay. Do you recall telling the federal  
9 prosecutors that you made the vital signs match the anesthesia  
10 time and that at no -- no time did anyone tell you to do that?

11 A No, I don't.

12 Q Okay. Let's see if this refreshes your  
13 recollection. Page two. Read that to yourself.

14 A I don't recall saying that, no, I don't.

15 Q Is it -- is it -- is what you told the federal  
16 prosecutors correct?

17 A To the best of my knowledge, yes.

18 Q Do you know Melvin Hawkins?

19 A Yes, I remember him.

20 Q What was he?

21 A A surgical tech.

22 Q Worked there for a number of years?

23 A Yes.

24 Q Nice guy?

25 A He was always busy working.

1 Q Nice?

2 A Always nice to me.

3 Q That's all I was asking.

4 A Oh, okay.

5 Q Want to go to your testimony here on direct  
6 examination about whether or not you and Ron Lakeman, when and  
7 for what reasons you all might change rooms. Okay?

8 A Okay.

9 Q And at the clinic there's two procedure rooms,  
10 right?

11 A Correct.

12 Q Each one -- well, sometimes there was a third  
13 CRNA, right?

14 A Correct.

15 Q Infrequent?

16 A Infrequent.

17 Q Okay. And if there was a third, then there  
18 could be more what?

19 A Going between -- or going -- making a circle,  
20 going around between rooms and to the recovery area and --

21 Q Okay.

22 A -- going back into the other room.

23 Q Well, on the days in question here, July 25th,  
24 September 21, you're aware there were two CRNAs and not three,  
25 right?

1           A     The July date you're talking about I was out of  
2 state, so I don't recall that.

3           Q     Okay. I mean, did you -- did you see it like in  
4 the indictment and in the discovery?

5           A     Yes.

6           Q     I mean, you were actually charged for the July  
7 21 date, correct?

8           A     I saw that.

9           Q     Okay. I mean it made no difference to the  
10 district attorney you were out of state.

11           MR. STAUDAHER: Objection, Your Honor.

12           THE COURT: That's sustained.

13 BY MR. WRIGHT:

14           Q     It made no difference to the grand jury that you  
15 were out of state and had nothing --

16           MR. STAUDAHER: Objection, Your Honor.

17 BY MR. WRIGHT:

18           Q     -- to do with it.

19           THE COURT: That -- that's -- Mr. Wright, that's  
20 sustained as to the form of that question, whether it made a  
21 difference.

22 BY MR. WRIGHT:

23           Q     Did it make any difference to the grand jury in  
24 returning the indictment --

25           THE COURT: Mr. Wright, I sustained that --

1 MR. STAUDAHER: Objection, Your Honor.

2 THE COURT: -- question as to the form of what made a  
3 difference to the grand jury. You can ask him, you were  
4 indicted for this even though you weren't in the state or you  
5 weren't in the state on this date or whatever. But what the  
6 prosecutors thought or what the grand jury may have thought is  
7 not the subject a fair question to this witness.

8 MR. WRIGHT: Okay. I'm sorry to have kept repeating  
9 that. I thought it was my phraseology that was off.

10 BY MR. WRIGHT:

11 Q You were indicted for the July 21 incident.

12 A Yes.

13 Q Okay, now --

14 MR. STAUDAHER: Your Honor, I believe it's July 25th,  
15 just for the record.

16 THE COURT: I'm sorry, I couldn't --

17 MR. WRIGHT: July 25th, I misspoke.

18 THE COURT: All right. July 25th.

19 BY MR. WRIGHT:

20 Q Thank you. When there's two CRNAs on duty.  
21 Okay?

22 A Okay.

23 Q Two procedure rooms going, at -- at the clinic,  
24 seven a.m., two physicians there, gastroenterologists start  
25 performing procedures. Okay?

1 A Okay.

2 Q You -- you stay in one room except for certain  
3 circumstances, correct?

4 A Correct.

5 Q And if -- if it was you and Ron Lakeman working  
6 on a given day, he'd be in one room, you'd be in a different  
7 room.

8 A Correct.

9 Q And the propofol always stayed in the same room,  
10 correct?

11 A Yes.

12 Q And the needles and syringes stayed in a  
13 separate room.

14 A Correct.

15 Q And all of the supplies for that matter that the  
16 CRNA used stays in each room and is not taken to a different  
17 room.

18 A Correct.

19 Q And that was the way it had been the entire time  
20 you were working there when there were two rooms, right?

21 A Correct.

22 Q And there was absolutely no need for propofol,  
23 needles, syringes, supplies to be sent back and forth from  
24 room to room.

25 A Each room had -- had an abundant supply, yes.

1 Q Okay. And when you are treating a patient, by  
2 treating I mean providing anesthesia to a patient.

3 A Okay.

4 Q A patient rolls in, you've either already talked  
5 to the patient outside or you're talking to the patient for  
6 the first time in the procedure room. Okay?

7 A Correct.

8 Q Most of the time you have a file there that has  
9 like a history and physical on it, correct?

10 A Correct.

11 Q Because the -- the patients don't just show up  
12 for their endoscopy, for their procedure and that's their  
13 first time ever at the place, right?

14 A Not unless it's an emergency or something.

15 Q Okay. But your -- your normal routine  
16 screening, the patient has already been to the gastro site,  
17 the doctor's office, and has been interviewed, a history and  
18 physical taken, a determination that you're going to have a  
19 colonoscopy made and then it's scheduled for a later date,  
20 right?

21 A Correct.

22 Q Okay. And then when that patient comes rolling  
23 in, you've got that history and physical if -- if there -- if  
24 -- we're following the normal procedure if it's there,  
25 correct?

1 A If it was there, yes, uh-huh.

2 Q Okay. And it was normally there.

3 A I would say most of the time. There were times  
4 that there were none.

5 Q Okay. Could have been an emergency.

6 A Could have been.

7 Q Okay. But if -- if -- if it's already there you  
8 look at it and take advantage of the records.

9 A Absolutely, yes.

10 Q Okay. And if it's not there you ask the patient  
11 various questions.

12 A Yes.

13 Q Okay. About bad past experiences, are you  
14 allergic to eggs. I mean, there's standard questions you want  
15 to know to make sure it's safe for them to undergo the  
16 anesthesia.

17 A Yes, absolutely.

18 Q You would ask them those questions.

19 A Yes.

20 Q Okay. And then once -- once you're satisfied  
21 from the history or physical or talking to them, and it's your  
22 determination to go forward, the procedure starts. And by the  
23 procedure I'm talking about the start time being -- let's see,  
24 the doctor's there, he's going to perform the colonoscopy,  
25 right?

1           A     Yes.

2           Q     Okay.  The -- there's a nurse present, a  
3 registered nurse, correct?

4           A     Correct.

5           Q     There's also a tech present, correct?

6           A     Correct.

7           Q     And then you're the fourth person.

8           A     Correct.

9           Q     That's assuming everything's there ready, the  
10 tech's ready, the equipment's ready, the nurse is ready, the  
11 doctor's there ready, you inject the anesthesia, right?

12          A     Correct.

13          Q     Okay.  At any time when the patient goes to  
14 sleep and patient remains asleep or close to asleep until the  
15 colonoscopy, the procedure, whether it's an endoscopy or a  
16 colonoscopy, until it's done, right?

17          A     Correct.

18          Q     Okay.  And the scope was withdrawn from the  
19 mouth or the other end.

20          A     Right.

21          Q     And then that's like the end of the medical  
22 procedure.

23          A     For the doctor, yes, other than doing --  
24 completing the computer part of it.

25          Q     Okay.  That's entering in the things.  There's



1 photographs taken --

2 A Right.

3 Q -- of inside and everything else.

4 A Correct.

5 Q Okay. And then you are -- you are caring for  
6 the patient who's quickly coming to.

7 A Correct.

8 Q And at the time the patient's got that little  
9 thing on your -- your finger for --

10 A Pulse oximeter.

11 Q Yeah and it's got blood pressure --

12 A Correct.

13 Q -- heartbeat, heart rhythm --

14 A Right.

15 Q -- all those things are hooked up to computers  
16 and things.

17 A Oxygen, uh-huh.

18 Q Right. And you're watching all of that to make  
19 sure everything's safe.

20 A Correct.

21 Q Okay. And so when -- when the symptoms are all  
22 -- the patient is healthy and is going to be -- heart rate  
23 good, O2 good, everything A-OK, out to the recovery room,  
24 right?

25 A Correct.

1 Q Until -- from the time you inject the anesthesia  
2 to where you have made the determination the patient is  
3 comfortable enough and it's safe enough to move the patient to  
4 the recovery room, have you left the patient's side?

5 A No, I wouldn't have left the side of the  
6 patient.

7 Q Okay. So that -- and you wouldn't because  
8 you're the anesthetist and you're the one monitoring  
9 everything for the anesthesia portion of it.

10 A Correct.

11 Q And if anything goes wrong you need to be right  
12 there.

13 A Absolutely.

14 Q So if you had to go to the bathroom or something  
15 you wouldn't just say time out, doc, and walk out?

16 A No.

17 Q Okay. And you wouldn't say I think I got to go  
18 over to the other procedure room and see how Ron's doing.

19 A No.

20 Q Okay. Never, never, never would you ever leave  
21 from starting until safely complete.

22 A No, I would not leave a patient, it's  
23 abandonment.

24 Q And you don't know -- I mean and it -- that's  
25 the same for every CRNA to your knowledge.

1 A To my knowledge.

2 Q Now, the only times you may go to the -- a  
3 different procedure room and like to go over and do a  
4 procedure in Ron Lakeman's room. Okay?

5 A Okay.

6 Q Would be first, lunch breaks.

7 A Correct.

8 Q Okay. And that -- they start at like seven in  
9 the morning and then there were staggered lunches for the two  
10 CRNAs.

11 A Correct.

12 Q Around 11?

13 A Probably around 11:30.

14 Q Okay. And then one CRNA would go to lunch.

15 A Correct.

16 Q And then come back half hour later and then like  
17 you would go to lunch for a half hour.

18 A Correct.

19 Q Okay. Now during those -- during those times,  
20 we're now down to one CRNA during the lunch hour.

21 A Correct.

22 Q Okay. And so at that time you may on occasion  
23 go over to -- I'll call it Ron Lakeman's room where he's the  
24 CRNA for the day and do a procedure, participate in a  
25 procedure in that room.

1           A     Right.

2           Q     Okay.  But you wouldn't be doing two procedures  
3 in one room.

4           A     Never.

5           Q     I mean two procedures in two different rooms at  
6 the same time.

7           A     No, never.

8           Q     Okay.  So when -- when there's evidence and  
9 testimony about this changing of rooms, it would be you  
10 completed fully a procedure in your room.  Okay?

11          A     Okay.

12          Q     Patient's safe, you can now leave bedside and  
13 then a doctor may be waiting because Ron Lakeman's at lunch  
14 and then you go over and you perform a complete procedure in  
15 Ron Lakeman's room.

16          A     That's correct.

17          Q     Okay.  And once again, even if Ron -- suppose  
18 Ron came back from lunch and you're halfway through the  
19 procedure.  You stay with the procedure.

20          A     You finish the patient, yes.

21          Q     Okay.  You don't just slap hands and take off.

22          A     No.

23          Q     Okay, full procedure.  And so then, when you  
24 complete a procedure there in Ron Lakeman's room, you may go  
25 back over and it's ready to start another one in the -- your

1 room.

2 A Correct.

3 Q Okay. And then Ron Lakeman comes back from  
4 lunch and you get to go to lunch and Ron may do the same type  
5 of changing.

6 A Sure.

7 Q Okay. And to your knowledge, recollection, you  
8 -- you would never, when you were changing rooms like that,  
9 you wouldn't carry the propofol from your room over to Ron's  
10 room while he goes to lunch.

11 A No, I wouldn't.

12 Q Okay. So you wouldn't carry needles and  
13 syringes.

14 A No.

15 Q And you don't carry them around in your pockets.

16 A No, I don't.

17 Q Everything is there in each room separately.

18 A Yes.

19 Q Okay. And so during the lunch hour there could  
20 be changing. And additionally, you said something about  
21 bathroom break.

22 A That would be the other one, yes.

23 Q Okay. Now a bathroom break, can you recall a  
24 specific time when that happened?

25 A No, I can't.

1 Q Okay. The -- I guess if some emergency came up  
2 you would go spell -- relieve Ron Lakeman, right?

3 A Okay.

4 Q But you -- if you did, you would have been done  
5 with your procedure.

6 A Yes.

7 Q Because you aren't going to leave the patient.

8 A No, I'm not.

9 Q Because Ron has to go to the bathroom.

10 A Right.

11 Q Okay. If anything, you're done and you may go  
12 relieve him just like a lunch hour type of proceeding.

13 A Exactly the same.

14 Q Meaning, you would -- if he really had to go for  
15 whatever reason, you would go do a procedure in that room.

16 A Yes.

17 Q But that -- that is if it ever happened, that is  
18 so infrequent that you have absolutely no recollection of  
19 anything like that ever occurring.

20 A I don't recall it, but, you know, it could have.

21 Q Okay, it's possible.

22 A Possible.

23 Q But you don't remember it?

24 A No, I don't.

25 THE COURT: Counsel, approach.

1 (Off-record bench conference.)

2 MR. WRIGHT: We're almost to lunch. We are at lunch.

3 THE COURT: Oh, okay. All right, ladies and  
4 gentlemen --

5 MR. WRIGHT: I'm done.

6 THE COURT: -- I guess we'll move into the lunch  
7 break then. Why don't we take until 1:15 for the lunch break.  
8 And before I excuse you, I must admonish you that you're not  
9 to discuss the case or anything relating to the case with each  
10 other or with anyone else. You're not to read, watch, listen  
11 to any reports of or commentaries on this case, any person or  
12 subject matter relating to the case. You're not to do any  
13 independent research by way of the Internet or any other  
14 medium. And please don't form or express an opinion on the  
15 case. You may place your notepads in your chairs. I saw  
16 maybe some of you have questions, if you want to hand them to  
17 the bailiff as you exit, that's fine.

18 (Jury recessed at 12:11 p.m.)

19 THE COURT: All right, Mr. Mathahs, you're excused  
20 for the lunch break. During the lunch break you're not to  
21 discuss your testimony with anyone who may be a witness in  
22 this case unless the prosecutors need to talk to you for any  
23 reason.

24 MR. CRISTALLI: I didn't know if counsel wanted him  
25 admonished about speaking about -- with his own counsel during

1 the break at all.

2 THE COURT: Right. Basically don't discuss your  
3 testimony. All right, sir, you're excused.

4 MR. WRIGHT: He -- he doesn't talk to the State or to  
5 us?

6 THE COURT: Right.

7 MR. WRIGHT: Oh, okay.

8 MS. WECKERLY: Okay. Yeah, I misunderstood -- I  
9 misheard you.

10 MR. CRISTALLI: Or -- or his attorney.

11 MR. WRIGHT: Right, right, that's fine. Yes.

12 THE COURT: So, sir, you're excused. You're free to  
13 leave for the break. 1:15 is when we'll be back.

14 Did you get any new questions? All right. I've got  
15 six sheets up here of pending questions and if -- I'm sorry?  
16 I'm just going to leave them up here and then if you folks  
17 want to look at them before you leave for lunch and when you  
18 get back from lunch, you can do that. Is there anything we  
19 need to put on the record before we take our lunch break?

20 MR. WRIGHT: No, Your Honor.

21 THE COURT: All right.

22 MS. WECKERLY: Just -- I would like to put one thing  
23 on the record.

24 THE COURT: All right. Sir, can we have the door  
25 shut? Thanks.



1 MS. WECKERLY: I just want the record to be clear  
2 when we took the break and discussed that Mr. -- that the  
3 State's opinion was Mr. Mathahs was in breach of his agreement  
4 with the State, his attorney -- neither his attorneys nor the  
5 State's attorneys nor the defense counsel informed him that  
6 the State considered him in breach, so there couldn't have  
7 been any influence on his testimony.

8 MR. WRIGHT: Not to my knowledge.

9 THE COURT: Right. I mean, I didn't see anyone  
10 inform him. The record's clear the Court admonished his  
11 lawyers not to inform him and no one else left the room.

12 MS. WECKERLY: Thank you.

13 MR. CRISTALLI: Well, I can only speak for myself, I  
14 didn't inform him. I don't know what anybody else did or  
15 didn't do.

16 THE COURT: Right. And like I said, I didn't see  
17 anyone else leave the room except for Mr. Mathahs and his  
18 attorneys. They were admonished not to inform him, so we have  
19 to assume that they didn't.

20 MS. WECKERLY: Correct.

21 THE COURT: Nothing really changed --

22 MS. WECKERLY: No.

23 THE COURT: -- in his testimony from the break until  
24 when he came back, so. And then I'd ask the defense when  
25 you're done with the questions just to put them back up here

1 and State, you can look at them now or at the break.

2 Just scheduling, Mr. Staudaher, what do you -- I'm  
3 going to let you do redirect before we do the juror questions.  
4 What do you anticipate for redirect?

5 MR. STAUDAHER: Probably -- it could be an hour, I  
6 would think.

7 THE COURT: Okay, all right. Go to lunch.

8 (Court recessed at 12:14 p.m. until 1:18 p.m.)

9 (Outside the presence of the jury.)

10 THE COURT: For the record, we had six pages of juror  
11 questions up here. Did everyone have a chance to look at the  
12 juror questions?

13 MR. STAUDAHER: Yes.

14 MR. WRIGHT: Yes.

15 THE COURT: Mr. Santacroce?

16 MR. SANTACROCE: Yes.

17 THE COURT: Any objection to any of these juror  
18 questions?

19 MR. WRIGHT: No.

20 MR. STAUDAHER: No, Your Honor.

21 THE COURT: All right, then. After redirect I'll be  
22 asking the juror questions. Are we ready to start?

23 MR. STAUDAHER: Yes, Your Honor.

24 THE COURT: Mr. Mathahs, come back up to the witness  
25 stand.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

(Jury reconvened at 1:21 p.m.)

THE COURT: All right. Court is now back in session.  
Mr. Staudaher, you may begin your redirect examination.

MR. STAUDAHER: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MR. STAUDAHER:

Q Mr. Mathahs, I want to go through a couple of things with you. Before we do, I'd like if you would to step down from the stand and I'll ask you about this chart. You were asked by Mr. Wright about moving from room to room and you said sometimes a bathroom break, if I'm recalling correctly, and also lunch. Is that fair?

A Correct.

Q Just so you're oriented. This is the 21st of September, 2007 and we're talking about two different rooms. As you can see here, you're in this room and Mr. Lakeman is in this other room.

A Correct.

Q If you look around this time frame here, right around the noon hour, between 11 something and one or 12 something, you can see Mr. Lakeman appears in your room.

A Right.

Q Does that look like it was probably the lunch period or the lunchtime, around the noon hour, give o take?

A I would think so.

1           Q     The same thing.  If you look down here we can  
2 see that you are in this other room, Mr. Lakeman's room,  
3 around the same general time, around the noon hour.

4           A     Right.

5           Q     Does it seem like the lunch hour period down  
6 here?

7           A     Yes.

8           Q     So we've got two windows, two periods of time  
9 when both of you are in each other's room around the noon  
10 hour; is that correct?

11          A     Correct.

12          Q     And if I understand you correctly, that would be  
13 a traditional lunch break or lunch relief.

14          A     Correct.

15          Q     Now in addition to those two times, though, that  
16 we're talking about, I want to make sure we have them correct,  
17 you're here, right here, this is the point where you were in  
18 the room for the lunch break and Mr. Lakeman's in your room  
19 for the lunch break.  If you go up here, back up to right  
20 around the 10:00 hour, you see that your name appears on a  
21 patient on that particular record.

22          A     Yes.

23          Q     So that's in addition to the lunch break.

24          A     Yes.

25          Q     So you actually -- and this is a summary of some

1 records that I've shown you and admitted. Okay? But just  
2 acknowledge that this is accurate, that you are in Mr.  
3 Lakeman's room in the morning time, which is not associated  
4 with the lunch relief.

5 A Yes.

6 Q Go ahead and have a seat, if you would.

7 A (Witness complies.)

8 Q Now, the patient that was referenced here and on  
9 the record here is number 18. I'm going to show you the  
10 original file. So I'm not going to display this for the jury  
11 because it's got names and so forth. We've got a redacted  
12 version if we need to. But because signatures and so forth  
13 sometimes are difficult to see when they're on a copy, I  
14 wanted you to see the original just to make sure.

15 A Okay.

16 Q This patient here, and you don't need to say the  
17 name, but I want to go to the anesthesia record for the 21st.

18 MR. STAUDAHER: And this, for the record, that we're  
19 look at is 47R. All of these, my understanding are stipulated  
20 to admission, the patient records.

21 THE COURT: Okay. So it's actually been admitted  
22 with the redactions as 47R?

23 MR. STAUDAHER: And it's also been admitted as  
24 Court's exhibit, this particular one.

25 THE COURT: Okay. Which is the original that doesn't

1 have the redactions.

2 MR. STAUDAHER: Correct.

3 THE COURT: Okay.

4 MR. STAUDAHER: This one corresponds to what has been  
5 designated as a redacted copy of patient 18.

6 THE COURT: Okay.

7 BY MR. STAUDAHER:

8 Q So I'm going to go to the anesthesia record, if  
9 you would. Do you see this anesthesia record?

10 A Yes.

11 Q Now, this is the original in pen, correct?

12 A Correct.

13 Q Does that bear your signature?

14 A Yes.

15 Q Any question that that's your signature?

16 A No.

17 Q So if this record comes from the patient down  
18 here in the other room at around the 10:00 hour, somewhere in  
19 there, and we already know the times on these things are  
20 false, correct?

21 A Right.

22 Q Not even close to real.

23 MR. SANTACROCE: I'm going to object to that. That  
24 misstates the testimony.

25 THE COURT: That's sustained.

1 MR. STAUDAHER: Well, I'm asking, are the times  
2 false.

3 MR. SANTACROCE: I'm going to object. Foundation.  
4 Which time?

5 THE COURT: For the record, Mr. Staudaher, for  
6 clarity, you're talking about the times on that exhibit?

7 MR. STAUDAHER: No. I'm actually talking about the  
8 anesthesia times that have been documented for the entire day.

9 THE COURT: Okay. All right.

10 MR. SANTACROCE: It misstates the testimony.

11 THE COURT: Well, he asked him a question, Mr.  
12 Santacroce. I sustained it as to the attorney kind of  
13 editorializing and prefacing. So state your question and then  
14 he can answer it if he can.

15 BY MR. STAUDAHER:

16 Q The times, and just so we're clear where I'm at,  
17 I'm talking about the anesthesia times that you put down on  
18 the record for that entire day for each patient that you did.  
19 These times right here on the anesthesia record.

20 A Ending time would be wrong, yes.

21 Q What about the beginning time?

22 A Should be correct, I would think.

23 Q You would think? Well, what would be your  
24 traditional way of putting down the times? Would you start  
25 with what you believe was the accurate time and then just put

1 it out 30 minutes or 32 minutes, 31 minutes?

2 A Yes.

3 Q So it's your testimony that this 10:15 period of  
4 time should be an accurate time?

5 A Should be as accurate as I can recall it.

6 MR. SANTACROCE: I can't hear the witness.

7 THE COURT: Sir, I know you're turning away from the  
8 microphone. So try to speak into the microphone so everyone  
9 can hear you. And can you state your answer again.

10 A I said the starting time was as accurate as I  
11 can recall it would be. The ending time would probably be the  
12 one that was falsified.

13 BY MR. STAUDAHER:

14 Q Again, just so we're clear on the record, the  
15 vital signs for that entire time would have been also false;  
16 is that correct?

17 A Not the entire time, but as of when the  
18 procedure was finished it would have been, yes.

19 Q So at least there's false entries on this  
20 record.

21 A Yes.

22 Q Now, I want to go to the actual page which has  
23 the machine time. Do you see that?

24 A Yes.

25 Q Okay. So the machine time here says 10:13 as a



1 start and 10:23 as an end.

2 A Okay.

3 MR. SANTACROCE: I'm sorry. Do you have a Bates  
4 number on that?

5 MR. STAUDAHER: This is the original document. I  
6 don't have it Bates numbered.

7 MR. WRIGHT: Can we approach?

8 THE COURT: Yeah, you can go ahead and look at it.

9 BY MR. STAUDAHER:

10 Q So on this one it says, the machine time says  
11 10:13 and the actual end time of the procedure is 10:23.

12 A Correct.

13 Q So that's a couple minutes off, but it's kind of  
14 close, correct?

15 A Correct.

16 Q So during at least the window of, according to  
17 the machine, was the machine more accurate than your actual  
18 record, machine time?

19 A The ending time would have been. The beginning  
20 time -- sometimes the machines are off as well, but, you know.

21 Q But is the machine time literally the window of  
22 time that the patient's in the room?

23 A Yes, correct.

24 Q Okay. So from 10:13, according to this record,  
25 from 10:13 to 10:23 the patient is in the room?

1 A Correct.

2 Q And you're over there during that entire time  
3 because you wouldn't leave during a procedure.

4 A I would not.

5 Q I'm just going to go through some of these.  
6 We're looking here at 47A, which also -- which is back in your  
7 room. Okay? So all the rest of these records are back in  
8 your room with the exception of the one that I just showed  
9 you. Okay?

10 A All right.

11 Q If we go to the anesthesia record, this one is  
12 in the afternoon at 2:15 to 2:47.

13 A Correct.

14 Q If we go to the machine time, and this one is in  
15 two pieces. Do you see that?

16 A Yes.

17 Q So 2:16 to 2:33.

18 A Correct.

19 Q So that kind of matches up with what you said  
20 before, correct, 2:15 to 2:47?

21 A Correct.

22 Q End time's more than it should be.

23 A Yes.

24 Q 47B, see the anesthesia time starts at what?

25 A Ten.

1 Q And goes to 10:33?

2 A Thirty-three.

3 Q Now, the anesthesia or the machine record goes  
4 from what?

5 A 10:05.

6 Q To 10 --

7 A Sixteen.

8 Q Okay. 10:05 to 10:16. Now, if I look back on  
9 the machine time, which is 47R, that machine time starts at  
10 10:13 and ends at 10:23.

11 A Uh-huh.

12 Q The machine times show that you were in two  
13 rooms at the same time. Can you explain that?

14 A Let's start over. You've lost me somewhere.

15 Q I want you to look at these two records here.  
16 Look at the taped times because we know at least the start  
17 times and stop times of those were accurate, correct?

18 A Okay.

19 Q So in 47R the machine time says you're there  
20 from 10:13 to 10:23.

21 A Okay.

22 Q In Exhibit 47B it says you're there from 10:05  
23 to 10:16.

24 A Okay. But if it's a different room the machines  
25 are not set the same.

1 Q Okay. So the times on the machines could be off  
2 by a few minutes?

3 A I don't know how many, but they certainly were  
4 off.

5 Q Have you ever been in a situation where you  
6 could actually physically be in both rooms at the same time?

7 A Physically? No. Impossible.

8 Q Would there ever be a time when you would be  
9 monitoring two patients at the exact same time?

10 A Never.

11 Q So those can't be right. You couldn't --

12 A Cannot.

13 Q -- those times even on the machine, when  
14 compared one to another, one room to another, couldn't be  
15 correct.

16 A Accurate. Could not be accurate.

17 Q Just to, as we go through these, I want to  
18 finish off the patients. And these are the infected patients  
19 that I'm showing you. Again, this is Mr. Rubino's chart.  
20 This is 47C. Do you see that your anesthesia time says 9:45  
21 to 10:17.

22 A Correct.

23 Q So that would, the 10:17 would be an overlap,  
24 but you said that that one wasn't correct.

25 A That's not right.

1 Q If we look at the machine time, it says 10:49 to  
2 -- or 9:49, rather, to 10:00.

3 A Correct.

4 Q So even though your start time here says 9:49,  
5 your anesthesia record says 9:45.

6 A Okay.

7 Q So it's off still.

8 A Could be. Might have seen the patient before  
9 they came in the room too, and that would have been a start  
10 time for us. I'm not sure. I don't recall all of that.

11 Q You know how many patients you did that day,  
12 right? You can look in the chart.

13 A I don't know.

14 Q Was it not your testimony earlier that you  
15 pretty much were in the room, you didn't have time to go out  
16 and talk to patients?

17 A Ordinarily, we didn't, yeah.

18 Q I'm showing you Ms. Orialanes' [phonetic] chart,  
19 which is 47D. This one probably would have been later in the  
20 morning. It says 11:45, according to your anesthesia record,  
21 to 12:18.

22 A All right.

23 Q Do you see that?

24 A Yes.

25 Q The machine time says 11:44 to 11:56.

1 A Okay.

2 Q So in that instance, 11:44 is close to 11:45,  
3 correct?

4 A Correct.

5 Q But the end time is wrong again.

6 A Correct.

7 Q Gwendolyn Martin, if we look at the anesthesia  
8 record, it's 1:15 to 1:47. Do you see that?

9 A Yes.

10 Q The machine time is 1:12 to 1:23.

11 A Okay.

12 Q 47F, which is Rodolfo Meana, the anesthesia  
13 record has 10:30 to 11:03.

14 A Correct.

15 Q If we go to the machine time, it says you  
16 started at 10:24 and went to 10:35.

17 A Okay.

18 Q Does that look right?

19 A Yeah.

20 Q So 10:24 and your start time here says 10:30. I  
21 mean, it's off by six minutes.

22 A We were not, you know, we didn't see the times  
23 on the machines. We were going by a watch or a clock or  
24 something, you know. So there was a variation of times.

25 Q So is it fair to say that of all the times we're

1 talking about here, and clearly the ones you have wrote down  
2 in the anesthesia record are not right. Fair?

3 A Pretty fair, yes.

4 Q We know that the machine times in the room  
5 aren't even accurate based on what we just went through.

6 A Correct.

7 Q And even the variations, some people use clocks,  
8 some people use different things. So we're talking about some  
9 variation.

10 A Yes, totally.

11 Q So even in the records there where it showed  
12 that it looked like you were in two rooms at the same time,  
13 you would acknowledge that that couldn't happen.

14 A Could not have happened, no.

15 Q So if it shows you're in the same room at each  
16 time, what does that mean?

17 A Start over. I'm sorry.

18 Q If it shows you're in the same room at each  
19 time, what does that mean, ultimately, about the times?

20 A They're off. They're inaccurate.

21 Q Now, let me go in kind of a backwards form here  
22 from where we went. You said you wouldn't leave a patient's  
23 room because it would be considered patient abandonment; is  
24 that right?

25 A Correct, yes.

1 Q If there was an emergency, somebody passes out  
2 and you're in the middle of a procedure and it's just two of  
3 you there, how would that be handled?

4 A You mean one of my patients passed out or what?

5 Q No. Two CRNAs in two separate rooms, bathroom  
6 emergency, emergency of some kind which either takes that  
7 other anesthetist out of the room or incapacitates them. You  
8 with me?

9 A Okay.

10 Q You're dealing with your patient. Now there's a  
11 patient who's left completely unattended. How would you  
12 handle that situation?

13 A Probably call a physician to come over and  
14 handle the situation or if the nurses couldn't handle it, if  
15 it was in the recovery area. I mean, I just didn't leave the  
16 room with the patient under anesthesia.

17 Q Okay. So at least if there was a situation  
18 where you had to run from one to the other in a situation like  
19 that, you would employ the physician to watch the patient?

20 A Yes.

21 Q Now, I'm going to talk to you about a few things  
22 that you said on direct examination and that you said on  
23 cross-examination. Okay? Because ultimately, we're just here  
24 for the truth. All right?

25 A That's all I want to give.



1 Q I know that that's -- we've had an agreement to  
2 tell the truth and I just want to make sure that I understand  
3 some of the things you said and some of the things in direct  
4 and cross to me and I'm going to ask you about them.

5 A Okay.

6 Q Didn't seem to match up all that well.

7 A Okay.

8 Q So I'm just going to ask about them and if you  
9 can, try to explain what is reality. You said that you were  
10 really cautious when you did your work. Fair?

11 A Yes.

12 Q And that you used, I think if I got the term  
13 right, you did your sort of procedures as aseptically as you  
14 possibly could.

15 A Correct.

16 Q Used alcohol pads on the bottle and all that  
17 stuff.

18 A Yes.

19 Q Now, you said before also that Desai would give  
20 you a hard time about using too many alcohol pads, right?

21 A Well, that was cleaning the skin for starting an  
22 IV and all those types of things, yes.

23 Q So he wouldn't want you to clean the skin?

24 A No, he didn't say not to clean it. But, I mean,  
25 it was, you know, cautious, watch what we were doing about

1 using too many.

2 Q You mentioned that when you were doing this  
3 propofol -- I mean, you're going back in the bottle and you're  
4 using propofol from one patient that's been used on a patient  
5 on an additional patient.

6 A Right.

7 Q Are we clear? This isn't within the same  
8 patient. You got me?

9 A Yeah.

10 Q If I have it correct, and let me make sure I've  
11 got this right here, you believed, if I understand correctly,  
12 that that was appropriate to do, to use propofol from one  
13 patient to the next. Is that fair?

14 A Are you talking about the bottle?

15 Q The bottle.

16 A Yes.

17 Q Okay. And why would that be appropriate to do?

18 A Why would it be appropriate to do? It was a  
19 multi-dose vial, for one thing.

20 Q Propofol is a multiple-dose vial?

21 A Yes.

22 Q Have you -- how many times have you used  
23 propofol in your career?

24 A Many, many, many.

25 Q Have you ever read the package inserts?

1           A     Well, I know it's been changed now, but I don't  
2 think it was at that time.

3           Q     Is it your testimony that back in 2007 that the  
4 bottles and the propofol inserts all said that this was  
5 multiple use?

6           A     I'm not sure if they did or they didn't. I  
7 can't answer for sure.

8           Q     When you were in California was there ever --  
9 did you ever use medication from one patient like that, like  
10 propofol, we'll talk about that since that's the issue here,  
11 did you ever use a bottle of propofol on one patient and then  
12 turn around and use that same bottle that you had entered and  
13 used on one patient on the next patient?

14          A     No.

15          Q     I said 33 years because I thought you said that  
16 initially, but 32 years.

17          A     No, 33 is right.

18          Q     Thirty-three. So in 33 years you never did  
19 that?

20          A     We didn't use propofol the whole time, but no, I  
21 did not. When I used propofol or any of them I did not go  
22 from using it on one patient and then into another patient,  
23 no.

24          Q     You worked with a group of 12 other CRNAs?

25          A     Correct.

1 Q Were they the same 12 the entire 30 plus years?

2 A No. It changed a few of them along the way once  
3 in awhile.

4 Q So there were more than that ultimately?

5 A Yeah. I think maybe 14, 15, 16, somewhere in  
6 there.

7 Q It was your group, you ran it?

8 A Well, I started the group, yes. I mean, I was  
9 not really an overseer, but I put it together and we worked  
10 as, you know, with each other trying to just share everything  
11 that we could.

12 Q Did you see anybody else during the entire time  
13 you were in California, other colleagues of yours even just  
14 within your group, ever do what I described, use a bottle of  
15 propofol or a single-use item like that and move it from one  
16 patient to another?

17 A Not that I recall, no.

18 Q Is that anything that you would have condoned at  
19 the time?

20 A No.

21 Q Why not?

22 A It's just not practice, it's just --as aseptic  
23 and as cautious as you can be, it could still be a problem.

24 Q Why would it be a problem, potentially?

25 A Like cross-contamination it could have been, you

1 know, from one to the next, one patient to another.

2 Q So there is a risk of that?

3 A There is a risk, sure. I don't know how big a  
4 risk, but I know there is a risk, yes.

5 Q Now, you had mentioned that at least in Mr.  
6 Wright's questioning of you that there was a change in the  
7 bottles. One went from an ampule, which is snap off the glass  
8 neck or whatever to gain access to the propofol.

9 A Correct.

10 Q And then another bottle which was an enclosed  
11 sealed container with a rubber stopper you had to pierce.

12 A Correct.

13 Q And you said that that rubber stopper was under,  
14 I think, negative pressure, you believed.

15 A Correct.

16 Q So what happens to a syringe that has a needle  
17 attached to it that has any propofol still in it when you  
18 puncture a brand new bottle of propofol?

19 A If there's anything in the syringe it would get  
20 drawn into the vial or bottle.

21 Q It would eventually pull it into that bottle,  
22 wouldn't it?

23 A Yes.

24 Q So if the syringe had been used on a patient,  
25 let's say there was a -- you said you would take a remnant

1 bottle from one patient to the next and then you would use  
2 that on a patient. Let's just say for some reason because of  
3 a breach, whatever, that that bottle is contaminated, that  
4 partial bottle is contaminated. Are you with me?

5 A Yes.

6 Q So you go to start the anesthesia on the next  
7 patient. In a situation like that with remnant bottle, let me  
8 ask you that first of all, would you start with the remnant  
9 bottle on that patient or would you start with a new bottle  
10 and then just use the remnant one to augment your dosing if  
11 you needed it?

12 A You're talking about if I would stay in the same  
13 room?

14 Q You're in the same room the whole time.

15 A Okay. All of the bottles would be used up, you  
16 know, one would be used before you'd start another one.

17 Q Okay. So we've got a partial bottle in one room  
18 that's been used on a patient. You take that partial bottle  
19 and we go to use it on the next patient, draw up propofol and  
20 let's, for argument sake, just say that that bottle for some  
21 reason is contaminated.

22 A Okay.

23 Q You don't have enough to get through that next  
24 patient out of that bottle. Okay?

25 A Okay.

1 Q You go into a new bottle, brand new bottle.  
2 What's going to happen to what's in that syringe which now  
3 contains contaminated propofol?

4 A The syringe, like I said, would be -- I think  
5 would be void of any propofol because I'd be putting on a new  
6 needle. But I don't know. I suppose there's a chance that it  
7 could have -- something got into the needle and into the vial.

8 Q Did you say that the bottle, the new bottle is  
9 under negative pressure?

10 A Yeah.

11 Q So -- and you said that it would draw what was  
12 in the needle syringe combination into the bottle because of  
13 that negative pressure.

14 A Unless you were holding back on the plunger,  
15 yeah.

16 Q Okay. So it would be a fight between you  
17 pulling back on the plunger and the bottle pulling what's in  
18 the plunger back into the bottle.

19 A Correct, opposite way, yeah.

20 Q You'd have to be really diligent to have more --  
21 well, as soon as you release the pressure on the plunger,  
22 isn't the plunger going to go into the bottle?

23 A It depends if -- like he was asking if there was  
24 Lidocaine in it, then it would not be. You'd be drawing back  
25 against that.

1           Q     Okay.  But if we have a bottle that's already  
2 under negative pressure and let's say you're really good and  
3 you put the needle in without any of that being sucked into  
4 the bottle and you put more negative pressure to draw out  
5 propofol, does that make the negative pressure in the bottle,  
6 as you've withdrawn it, even greater?  You've removed volume  
7 from a fixed space, correct?

8           A     Possibly could, I'm not sure.

9           Q     You're aware there's a risk in doing all of  
10 that, correct?

11          A     Yes, absolutely.

12          Q     And that's one of the reasons why you never did  
13 it in California.  Is that fair?

14          A     Right.

15          Q     So you didn't do it in 32 years in California  
16 because of that very problem.

17          A     Right.

18          Q     You did it here, though, in Las Vegas.

19          A     Yes.

20          Q     At any point during your time here in Las Vegas,  
21 did you believe that that risk was eliminated, that there  
22 would be no risk at all?

23          A     I can't imagine that the risk could be totally  
24 eliminated, no.  I mean, you know, you're as careful and  
25 aseptic as you possibly can be, but there still could be a



1 risk.

2 Q So here's one of those parts that I was going to  
3 ask you about, about something you said in cross versus  
4 something you said on direct. That is what I understood you  
5 to say on direct. In cross-examination, if I got it down  
6 right, you said that there was no chance that things could get  
7 into the syringe or bottle. Is that accurate or is the thing  
8 you just said accurate?

9 A I would said that no, something could get in  
10 there. You know, anything could happen.

11 Q Is it fair to say that using this negative  
12 pressure thing that you did would possibly minimize the risk  
13 but would not eliminate it?

14 A Minimize it, absolutely.

15 Q And as cautious as you are, you're aware that  
16 there is a risk of contamination from doing the practice of  
17 using propofol in a bottle like we described from one patient  
18 to the next.

19 A Yes.

20 Q Now, you mentioned that you did this needle  
21 changing thing, right?

22 A Correct.

23 Q And I think your testimony was that you never  
24 used a syringe that had been used on a patient from patient to  
25 patient.

1 A Right.

2 Q Did you acknowledge that at least on a patient,  
3 that you would reuse the same syringe on the bottle of  
4 propofol that you had?

5 A Yes.

6 Q So -- when we see the dosing on some of those  
7 patients, when it's, you know, 50 mg., 50 mg., 60, 40,  
8 whatever it is, multiple doses on virtually every patient,  
9 correct?

10 A Correct.

11 Q Because even though these are short procedures,  
12 the real time of the procedure is short, you're still having  
13 to give multiple doses. Is that fair?

14 A Correct.

15 Q So because you could only get the 10 cc  
16 syringes, you're going to have to at some point during  
17 virtually every procedure go back into the bottle of propofol,  
18 new or used, after you had actually contacted that syringe  
19 with the patient's bloodstream.

20 A Ordinarily, yes, if you're going to give more.

21 Q Virtually every one of these patients, correct?

22 A There were some that didn't, but most of the  
23 time, yes.

24 Q On your -- do you recall that there were out of  
25 60 patients in a day, even a handful that would just get less

1 than 10 cc's of propofol?

2 A Don't even know it would be a handful, but it  
3 would be minimum, sure. I mean, depends on age and their  
4 condition and all that type of thing.

5 Q But the vast majority would require more  
6 contacts with the bottle.

7 A Correct.

8 Q Now, you said that on direct examination  
9 initially that if Desai was in the room you wouldn't waste  
10 anything, at least that he could see. Is that fair?

11 A That's true.

12 Q You did mention that there were times when you  
13 would waste the propofol, you would squirt it into the  
14 container, you would throw it in the sharps container or  
15 something.

16 A Right.

17 Q That Desai would come around and look in the  
18 sharps container to see if you'd thrown away a syringe that  
19 had propofol in it or a bottle that had some still in it.

20 A Correct.

21 Q And you said he would yell at you if he found  
22 that there was a syringe or a bottle in that situation.

23 A Of being wasteful, yes.

24 Q When he saw that those bottles and syringes were  
25 in the sharps container on the occasions that he did, and I

1 know you tried to minimize that, but on those occasions, what  
2 would he yell at you?

3 A Of being wasteful and how much each bottle of  
4 propofol cost.

5 Q So is it fair to say that during these yelling  
6 periods that he was indicating that you should not waste that  
7 and use that on the next patient?

8 A I guess that's what he was referring to, sure.  
9 If there was enough there to use it, yeah.

10 Q Now, you were also asked some questions and I  
11 didn't -- I don't think I asked you these on direct, about the  
12 20 and 50 cc bottles. Do you remember that?

13 A Yes.

14 Q Started off with 20s and then later on you were  
15 getting the 50s.

16 A Right.

17 Q Once the 50s came in to play for you, which did  
18 you prefer to use?

19 A Twenties.

20 Q So if you had a choice between a 20 and a 50,  
21 would you use --

22 A I would have always used the 20 if we had them  
23 available. A lot of times they weren't available.

24 Q And why would that be?

25 A Because I just preferred using the smaller

1 amount because it would be -- not being wasteful, you don't  
2 have such a big bottle.

3 MR. STAUDAHER: State's Exhibit 45A, Your Honor. May  
4 I approach? Actually, I'll just display it now since they're  
5 stipulated to.

6 BY MR. STAUDAHER:

7 Q I'll show you the page from that exhibit which  
8 shows propofol 500 mg. Do you see those?

9 A I do.

10 Q Now, those would be the 50 cc bottles, right?

11 A Correct.

12 Q And this -- are you familiar with this form?

13 A I remember it, yes, from then.

14 Q It says propofol sign-out log.

15 A Correct.

16 Q If we go to the 21st and the 21st of September,  
17 2007. Do you see both of those there?

18 A Ye.

19 Q I'm going to go across to this signature line  
20 for the person accepting the medication. Do you see those  
21 signatures?

22 A Yes.

23 Q Are you familiar with them?

24 A I'm sorry?

25 Q Are you familiar with those signatures?

1 Q Okay. And you'd set up both of -- both of them  
2 even though you're only going to be working in one?

3 A Correct.

4 Q Okay. And that -- that would be supply --  
5 bottles of propofol, needles, syringes, Lidocaine?

6 A Lidocaine, alcohol, alcohol swabs, yeah,  
7 anything that would be pertinent. Suction catheters,  
8 whatever, oxygen masks and that type of thing.

9 Q Okay. Saline solution?

10 A It was probably there. I don't remember us, you  
11 know, having -- setting it up but --

12 Q Okay. Lidocaine is used how when you are using  
13 propofol to put a patient to sleep?

14 A It can be used, it can be mixed with propofol  
15 and some people claim that propofol by itself can cause a  
16 little irritation to the vein when it's injected. The  
17 Lidocaine is supposed to do away with that irritation.

18 Q Okay. And when -- did you use Lidocaine with  
19 propofol?

20 A Not all the time, rarely.

21 Q Okay. But if -- if you did use Lidocaine with  
22 propofol, okay?

23 A Yes.

24 Q Would the procedure be -- you take your 10 -- 10  
25 size syringe -- what is that, 10 --

1 A Ten milliliters.

2 Q -- 10-milliliter syringe and you decide you're  
3 going to use Lidocaine so that it doesn't sting the patient.  
4 Is that -- would that -- I mean does it like sting when it  
5 goes in?

6 A I've never had it sting on me but that's what  
7 they say, it stings, yes.

8 Q Okay. So if it does sting and a patient's  
9 sensitive and they don't want the propofol to sting and you're  
10 using Lidocaine, you would start with the brand new needle and  
11 syringe, right?

12 A Correct.

13 Q And you would first draw Lidocaine; is that  
14 correct?

15 A A cc.

16 Q Two cc's?

17 A One, one milliliter --

18 Q Okay.

19 A -- one cc.

20 Q So you would take one cc of Lidocaine and then  
21 you would take -- take -- fill up the syringe, nine remaining  
22 cc's with propofol?

23 A Correct.

24 Q Okay. So that the Lidocaine and propofol are  
25 mixed together?

1 A Correct.

2 Q Okay. And then that is injected into the  
3 patient?

4 A Correct.

5 Q Okay. And you would take the -- the --  
6 hypothetically, you would take a brand new needle and syringe,  
7 right?

8 A Yes.

9 Q And you would use it for the Lidocaine?

10 A Yes.

11 Q And then you would use it -- and is Lidocaine a  
12 single use or multi-use?

13 A Multi.

14 Q Okay. So the Lidocaine is a multi-use bottle,  
15 vial?

16 A Bottle.

17 Q Bottle, okay. A multi-use bottle meaning you're  
18 going to keep -- keep using it. It's not just going to be  
19 used one time and tossed?

20 A Correct.

21 Q Okay. So you would get Lidocaine and then use  
22 the same needle and syringe, go into the propofol bottle,  
23 correct?

24 A No. I would -- I would always change the  
25 needle. I never went from --



1 Q Oh, okay.

2 A -- one -- one vial to another without changing a  
3 needle.

4 Q Okay. Even -- even on -- even on the -- the  
5 Lidocaine, the hypothetical -- before we get to the re-dosing  
6 a patient --

7 A Right.

8 Q -- just starting out first time. The patient  
9 I'm going to give Lidocaine, propofol mix, go into the  
10 Lidocaine I have drawn one cc, right?

11 A Right.

12 Q Now I'm going to get propofol. Your practice  
13 was take off the needle --

14 A Put on a new one.

15 Q -- yeah. Same syringe, take off the needle, get  
16 a brand new needle --

17 A Correct.

18 Q -- put it on?

19 A Correct.

20 Q Okay. Take the old needle, throw it in the  
21 sharps container?

22 A Correct.

23 Q Okay. And now you have a new needle, new  
24 syringe, go into the propofol?

25 A Correct.

1 Q Okay. Draw the propofol. Do you -- are you  
2 going to then inject the patient or do you put on a new needle  
3 again?

4 A No, I inject with that needle.

5 Q Okay.

6 A Yeah.

7 Q The -- and that is the way you have been taught?

8 A That's the way I practiced. I mean, I just  
9 cautious --

10 Q Okay.

11 A -- and just that's the way I always practiced.

12 Q Okay. And you believe that to be aseptic and  
13 clean, sterile?

14 A As aseptic as it's possible, yes.

15 Q Okay. And so then you dose the patient, okay?

16 A Yes.

17 Q And a -- a determination is made, the procedures  
18 going along, propofol is fast acting and fast unacting.

19 A Right.

20 Q You think the patient needs another dose, right?

21 A Okay.

22 Q Okay. And under -- under that circumstance, you  
23 would have propofol vials still sitting there, correct?

24 A Correct.

25 Q And you'd have the needle and syringe from the

1 patient sitting there?

2 A Correct.

3 Q And you would take the needle and syringe and  
4 you'd take the needle off --

5 A Correct.

6 Q -- correct? Because that's the safe practice,  
7 the way you were --

8 A Correct.

9 Q -- you have always done it. Toss it in the  
10 sharps container, get out a brand new, clean, sterile needle,  
11 put it on and then re-enter the propofol vial --

12 A Make sure there's a negative pressure so you're  
13 not going to be getting anything into the needle, yes.

14 Q Okay. And when you -- and I'm speeding it up,  
15 but when you re-enter the propofol vial, it has a rubber stop  
16 -- a rubber top --

17 A Correct.

18 Q -- right? Where -- when you first opened it you  
19 took a sealed top off --

20 A Correct.

21 Q -- right?

22 A Metal.

23 Q Metal top. And then under it is this rubber  
24 membrane that the needle slides through?

25 A Correct.

1           Q     Okay.  And so even before going into that rubber  
2 membrane, you take a little swab in alcohol and you wipe that  
3 rubber membrane, right?

4           A     Correct.

5           Q     Okay.  And that's to keep out bacteria --

6           A     Bugs.

7           Q     -- germs, right?

8           A     Correct.

9           Q     Okay.  So when I'm talking about re-dosing, you  
10 have the syringe, you've got on your brand new needle and then  
11 you would take alcohol, wipe -- wipe off the top of the  
12 propofol bottle, go into it again and you would keep negative  
13 pressure.  Tell us in layman's terms, tell the jury what that  
14 means and why you were doing it.

15          A     It would be so that there would be no chance  
16 that anything that would be remaining in the syringe, if there  
17 was anything, could possibly get into the needle or into the  
18 propofol bottle.

19          Q     Okay.  And so by -- by making sure of negative  
20 pressure, what -- what do I physically do with the syringe?  
21 Do I push it a little bit?  Pull it back a little -- I mean --

22          A     Pull it back.  You'd be pulling the plunger  
23 back.

24          Q     Okay.  I pull the plunger back a little bit,  
25 correct?

1 A Correct, uh-huh.

2 Q Okay. Then enter it?

3 A Yes.

4 Q So that the pressure outside of the bottle is  
5 greater than the pressure inside the bottle?

6 A Correct, correct.

7 Q So that there -- if it isn't -- or maybe it's  
8 vice versa, I'm mixed up.

9 A I'm not sure, exactly.

10 Q In any event, you would do that each time,  
11 negative pressure, so that nothing in the needle and syringe  
12 any way could get into the propofol vial?

13 A Correct.

14 Q Was your -- or in the syringe. Not in the  
15 needle because you put on a new needle.

16 A Correct.

17 Q Okay. And then you re-dose. Okay. Now, moving  
18 on to part-time. You had retired again in 2002, 2003,  
19 sometime in 2005, went back, saw your daughter, back out to  
20 Las Vegas and you -- you agreed to come back part time?

21 A Actually, I think we went and spent two or three  
22 months down at an RV camp in Southern California in January,  
23 February and March, so that probably would have been, I don't  
24 know, somewhere in '05 and then spring of '06 before I ever --  
25 it would have been after April, I know, before I came back.

1 Q Okay. It would have been after April of --

2 A '06.

3 Q -- '06. Okay. And at that point your part-time  
4 work would be like -- like five days a week but you would just  
5 try to leave by noon?

6 A Yes, pretty much had to be out by noon.

7 Q Okay. And the -- that -- that schedule  
8 continued up through 2008 when the clinics closed.

9 A Well, in the fall -- let's see. '06, we were  
10 gone again in summer of '07 for a while and fall of '07 I --  
11 we left already I think the last part of September and didn't  
12 come back until late sometime in January of '08. So  
13 sporadically in and out during those -- those months in there.

14 Q Okay. You would leave for -- because you had  
15 worked a lot and you wanted some retirement, so you would take  
16 intermittent weeks off to go to California or back where  
17 family is?

18 A Well, we'd go back -- we have a boy that has a  
19 big church and a college in California and we'd go back. In  
20 '07 we helped open up the -- the new bookstore. We were there  
21 for almost four months that time.

22 Q And each -- each time when you returned you  
23 would go back -- when you got back to Las Vegas after your  
24 trips, you'd go back to work maintaining the part-time  
25 schedule.

1 A Correct.

2 Q Okay. And -- and that remained -- you were  
3 still working in 2008 until the clinics closed.

4 A Correct.

5 Q Okay. But before -- when you were working full  
6 time in 2002 -- pardon me, 2003, '04, into '05, clinics using  
7 all 20 -- 20s for propofol?

8 A Yes. That's all -- that's all we had at that  
9 time.

10 Q Okay. And then were -- were you at the clinic  
11 when 50s, I -- I call them, the bigger bottle, became  
12 available to the clinic?

13 A I think it was '05 when I came back they were  
14 there. I had no -- no voice in, you know, when -- when they  
15 came, how they came or whatever.

16 Q Okay. At one point you left, they were all 20s,  
17 came back there were 20s and 50s?

18 A Correct.

19 Q Okay. And 20s or 50s could be used based upon  
20 what was available or based upon the choice of the CRNA,  
21 correct?

22 A It was usually what was available or whatever  
23 the nurse had given us that day.

24 Q Okay. And the nurse would give you whether it  
25 was 20s or 50s, you'd get a flat -- a tray of propofol if

1 that's the amount she was giving you, correct?

2 A That's correct.

3 Q Okay. And at -- at the end of the day, say she  
4 gave you a tray with twenty-five 20s and at the end of the day  
5 there were -- you were -- you were all done, I'm at your  
6 full-time period of work --

7 A Correct.

8 Q -- okay. So that you're there like at the end  
9 of the day. If there's still seven full ones, vials of  
10 propofol and maybe one-half because it hadn't been completely  
11 used. Okay?

12 A Correct.

13 Q And all -- all the rest are used up and are  
14 tossed, correct?

15 A Correct.

16 Q And then the full ones are given back to the  
17 nurse for a return, correct?

18 A Correct.

19 Q The partial is tossed?

20 A Correct.

21 Q Okay. And you're -- you were aware that  
22 propofol has a, when opened, when opened shelf life, correct?

23 A Short, yes.

24 Q Okay. In other words, when I say when opened,  
25 does the bottles of propofol that are sealed with a metal cap



1 on it, those maybe will go bad at some point in storage. Did  
2 they have a use date on them? Do you know?

3 A Yes, they do have a date.

4 Q Okay. So they have a shelf life when they are  
5 sealed by which they must be used, right?

6 A Correct.

7 Q Okay. Now aside from that shelf life when  
8 they're sealed, when you get one and you're going to use it,  
9 vial of propofol, and you take the metal top off, right then  
10 and there removing the metal top, we -- we now have a when  
11 opened shelf like kick in, correct?

12 A I don't know if it's then or after you actually  
13 puncture the --

14 Q Oh, okay.

15 A -- the stopper, the rubber stopper because that  
16 -- it has a negative pressure in there and I think it would  
17 probably be at that point.

18 Q Okay. So it's -- you open it and then the first  
19 time you enter it --

20 A Correct.

21 Q -- it -- the negative pressure is then gone and  
22 it now has been opened and punctured one time?

23 A Correct.

24 Q Okay. And at that -- at that point, there is a  
25 time within which it must be used, correct?

1           A     Six hours, yes.

2           Q     Okay.  And -- and that six hours to use the  
3 vial, your understanding is comes from the fact that it  
4 doesn't have a preservative in it that makes it last any  
5 longer.

6           A     That's correct, it doesn't.

7           Q     Okay.  And other -- other -- some other  
8 multi-use things like Lidocaine, that's a multi-use bottle,  
9 right?

10          A     Correct.

11          Q     It's your understanding that has some  
12 preservative in it and I might not be using the correct  
13 language, but it has something in it that protects it from  
14 bacterial infection.  That means you can use it for days.

15          A     Correct.

16          Q     But with propofol you've got six hours to use it  
17 and if you don't, when six hours comes along, you should toss  
18 it because bacteria could grow by then and it could become  
19 contaminated.

20          A     It's possible, yes.

21          Q     Okay.  Now when you're back 2005 or whenever it  
22 is, 50s are then available.  I'm talking about propofol vials.

23          A     Okay.

24          Q     You used both, 20s and 50s, whatever was  
25 available and they gave you.

1 A That's it.

2 Q Okay. And did you -- you -- you also worked at  
3 the Burnham Clinic?

4 A Yes.

5 Q Okay. And the same 20s and 50s available there?

6 A To my recollection, yes.

7 Q Okay. And in fact would -- would there be an  
8 interchanging of supplies between Shadow Lane Clinic and  
9 Burnham Clinic?

10 A Yes. I would get frequent calls from Jeff, the  
11 supervisor, to stop by because I live in Summerlin and when  
12 I'm on the way to Burnham to stop by and pick up propofol or  
13 syringes or needles or something that are needed at the  
14 Burnham Clinic.

15 Q Okay. So that -- that would be Jeff Krueger?

16 A Jeff Krueger, yes.

17 Q Okay. And so he -- you would be going like to  
18 Burnham on a given day and he'd call you, you're in Summerlin,  
19 stop by Shadow Lane, Burnham needs propofol, needles and  
20 syringes or -- or something --

21 A Right, correct.

22 Q -- and so you would get them and take them over  
23 there?

24 A Correct.

25 Q Okay. You were working up through 2008 and you

1 were there at the clinic when CDC, Center for Disease Control,  
2 and the Southern Nevada Health District and various people  
3 came into the clinic and did observations, correct?

4 A Yes.

5 Q Okay. And do you recall if that was in early  
6 January, 2008?

7 A I just remember '08, January, but I couldn't say  
8 it was early, late or when.

9 Q Okay. What -- whatever day it was, CDC and it's  
10 all of record --

11 A Okay.

12 Q -- but you are actually there on that date,  
13 right?

14 A Yes.

15 Q And -- and you were actually observed by a -- do  
16 you remember the name of the doctor from CDC?

17 A Other than she was a pediatrician, no, I don't  
18 remember her name.

19 Q Okay. Schaefer ring a bell?

20 A Oh, that could be.

21 Q Okay, Dr. Schaefer. And so by -- by observing  
22 your procedure -- I -- meaning she came into the procedure  
23 room, correct?

24 A She was in and out, uh-huh.

25 Q Okay. And she watched a -- do you remember, was

1 Dr. Carrol doing a procedure? Do you happen to recall?

2 A I don't recall it, but Dr. Carrol was probably  
3 there that day, yes.

4 Q Okay. But she -- Dr. -- the CDC doctor watched  
5 you go through a -- either an upper or lower endoscopic  
6 procedure, correct?

7 A Okay.

8 Q Okay. And by watching, I mean, you weren't  
9 doing the procedure, a doctor was, you were just doing your  
10 CRNA duties.

11 A Correct.

12 Q Okay. And you -- do you recall -- you -- you  
13 utilized your standard procedure, correct?

14 A Correct.

15 Q Okay. Do you recall that you re-dosed a patient  
16 that she watching?

17 A Do I recall it? No. But if that's the way it  
18 was, yes.

19 Q Okay. Well, you recall a conversation with her  
20 after she observed your procedure, correct?

21 A Somewhat.

22 Q Okay. The -- well, it -- utilizing your same  
23 procedure, your standard procedure, you would have dosed the  
24 pager -- patient, right?

25 A Correct.

1 Q And assuming the patient needed a re-dose, more  
2 propofol, you take the same needle and syringe, change the  
3 needle, get out a brand new needle, put it on, reenter  
4 propofol vial and dose the patient again?

5 A Correct.

6 Q And toss -- assuming you were done and there was  
7 no second or third re-dose, you would toss the needle and  
8 syringe.

9 A Correct.

10 Q Okay. Have you ever used a needle and syringe  
11 between patients at anytime in your life?

12 A Never.

13 Q Okay. And that -- that's in your 32 years in  
14 Southern California and your five years at Desai Clinics here,  
15 you never reused syringe, needle between any patients?

16 A Never.

17 Q Now the CDC doctor observes your procedure and  
18 you do recall having a conversation with her?

19 A Yes.

20 Q Okay. And did -- do you recall generally that  
21 she pointed out and asked you about your re-dosing the patient  
22 using the same syringe?

23 A Do I recall it? I mean, I know we had a  
24 conversation and I'm sure she might have said something. I  
25 don't recall the exact, you know, verbiage.

1 Q Okay. I'm going to show you something and have  
2 you look at it and see if it refreshes your recollection.

3 A Okay.

4 Q Okay.

5 MR. WRIGHT: May I approach the witness?

6 THE COURT: You may.

7 BY MR. WRIGHT:

8 Q Show you an interview, not yours, Gayle  
9 Fishcher. Okay?

10 A Oh, Fishcher, okay.

11 Q Yeah. So I want you just to read it and then  
12 see if that refreshes your recollection. It's over five years  
13 ago, correct?

14 A Yes.

15 Q And the markings are mine.

16 A Okay.

17 Q So I mean just --

18 MR. STAUDAHER: Counsel, could I have the page,  
19 please?

20 MR. WRIGHT: Pardon?

21 MR. STAUDAHER: Could I have the page, please?

22 MR. WRIGHT: Sixteen and 20.

23 BY MR. WRIGHT:

24 Q Read -- just to get a sense of it. You can  
25 start there and read all of 16 as much as you want to.

1 A Okay. Who's this RW?

2 Q That's the -- Mr. Whitely. I should -- I should  
3 of --

4 A Because I didn't --

5 Q That's the -- the questioner is RW, that's  
6 Detective Whitely.

7 A I didn't think it was me.

8 Q It's questions and answers.

9 A Okay.

10 Q Okay. And of course GF is Gayle Fishcher.

11 A Correct.

12 Q Okay. And then also look at page 20.

13 A Okay.

14 Q Does that help refresh your recollection  
15 about --

16 A Yeah, uh-huh.

17 Q -- the conversation? Did you answer?

18 A Yes. I'm sorry.

19 Q Oh, okay, I'm sorry, I didn't hear you. The --  
20 having reviewed that, what -- what additionally do you recall  
21 about that conversation?

22 A I think it was brief, I don't think there was,  
23 you know, much instruction at it. It's sort of questioning  
24 how it was done and why it was done and who ordered us to do  
25 it and that type of thing.



1 Q Okay. Did you tell her, Dr. Fishcher, that that  
2 was what you would normally do, meaning the changing of the  
3 needle and reusing the syringe?

4 A Yes.

5 Q Okay. Did you tell her that you wouldn't, you  
6 know, you would never reuse a needle at any time?

7 A Correct.

8 Q Okay. But that a syringe, you know, he used --  
9 I reuse syringes and I clearly understand and I didn't  
10 understand this was a problem.

11 A That's what I said. I don't recall it, but if  
12 that's what I said, yes.

13 Q Okay. And that -- you were being truthful with  
14 her, correct?

15 A Correct.

16 Q Okay. You -- you believed you were using safe  
17 injection practices.

18 A Safe and aseptic, yes.

19 Q Yeah. And she -- she's telling you just  
20 changing the needle isn't enough, right?

21 A Correct.

22 Q And you said I understood that that is safe, the  
23 way I do it, and have always done it, right?

24 A Correct.

25 Q And you stated you knew it was not proper to

1 reuse needles, but you thought it was okay to reuse the  
2 syringe with a new needle, correct?

3 A In a proper way, yes.

4 Q Okay. And that's what you believed then and  
5 that's what you told her, correct?

6 A Correct.

7 Q She disagreed and said no reuse of syringes at  
8 all. Is that a fair characterization?

9 A Yes.

10 Q So going forward from that time, whenever it was  
11 in January, 2008, you were instructed to change your practice  
12 of when re-dosing, change your practice, don't get out a new  
13 needle and think that that's safe and put it on a syringe and  
14 re-dose. Instead, going forward, everything -- toss every  
15 needle and syringe, get out a new needle and syringe going  
16 forward, correct?

17 A Correct.

18 Q And then you -- you told Dr. Fishcher that --  
19 that -- that is what you had been told to do, correct?

20 A Correct.

21 Q Okay. And -- okay. Now, the -- moving from  
22 January, 2008 you were aware there was a hepatitis outbreak, a  
23 cluster, whatever you want to call it, hepatitis C  
24 transmission had been tied to the clinic where you worked on a  
25 couple of given dates.

1 A That's what we were told, yes.

2 Q Okay. And new -- new -- after CDC, do you know  
3 who BLC is?

4 A No.

5 Q Okay. Bureau License from the State.

6 A Okay.

7 Q Okay. After CDC, BLC, Southern Nevada Health  
8 District had all been there, new -- new protocols were  
9 implemented and a new plan going forward. Did you understand  
10 that?

11 A Yes.

12 Q Okay. And the new protocols were the single --  
13 single use needle and syringe, right?

14 A Correct.

15 Q And single use propofol vials?

16 A Correct.

17 Q Meaning don't reuse any propofol on any other  
18 patient, correct?

19 A If it's been used on a patient, don't use it on  
20 another one, correct.

21 Q Okay. So needle and syringe gone, propofol,  
22 even if there's some left, toss it.

23 A Exactly.

24 Q And that was part of the plan of correction  
25 going forward, correct?

1 A Correct.

2 Q Okay. And then by the end of February or into  
3 March, the clinics closed, correct?

4 A Correct.

5 Q And then you were aware the search warrants were  
6 executed?

7 A Through the media is the only way I knew.

8 Q Okay. And the -- well, ultimately, you were  
9 aware because you were charged criminally, correct?

10 A That was years afterwards.

11 Q Okay. But you were ultimately aware that police  
12 went in and seized all of the computers and all the medical  
13 records and everything there.

14 A Correct.

15 Q Okay. And so March -- and that -- that occurred  
16 in March, 2008, because we've got the dates.

17 A Okay.

18 Q You're then retired by closure of the clinics.

19 A Correct.

20 Q Okay. And did you go out and get another job or  
21 just retire?

22 A Quit, retired. I mean, we surrendered our  
23 license or gave them up or took them or whatever they did.

24 Q Okay. Complaints were filed by the Southern  
25 Nevada Health District against you and the other CRNAs. By

1 complaints I'm talking about with the nursing board, correct?

2 A I -- could be, I don't know. I'm not aware of  
3 it but --

4 Q Okay. Well, you -- you know your license was  
5 taken.

6 A Correct.

7 Q Okay. You understood that that was a result of  
8 the investigation there at the clinic.

9 A Yes.

10 Q Okay. And do you know who -- who had licensed  
11 you, the Board of Nursing?

12 A Yes, State of Nevada.

13 Q Okay. And did you -- or maybe, did you  
14 surrender your license?

15 A That's what we were instructed to do, yes, by  
16 the attorney that was representing us.

17 Q Okay. Do you remember that attorney's name?

18 A It was one hired by the clinic.

19 Q Was it Karen Ross?

20 A No.

21 Q Or Ms. [indiscernible].

22 A No. She's -- she's a -- also an RN attorney,  
23 Gayle -- no, not Gayle, I'm sorry.

24 THE COURT: Did all of the CRNAs have the same  
25 attorney at that point?

1 THE WITNESS: Those that were working at the clinic,  
2 yes.

3 THE COURT: Okay.

4 BY MR. WRIGHT:

5 Q But they hired an attorney -- or made an  
6 attorney available to assist you with the licensing dispute  
7 that you all individually had with the nursing board; is that  
8 correct?

9 A Correct.

10 Q Okay. And you've remained retired since then.

11 A Yes.

12 Q Okay. And then you're -- you became aware that  
13 there was an ongoing criminal investigation.

14 A Wasn't aware but I, you know, heard it in the  
15 news, media and that type of thing, things were going on.

16 Q Okay. Did you expect to -- an indictment to be  
17 returned against you?

18 A Never.

19 Q Never, okay. You -- you did not believe you had  
20 done anything wrong, correct?

21 A Correct.

22 Q And you had a -- at what point did you become  
23 aware that you were -- you were a target of the investigation?

24 A Sometime in June of '10 I think it was.

25 Q Okay. You were indicted in June, 2010, correct?

1 A Correct.

2 Q Do you remember getting a notice sent to you, a  
3 letter that's called Notice of Intent to Seek Indictment where  
4 the prosecutor tells you ahead of time I'm going to indict  
5 you?

6 A No, I did not.

7 Q Okay. But the first you heard about it is when  
8 you got indicted. Is that fair?

9 A I would say that's fair, yes.

10 Q Okay. And at that point were you represented by  
11 criminal counsel?

12 A No.

13 Q Okay. So up -- up until then, you know from the  
14 newspapers that there's an investigation going on?

15 A Correct.

16 Q You don't have any concerns because you have not  
17 engaged in any wrongdoing.

18 A Correct.

19 Q And you don't go hire a criminal lawyer.

20 A No.

21 Q Beforehand.

22 A No.

23 Q Okay. And so the first you know you are  
24 indicted by the Clark County Grand Jury, correct?

25 A Correct.

1 Q Okay. And then you hire a lawyer.

2 A Well, back it up --

3 Q Okay.

4 A -- I think before that we -- I had Booke  
5 [phonetic]. I don't remember his name, you know, the fellow  
6 that passed away.

7 Q Bucky Buchanan.

8 A Buchanan.

9 Q Okay.

10 A Yes. He was representing me and then, of  
11 course, he passed away and then I think his son sort of took  
12 it over or something.

13 Q Okay. So you -- you had been consulting with  
14 Bucky Buchanan who is -- who is a criminal defense attorney.

15 A Had hired him, I don't think I saw him over one  
16 time, you know, just --

17 Q Okay. You -- you hired him. He did pass away  
18 and so you -- you didn't replace him and you didn't anticipate  
19 any problems being brought upon you, correct?

20 A Correct.

21 Q And when you are indicted, you get arrested.

22 A Correct.

23 Q Okay. Go to Clark County Jail.

24 A Yes.

25 Q Okay. In order -- let's see, you were -- you



1 were then 73 years old?

2 A Seventy -- probably 75 or 6.

3 Q Okay. Have any criminal record?

4 A Never.

5 Q Okay. And so you're in jail and how much is the  
6 bail?

7 A They wanted --

8 MR. STAUDAHER: Objection, Your Honor. Relevance on  
9 his bail.

10 THE COURT: He can answer.

11 A Half a million dollars.

12 BY MR. WRIGHT:

13 Q Okay. Did you have that in your wallet at home?

14 THE COURT: I'll -- I'll see counsel.

15 BY MR. WRIGHT:

16 Q Did you have that readily --

17 THE COURT: Mr. Wright, I said I'll see counsel.

18 MR. WRIGHT: I'm sorry. I didn't hear you.

19 THE COURT: That's okay.

20 (Off-record bench conference.)

21 THE COURT: Ladies and gentlemen, we're going to take  
22 a quick recess until about 10:30. And once again, you're  
23 reminded that during the recess you are not to discuss the  
24 case or anything relating to the case with each other or with  
25 anyone else. You're not to read, watch, or listen to any

1 reports of or commentaries on the case, any person or subject  
2 matter relating to the case by any medium of information.  
3 Please don't do any independent research on any subject  
4 connected with the trial. And please don't form or express an  
5 opinion on the case.

6 If you would all please place your notepads in your  
7 chairs and follow the bailiff through the rear door.

8 (Jury recessed at 10:15 a.m.)

9 THE COURT: Mr. Mathahs, I'm going to ask you to have  
10 a seat in the vestibule for right now while we argue about  
11 something in here.

12 THE WITNESS: Oh, okay.

13 THE COURT: But I had asked your attorney to stay in  
14 the room, please. And then, ma'am, you'll have an opportunity  
15 to confer with Mr. Mathahs privately in the vestibule but you  
16 can be present. I just -- to the extent we may be talking  
17 about future testimony, I obviously don't want him here to  
18 hear that. All right.

19 Counsel had objected to the line of questioning,  
20 which -- although I did allow the one question on bail,  
21 getting into posting the bail and all those things as getting,  
22 in my view, I thought maybe irrelevant. Mr. Wright stated  
23 no, it goes to his motivation to testify and to plead guilty.  
24 So Mr. Wright, what have you to say about that on the record?

25 MR. WRIGHT: Well, I -- I believe that he changed --

1 entered into a plea agreement and pled guilty to the five  
2 charges, even though he believes he was factually -- did not  
3 commit the offenses. However, the threat of the murder  
4 indictment and the additional charges and the expenses  
5 involved; the defense attorney, the bail, everything that had  
6 come down on him was part of the motivation for cooperating  
7 and therefore pleading to something -- a crime he didn't  
8 commit.

9 THE COURT: I mean, I think it's a subject of fair  
10 cross-examination as to his motives and whatnot. You know,  
11 certainly the witness is free to say, no, I pled guilty  
12 because I realized I was guilty or, you know, whatever. The  
13 testimony is going to be what it is.

14 MS. WECKERLY: How is that not part of a privileged  
15 conversation between himself and his lawyer, the reasons why  
16 he pled or --

17 THE COURT: Well, his own motivation, I mean you  
18 think what you think in your head. Obviously, he can't go  
19 into a privileged communication. But if I murdered someone  
20 and then I tell my lawyer, hey, I murdered someone, that  
21 doesn't mean they can't ask me you murdered someone because  
22 you happened to also tell your lawyer. Obviously, Mr. Wright  
23 can't get into privileged communications or what he talked  
24 about and -- and his lawyer needs to go talk to Mr. Mathahs  
25 and advise him as to what he can answer or what may call for

1 privileged communication because I'm certainly not going to  
2 step on that in any way.

3           And I know Mr. Wright, if the situation were  
4 reversed, wouldn't want the Court to step on any  
5 communications and advice he received from counsel. So  
6 obviously, we can't get into advice from counsel or anything  
7 like that.

8           MS. WECKERLY: The other -- the other thing I'd say  
9 is his opinion as to whether the legal -- whether or not he  
10 was legally guilty or not isn't relevant. He doesn't get to  
11 decide what the law is or, you know, he was guilty or not  
12 guilty according to what the law is. That's not his call.

13           THE COURT: No, and he can't ask him if he's guilty  
14 or not guilty. He can ask him, you know, did you believe  
15 you'd done something wrong, which I think he's actually  
16 already done. You know, when you pled guilty, did you believe  
17 that you'd done any -- did you or did you -- I mean, I think  
18 he's kind of covered it.

19           MS. WECKERLY: Well, from the State's perspective,  
20 and I've advised his counsel, he's now in violation of his  
21 proffer because he's testified differently on direct than he  
22 did on cross.

23           THE COURT: Meaning that -- and I'm assuming what the  
24 State means by that is the fact that he's now said, no, he  
25 thought it was perfectly safe to reuse the syringe into the

1 bottle of propofol and that that was a standard of practice  
2 that he'd been doing for 32 years or whatever.

3 MR. STAUDAHER: Which is diametrically opposed to  
4 what he testified to on -- on direct examination --

5 THE COURT: Right, which was no --

6 MR. STAUDAHER: -- as well as what he stated in his  
7 proffer.

8 THE COURT: -- he'd never seen anybody do that  
9 before.

10 MR. STAUDAHER: Right. And he stated that in his  
11 proffer as well. This was not an Alford plea. He pled and  
12 was canvassed on this whole issue, not just the financial part  
13 of it, but the other aspects of it too. He didn't think he  
14 did anything wrong. He's got an immunity agreement with the  
15 feds so he didn't get prosecuted under the fed -- or under the  
16 financial crime. So clearly, there must be some issue there  
17 that he's concerned about and thinks that he did something  
18 wrong, which is completely different than what he just  
19 testified to.

20 And I believe under 51.55 at this point that  
21 certainly I can cross-examine him or treat him, lead him and  
22 ask him -- treat him as an adverse witness at this point when  
23 I go up and do re -- redirect. I believe he was in that  
24 position earlier --

25 THE COURT: No, he was very cooperative on direct.

1 There was nothing --

2 MR. STAUDAHER: It doesn't mean that they have to be  
3 cooperative. It means that they have to stand in an adverse  
4 position under the statute. We don't have to have him get  
5 angry or cross --

6 THE COURT: No, no, I understand that. But on direct  
7 he was completely, you know, he'd agreed to testify, he had  
8 agreed to testify truthfully. So at that point in time, you  
9 know, just because someone's previously been charged by the  
10 State does not automatically make him an adverse witness. You  
11 know, obviously, if he called him and there was no agreement  
12 and he'd previously been convicted and was hostile and we  
13 dragged him here from the prison, that's a different  
14 situation. But just because someone stood accused at a prior  
15 time and entered into a plea negotiation with the State, does  
16 not make them an adverse witness.

17 MR. STAUDAHER: Well, we're beyond -- we're beyond  
18 that.

19 THE COURT: That's not the state of the law.

20 MR. STAUDAHER: But we're beyond that. We're at a  
21 point where not just what happened today but --

22 THE COURT: You can certainly -- you know, in terms  
23 of impeaching him, you can certainly lead him on that and  
24 certainly with respect to the agreement and all of those  
25 things and he pled guilty and he admitted the facts and blah,

1 blah, blah, you can certainly lead him on those -- on those  
2 things, which are the, I'm assuming the things that are in  
3 direct contradiction and where you would want to go.

4 MS. WECKERLY: Yes.

5 THE COURT: You know, there may be other areas you  
6 want to get into, but to me those are obviously the most  
7 obvious. Mr. Wright?

8 MR. WRIGHT: I believe it is improper for the State  
9 to have told this witness or his counsel that he is breaching  
10 his plea agreement for testifying truthfully.

11 THE COURT: Right. Basically that will be up to the  
12 Court.

13 MR. WRIGHT: They are threatening him. They are  
14 threatening this witness because his testimony changed from  
15 direct. And that is prosecutorial misconduct to tell a  
16 witness if they vary from their direct examination testimony,  
17 we are withdrawing the plea bargain. That is absolutely  
18 improper conduct. It violates the plea agreement itself where  
19 he's obligated to tell the truth. And the truth of the matter  
20 is, they knew from Gayle Fishcher and other witnesses what he  
21 had said to her. That's her report and her testimony at the  
22 grand jury and to Metro Police as to what he said, that he  
23 understood and believed what he was doing was proper and all  
24 they did was threaten him, get him to plead guilty and then  
25 spoon feed him a version to tell on direct, which is contrary

1 to the truth. And you can't now threaten the witness while  
2 he's testifying, which is what they have done.

3 MS. WECKERLY: First, we didn't tell the witness.

4 THE COURT: Right. The witness --

5 MS. WECKERLY: Second, I didn't say the substance of  
6 what the violation was. I said he's now in breach of his --

7 THE COURT: Well, it's pretty obvious though what the  
8 substance of the violation is. I mean, it's what is different  
9 -- what is substantial and different that he testified to on  
10 cross-examination.

11 MS. WECKERLY: But we didn't --

12 THE COURT: And the big thing to me, and I've been  
13 listening to all of this, the big thing, the whole critical  
14 thing is those -- is the reuse of the syringes. That is the  
15 critical thing in this case. So whether the first time he  
16 said -- now for the record Mr. Cristalli is now here. Whether  
17 he said 32 years or 33 years, I mean, there may have been  
18 minor inconsistencies. But it's obvious to anybody that the  
19 big inconsistency here, the important inconsistency is the  
20 fact on direct examination he said, no, we don't reuse the  
21 syringes, and then on cross-examination he said, no, I thought  
22 it was perfectly fine to just change the needle, reuse the  
23 syringe as long as we applied negative pressure.

24 So to me, that's -- that's the crux of the case.  
25 Could you reuse the syringe or not, A. And then could you



1 reuse the propofol or not, B. If you weren't reusing the  
2 syringes, even though the vial was labeled single use, you  
3 could have probably used -- reused the propofol safely,  
4 although that was contraindicated by the warning as I  
5 understand it from the manufacturer on the vial. That's the  
6 second issue. But the big issue to me is the syringes.

7           So whether he heard or whatnot, I mean the man is  
8 obviously a person of reasonable intelligence and he would  
9 know that, number one. Number two, for the record, that is  
10 why I excused him. So although Ms. Weckerly did pull his  
11 attorney into -- into the hallway, I saw that, he may have  
12 observed that. He wouldn't know what they were talking about.  
13 It could have been scheduling, could have been a million other  
14 things. So I don't find that the State indicated to the  
15 witness by pulling his attorney into the vestibule area, that  
16 he was in breach.

17           I also find the witness has been excused from the  
18 courtroom and so he has not heard the State's position that he  
19 was in breach. So in terms of trying to intimidate the  
20 witness, he wouldn't be aware of what's going on in here right  
21 now unless he heard the conference at the bench but I, you  
22 know, I can't say that was misconduct on the part of the State  
23 at that point.

24           MR. WRIGHT: Well, I don't want the threat to be  
25 communicated to him through counsel.

1 MS. WECKERLY: That's fine.

2 MR. STAUDAHER: Yeah. We just want to make sure the  
3 Court's on record -- or we're on record as far as our position  
4 at this point.

5 MR. WRIGHT: I don't mean these two counsel --

6 THE COURT: No.

7 MR. WRIGHT: -- the witness's counsel.

8 THE COURT: His counsel.

9 MS. WECKERLY: That's fine.

10 THE COURT: Well, I'm getting a little uncomfortable  
11 now standing in the middle of Mr. Mathahs and his counsel  
12 who've now been made aware of the situation. So, you know,  
13 here -- let me just say this. It's up to the Court whether or  
14 not the -- Mr. Mathahs is in breach of the agreement to  
15 testify truthfully or not.

16 Now, obviously, this is going to be, I'm assuming,  
17 Mr. Cristalli, this is going to be very contested. I don't  
18 assume he's going to, you know -- so we're going to have to  
19 have a hearing about this at some time in the future. We're  
20 going to have to -- the Court's going to have to hear more  
21 specifically, how did the offer of proof go down? You know,  
22 how leading was that? Did they spoon feed him, as suggested  
23 by Mr. Wright or was this a narrative? You know, how -- why  
24 did his story change and other things. And then the Court  
25 will make a determination, was the testimony truthful or not

1 truthful.

2 I mean, the State's gone on record in front of  
3 counsel that they're going to argue that it wasn't truthful.  
4 And at the end of the day, as I understand the agreement,  
5 it'll be up to the Court to make that determination. But I  
6 don't think the time to do that is in the middle of this  
7 trial. I think the time to do that is a subsequent hearing  
8 once this trial is over.

9 And to give Mr. Mathahs's attorney a fair opportunity  
10 to be heard at that time because then it becomes obviously of  
11 interest to Mr. Mathahs's attorneys. You know, at that point,  
12 he's been told to testify truthfully. He was admonished by  
13 the Court prior to his testimony and I can't -- you know, I  
14 can't coach him or what -- and I know you're not suggesting  
15 that, but I can't pull him in here and tell -- you know, I  
16 mean I think we go forward. You know, his attorneys  
17 understand the State's position.

18 MS. WECKERLY: We don't -- we don't want him reminded  
19 him of anything.

20 THE COURT: No.

21 MS. WECKERLY: He's under oath. He's still  
22 technically on the witness stand. We just want the Court to  
23 be aware that now we'd like to be able to lead him because we  
24 view him as in breach of the agreement --

25 THE COURT: Right. I mean -- I think --

1 MS. WECKERLY: We're not asking for anything to be  
2 relayed to him.

3 THE COURT: -- you can certainly lead him on the  
4 important areas, the change in his testimony from direct to  
5 cross and the agreement and, you know, the benefit and what he  
6 said in his plea at the time of the plea canvass and -- and  
7 whatnot. I mean, I certainly think that that's fair and is in  
8 direct contradiction of what he's now testified to. So, yes?

9 MR. WRIGHT: The -- I -- I don't believe he's in  
10 breach. I understand you'll say that later, but as a  
11 predicate to where I'm going, I want to read his plea  
12 agreement. Obligation to be truthful, overriding all else, it  
13 is understood this agreement require from Keith H. Mathahs an  
14 obligation to do nothing other than to tell the truth. It's  
15 understood between all the parties to this agreement that  
16 Keith Mathahs at all times shall tell the truth both during  
17 the investigation, while testifying on the witness stand.  
18 Mathahs shall tell the truth no matter who asks the questions,  
19 including, but not limited to, investigators, prosecutors,  
20 judges and defense attorneys. That's his sole obligation on  
21 the plea agreement, to tell the truth. But I -- I don't want  
22 the -- his attorneys, having heard that, Mr. Cristalli and  
23 Ms --

24 MS. MORGAN: Morgan.

25 MR. STAUDAHER: Ms. Morgan.

1           MR. WRIGHT: -- Morgan going out and delivering the  
2 message from the State that he's in jeopardy because of his  
3 testimony. That is --

4           THE COURT: No, I agree. I think -- I think what we  
5 should do is in a moment, after we've had a little break, if  
6 anyone needs one, resume his testimony. And then assume, you  
7 know, he's under oath, he'll be reminded that he's under oath  
8 and then you can cross-examine him. And then, like I said, I  
9 think certainly on those areas, leading questioning is fine by  
10 the State on the areas that I've said he's in direct  
11 contradiction on his cross-examination. And then at a  
12 subsequent time, the Court will make the determination, and,  
13 you know, based on kind of the allegations that have been made  
14 by Mr. Wright, maybe, you know, we'll need to do a hearing.

15           At that point in time, Mr. Wright really doesn't have  
16 an interest anymore. It's Mr. Cristalli will be carrying the  
17 water on that, so to speak. And at that time Mr. Cristalli  
18 can be heard, and we'll make a determination as to how we  
19 proceed regarding Mr. Mathans before his sentencing and we can  
20 have a full hearing at that time. I think that's the best way  
21 to proceed, but I would ask his counsel, you know, this  
22 technically we could have still been going with his testimony.  
23 And so really, you know, the break was kind of taken because  
24 they can hear us with the way people are seated in the  
25 audience because we couldn't fit them all in the witness stand

1 so we took the break. So, you know, realistically there  
2 wouldn't necessarily have been a break and an opportunity for  
3 counsel to speak with him.

4 I don't want, you know, any -- anyone to say anything  
5 to Mr. Mathahs that could alter his testimony one way or the  
6 other. And certainly, Mr. Cristalli, if it comes down to it,  
7 we do have to have some kind of a hearing on truthfulness when  
8 you have an opportunity to have your client speak on that  
9 issue as well.

10 MR. STAUDAHER: Go ahead, I'm sorry.

11 MR. CRISTALLI: Your Honor, the only thing we'll  
12 advise the Court is at all times during the course of our  
13 representation of Mr. Mathahs, all communications to him have  
14 been to give truthful testimony in regard to this case.

15 THE COURT: Right. The only thing I would say or I  
16 can do it myself, is that if anyone asks a question that calls  
17 for him to give advice or talk about discussions he had with  
18 his attorney, he doesn't have to talk about that. Now you may  
19 -- he may actually -- you may -- you and he may prefer that he  
20 say oh, that, my lawyer advised me to do that, but he  
21 certainly doesn't have to waive the privilege if he wants to  
22 obviously, but he certainly doesn't have to testify about  
23 anything.

24 I don't know if you've gone over that already with  
25 him or if you would like the Court to bring him in and advise

1 him again that if any questioning goes into his conversations  
2 with counsel, either things you told him or things he told  
3 you, that he certainly doesn't have to testify about that.

4 MR. CRISTALLI: Yeah, I don't think there's any  
5 reason to have a waiver --

6 THE COURT: Remind him?

7 MR. CRISTALLI: -- of my privilege with my client.

8 THE COURT: Okay. Do you want me to remind him is my  
9 question?

10 MR. WRIGHT: I haven't asked any.

11 THE COURT: No, well, Ms. Weckerly --

12 MR. WRIGHT: I didn't intend to.

13 THE COURT: Okay. Well, do you want me to remind him  
14 or not?

15 MR. CRISTALLI: Well, it sounded like you were going  
16 in that direction.

17 THE COURT: Mr. Cristalli?

18 MR. CRISTALLI: I mean, I -- I mean, I can advise him  
19 myself. If it appears that there's a question that may  
20 violate that privilege, then Your Honor, I would ask to -- to  
21 admonish him that he doesn't have to answer that question.

22 THE COURT: All right.

23 MR. STAUDAHER: And, Your Honor, the concern I have  
24 related to that is that even at the bench, Mr. Wright  
25 indicated that he was going to basically ask why did you enter

1 into this agreement if in fact you think you're innocent,  
2 essentially. And that may spill into what Mr. Cristalli had  
3 conversations with what he was facing, the evidence and so  
4 forth, I don't know. But I'm just saying that it gives me  
5 great concern that that might be entering into the purview of  
6 an attorney-client communication.

7 THE COURT: Well, that's something Mr. Cristalli and  
8 Mr. Mathahs need to be concerned about. And Mr. Wright is now  
9 mindful of that issue. And so Mr. Wright, you know, phrase  
10 your questions. Mr. Cristalli, do you want me to advise your  
11 client that if it calls for communication, he doesn't have to  
12 answer. My -- or do you want to just whisper to him and  
13 advise him of that again?

14 MR. CRISTALLI: Well, yeah, of course I'll advise him  
15 of that. And once again, I'll reiterate, Your Honor, if it  
16 appears to be a question that will be in reference to a  
17 communication which his attorney, which is privileged, we ask  
18 that that question not be answered. But I will have that  
19 communication with him and certainly I would anticipate the  
20 Court interjecting if it appears that that --

21 THE COURT: Yeah, if it appears. I may not know. I  
22 may not be aware if that calls for communication or not. I  
23 mean, Mr. Wright is not going to say what did your lawyer tell  
24 you or what did you tell --

25 MR. WRIGHT: No, but --



1 THE COURT: -- he's not going to tell -- ask it in  
2 that way. It will be more subtle, clearly.

3 MR. WRIGHT: I am mindful of the issue, however, I  
4 don't want you to think I'm going astray, I'll tell you where  
5 I'm going. I mean, the last thing I'm going to do is ask what  
6 did your lawyer tell you or why.

7 THE COURT: And that's what I just said. Obviously,  
8 it's not going to be clear like that, it would be something  
9 subtle that might call for privileged communication.

10 MR. WRIGHT: Right. But I do intend to go into his  
11 own writ of habeas corpus, filed by him, in which he stated  
12 that for propofol use -- and he stated with the affidavit of  
13 his counsel on it that everything in there is true and  
14 correct, that reuse of propofol was standard practice and done  
15 constantly. That is his admission and his pleadings that I  
16 intend to go into. So when I do talk about it I -- I mean,  
17 I'm not trying to get into Mr. Cristalli's conversations with  
18 him, but I didn't want to mislead you if he like doesn't know  
19 about the pleading or anything else, I have it and I'm going  
20 to utilize it.

21 THE COURT: Well, if he knows if he read it and he  
22 verifies that that's true because if he didn't swear out an  
23 affidavit, if it's a statement of facts in the pleading, then  
24 Mr. Cristalli may have written that and how do we know where  
25 it came from?

1 MR. WRIGHT: Well, I'll -- I'll ask him how -- how --  
2 Mr. Cristalli's work is true and correct. I'll ask him where  
3 -- ask him where he got that information. If he was resists  
4 me on it, I don't know if he'll resist on it, I didn't get  
5 that far yet.

6 THE COURT: Because just because a lawyer writes  
7 something in a statement of facts or something like that --

8 MR. WRIGHT: Well, it's not --

9 THE COURT: -- doesn't mean -- as you know, doesn't  
10 mean the client has read anything and understood it and --

11 MR. WRIGHT: It's not a statement of facts, it's a  
12 writ and I file it and say everything I -- everything in there  
13 is true and correct. That is an adoptive admission by this  
14 client through his lawyer. This -- it is.

15 MR. STAUDAHER: That's absolutely -- I mean, it's --  
16 again, it goes to the heart of an attorney client  
17 communication.

18 MR. WRIGHT: Doesn't go to the heart. It's -- it's  
19 the same thing if I make representations at a bail hearing.  
20 It's an adoptive admission of my client and the State uses it  
21 against me. It's not hearsay. It's not an adoptive  
22 admission. I have had my representations used against my  
23 client because I am the agent -- the agent and it's an  
24 adoptive admission -- admissible. And that -- if he resists,  
25 I will then do it that way. I don't think he's going to -- I

1 think he's going to admit that that was his belief.

2 THE COURT: Well, then ask him. But here's the  
3 thing. First of all, I've never seen the situation that  
4 you've talked about where a criminal defense attorney has  
5 stood up at a bail hearing and made representations and then  
6 later at the trial of that particular defendant those  
7 attorneys' representations are used somehow against the client  
8 in the trial.

9 MR. WRIGHT: Yes.

10 THE COURT: I've never seen that.

11 MR. WRIGHT: You have too many cases.

12 THE COURT: Well, I mean, I'm assuming the only way  
13 you could do that is if the client testifies.

14 MR. WRIGHT: No, it's an admission.

15 THE COURT: I've never --

16 MR. WRIGHT: Of the party opponent by his --

17 THE COURT: I know --

18 MR. WRIGHT: -- authorized agent.

19 THE COURT: All right. Well, I've never seen that  
20 done. I'm sure if you say you've seen it, you have, but I've  
21 personally in the numerous trials as a Judge, as a lawyer,  
22 whatever, I've never -- when you say that, I -- I can't think  
23 of a single instance where I have seen that done, number one.

24 Number two, even if it had been done, what you're  
25 talking about are oral representations made in open court

1 where the defendant is either seated next to you in --  
2 probably in the cases of your client -- their clients again,  
3 they're typically out of custody. Because they have the  
4 financial wherewithal to make bond. So typically, they're  
5 sitting next to you or in the rare cases they're sitting over  
6 there in custody. So they're hearing the representations.  
7 But now we're talking about written representations that are  
8 made by a lawyer and then filed and so --

9 MR. WRIGHT: And sworn to.

10 MS. WECKERLY: By the lawyer, not by Mr. Mathahs.

11 MR. WRIGHT: No, no.

12 THE COURT: By the lawyer.

13 MR. WRIGHT: No, correct.

14 THE COURT: I mean --

15 MR. WRIGHT: You mean an agent. The lawyer is  
16 speaking for the client.

17 THE COURT: Mr. Wright. Mr. --

18 MR. WRIGHT: I speak for my client --

19 THE COURT: Mr. --

20 MR. WRIGHT: -- every word I say is attributable to  
21 him.

22 THE COURT: Mr. Wright, I am not going to make law  
23 and I -- or I'm not going to say that every word out of a  
24 lawyer's mouth is somehow adopted by his client. Now -- or  
25 every written pleading. You know, in a similar arena that's

1 different. But in a criminal case, I am not going to say that  
2 whatever the lawyer says now somehow has been adopted by a  
3 criminal defendant.

4           Again, a civil arena is different. Yes, absolutely  
5 it is part of -- you know, it's used. But in a criminal case  
6 where you have greater protections and everything like that,  
7 some lawyer stands up and says something and you've got some  
8 yutz sitting over there with, you know, a sixth grade  
9 education, they're supposed to, oh, okay, well this is an  
10 adoptive admission and I haven't said anything and my agent,  
11 this lawyer over here, is saying this thing.

12           Now, with your clients they tend to be a different  
13 type of client. But let's take that to the logical extension  
14 what I've just said. You've got some PD standing up arguing,  
15 some guy sitting over there with a sixth grade education half  
16 asleep and he's supposed to now be bounding and tied to every  
17 word out of his lawyer's mouth. That's what you're  
18 suggesting. And somehow be used against him --

19           MR. WRIGHT: Correct. And I'll tell you in this  
20 courthouse when it was used. I filed [indiscernible] was the  
21 district attorney and filed a notice and a laid out specific  
22 alibi. Okay? In pretrial pleadings. And then withdrawal  
23 notice of alibi and withdrawal everything. They wanted to use  
24 the false alibi, okay, in their case in chief.

25           THE COURT: Well --

1 MR. WRIGHT: And it was admissible because it -- why  
2 is it not? It wasn't hearsay --

3 THE COURT: Okay.

4 MR. WRIGHT: -- and it was an admission and it was  
5 pleading.

6 THE COURT: Well, we're going -- if anyone needs to  
7 use the restroom --

8 MR. SANTACROCE: I need to just make a brief  
9 record --

10 THE COURT: All right.

11 MR. SANTACROCE: -- on this, Your Honor. I'm going  
12 to join in Mr. Wright's objection, prosecutorial misconduct.  
13 The fact that the State in the middle of two days of  
14 cross-examination gets up in the middle of that examination,  
15 takes the witness's lawyer into the hallway and tells that  
16 lawyer that your client has now violated the plea agreement is  
17 coercive and it is misconduct. And the only effect that they  
18 could possibly be looking for was some coerciveness to get  
19 this witness back in line because the witness was telling the  
20 truth and was going contrary to the prosecution's theory.

21 And for that reason -- and the fact is they -- State  
22 made an objection. We went to the bench, and we were -- the  
23 discussion was very loud, the witness is only four feet away  
24 from the bench discussion. He heard the prosecutor say that  
25 he was in violation of the plea agreement and the conduct is

1 misconduct, inappropriate and --

2 THE COURT: As I said, you know, I don't know what  
3 Mr. Mathahs was thinking. But when Ms. Weckerly took his  
4 lawyer into the vestibule area, it could have been for a  
5 number of things and so I don't know that he's going to think,  
6 oh, wow, she's saying I'm in violation of the agreement and  
7 blah, blah, blah.

8 Number two, you know, you can't have it both ways.  
9 If I say Ms. Weckerly's suit is black and then on cross I say  
10 Ms. Weckerly's suit is white, I'm either telling the truth one  
11 time or the other time. So you can't say two inconsistent  
12 things and be testifying truthfully. I mean, by definition  
13 there's -- there's an issue there.

14 MR. SANTACROCE: But they could rehabilitate him.

15 THE COURT: Well, we'll look -- you know, down the  
16 road this is maybe Mr. Mathahs's issue. Down the road there's  
17 going to be a transcript of all of this and there will be a  
18 very careful line by line comparison with what was said on  
19 direct and what was said on cross. But as I said, you can't  
20 say it's A and then say it's B and be telling the truth both  
21 times. It doesn't -- I mean, it doesn't work that way.

22 MR. SANTACROCE: That's not the point. The point is  
23 the coerciveness of the State, to bring that out in the middle  
24 of cross-examination when they can bring that out at the  
25 appropriate time before the Court.

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed  
SEP 02 2014 09:01 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

DIPAK KANTILAL DESAI, )  
 )  
 Appellant, )  
 )  
 vs. )  
 )  
 THE STATE OF NEVADA, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

CASE NO. 64591

**APPELLANT’S APPENDIX VOLUME 8**

FRANNY A. FORSMAN, ESQ.  
Nevada Bar No. 000014  
P.O. Box 43401  
Las Vegas, Nevada 89116  
(702) 501-8728

RICHARD A. WRIGHT, ESQ.  
Nevada Bar No. 000886  
WRIGHT, STANISH & WINCKLER  
300 S. Fourth Street, Suite 701  
Las Vegas, Nevada 89101

Attorneys for Appellant

STEVEN S. OWENS  
Chief Deputy District Attorney  
Nevada Bar No. 004352  
200 Lewis Avenue  
Las Vegas, Nevada 89155  
(702) 671-2750  
Attorney for Respondent



## INDEX TO APPENDIX VOLUMES 1 through 41

<u>DOCUMENT</u>	<u>VOL.</u>	<u>PAGE(S)</u>
Indictment	1	000001-000042
Amended Indictment	1	000043-000084
Court Minutes 7/21/10	1	000085
Court Minutes 2/08/11	1	000086
Finding of Competency	1	000087-000090
Recorder's Transcript - Hearing: Video Deposition Tuesday, March 20, 2012	1	000091-000129
Indictment (C-12-283381 - Consolidated Case)	1	000130-000133
Second Amended Indictment	1	000134-000176
Third Amended Indictment	1	000177-000212
Defendant Desai's Motion and Notice of Motion for Competency Evaluation	1	000213-000229
Recorder's Transcript - Hearing Re: Defendant Desai's Motion for Competency Evaluation Status Check: Experts/Trial Readiness (All) Tuesday, January 8, 2013	1	000230-000248
Fourth Amended Indictment	2	000249-000284
Notice of Motion and Motion to Use Reported Testimony	2	000285-000413
Reporter's Transcript Re: Status Check: Experts (All) Thursday, March 7, 2013	2	000414-000440

<b><u>DOCUMENT</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE(S)</u></b>
Defendant Desai's Opposition to State's Motion to Admit Foreign Documents Relating to Rodolfo Meana	2	000441-000445
Order	2	000446-000449
Court Minutes 3/21/13	2	000450
Defendant Desai's Opposition to State's Motion to Use Reported Testimony	2	000451-000454
Court Minutes 3/26/13	2	000455
Independent Medical Evaluation, 4/14/13 Filed Under Seal - Separately	2	000456
Reporter's Transcript - Calendar Call (All) State's Motion to Admit Evidence of Other Crimes Tuesday, April 16, 2013	2	000457-000497
Fifth Amended Indictment	3	000498-000533
Reporter's Transcript - Jury Trial Day 7 Friday, May 3, 2013	3	000534-000622
Reporter's Transcript - Jury Trial Day 8 Monday, May 6, 2013	3 & 4	000623-000773
Reporter's Transcript - Jury Trial Day 9 Tuesday, May 7, 2013	4 & 5	000774-001016
Reporter's Transcript - Jury Trial Day 10 Wednesday, May 8, 2013	5	001017-001237
Reporter's Transcript - Jury Trial Day 11 Thursday, May 9, 2013	6 & 7	001238-001517

<b><u>DOCUMENT</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE(S)</u></b>
Reporter's Transcript - Jury Trial Day 12 Friday, May 10, 2013	7 & 8	001518-001784
Reporter's Transcript - Jury Trial Day 13 Monday, May 13, 2013	8 & 9	001785-002061
Reporter's Transcript - Jury Trial Day 14 Tuesday, May 14, 2013	9 & 10	002062-00
Reporter's Transcript - Jury Trial Day 15 Wednesday, May 15, 2013	10 & 11	002303-002494
Reporter's Transcript - Jury Trial Day 16 Thursday, May 16, 2013	11 & 12	002495-002713
Reporter's Transcript - Jury Trial Day 17 Friday, May 17, 2013	12 & 13	002714-002984
Reporter's Transcript - Jury Trial Day 18 Monday, May 20, 2013	13 & 14	002985-003247
Reporter's Transcript - Jury Trial Day 19 Tuesday, May 21, 2013	14 & 15	003248-3565
Reporter's Transcript - Jury Trial Day 20 Wednesday, May 22, 2013	15 & 16	003566-003823
Reporter's Transcript - Jury Trial Day 21 Thursday, May 23, 2013	16 & 17	003824-004014
Reporter's Transcript - Jury Trial Day 22 Friday, May 24, 2013	17	004015-004185
Reporter's Transcript - Jury Trial Day 23 Tuesday, May 28, 2013	18	004186-004384

<b><u>DOCUMENT</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE(S)</u></b>
Reporter's Transcript - Jury Trial Day 24 Petrocelli Hearing Wednesday, May 29, 2013	19	004385-004510
Reporter's Transcript - Jury Trial Day 24 Afternoon Session Wednesday, May 29, 2013	20	004511-004735
Reporter's Transcript - Jury Trial Day 25 Thursday, May 30, 2013	21	004736-004958
Reporter's Transcript - Jury Trial Day 26 Friday, May 31, 2013	22	004959-005126
Reporter's Transcript - Jury Trial Day 27 Friday, June 3, 2013	22 & 23	005127-005336
State's Exhibit 18 - Meana Death Certificate Admitted 6/3/13	23	005337-005345
Reporter's Transcript - Jury Trial Day 28 Tuesday, June 4, 2013	23 & 24	005346-005611
Reporter's Transcript - Jury Trial Day 29 Wednesday, June 5, 2013	24 & 25	005612-005885
Reporter's Transcript - Jury Trial Day 30 Thursday, June 6, 2013	25 & 26	005886-006148
Reporter's Transcript - Jury Trial Day 31 Friday, June 7, 2013	27 & 28	006149-006430
Reporter's Transcript - Jury Trial Day 32 Monday, June 10, 2013	28	006431-006641
Reporter's Transcript - Jury Trial Day 33 Tuesday, June 11, 2013	29 & 30	006642-006910

<b><u>DOCUMENT</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE(S)</u></b>
Reporter's Transcript - Jury Trial Day 34 Wednesday, June 12, 2013	30 & 31	006911-007143
Reporter's Transcript - Jury Trial Day 35 Thursday, June 13, 2013	31	007144-007382
Reporter's Transcript - Jury Trial Day 36 Friday, June 14, 2013	32	007383-007619
Reporter's Transcript - Jury Trial Day 37 Monday, June 17, 2013	33	007620-007827
State's Exhibit 228 - Table 20-1 - Modes of Transmission and Sources of Infection Considered Admitted 7/17/13	33	007828
Reporter's Transcript - Jury Trial Day 38 Tuesday, June 18, 2013	34	007829-008038
Reporter's Transcript - Jury Trial Day 39 Wednesday, June 19, 2013	35	008039-008113
Reporter's Transcript - Jury Trial Day 40 Thursday, June 20, 2013	35 & 36	008114-008361
Reporter's Transcript - Jury Trial Day 41 Friday, June 21, 2013	36 & 37	008362-008537
Reporter's Transcript - Jury Trial Day 42 Monday, June 24, 2013	37 & 38	008538-008797
Reporter's Transcript - Jury Trial Day 43 Tuesday, June 25, 2013	38	008798-009017
Reporter's Transcript - Jury Trial Day 44 Wednesday, June 26, 2013	39	009018-009220

<b><u>DOCUMENT</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE(S)</u></b>
Reporter's Transcript - Jury Trial Day 45 Wednesday, June 27, 2013	39 & 40	009221-009473
Defendant's Proposed Instruction No. 2	41	009474-009475
Defendant's Proposed Instruction No. 3	41	009476
Defendant's Proposed Instruction No. 4	41	009477
Defendant's Proposed Instruction No. 5	41	009478
Instructions to the Jury	41	009479-009551
Verdict	41	009552-009559
Reporter's Transcript - Sentencing Hearing Thursday, October 24, 2013	41	009560-009583
Judgment of Conviction	41	009584-009589
Amended Judgment of Conviction	41	009590-009595
Notice of Appeal	41	009596-009600

1 THE COURT: I understand.

2 MR. WRIGHT: -- a week ago.

3 THE COURT: All right.

4 MR. WRIGHT: So I am saying through inadvertence  
5 this is not a document I had stipulated to.

6 THE COURT: All right.

7 MR. WRIGHT: So I did not stipulate this in.

8 THE COURT: Okay. Here's the deal. Mr. Staudaher,  
9 when you have the police officer testify, you're going to have  
10 to lay the foundation for that document, how it was found,  
11 where it was found, what other documents, you know, whatever.

12 And then, you know, if it's just some document  
13 laying around and you don't tie it into Dr. Desai, I mean, I  
14 still would probably admit it as it's there in the office and  
15 it was seized pursuant to a search warrant, and then you can  
16 certainly argue or, you know, cross that we don't know who  
17 wrote the document, we don't know, you know, if Dr. Desai ever  
18 even read the document or anything like that. So, I mean, to  
19 me that goes more to the weight rather than the admissibility.

20 And, you know, it was there. Assuming they tie it  
21 in with a police officer or a detective, whoever is going to  
22 do it, that, yes, it was there, it was in the office, it was  
23 these other things, whatever. Again, if it's attached to an  
24 attorney email or communication or something like that, there  
25 may be --

1 MR. WRIGHT: Or if it was in a legal file.  
2 THE COURT: Right. There's other issues, then.  
3 Mr. Wright, you didn't write the affidavit, is that  
4 fair to say?  
5 MR. WRIGHT: That's fair to say.  
6 (Court recessed at 3:01 p.m., until 3:09 p.m.)  
7 THE COURT: Are you ready, Mr. Santacroce?  
8 MR. SANTACROCE: I'm sorry, Your Honor. I'm trying  
9 to get these files together.  
10 THE COURT: That's okay. I know it was a little out  
11 of order.  
12 MR. SANTACROCE: 18.  
13 MR. STAUDAHER: Just make sure she knows.  
14 MR. SANTACROCE: Who?  
15 MR. STAUDAHER: Her.  
16 MR. SANTACROCE: I have 18, Patient 18.  
17 THE COURT: Just make sure -- more importantly make  
18 sure she gets them back before you leave today.  
19 THE CLERK: What exhibit number is that, Mr.  
20 Santacroce?  
21 THE COURT: 18. Wasn't it 18?  
22 THE CLERK: It's not 18.  
23 THE COURT: Just for the record, at the conclusion  
24 of Mr. Mathahs's direct testimony, Mr. Wright approached the  
25 bench and indicated he'd like about an hour to confer with his



1 client, and that was at about 3:00. And due to the late hour  
2 -- late hour of the day that we didn't want to take a break  
3 for an hour, it was agreed at the bench that Mr. Santacroce  
4 would do the first cross-examination, and then we'd take an  
5 evening recess to make the reasonable accommodation so that  
6 Mr. Wright could confer with his client over the weekend  
7 recess.

8 Is that correct, Mr. Wright?

9 MR. WRIGHT: Yes, it is, Your Honor.

10 THE COURT: All right. I'd like to start at 9:00 on  
11 Monday. Everyone good with 9:00? And what can we anticipate  
12 for Monday?

13 MS. WECKERLY: I've given them sort of a forecast  
14 for the week. I don't -- I think in the morning it'll  
15 probably be the cross of --

16 THE COURT: Right.

17 MS. WECKERLY: -- Mr. Mathahs. And then I have two  
18 other witnesses that I told them --

19 THE COURT: Okay.

20 MS. WECKERLY: -- for the afternoon.

21 THE COURT: Are they --

22 MS. WECKERLY: One is a victim, and one is a doctor.

23 THE COURT: A doctor who worked at the clinic or --

24 MS. WECKERLY: Yeah.

25 THE COURT: -- a referring doctor?

1 MS. WECKERLY: No, he's one of the clinic partners.  
2 But I don't there -- it's more on the business structure, so I  
3 don't think --

4 THE COURT: Okay.

5 MS. WECKERLY: -- it'll be lengthy.

6 THE COURT: So not about procedures or anything?

7 MS. WECKERLY: Right. And I'll give -- I just  
8 haven't, yet, because he was picking up exhibits. I'll give  
9 the same list --

10 THE COURT: Okay.

11 MS. WECKERLY: -- to Mr. Santacroce.

12 THE COURT: So Ms. Weckerly, how many witnesses  
13 behind are we from where you thought we'd be? Although, I  
14 think we're moving pretty fast, actually.

15 MS. WECKERLY: A lot.

16 THE COURT: You way, way --

17 MS. WECKERLY: How's your Fourth of July locking?

18 THE COURT: -- overestimated. How many -- like  
19 what's a lot like? Seven?

20 MS. WECKERLY: 10. 10.

21 MR. SANTACROCE: Thank you, Your Honor. I think I'm  
22 ready to go.

23 THE COURT: Would you let Kenny know we can bring  
24 the jurors in now.

25 MR. SANTACROCE: Do you have any objection to

1 marking 18, Patient 18?

2 MR. STAUDAHER: No, as far as I -- oh, marking it  
3 separately? That's fine.

4 MR. SANTIACROCE: No, you can mark it as yours. I  
5 don't care, but they aren't marked.

6 MR. STAUDAHER: Yeah, you can mark it.

7 THE COURT: Just next in order?

8 THE CLERK: Do you know where this is from?

9 MR. STAUDAHER: That's from this box here. Those  
10 are all the redacted files. It's from this box here.

11 THE CLERK: Thank you.

12 MS. WECKERLY: Actually, it's only nine behind.

13 THE COURT: Well, your boss was asking me.

14 MS. WECKERLY: Oh.

15 THE COURT: Well, he said how's it going, and I  
16 said, well, I think we're moving really fast, but I know your  
17 deputies think that we're not moving really fast because they  
18 keep having people waiting out -- out in the hall. That was  
19 the conversation just so the defense knows. We weren't  
20 conferring about the case or anything like that.

21 MR. STAUDAHER: Oh, Your Honor, for the -- for the  
22 clerk I wanted to --

23 MR. WRIGHT: And she said Weckerly has been  
24 [inaudible].

25 MR. STAUDAHER: I just wanted to put on the --

1 THE COURT: I said -- no, he's just, how are you  
2 going? I said, oh, I think it's moving good.

3 MR. STAUDAHER: I wanted to put just a housekeeping  
4 issue on the record. We brought over that chart today. We'll  
5 bring over a smaller version so that --

6 THE MARSHAL: Ladies and gentlemen, please rise for  
7 the presence of the jury.

8 Hold on. Hold on. Do you need a moment?

9 MR. STAUDAHER: No, that's fine.

10 THE COURT: No, come on in.

11 (In the presence of the jury.)

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

14 And, Mr. Santacroce, you may begin your  
15 cross-examination of the witness.

16 MR. SANTACROCE: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. SANTACROCE:

19 Q Good afternoon, Mr. Mathahs.

20 A Good afternoon.

21 Q We spent quite a considerable time talking  
22 about what Dr. Desai did and what you did. But as you know,  
23 there's two men on trial here, so I want to focus your  
24 attention on the other person in the room --

25 A Okay

1 Q -- Ronald Lakeman. Do you know Mr. Lakeman?

2 A Yes, I do.

3 Q How do you know him?

4 A We worked side by side.

5 Q So for how long of a period of time?

6 A I think -- I think Ron came in '04, if I'm not  
7 mistaken, until the clinic closed.

8 Q So for several years, four years, you worked  
9 right next to Ron every day --

10 A Yes.

11 Q -- correct?

12 A Off and on. Yes. Uh-huh.

13 Q So you know him very well?

14 A Well, I think so.

15 Q Okay. I'm going to start backward where Mr.

16 Staudaher left off. Okay? And I'm going to ask you some  
17 questions about the chart. So if you want to step down, feel  
18 free to do that. You may need the microphone.

19 THE COURT: Do you want him to step down?

20 MR. SANTACROCE: Yes.

21 THE COURT: Okay. Sir, go ahead and step down.

22 BY MR. SANTACROCE:

23 Q Mr. Staudaher explained to you how this chart  
24 was set up; correct? In other words, these were the cases you  
25 did except for the one that Ron came over and did at lunch

1 time for you; correct?

2 A Correct.

3 Q And the first patient, it wasn't the first  
4 patient of the day, but the first patient we're discussing  
5 here is a Kenneth Rubino; correct?

6 A Correct.

7 Q Do you have any independent recollection of  
8 Mr. Rubino?

9 A None at all.

10 Q Do you have an independent recollection of  
11 this day at all?

12 A No, I don't.

13 Q The chart says that the procedure started at  
14 9:45. Now, we talked about these times being inaccurate.  
15 These times I'm referring to are the procedure times of 33  
16 minutes, 32 minutes, all of these were inaccurate; correct?

17 A Correct.

18 Q The procedure start times, do you have any  
19 idea of whether or not those are accurate or not?

20 A I would say they are accurate, yes. I mean, I  
21 usually use my cell phone, you know, as a watch. There was  
22 not a clock in the room, so --

23 Q Would you record on the patient's record what  
24 time the procedure started?

25 A When the patient came in. And I don't think

1 we put down the time when the procedure started. But when the  
2 patient arrived in the room and came under our control.

3 Q Okay I want to show you what's been marked as  
4 State's Exhibit No. 4. It's the patient file for Kenneth  
5 Rubino. I'm going to show this to you and help refresh your  
6 recollection. And specifically I'm showing you the anesthesia  
7 record.

8 A Okay.

9 Q Would you take a look at that and tell me if  
10 there's any indication as to what the start time is?

11 A It's marked 9:45.

12 Q And what does this chart say?

13 A 9:45.

14 Q So the start time was accurate?

15 A Yes.

16 Q And I'm going to also show you another  
17 document in the patient record, also in Kenneth Rubino's file,  
18 and specifically Bate No. 002605. And can you tell me what  
19 this document is?

20 A That's the record kept by the nurse that would  
21 have been in the room.

22 Q And what time -- and she would have a little  
23 bit different time, wouldn't she, because she would record the  
24 procedure time when that started.

25 A Yes.

1 Q What's the time that she records the procedure  
2 start time?

3 A 9:49.

4 Q So four minutes after you got the patient, the  
5 procedure started; correct?

6 A Right.

7 Q Now, I want to show you the same -- same  
8 chart, different document, this will be Bates stamped 002606,  
9 and ask you if you can identify what that record is.

10 A That's the recovery room area where the  
11 patient was evaluated when they came out to the -- to the  
12 recovery area.

13 Q And what time did the patient get to the  
14 recovery area?

15 A Here or --

16 Q Yes.

17 A -- or down here? There's two times here.  
18 10:02.

19 Q Okay. So it's different than the chart end  
20 time on this chart because we've already established that the  
21 total procedure time was incorrect.

22 A Correct.

23 Q So the procedure, the patient gets to you at  
24 10:45, the procedure starts at 9:45 -- I'm sorry, 9:45, the  
25 procedure starts at 9:49, and the patient is in the recovery



1 room at what time?

2 A 10:02.

3 Q 10:02. Okay. That's for Kenneth Rubino.

4 Now, you did another patient between Kenneth Rubino and the  
5 time that you went and did a patient in Ron's room; correct?

6 A Yes.

7 Q And that patient is identified on the chart by  
8 No. 55C; correct?

9 A That's what it says there, yes.

10 Q I want to refer your attention to State's  
11 Exhibit 93, and ask you to take a look at the anesthesia  
12 record and tell me -- and this is Bates No. 0004772. Tell me,  
13 what time did that patient come into your room?

14 A I've got it recorded at 10:00.

15 Q What time does it say on the chart?

16 A 10:00.

17 Q So that's accurate; correct?

18 A Yes.

19 MR. STAUDAHER: Objection, Your Honor. That's --  
20 he's testified that the times on the records are not  
21 necessarily accurate, but it's the same as on the record.

22 THE COURT: All right. That's -- that's sustained.  
23 So it's the same as the other record.

24 BY MR. SANTACROCE:

25 Q The time on the anesthesia record is the same

1 as the -- what's on the chart.

2 A Yes.

3 Q And that's the time you would have received  
4 that patient in the room?

5 A Yes.

6 Q I'm going to show you Bates stamp PF0004775.  
7 And, again, this is the nurse's record. What time did the  
8 procedure for patient 55?

9 A 10:05.

10 Q Okay. And showing you -- okay. That'll  
11 suffice for that. So it started at 9:45 and finished -- or it  
12 started, the procedure started at --

13 A 10:00.

14 Q And I'm showing you Bates stamp 0004776. What  
15 time did the patient get into the recovery room?

16 A 10:17.

17 Q Now, you testified that you went into Ron's  
18 room to do a patient because he had -- I believe you said a  
19 bathroom break; correct?

20 A If that's what it was. I'm not sure.

21 Q Well, for whatever reason you went to his room  
22 and did a patient.

23 A Yes.

24 Q And the patient you did in that room was  
25 identified as Patient 18 by the State; correct?

1 A Correct.

2 Q I'm going to show you Patient 18's file.

3 Referring to Bates stamp 0003309, and this is the anesthesia  
4 record. Tell me what time you received that patient.

5 A 10:15.

6 Q And what does the time say on the chart?

7 A 10:15.

8 Q So the start -- the times you received the  
9 patients appear to coincide with the records; correct?

10 A Correct.

11 Q Showing you the same Patient 18, Bates stamp  
12 PF0003312. Tell me what time the procedure started.

13 MR. STAUDAHER: With the -- I'll object to with  
14 according to what the record shows is not necessarily when.

15 THE COURT: That's fair. According to the record.

16 BY MR. SANTACROCE:

17 Q What time?

18 A 10:13.

19 Q Now, there was another patient in Ron's room  
20 that was done right prior to Patient No. 18. That was Stacy  
21 Hutchinson; correct?

22 A Yes.

23 Q According to the records, and this is State's  
24 Exhibit 5, Bates stamp 002819, what time does the anesthesia  
25 record say that Ron received the patient Stacy Hutchinson?

1 A 9:55.

2 Q What time does the chart say?

3 A 9:55.

4 Q So those two times coincide; correct?

5 A Correct.

6 Q I want you to tell me according to the nurse's

7 record how long the procedure was. I'm referring to Bates

8 stamp 002822.

9 A Procedure starts at 09:55.

10 Q And when did Ms. Hutchinson get into the

11 recovery room according to the patient record 002823?

12 A 10:05.

13 Q Now, do you remember what time we said Patient

14 55's procedure ended?

15 A I don't. Sorry.

16 Q Let me refresh your recollection.

17 A 10:17.

18 Q So Ms. Hutchinson, according to the start and

19 stop times and recovery room records, was already in the

20 recovery room when you were still doing Patient 55C; isn't

21 that correct?

22 A Yes.

23 Q Now, when you came over to Ron's room to do

24 Patient 18, that's after Stacy Hutchinson.

25 A Yes.

1 Q You don't have a recollection as you sit here  
2 today whether you brought a propofol bottle from your room to  
3 do Patient 18. do you?

4 A No, I don't.

5 Q And if you look at the propofol amounts that  
6 were used on Kenneth Rubino and Patient 55C, you testified  
7 earlier as to what these numbers indicate; correct?

8 A Correct.

9 Q And can you tell me how much propofol you used  
10 on Rubino?

11 A 200.

12 Q In cc how many is that?

13 A Oh, that's 20 cc.

14 Q And how much did you use on the second  
15 patient?

16 A That would have been 170.

17 Q Okay. So total amount --

18 A 17 cc.

19 Q How much is that total for both patients?

20 A 37.

21 Q So there would have been -- if you used a new  
22 bottle for Rubino, and we don't know that you did, if you used  
23 Rubino and Patient 55C, you would have used 37 cc on those two  
24 patients; correct?

25 A Correct.

1           Q       Given the fact that Stacy Hutchinson was  
2 already in the recovery room when you came over to Ron's room  
3 to do Patient 18 --

4           MR. STAUDAHER:  Objection, Your Honor.  
5 Mischaracterizes the actual state of the evidence and  
6 testimony.  He's already said that every record is falsified.

7           THE COURT:  Well, okay.

8           MR. SANTACROCE:  No --

9           MR. STAUDAHER:  He can't say that that's --

10          MR. SANTACROCE:  -- that's not --

11          MR. STAUDAHER:  -- when the patient was there.

12          MR. SANTACROCE:  -- what's been said.

13          THE COURT:  Okay.

14          MR. WRIGHT:  Objection.

15          MR. SANTACROCE:  That's not what's been said.

16          THE COURT:  All right.

17          MR. WRIGHT:  That was --

18          THE COURT:  Sustained.

19          MR. WRIGHT:  -- not his testimony.

20          THE COURT:  All right.  Again, the jury is  
21 instructed they'll recall what the state of the evidence is.

22                 And, Mr. Mathahs, if Mr. Santacroce says something  
23 and that's not what you testified to and we don't catch it,  
24 obviously, you can point it out.

25 BY MR. SANTACROCE:

1 Q Have I mischaracterized or misstated any of  
2 your testimony so far?

3 A I honestly couldn't tell you. I'm sorry. I  
4 really couldn't tell you.

5 Q All right. If I do, you tell me. Okay?

6 A If I catch it.

7 Q All right. So you -- Rubino was the source  
8 patient on this date.

9 A Correct.

10 Q On September 21st; correct?

11 A Yes.

12 Q The next patient you do, 55C, it's a different  
13 color and Mr. Staudaher explained the colors, they can't  
14 confirm that this patient has hep C; correct?

15 A Correct. Yes.

16 Q Now, we go down to the patient you did,  
17 Patient 18 in Ron's room.

18 A Correct.

19 Q The patient doesn't have hep C; correct?

20 A Correct.

21 Q Patient Hutchinson who is already in the  
22 recovery room, procedure done when you get to Ron's room, has  
23 hep C.

24 A That's right.

25 Q Can you explain to me how that happened?

1 MR. STAUDAHER: Objection, Your Honor.

2 BY MR. SANTACROCE:

3 Q Do you have an opinion?

4 MR. STAUDAHER: Speculation.

5 MR. SANTACROCE: If he has an opinion.

6 THE COURT: State your question again.

7 MR. SANTACROCE: I asked him if he has an opinion as  
8 to how this patient could be affected, and this patient not be  
9 affected.

10 THE COURT: No, he can't speculate as to what might  
11 have happened. He can only testify as to what he recalls  
12 happening or what his practice was in those situations. So I  
13 don't want the witness to speculate as to what might have  
14 happened.

15 MR. SANTACROCE: Very good.

16 BY MR. SANTACROCE:

17 Q Then we come back, you come back from Ron's  
18 room, and you do Mr. Meana.

19 A Correct.

20 Q And Mr. Meana turns up infected.

21 A Okay.

22 Q And then you do one, two, three, four, five  
23 more.

24 A Correct.

25 Q They're not infected.



1 A Correct.

2 Q And then you do Sonia Orellano. She's  
3 infected.

4 A Right.

5 Q Then you do one more, not infected.

6 A Correct.

7 Q Then you do one more, Gwendolyn Martin,  
8 infected; correct?

9 A Correct.

10 MR. STAUDAHER: Your Honor, may we approach for a  
11 moment?

12 THE COURT: All right.

13 (Off-record bench conference.)

14 THE COURT: All right. Mr. Santacroce, rephrase  
15 your question.

16 BY MR. SANTACROCE:

17 Q When Mr. Staudaher was up here at this board  
18 and he was describing to you what the colors were, he told you  
19 that orange was the source patient; correct?

20 A Correct.

21 Q And green was an infected patient; correct?

22 A Correct.

23 Q What's the color of Kenneth Rubino?

24 A Pink.

25 Q So source patient?

1 A Yes.

2 Q And what's the color of Rodolfo Meana?

3 A Green.

4 Q What's the color of Patient 16?

5 A White.

6 Q No color.

7 A No color.

8 Q Patient 15?

9 A No color.

10 Q Patient 31?

11 A No color.

12 Q Patient 27?

13 A No color.

14 Q Patient 23?

15 A No color.

16 Q Sonia Orellano?

17 A Green.

18 Q Patient 28?

19 A No color.

20 Q Gwendolyn Martin?

21 A Green.

22 Q Patient 34?

23 A No color.

24 Q 35?

25 A No color.

1 Q 38?  
2 A No color.  
3 Q 57C?  
4 A I guess --  
5 Q Yellow?  
6 A -- the same as the one up here?  
7 Q Yellow?  
8 A Yellow.  
9 Q Number 41.  
10 A White.  
11 Q No color?  
12 A No color. Sorry.  
13 Q Patient 44?  
14 A No color.  
15 Q 45?  
16 A No color.  
17 Q 47?  
18 A No color.  
19 Q 50?  
20 A No color.  
21 Q 51?  
22 A No color.  
23 Q 54?  
24 A No color.  
25 Q 53? No color?

1 A No color.

2 Q What's the patient that you did in Ron's room?

3 A No color.

4 Q Now, all of these patients up here in this  
5 section except for the 12:00 patient which has no color was  
6 done by Ron, the 12:00 one; correct? 12:15?

7 A Yes.

8 Q Okay. Kenneth Rubino you did?

9 A Correct.

10 Q Patient 55C you did?

11 A Correct.

12 Q Rodolfo Meana you did?

13 A Correct.

14 Q Sonia Orellano you did?

15 A Correct.

16 Q Gwendolyn Martin you did?

17 A Correct.

18 Q Ron Lakeman didn't do any of those patients;  
19 correct?

20 A No, he didn't.

21 Q He didn't see them, he didn't -- didn't  
22 perform any medical services to those patients?

23 A Not that I'm aware of.

24 Q Okay. You can take your seat. Now, I want to  
25 talk to you about the CRNAs at the endoscopy center.

1 A Okay.

2 Q You were one of them.

3 A Correct.

4 Q Ron was one of them.

5 A Correct.

6 Q Who else was CRNAs?

7 A Ralph McDowell, Ann Lobiondo, Vince Mione,  
8 Linda Hubbard, Vince Sagendorft, and then there was a Glass  
9 and I don't remember her name.

10 Q And all of those people you mentioned worked  
11 at the endoscopy center?

12 A Yes.

13 Q Were CRNAs?

14 A Correct.

15 Q I believe you testified when you got to the  
16 clinic Ann Lobiondo told you about billing 31 minutes;  
17 correct?

18 A Her and Dr. D., yes.

19 Q Okay. When Ron came to the clinic, this was  
20 after you had gotten there --

21 A Yes.

22 Q -- correct? You told Ron that he had to bill  
23 at 31 minutes; correct?

24 A I was his mentor, yeah. I guess I was just  
25 trying to tell him what needed to be followed, you know, what

1 was house rules.

2 Q House rules.

3 A Yeah.

4 Q You never saw Ron have a meeting with Dr.  
5 Desai or Tonya Rushing or anybody in upper management that  
6 told -- that they got together and cooked this 31 minutes up  
7 and that they were going to use that, did you?

8 A No.

9 Q This was a policy and procedure that had been  
10 in place in the clinic since before you got there.

11 A Before I arrived, yes.

12 Q And every single CRNA that you just named  
13 billed the same way; isn't that correct?

14 A As far as I knew, yes.

15 Q Now, when you put your 31 minutes down on the  
16 chart, were you aware that the billing department would send a  
17 bill which had your name as the anesthesiologist in -- in some  
18 sort of computer typing format, not your signature anyway, and  
19 would send that off to the insurance companies to be paid?

20 A At the time I guess I paid no attention to it.  
21 But, I mean, we really weren't involved in that part of it and  
22 we just never paid any attention to it. But I -- in  
23 retrospect, yes.

24 Q I'm not talking about retrospect.

25 A Okay.

1 Q I'm talking about what you knew on July 25,  
2 2007, and September 21, 2007.

3 A I -- I was not really aware of a billing  
4 factor, you know, that was going on at that time, no.

5 Q Did you ever receive a check from an insurance  
6 company made payable to you for anesthesia services?

7 A Never.

8 Q Did any -- to your knowledge did any of the  
9 CRNAs ever receive a check from an insurance company for  
10 anesthesiology services?

11 A I am not aware of it.

12 Q You were paid a salary; correct?

13 A Yes.

14 Q As were all of the CRNAs?

15 A That's --

16 Q As far as you know?

17 A As far as I know.

18 Q And that salary wasn't tied to how many  
19 patients you did, was it?

20 A No.

21 Q You got that salary whether you did one  
22 patient or 50 patients.

23 A Yes.

24 Q Now, I want to talk to you a little bit about  
25 the practices you used to anesthetize patients.

1 A Okay.

2 Q Can you tell me the procedure you used --  
3 well, in your words tell me how it was done.

4 A Are you talking about starting from the very  
5 beginning or --

6 Q Sure.

7 A Are you talking about taking the history and  
8 physical, or where do you want me to start?

9 Q No, I mean the actual mechanism.

10 A Oh, okay. Well, I had to make sure that I had  
11 an IV that was in proper place, you know, I --

12 Q Okay. Let's stop and start talking about the  
13 IV.

14 A Okay.

15 Q You didn't always put IVs in patients;  
16 correct?

17 A Correct.

18 Q In fact, most of the time the IVs were started  
19 in the pre-op room by another nurse; correct?

20 A Correct.

21 Q I'm going to show you this chart. Can you see  
22 that okay?

23 A I can.

24 Q Have you ever seen that before?

25 A Never.



1 Q Okay. This purports to be a diagram of a flow  
2 chart for September 21, 2007, the date we were talking about  
3 on that chart. If you'll notice, the first person on this  
4 chart on top is Kenneth Rubino. And you already testified  
5 that you did him and he was the source patient; correct?

6 A Right.

7 Q Do you see in the middle there, Lynnette  
8 Campbell?

9 A Yes, I do.

10 Q Who is Lynette Campbell, if you know?

11 A One of the nurses at the clinic.

12 Q And what was her job?

13 A She functioned as an RN in the room or in the  
14 -- in the prep room or whatever, you know.

15 Q Would she start IVs on patients?

16 A Yes, she would.

17 Q And there's another gentleman named here,  
18 Jeff Krueger. Who is that?

19 A He would have been Lynette's supervisor.

20 Q And he would also do IVs?

21 A Yes.

22 Q So at least on this day the diagram shows that  
23 the IVs were started by Lynette Campbell and Jeff Krueger. Do  
24 you have any reason to doubt that?

25 A No, I don't.

1 Q So back to your description of the IV process.

2 A Well, the IV would -- you'd put on a  
3 tourniquet and look for the nicest vein or the biggest vein  
4 that you'd want to put an IV in. Some of them want -- this is  
5 called the antecubital area up here in the elbow. Some of  
6 them would poke in there, some of them would put down here in  
7 the wrist, some of them would go in the hand, so it just  
8 depended where they would find, you know, the nice size vein  
9 that they could place the catheter in.

10 Q And so then you stick that hep-lock in. I  
11 think you --

12 A The angiocath with the hep-lock, and it would  
13 be taped in, yes.

14 Q Okay. And can you describe for me what  
15 flushing means?

16 A Flushing means when you've got a bottle of  
17 saline and you've got a syringe and you've got fluid in the  
18 syringe and you would hook it up to the IV -- or not the IV,  
19 but to the catheter in the arm or in the patient and you'd  
20 flush it so there would be no blood in the catheter itself.

21 Q Or obstructions?

22 A Or obstructions to make sure it was in  
23 properly and working properly, yes. Uh-huh.

24 Q And sometimes that flushing would have a  
25 backflow of blood sometimes?

1 A It could. Sure.

2 Q Isn't it true that Jeff Krueger was known to  
3 have flushed everything? Wasn't that his reputation at the  
4 clinic?

5 A I honestly can't tell you because --

6 Q Okay. That's fair.

7 A -- I mean, I've seen him start IVs, but I --  
8 you know, I don't know.

9 Q Did you see him flush any of those?

10 A Oh, I'm sure I did. Sure.

11 Q So you've seen Krueger actually flush  
12 hep-locks?

13 A Yes.

14 Q Now, go on with your narration about the  
15 process.

16 A So you want me to start --

17 Q After the -- after -- well, let me ask you a  
18 question about that. Where were these IVs started? What  
19 room?

20 A Usually in the holding room. We called it a  
21 holding room where there were maybe -- let's see, maybe about  
22 four like recliner chairs in there and the patient would be  
23 brought into that room after they had already changed. They  
24 had on a gown, they would go in there and they would be --  
25 that's where the IVs would be started. And then they'd go

1 from there to a recovery area where there would be an empty  
2 gurney. And then from there it would be going into our  
3 procedure room.

4 Q Okay. Now, tell me about when they get to  
5 their procedure room with an IV. What happens?

6 A You mean to make sure that it's working or --

7 Q No, just tell me what you do.

8 A Well, the first thing I would do is, you know,  
9 make sure there's an H&P that I had done on the patient. I  
10 would make sure the patient is hooked up to all the monitors,  
11 the pulse oximeter, the EKG, and that type of thing. Oxygen  
12 would have to be placed on them and get them in position. And  
13 then they'd be ready to go with the procedure, then I'd be  
14 giving the propofol over in the IV area.

15 Q Okay. And the HP -- H&P you did on every  
16 patient?

17 A Yes, I did. The ones I did, personally did.

18 Q Your patients. That's what I'm talking about.

19 A Yes, I did my patients, yes.

20 Q Okay. So tell me now about the injection of  
21 propofol.

22 A Well, it depends on the classification of the  
23 patient. You know, we had ASA1s, ASA2s, 3s, 4s, and that type  
24 of thing. Depending on the patient, the weight of the  
25 patient, the age of the patient. I mean, you would start out

1 with maybe like 5 cc, 50 milliliters of propofol, and just see  
2 what your reaction is going to be. If it was an older  
3 patient, that might be enough for the procedure. You don't  
4 want to overdose them and have them go into a respiratory  
5 arrest or something like that where they'd stop breathing for  
6 you.

7 Q Okay. Did you ever pre-fill syringes with  
8 propofol?

9 A Yes.

10 Q So when you started in the morning, would you  
11 pre-fill a bunch of syringes?

12 A Yes.

13 Q And you would use those syringes until they  
14 were used up?

15 A Yes.

16 Q And as you empty the bottle you would throw it  
17 away?

18 A Yes.

19 Q And those would be all different syringes;  
20 correct?

21 A Correct.

22 Q And then you would take a clean, a septic,  
23 sterile needle --

24 A Right fresh out of the paper.

25 Q Brand new.

1 A Yes.

2 Q And you would insert the syringe and needle  
3 into the propofol bottle?

4 A Yes.

5 Q With draw 5 of 10 cc, whatever you needed.

6 A Right.

7 Q Inject it into the hep-lock?

8 A Yes.

9 Q Is that a fair statement?

10 A Yes.

11 Q You testified that sometimes a patient would  
12 wake up or seem to come back --

13 A Move around.

14 Q -- in the middle of the procedure, and you  
15 would re-inject that person as we saw Mr. Rubino. He had --

16 A Right.

17 Q -- 20 cc.

18 A Yes.

19 Q So if you gave Mr. Rubino 5 cc at a time,  
20 would you use four syringes?

21 A No.

22 Q Okay. Tell me how that happens.

23 A Well, the syringe would have been -- we were  
24 only allowed to have 10 -- 10 milliliter syringes, so that  
25 would hold 100 milligrams. So that would have been two

1 injections of 50 milliliters each there, or if you're giving  
2 100, it would be one syringe and then you would put on a new  
3 needle and refill the syringe with propofol.

4 Q Okay. So when you used one of the prefilled  
5 syringes all gone, you put a new needle, go back into the  
6 bottle, withdraw another 5 or 10 cc; correct?

7 A Correct.

8 Q And you'd still have all those other filled  
9 bottles on your tray; correct?

10 A Correct.

11 Q Filled syringes?

12 A Yes.

13 Q Okay. So then he wakes up again and you give  
14 him another 5 cc, same syringe, clean needle.

15 A Well depending on -- you would evaluate the  
16 patient, age, weight, how long it was going to take. You  
17 probably would have drawn up 10 cc, so you would have had  
18 enough in there for --

19 Q Well, let's take Mr. Rubino's case. Okay?

20 A Okay.

21 Q You don't have to get down. The chart says  
22 that it's 50, 50, 60, 40.

23 A Okay. That's two syringes.

24 Q Two syringes?

25 A Yes.

1 Q Well, one syringe twice; right?

2 A Right. Yeah. One syringe filled twice, yes.

3 Q Okay. So it wasn't two of the syringes you  
4 had on your tray.

5 A No, no.

6 Q One syringe filled twice, two different  
7 needles.

8 A Correct.

9 Q Is that the procedure that all the CRNAs used  
10 at the clinic based on your experience and interacting with  
11 them and talking to them?

12 A You know, I don't recall talking that much  
13 about how other people or how the nurse anesthetists gave  
14 their anesthetics. But I think that if we were in the room,  
15 you know, we would be with another one of the anesthetists,  
16 that's what we would see is the same type of procedure, yes.

17 Q Okay. So all of them did the same thing,  
18 basically?

19 A As far as I am aware, yes.

20 Q Okay. They may have drawn up 10 -- or given  
21 some 20 milliliters instead of 5.

22 A Correct.

23 Q But basically the same procedure?

24 A Correct.

25 Q Now, you said you've been practicing 30 years,



1 40 years?

2 A 40 years total.

3 Q And you were a member of the AANA?

4 A AANA. Correct.

5 Q And --

6 A Retired.

7 Q Huh?

8 A Retired now.

9 Q Okay. In any event you receive bulletins from  
10 that organization; correct?

11 A Yes.

12 Q There was a bulletin that's been circulating  
13 around here from 2002 that says one and one. Do you know what  
14 that means?

15 A I'm not following. No.

16 Q Okay. Basically one syringe, one needle,  
17 throw it out.

18 A Okay.

19 Q Are you aware of that directive from your  
20 association?

21 A If I saw it, I don't recall it, no. I mean,  
22 it's just --

23 Q Well, you testified earlier that you got all  
24 of it.

25 A I got the -- but I --

1 Q You testified you received all of their  
2 bulletins. So I'm asking you do you recall seeing anything  
3 like that?

4 A No, I don't.

5 Q Despite that bulletin in 2002, the procedure  
6 you described was the procedure that was used in -- since you  
7 got to the clinic; right?

8 A Yes.

9 Q Do you know if it's still a procedure used in  
10 other clinics or in other facilities?

11 A Yes, it is.

12 Q Do you know if it's the same procedure used in  
13 other facilities throughout the country?

14 A I can't speak for other facilities in the  
15 country, but I know it was widely used here in Las Vegas.

16 Q Even after the hep C outbreak?

17 A Well, I think some changes came about because  
18 of all of the publicity and everything that was going on.

19 Q But as far as you know the procedure was still  
20 being used?

21 A Yes.

22 Q When you got to the clinic in the morning, I  
23 think you -- let me -- let me go back first. I read somewhere  
24 in one of your statements you said CRNAs were autonomous. Do  
25 you recall that?

1 A No.

2 Q Technically it's an interview that you gave  
3 the State Attorney General's office on December 28, 2010. I'm  
4 going to show you this and ask you if you recognize it. Not  
5 the document, but the interview.

6 A I don't recall, no.

7 Q Did you give an interview to the State  
8 Attorney General's Office on September 28, 2010?

9 A No, I did not. I don't know who it is.

10 Q Okay. Do you ever recall making a statement  
11 -- do you remember giving a proffer to the United States  
12 Attorney -- Attorney's office, feds, the feds?

13 A Yes.

14 Q Okay. I'm going to reshow you this document.  
15 This purports to be your proffer.

16 A That's from them? Okay.

17 Q Okay.

18 A I didn't know there was --

19 Q You gave a proffer.

20 A Yes.

21 Q In that proffer you said that CRNAs were  
22 autonomous. Do you recall that?

23 A No, I don't.

24 Q I'm going to find it for you. I thought I had  
25 highlighted it, but apparently I didn't. I'll find it and

1 come back --

2 A Okay.

3 Q -- rather than waste time.

4 THE COURT: Does anyone need a break?

5 JURY PANEL: No.

6 THE COURT: Okay.

7 BY MR. SANTACROCE:

8 Q CRNAs in Nevada are allowed to practice -- Mr.  
9 Wright found it for me. Page 2, I'd ask you to take a look  
10 and read that first paragraph.

11 A Okay.

12 Q What -- what did you tell them in your proffer  
13 regarding CRNAs and doctor supervision?

14 A That in California it was not required.

15 Q How about Nevada? It's true that Nevada  
16 doesn't require it either, does it?

17 A Other than the supervision physician that's  
18 doing the procedure.

19 Q There has to be an MD there; right?

20 A Right.

21 Q It doesn't have to be an anesthesiologist.

22 A No.

23 Q It doesn't have to be a supervisor. It could  
24 be an MD, it could be a podiatrist?

25 A Yes, as far as I know.

1 Q So going back to the beginning of the day when  
2 you started your shift, propofol had to be checked out to you;  
3 correct?

4 A Right.

5 Q Is it a controlled substance?

6 A No.

7 Q But at least at the clinic it was under lock  
8 and key; correct?

9 A Correct. Yes.

10 Q And you would have to check it out in the  
11 morning; correct?

12 A Yes, one of the nurses would do it.

13 Q And at the end of the day you would turn back  
14 in all that's left you didn't use; correct?

15 A All the full bottles. All the empty ones were  
16 discarded -- I mean, the partial ones were discarded.

17 Q So at the end of the day you threw them out?

18 A Absolutely.

19 Q Returned the full ones back to the locker?

20 A Correct.

21 Q I want to talk about the beginning of your  
22 day. When you started your day, how many propofol bottles did  
23 you start with?

24 A If I recall, I think it was usually about 20  
25 that was set up in each room.

1 Q And you testified earlier that sometimes you  
2 got there early and you would set up both rooms.

3 A I did usually, yes.

4 Q You'd set up 20 in Room No. 1, 20 in Room No.  
5 2?

6 A Correct.

7 Q And those were all new sealed bottles of  
8 propofol when you started the day?

9 A Yes.

10 Q I believe Mr. Staudaher asked you a question  
11 about would someone -- and forgive me. I'm not quoting this.  
12 I'm just saying it how I heard it. If you heard it different,  
13 you tell me. That toward the end of the day if there was some  
14 propofol leftover in a bottle and another procedure had to go  
15 on you'd get that used bottle or something like that? Explain  
16 that to me.

17 A When we had two rooms running, if one of the  
18 anesthetists finished that day and he had a partial bottle  
19 left, and this room over here maybe still had one or two  
20 patients to go, we would use the -- use up what was left over  
21 in that room to bring over to the other room, yes.

22 Q But that would only be at the end of the day.

23 A Yes.

24 Q Never in the middle of the day and never in  
25 the morning.

1 A Not that I ever saw.

2 Q Only at the end of the day.

3 A Yes.

4 Q I want to go over this term that I learned  
5 today, micromanaging. Okay. Tell me what micromanaging is,  
6 again?

7 A In my way of thinking it's someone that is  
8 very involved in the entire procedure, knows exactly what's  
9 going on with everything in the organization, the cost of  
10 everything in the organization, the cost of everything in the  
11 organization, time factors, all of that type of thing. And,  
12 of course, the employees.

13 Q And in every organization you would expect to  
14 have someone like that; correct?

15 A Yes, I guess you would have some kind of a  
16 management, yes. I don't know if they'd be a micromanager,  
17 but --

18 Q Okay. But I'm not so much concerned about  
19 that as I am as to who was in charge over there. Okay. We've  
20 already talked about Dr. Desai.

21 A Correct.

22 Q But there were other people there in charge;  
23 correct? Tonya Rushing, who is she?

24 A She was in charge of nurses as far as I know,  
25 in charge of us. She was the -- Dr. Desai, and then it was

1 Tonya Rushing was in charge of anybody else. I think she was  
2 even in charge of the doctors as far as I recall.

3 Q And was she in charge of billing?

4 A That I don't know. She was involved in it,  
5 I'm sure. I mean, we learned lots through the papers, you  
6 know. I mean, that's the only way we knew.

7 Q I'm not talking about what you learned through  
8 publicity. We tell the jurors not to rely on publicity. We  
9 don't want our witnesses spouting that up either, okay?

10 A Okay.

11 Q So I only want you to tell me what you knew  
12 when you were working there.

13 A Well, I knew very little.

14 Q Okay. Knew very little.

15 A Yes. As far as billing, I knew nothing  
16 really. I mean --

17 Q Were the CRNAs -- my point is were the CRNAs  
18 involved in any kind of management decisions at all?

19 A Never.

20 Q Were they involved in any kind of billing  
21 decisions ever?

22 A Never. Never.

23 Q You came to work and you did your job, you got  
24 paid, and you went home.

25 A That's it.



1 Q You had nothing to do with scheduling  
2 patients; correct?

3 A No.

4 Q If they scheduled 1 or 50, you had nothing to  
5 do with that?

6 A That's right.

7 Q Who is Dr. Carrol?

8 A He was the one that was -- I always felt was  
9 in control -- or, I mean, in the line of duty behind Dr.  
10 Desai. Because he was always at that clinic at Shadow Lane  
11 and he was there. If Dr. Desai was gone, he would be the one  
12 in charge of everything.

13 Q So you think he was a decision maker?

14 A Yes.

15 Q So we have Dr. Desai, Dr. Carrol, Tonya  
16 Rushing, all decision makers?

17 A Yes.

18 Q Ron Lakeman, not a decision maker?

19 A Not that I knew of.

20 Q Well, did you ever get any directives from  
21 Ron?

22 A No. Never.

23 Q Did you ever get any orders from Ron Lakeman?

24 A No.

25 Q Okay. Who was Eladio Carrera?

1           A       One of the -- I think he was the physician  
2 that was there the longest, if I recall right. Another one of  
3 the gastroenterologists.

4           Q       Performed procedures there?

5           A       Yes.

6           Q       And who was Dr. Faris?

7           A       Another gastroenterologist that came only, I  
8 think, once a week or something like that. He was practicing  
9 in the hospitals otherwise.

10          Q       Now, we talked a lot about the times with Dr.  
11 Desai and Clifford Carrol. They were fast; right?

12          A       Yes.

13          Q       What about Carrera and Faris?

14          A       Much slower.

15          Q       How long would their procedures take?

16          A       At least 30 minutes, some of them could be 45.

17          Q       So they would go that long?

18          A       Yes, they would.

19          Q       Now, at some point the CDC was notified of a  
20 hospital epidemic, outbreak, whatever you want to call it.  
21 They came to the facility and actually observed people such as  
22 yourself doing their job; correct?

23          A       Correct.

24          Q       Ron Lakeman wasn't there because he had  
25 already left the employment of the endoscopy center long

1 before they came; isn't that correct?

2 A They came, I think, probably January, and I  
3 think Ron left in November, if I'm not mistaken.

4 Q So Ron wasn't there. He wasn't observed doing  
5 anything to your knowledge?

6 A Not to my knowledge.

7 Q Did you ever steal anything from any patients?

8 A Steal?

9 Q Yeah.

10 A No.

11 Q Did you ever steal anything from an insurance  
12 company?

13 A Did I?

14 Q Yeah.

15 A Not intentionally that I know of.

16 Q Well, in order to steal it has to be  
17 intentional. Did you steal anything from an insurance  
18 company?

19 A No. I mean, I wasn't paid by the insurance  
20 company, so I don't know what your question is dragging at.

21 MR. SANTACROCE: Court's indulgence.

22 THE COURT: That's fine.

23 MR. SANTACROCE: I have no further questions. Thank  
24 you, Mr. Mathahs.

25 THE WITNESS: Thank you.

1 MR. SANTACROCE: Best of luck to you, sir.

2 THE COURT: All right. Thank you, Mr. Santacroce.

3 Ladies and gentlemen, we're going to have to take  
4 our evening recess, or our weekend recess actually, at this  
5 point. We will reconvene Monday morning at 9:00 a.m.

6 Before I excuse you for the weekend recess I must  
7 admonish you that you're not to discuss the case or anything  
8 relating to the case with each other or anyone else. You're  
9 not read, watch, or listen to any reports of or commentaries  
10 on this case or any subject matter relating to the case.

11 Don't do any independent research on any subject connected  
12 with the case, and please don't form or express an opinion on  
13 the trial.

14 If anyone else has some questions, you can just hand  
15 your questions to the bailiff on the way out. Otherwise, put  
16 your notepads in your chairs, follow Kenny, and we'll see you  
17 all back here Monday at 9:00.

18 (Jury recessed at 4:05 p.m.)

19 THE COURT: Mr. Mathahs, during the weekend recess  
20 don't discuss your testimony with anybody else who may be  
21 called as a witness in this case. Obviously, you can talk to  
22 your lawyers and what not.

23 Okay. That's it. See you guys back Monday at 9:00.

24 (Court recessed for the evening at 4:06 p.m.)

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**

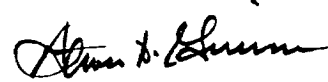
I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

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

  
KIMBERLY LAWSON

COPY

Electronically Filed  
03/11/2014 12:30:01 PM



CLERK OF THE COURT

TRAN

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

STATE OF NEVADA,	)	CASE NO. C265107-1,2
	)	CASE NO. C283381-1,2
Plaintiff,	)	DEPT NO. XXI
vs.	)	
	)	
DIPAK KANTILAL DESAI, RONALD	)	<b>TRANSCRIPT OF</b>
E. LAKEMAN,	)	<b>PROCEEDING</b>
	)	
Defendants.	)	

BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE

**JURY TRIAL - DAY 13**

MONDAY, MAY 13, 2013

APPEARANCES:

FOR THE STATE:	MICHAEL V. STAUDAHER, ESQ. PAMELA WECKERLY, ESQ. Chief Deputy District Attorneys
FOR DEFENDANT DESAI:	RICHARD A. WRIGHT, ESQ.
FOR DEFENDANT LAKEMAN:	MARGARET M. STANISH, ESQ. FREDERICK A. SANTACROCE, ESQ.
Also present:	MICHAEL V. CRISTALLI, ESQ.

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

KARR REPORTING, INC.

**001785**

**I N D E X**

**WITNESSES FOR THE STATE:**

KEITH MATHAHS - Resume

Cross-Examination By Mr. Wright	4
Redirect Examination By Mr. Staudaher	120
Recross Examination By Mr. Santacroce	160
Recross Examination By Mr. Wright	164
Further Redirect Examination By Mr. Staudaher	165
Further Recross-Examination By Mr. Wright	166

PATTY ASPINWALL

Direct Examination By Mr. Staudaher	173
Cross-Examination By Ms. Stanish	197
Cross-Examination By Mr. Santacroce	206
Redirect Examination By Mr. Staudaher	209
Recross Examination By Mr. Santacroce	209

CARMELO HERRERO

Direct Examination By Mr. Staudaher	212
Cross-Examination By Mr. Santacroce	255

**E X H I B I T S**

**STATE'S EXHIBITS ADMITTED:**

	<b>PAGE</b>
96	178

1           **LAS VEGAS, NEVADA, WEDNESDAY, MAY 13, 2013, 9:06 A.M.**

2   \* \* \* \* \*

3                           (Outside the presence of the jury.)

4           THE COURT: All right, good morning. The jurors are  
5 all here, so Kenny if everyone's ready. Kenny, you can bring  
6 them in.

7                   Did you guys have a chance to look at the juror  
8 questions that were up here? Okay.

9           MR. WRIGHT: No.

10          MR. STAUDAHER: No.

11          THE COURT: Then we'll do it after Mr. Wright's  
12 testimony. We've accumulated five that they gave to the  
13 bailiff on the way out.

14          MR. WRIGHT: Okay.

15          THE COURT: Yesterday -- Friday rather.

16   (Jury reconvened at 9:08 a.m.)

17          THE COURT: Court is now back in session. The record  
18 should -- everyone can be seated. The record should reflect  
19 the presence of the State with the deputy district attorneys,  
20 the presence of the defendants and their counsel, the officers  
21 of the Court and the ladies and gentlemen of the jury.

22                   And when we'd taken our weekend recess, Mr. Mathahs  
23 was on the stand. So Mr. Mathahs, you may come back up here  
24 to the witness stand, please. And, sir, just have a seat.  
25 You are still under oath. Do you understand that, sir?



1 THE WITNESS: Okay.

2 THE COURT: Sir, you are still under oath. Do you  
3 understand that?

4 THE WITNESS: Yes.

5 THE COURT: Okay. Mr. Wright, you may begin your  
6 cross-examination.

7 CROSS-EXAMINATION

8 BY MR. WRIGHT:

9 Q Thank you. Good morning, Mr. Mathahs.

10 A Good morning.

11 Q We know each other, correct?

12 A Yes.

13 Q Okay. There was a time when you were sitting  
14 here with Dr. Desai and with Mr. Lakeman as a defendant in  
15 this case, correct?

16 A Correct.

17 Q Now I want to go back to your -- start back at  
18 the beginning with your education. Okay?

19 A Okay.

20 Q And so tell the jury in greater detail how you  
21 became a tech and ultimately a nurse, starting with years and  
22 where -- where you went to school.

23 A The lab tech was a -- a school in Minneapolis.  
24 I think it -- I don't recall the name of it anymore. It's  
25 been 40, 50 years ago. But anyhow, that's where I went to

1 school for two years there and became a lab tech, and I worked  
2 in the lab, ran a lab for eight years before I decided to go  
3 back to nursing school and with the idea of going into  
4 anesthesia.

5 Q Okay. And were you from Minnesota? Is that why  
6 you went to school there?

7 A Northern Iowa.

8 Q Northern Iowa.

9 A Yes.

10 Q Okay. How old are you, sir?

11 A Seventy-seven.

12 Q Okay. And was -- was that -- did you go to high  
13 school?

14 A In Iowa.

15 Q Okay. And was that like a two-year trade  
16 school, junior college or what would you call it back then to  
17 become a tech, medical tech?

18 A I think it was -- probably you'd call it a trade  
19 school today.

20 Q Okay. And you graduated and became a medical  
21 technician --

22 A Correct.

23 Q -- is that correct? And then you actually  
24 worked as a medical technician for eight to ten years?

25 A Yes.

1 Q Okay. And where was that?

2 A At the Dallas County Hospital in Perry, Iowa.

3 Q Okay. And after that hospital work, that's when  
4 you decided to go back to school to become a nurse?

5 A That's correct.

6 Q Okay. And where did you go to school for that?

7 A Iowa Central College in Fort Dodge, Iowa.

8 Q Okay. How long a --

9 A It was an AD program, two-year program.

10 Q Okay. And you graduated?

11 A Yes.

12 Q Okay and became a registered nurse, LPN, what do  
13 you --

14 A RN, but I became that after I was already in  
15 anesthesia school.

16 Q Okay. So once you became a nurse you -- you  
17 then wanted to specialize in anesthesia; is that correct?

18 A Correct, correct.

19 Q And you go -- after becoming a nurse you go  
20 additional education to become a nurse anesthetist, right?

21 A Correct. I was two years at the Mayo Clinic in  
22 Rochester.

23 Q Okay. A two-year program and you graduated?

24 A Yes.

25 Q Okay. And that's Mayo Clinic, the world famous

1 Mayo Clinic?

2 A That's it.

3 Q Okay. And so at that point are you -- what  
4 we've been calling here in the courtroom, a CRNA?

5 A Well, after you take the national exam you are,  
6 yes. And I -- I graduated in June -- I guess 1st of July in  
7 '70, so I didn't really have a chance to take it until the  
8 fall of '70 and didn't get the results until early '71.

9 Q Okay. So you were then a -- a -- you took a  
10 national -- a national test to become a certified registered  
11 nurse anesthetist?

12 A That's correct.

13 Q Okay. And then in 1970 -- beginning of '71, now  
14 that you're a CRNA, where do you go?

15 A In to California, Southern California.

16 Q Okay. And you were -- if I understand it, you  
17 were in Southern California from 1971 up until your retirement  
18 in 2002?

19 A That's correct.

20 Q Okay. And during those 31 or 32 years in  
21 Southern California, what -- where were you located and what  
22 were you doing generally?

23 A I was in Rancho Cucamonga and I was in the  
24 practice of giving anesthesia for different hospitals,  
25 different groups, different surgeons.

1 Q And were you in practice with others?

2 A Yes.

3 Q Okay. Was it a CRNA group?

4 A Yes.

5 Q Okay. And so how many others in your group?

6 A It started out with myself and another one, but  
7 over probably five, six years we were up to about 10 or 12  
8 other CRNAs all working together as a group. It was called  
9 the Cucamonga anesthesia Group.

10 Q Okay. And that was started by yourself,  
11 correct?

12 A Correct.

13 Q Okay. And as a -- that -- that group made  
14 itself available to any physicians, hospitals, doctors, anyone  
15 who needed a nurse anesthetist; is that correct?

16 A Yes or you might say just anesthesia, you know,  
17 privileges. Yeah, we could give anesthesia for.

18 Q Okay. You had privileges. What does that mean?

19 A Well, at the hospitals or the clinics that we  
20 were on -- was on, we were on the staff just like a physician  
21 would be. Fill out, you know, that and we would attend  
22 meetings and all of those types of things. It would have been  
23 no different than a physician being on the staff at a  
24 hospital.

25 Q Okay. So that -- you -- your -- your group

1 covered like three counties in Southern California?

2 A We were in Orange County, San Bernardino and  
3 Riverside, yes.

4 Q Okay. And there are numerous hospitals there  
5 and you would -- in order to be privileged at a given  
6 hospital, you would apply and show that you have the  
7 credentials and are up to date with your licensing, correct?

8 A Correct.

9 Q And when all of that is in order, that's  
10 demonstrating you are competent, licensed and you know how to  
11 do it, right?

12 A Correct.

13 Q Okay. And you were -- if -- if there was a  
14 hospital you'll -- that called you and you weren't  
15 credentialed, you couldn't go there. Someone else in your  
16 group that was credentialed there would go there?

17 A Well, our group was all -- pretty much as far as  
18 I know, the same credentials, yeah.

19 Q Okay.

20 A So we were all able to go -- had privileges to  
21 wherever we are on staff.

22 Q Okay. Interchangeably, you all would just set  
23 up schedules and you would go out to the various hospitals to  
24 do anesthesia services?

25 A Correct.

1 Q Okay. And after -- after 32 years you decided  
2 to retire?

3 A Yes.

4 Q Okay. And are still living in Southern  
5 California?

6 A Yes.

7 Q And you didn't stay retired?

8 A I didn't. No, it was very difficult.

9 Q Okay. You've been working more than 40 years  
10 and had a routine, correct?

11 A Yes.

12 Q Okay. And is that why retirement -- you had too  
13 much time on your hands?

14 A I think you could say time was probably wearing  
15 on me, yes.

16 Q Okay. And so you -- you were looking -- even  
17 though you retired, you tried it for a while and then you  
18 thought about going back to work. Is that fair?

19 A I retired I think it was in -- first of July of  
20 '70 -- or I mean 70, 2002 and just stayed comfortable for a  
21 few months and then I saw the ad. They were looking for  
22 anesthesia at the Gastro Center here in Las Vegas and so I  
23 looked into it, and that's how I --

24 Q Okay.

25 A -- came here.

1 Q There was an advertisement seeking a CRNA at the  
2 Gastro Center in Las Vegas, Nevada, correct?

3 A Correct. That was in our AANA magazine.

4 Q Okay. And did -- were you interviewed for the  
5 job?

6 A Yes.

7 Q Okay. And who interviewed you?

8 A Tonya Rushing and Dr. Desai.

9 Q Okay. And that would have been at the end --  
10 late in 2002; is that correct?

11 A October or late November, somewhere in that  
12 area, yes, I don't recall exactly.

13 Q Okay. And they offered you a job?

14 A Yes.

15 Q Okay. You accepted?

16 A Yes.

17 Q Okay. And I think you said on your direct  
18 examination you were coming on full time, correct?

19 A Yes.

20 Q Ultimately, you went to half time after a few  
21 years --

22 A Correct.

23 Q -- correct? But initially full time and you  
24 were earning \$120,000 per year plus bonuses?

25 A Correct.



1 Q Okay. Now when -- when did you start?

2 A Full time would have been sometime in January of  
3 '03.

4 Q Okay. And you had to get your Nevada license.  
5 You weren't licensed in Nevada at the inception, right? When  
6 you were offered the job?

7 A No, I was not.

8 Q Okay. And so you needed to apply in Nevada  
9 because you were licensed in California, CRNA, correct?

10 A Correct.

11 Q And so you applied here and you have to take  
12 tests or is it just reciprocity?

13 A Reciprocity.

14 Q Okay. So you got your licensing and then went  
15 to work. And at the time, the -- you went to work at the  
16 Gastro Center and there was an endoscopy clinic there and at  
17 the beginning it was a one procedure room operation; is that  
18 correct?

19 A That's correct.

20 Q Okay. And when you -- when you started, were  
21 you the only CRNA or were others there?

22 A There were others.

23 Q Okay. And that was I think you said Ann  
24 Lobianbo?

25 A Correct.

1 Q Okay. And who else?

2 A Ralph McDowell.

3 Q Okay. And at the time, was there more than one  
4 clinic that was operating in Las Vegas for this Dr. Desai's  
5 clinic?

6 A Yes. There was on Burnham, the one on Shadow  
7 Lane.

8 Q Okay. So did -- did you work mainly at Shadow  
9 Lane?

10 A At the beginning I think I went back and forth a  
11 little.

12 Q Okay. So at the time it was what we called the  
13 Burnham Clinic, right?

14 A Correct.

15 Q Shadow Lane Clinic?

16 A Correct.

17 Q And you had Ann -- how do you say her name?

18 A Lobianbo I think it is.

19 Q Lobianbo.

20 A Yeah.

21 Q And she was a CRNA?

22 A Correct.

23 Q The same as you, correct?

24 A Yes.

25 Q And Ralph McDowell.

1 A Yes.

2 Q Anyone else at the -- when you arrived?

3 A No, that was it.

4 Q Okay. And who -- who -- were you need to be  
5 taught how to be a CRNA by Ann or Ralph?

6 A I was instructed or mentored in the way they  
7 were doing the procedures for the center because they -- Ann  
8 had been here I think for a year or maybe longer and I think  
9 Ralph probably about the same.

10 Q Okay.

11 A And the way they wanted it done, yes.

12 Q Okay. And they were showing you the ropes of  
13 how it worked; is that correct?

14 A Correct.

15 Q And but as far as like teaching you how to be a  
16 CRNA, you already were one and you were simply coming on as an  
17 equal to them, meaning they were CRNA and you were a CRNA,  
18 correct?

19 A Correct.

20 Q Okay. And then in what Ralph or Ann told you in  
21 showing you the ropes at the beginning, did you see anything  
22 wrong?

23 A I was questioning the time situation, yes.

24 Q Okay. That -- and is that the billing time?

25 A The time that was -- had to be on the anesthesia

1 records, yes.

2 Q Okay. So you questioned -- right at the  
3 beginning you questioned Ann about that?

4 A Yes.

5 Q Okay. And other -- other than the billing,  
6 okay, on the procedures, how it was going to take place, what  
7 you were doing, did you see anything where you went whoa, wait  
8 a minute, that's contrary to practice?

9 A Not that I'm aware of, you know. I mean,  
10 talking about anesthesia or are you talking about that?

11 Q Anesthesia.

12 A Yeah. No, I'm not -- the thing that I said in  
13 the beginning when they were -- when I first came on they were  
14 using Versed or Valium and Demerol or Fentanyl, which was  
15 prolonging the patients from waking up and returning back to,  
16 you know, leaving the -- leaving the facility. And I was the  
17 one that suggested we might start using propofol and do away  
18 with the narcotics.

19 Q Okay. And had -- had you -- you were familiar  
20 with propofol?

21 A Very much.

22 Q From your practice in California?

23 A Yes.

24 Q And I can't remember when propofol was invented,  
25 1987 or something?

1           A     It came in the glass vials that we had to break  
2 the tops off, that's all I remember about it.

3           Q     Okay. Originally, when propofol was a new --  
4 new drug or quick acting sedative -- anesthesia?

5           A     Right.

6           Q     It -- it came in little glass ampules, right?

7           A     Yes.

8           Q     And so, there was no rubber stopper or anything  
9 else, it was a glass -- like a little tiny glass test tube?

10          A     Almost and it had a top on it that we had to  
11 break off to, you know, extract the --

12          Q     Okay.

13          A     -- propofol.

14          Q     It was totally sealed in glass?

15          A     Correct.

16          Q     Okay. And snap the top off?

17          A     Uh-huh, cut your finger.

18          Q     Okay. And then draw it out like with a needle  
19 and syringe?

20          A     Correct.

21          Q     Okay. And then obviously, it went from glass  
22 ampules to propofol -- what -- the propofol bottles, which  
23 we've seen pictures of here in the courtroom, like a 20 and a  
24 50, a little bottle with a rubber top after you snapped the  
25 seal off of it; is that correct?

1           A     That's correct. I don't think 50 milliliters or  
2 cc's were around for quite awhile after the 20 came out, and  
3 that was -- 20 or was it a 10? I don't remember. Ten or 20  
4 milliliter --

5           Q     Okay.

6           A     -- but that was the first and then 50, I -- I  
7 don't know when that came in to play.

8           Q     Okay. They -- they -- they came out more --  
9 more -- let me put it this way: In your practice in Southern  
10 California when you were doing propofol, how many CRNA  
11 procedures did you do in your 32-year career?

12          A     Surgeries? Thousands. I couldn't -- I -- I  
13 don't know -- I never kept track, but it was thousands.

14          Q     Okay. Many of them in the latter part of your  
15 career with propofol?

16          A     Yes.

17          Q     Okay. And at -- in Southern California, you  
18 were mainly -- you were using 20s or maybe 10s at some point?

19          A     Correct.

20          Q     Okay. Now you come here, the clinic, Dr.  
21 Desai's clinic, they were still using the drugs you said?

22          A     Correct.

23          Q     Okay. And those are narcotics?

24          A     Well, the Fentanyl or Demerol are narcotics,  
25 yeah. The others an amnesiac, Valium or Versed just gives you

1 a little amnesia is what it gives you, you know.

2 Q Okay.

3 A So you really don't know what's going on.

4 Q And those have traditionally been used for  
5 sedatives, anesthesia before propofol?

6 A Correct.

7 Q And it -- there -- there's a longer wake up time  
8 for the patient with those type of drugs?

9 A With the narcotic, yes, and it prolonged it  
10 quite a bit.

11 Q Okay. And so you suggested going to propofol --

12 A Yes.

13 Q -- correct? And the -- the suggestion was taken  
14 and the clinic ultimately went completely to propofol except  
15 for the rare exception when someone couldn't take it for some  
16 reason?

17 A Correct.

18 Q Okay. And at that time, if someone -- what,  
19 could you be allergic to propofol or --

20 A Propofol contains egg albumin and some people  
21 are allergic to eggs so we always had to make sure that they  
22 were not allergic to any type of egg substance or anything  
23 like that.

24 Q Okay. And if someone was allergic, you would  
25 then go back to the previously used methods?

1 A Correct.

2 Q Correct? But that was infrequent?

3 A Very infrequent, yes.

4 Q Okay. Now, you worked mainly with which -- now  
5 I'm back at the clinic now, starting when you were full time.

6 A Okay.

7 Q When -- when did you go to half -- half time or  
8 part time?

9 A Part time, let's see. I think the only full  
10 time that I worked was '03 and '04 and [indiscernible] in '05.

11 Q Okay. So 2003, 2004 you were working full time?

12 A Correct.

13 Q Okay. Who -- which doctors mainly were you  
14 working with?

15 A Dr. Desai, Dr. Carrol, Dr. [indiscernible] and  
16 Dr. Sharma would come in when I -- and I think in '03 Dr.  
17 Herrero was there some and Dr. Faris.

18 Q Okay. Now, when you go -- 2003, '04, in 2005  
19 you become part time; is that correct?

20 A I think the -- actually --

21 Q Approximately.

22 A -- I think I actually quit, yeah, in the latter  
23 part of '05 and part of '06, yes, uh-huh.

24 Q Okay.

25 A So I was gone -- I was out of the state for a



1 while.

2 Q Okay. Did you -- you wanted to go back to North  
3 Carolina and spend time with a daughter?

4 A Correct.

5 Q Okay. And the -- you -- you came back and then  
6 were rehired part time?

7 A Yes.

8 Q Okay. Now you worked part time -- and -- and  
9 what would part time be? Half days or just so many days a  
10 week?

11 A I think it was usually -- I would come in and  
12 open up. I would usually be there a little after six, get it  
13 -- get everything set up and then I would try -- try and get  
14 out of there by noon. That's when they would want me to be  
15 out of there, by noon, after I had relieved the person, you  
16 know, on -- who was in the other room and somebody would  
17 probably be coming in and take my place.

18 Q Okay. For your first -- until you -- until 2005  
19 when you're full time, okay, you would be -- it was always  
20 your practice, you were an early bird, first one there; is  
21 that right?

22 A That's right.

23 Q Okay. So you -- you would come in, set up the  
24 procedure room as far as the anesthetist go?

25 A Correct.

1 Q And so that meant getting out the -- like a tray  
2 of propofol?

3 A We usually got it -- it was locked up and one of  
4 the nurses would open the cabinet and give it to us. We would  
5 usually -- I always -- if I recall right, it was set up. I  
6 think it was we'd get a whole box and I think there were 20  
7 bottles in a box, so we'd set up each room with the same  
8 amount of propofol.

9 Q Okay.

10 A And make sure the syringes, needles and alcohol  
11 swabs and that type of thing were there.

12 Q Okay. And at the time you -- you -- you would  
13 get there at six, procedures normally start at seven?

14 A Correct.

15 Q Okay. And you would make sure each -- well,  
16 first, I don't want to get ahead. But initially, there was  
17 one procedure room, right?

18 A Yes.

19 Q Okay. Then it went to two sometime in 2004?

20 A I think it was maybe summertime of '04,  
21 somewhere in there, yeah, uh-huh.

22 Q Okay. So when we got to the two procedure  
23 rooms, you're -- you're talking about setting both of them up  
24 with the supplies that the CRNA would need for the day?

25 A Correct.