

1 would tell me -- he'd kick me out.

2 Q He would kick you out?

3 A He would kick me out immediately.

4 Q What was the reason?

5 A I actually, I don't know because from my
6 understanding he was -- he was like that to everybody or
7 especially me.

8 MR. WRIGHT: I didn't hear the last part of that.

9 THE COURT: Sir, can you state your answer again?

10 THE WITNESS: He mostly kicked out probably new
11 people, but I felt like he just didn't like me.

12 BY MR. STAUDAHER:

13 Q Did you ever have an issue with him, an
14 argument, anything you've gotten into?

15 A No, sir.

16 Q But if you were in a room he would kick you out
17 of it?

18 A Right away.

19 Q Did you ever see him do procedures though?

20 A I only was there for like a couple minutes and
21 then I was kicked out because we were understaffed.

22 Q Right. But, I mean, at times where he's doing a
23 procedure, can you see, overhear, see what's going on in those
24 rooms?

25 A No. If I was kicked out I was in the

1 sterilization room.

2 Q Did you ever see him actually do colonoscopies,
3 put scopes into people, things like that?

4 A I've only seen -- I've only seen a couple and
5 they were in and out basically.

6 Q Okay. But you did see a couple?

7 A Yes, sir.

8 Q Let's talk -- so when he would kick you out, is
9 that when you would go over to the procedure room -- I mean
10 the cleaning room and then you would do your work there?

11 A Yes, sir.

12 Q Let's talk about that for a minute. When you're
13 in the procedure -- or the cleaning room is where I'm at right
14 now. When you're in the cleaning room, what kinds of things
15 did you do in there?

16 A Well, when the procedure was done -- the gastro
17 technician would unhook the dirty scope, either the endoscope
18 or the upper scope and they would bring it in and I would
19 clean it. I'd put it in the bucket and I'd use this brush
20 thing to put it to the three ports to where I would scrub it
21 to where all the feces would come out. And after that we
22 would hook it up into the Medivator to where we pressed the
23 button and it would sterilize the equipment.

24 Q Now, the Medivator itself, did that circulate
25 things, you know, solution through the scope itself?

1 A Yes, sir.

2 Q So you weren't just dropping it into a solution,
3 a material, it actually circulated through the scope to clean
4 the inside of the scope out?

5 A Well, there was a -- there was a process. We'd
6 -- first we'd have to clean out the -- the fecal matter and
7 then we'd put it in the next clean bucket and then we would
8 stick it in the Medivator.

9 Q Okay. So three -- three stops; dirty area
10 where --

11 A Uh-huh.

12 Q -- the fecal material gets cleaned out. Is that
13 like a bucket or a sink or what is it?

14 A It was a -- it was a bucket. It was like a blue
15 bucket like -- I can't really explain it. It's like this big,
16 that -- that tall.

17 Q Okay. And for the record, you were -- you were
18 motioning with your hands. It looked like about two and a
19 half feet or so in diameter?

20 A I'm bad with math --

21 Q You're saying was it about -- about like that?

22 A Yeah.

23 Q And then you said it looked like it was about a
24 foot or so high?

25 A Yes, sir.

1 Q And you would put the scopes inside that, that
2 would be the dirty bucket you said?

3 A Yes, sir.

4 Q Now, beside the scopes would you process
5 anything else in that dirty bucket with the scopes?

6 A Well, we would scrub the -- the bite blocks.

7 Q Bite blocks?

8 A The thing that -- for the upper endoscopy so
9 that the scope would go in and the patient wouldn't bite the
10 scope, we would put a bite block. And for -- I don't know,
11 for a while we would be cleaning that in the -- in the tub.

12 MR. STAUDAHER: Court's indulgence.

13 THE COURT: Uh-huh.

14 BY MR. STAUDAHER:

15 Q Scopes, bite blocks, all go in the same dirty
16 solution, right?

17 A Yes, sir.

18 Q And then they get cleaned and then they go
19 where?

20 A In the Medivator to where -- where the machine
21 is hooked up to the scope and the solution just goes through
22 the whole thing and it like does this whole cycle where it
23 cleans everything in there.

24 Q Okay. And how -- how often or how long would
25 that process take?

1 A For the Medivator I -- I believe like 16
2 minutes, sir.

3 Q So the process of -- is this after you get it
4 actually hooked up into the Medivator it does it's processing
5 for 16 minutes?

6 A Yes, sir.

7 Q Is this something you have to do anything to
8 when -- I mean, do you have to open up the machine and do
9 anything with it during the time or does it run on its own?

10 A It -- it runs on its own. As long as everything
11 was hooked up to it, it was running properly, it would go --
12 it would circulate through the scope and it would basically
13 fill up -- it would fill up with solution and it would -- it
14 does its process.

15 Q Was there ever any time when that didn't work,
16 the machine -- the Medivator, for example?

17 A There was a couple times it didn't work.

18 Q What was going on? Was it broken or was it --

19 A It just didn't work properly. It probably like
20 -- when you turned it on, water and solution would come out
21 the bottom or it just didn't work properly -- period.

22 Q What would you do in those instances?

23 A Well, we would take two -- two buckets, just the
24 same thing, and basically put more solution and we would do
25 the whole process, cleaning the fecal matter with the solution

1 and then they wanted us to soak it in a second bucket of clean
2 water.

3 Q So how long would the -- this whole process take
4 when you just were doing the cleaning out the dirty buckets
5 and then moving it to the clean buckets?

6 A Well, after everything was cleaned we would --
7 we would soak it for like 20 minutes.

8 Q So instead of 16 in the Medivator it would just
9 sit in the solution for 16 -- or 20 minutes?

10 A Yes, sir.

11 Q Now, when it's sitting in the solution, it's not
12 circulating -- there's nothing circulating in it, correct?

13 A No, sir.

14 Q So you add an additional four minutes to the --
15 to the -- sort of the time --

16 A Yes, sir.

17 Q -- for the bucket?

18 A Yeah, yes, sir. By the time the -- as soon as
19 the dirty scope was in there we made sure -- we had to hook up
20 this device to where you'd hook it up to the ports and that's
21 where you would -- the syringes with water and we would do it
22 until where the end of the scope would -- all the fecal matter
23 would come out and then we would put the brush in and keep it
24 doing it until there was no fecal matter. And then we would
25 soak it and then put it in the other one and soak it with

1 clean water.

2 Q For 20 minutes?

3 A Yes, sir.

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

5 THE COURT: You may.

6 BY MR. STAUDAHER:

7 Q I'm going to show you what has been -- actually
8 this is the only thing I'm interested in specifically, but,
9 marked as 71-C and I want you to tell me if you recognize
10 that.

11 A It's a bite block. Ours was -- well, it didn't
12 actually look like this, it looked a little bit different but
13 it was green.

14 Q Besides from the colors, is it the same basic
15 thing though?

16 A Yes, sir.

17 Q So that's the kind of device that you had?

18 A Yes, sir.

19 MR. STAUDAHER: Move for admission of State's
20 Proposed 71-C and I guess 71-B is the packaging, Your Honor.

21 THE COURT: Any objection?

22 MS. WECKERLY: No, Your Honor.

23 MR. SANTACROCE: No.

24 THE COURT: All right. Those will be admitted.

25 (State's Exhibit 71-B and 71-C admitted.)

1 BY MR. STAUDAHER:

2 Q I'm going to turn off the light so it doesn't
3 have the shininess there. But you can draw on that screen
4 with your fingernail if you need to, but can you describe for
5 us where you put this exactly, what portion of it you put in
6 and where the scope actually goes. Does it go in this hole or
7 does it go over here, where does that go?

8 A It goes right here.

9 Q Yeah.

10 A Yeah, right there.

11 Q Okay. So the -- the scope would go through that
12 hole --

13 A Uh-huh. But the -- the long end would go to the
14 patient's mouth.

15 Q So the long end is actually inside the mouth --

16 A Uh-huh.

17 Q -- flat end if I turn it over --

18 A Yeah, so the --

19 Q -- flat end is --

20 A -- the scope would go through -- through this
21 hand right here.

22 Q Right there?

23 A Yes, sir.

24 Q And then the -- this portion would rest on the
25 lips of the patient, on the outside?

1 A Yes, sir.

2 Q And what are these little wings with the little
3 hooks on them for?

4 A It -- looks like a different hooks but those are
5 just to keep it in place so the patients not like trying to
6 take it out with his tongue.

7 Q Inside this package, do you see this roll of
8 material here?

9 A Yes, sir.

10 Q And what is that, if you know?

11 A That's the thing to help -- it's like -- like
12 kind of like a headband just to make sure -- not a headband,
13 but it keeps the mouth -- the thing in your mouth.

14 Q So it -- it goes around the neck and holds it in
15 place?

16 A Yes, sir.

17 Q When you process these, when you threw those in
18 with the -- with the scopes and you cleaned them, did this
19 part go in there as well? This sort of band?

20 A Yes, sir.

21 Q The whole thing went in there?

22 A The whole thing went in there.

23 Q In a typical day, how many of those would you
24 use?

25 A We were only supposed to be using four

1 throughout the day -- in -- in our container but if we were
2 sterilizing we would grab more, but I'd say like 10 in a whole
3 day because we were -- we were only allowed so many.

4 Q So you were -- you reprocessed these though?

5 A Yes, sir.

6 Q Over and over again?

7 A Yes, sir.

8 Q At what point would you actually throw it away?

9 A At the end of the day.

10 Q How many times would you think that this would
11 get processed, a single one would get processed in a day?

12 A Quite a few. It depends if we -- depending if
13 we were on time or if how many patients we had.

14 Q Could it be three, four or five times a day?

15 A Probably -- probably around there.

16 Q Okay. So for one of these it would go into that
17 same soup, so to speak, with the scopes. And these are scopes
18 that were used for the upper and the lower endoscopies?

19 A Yes, sir.

20 Q The colonoscopies as well?

21 A Yes, sir.

22 Q After these -- did anybody ever tell you that
23 these were single use only items?

24 A We were told -- we were -- to throw them away
25 eventually later.

1 Q Eventually later. Now beside the bite blocks
2 here and the scopes, was there anything else that you
3 reprocessed like that while you were there?

4 A I believe the -- the dilators. I can't remember
5 what they look like, it's been a long time. I think that's
6 like the stuff that goes in your stomach because we were also
7 doing other procedures.

8 Q Primarily did you work in the scope room or in
9 the procedure room?

10 A I -- I did everything.

11 Q Was it -- so you split your time about equally?

12 A Yeah. Some -- some days I'd be mostly in -- in
13 the scope room or sanitation room.

14 Q Now, the -- when the scope -- when the Medivator
15 was broken and you had the scopes just sitting in the -- the
16 bucket with the solution, what -- tell us about the solution.
17 What kind of solution was this that was used to clean these --
18 these scopes?

19 A Oh, goodness. I don't know the -- the solution,
20 I don't remember the name.

21 Q Was it some sort of disinfecting solution?

22 A Yes, sir it was something that was -- that was
23 very strong.

24 Q Did it eventually -- did it have a color?

25 A I -- I -- I can't recall.

1 Q Do you remember if there was anything to do with
2 a change in the appearance of the -- I mean, how did you know
3 when it was time to change the solution?

4 A Well, we would change it after like two or three
5 times.

6 Q So it would be used -- and how many scopes would
7 go in the solution at a time?

8 A Two.

9 Q So two scoops -- two scoops -- two scopes and
10 you would use it two or three times and then you would change
11 the solution?

12 A Yes. Unless -- unless that one scope that we
13 brought in was super dirty, I mean, and the whole bucket was
14 just disgusting, then I would change it.

15 Q But is it fair to say that after you have two
16 scoops -- I'm sorry, two scopes and you do this with -- I
17 mean, that would be anywhere from four to six, eight scopes
18 would go through before it would get changed, correct?

19 A Four --

20 Q Two at a time and you said two to three times
21 before you would change it?

22 A I guess that sounds right.

23 Q Okay. Would it be pretty dirty before you
24 changed it?

25 MS. WECKERLY: Objection. Leading.

1 THE COURT: It's a little leading, well, overruled.

2 MR. STAUDAHER: I can -- I can rephrase it.

3 BY MR. STAUDAHER:

4 Q How -- what would be the cleanliness of the
5 solution? Can you describe that for us after it got to that
6 point and we're talking six, eight scopes?

7 A Well, if it -- if it -- you mean if it was
8 dirty?

9 Q Well, that's what I'm asking you. Why would you
10 change it?

11 THE COURT: I think he's asking how dirty would it
12 be?

13 MR. STAUDAHER: Exactly.

14 THE WITNESS: Well, I mean, it'd be pretty dirty. I
15 mean, there would be fecal matter all around it, just
16 floating.

17 BY MR. STAUDAHER:

18 Q Okay. And that's what these things would go in
19 also, right?

20 A Yes, sir.

21 Q Now, after those got into that dirty one and
22 let's talk -- let's take the Medivator out of it right now.
23 Okay? What happens to them in a situation where the
24 Medivator's not working?

25 A Can you repeat that?

1 Q Where would it go next? You got them in the
2 dirty one and you've done your brushes and cleaning part --

3 A Okay.

4 Q -- correct? Now, what do you do with the --
5 with the scopes and these bite blocks?

6 A We would put them in the next one where it was
7 clean water and we would let it soak.

8 Q And that's where it would soak for how long?

9 A Like 20 minutes and then we would dry them.

10 Q How would you --

11 A The scopes we would hang -- to hang to dry to --
12 where there was a shelf, we would hang them in the closet to
13 where they were just hanging. The bite blocks we just put
14 them near our sink in the cleaning area because we had our
15 cleaning area for the sinks and behind there there was also
16 sinks to where we put the bite blocks.

17 Q Okay. So there's no solution between, it's just
18 the dirty one and then take them out after they've been
19 brushed and everything and you put them in the clean one to
20 let them soak?

21 A Yes, sir.

22 Q And then you take those and you hang them up?

23 A Yes, sir.

24 Q And the bite blocks you put those -- take them
25 out of that solution, the clean solution, and you put them

1 where again?

2 A After they were all done cleaning, we would put
3 them in the back on top of the clean shelf.

4 Q Okay. And then would you take those in to the
5 -- in the places where they did the procedures or did somebody
6 come in and get them?

7 A Mostly, sometimes -- majority of times the --
8 the gastro technician would come and get them, but they'd be
9 dry before they even came in to the procedure room.

10 Q What time did you start working during the day?

11 A Probably morning until -- it was basically
12 closed.

13 Q So for morning is that really early in the
14 morning or is that after things have gotten going?

15 A I think probably like around nine. It was -- it
16 was like the time when customers -- patients are just coming
17 in.

18 Q Okay. So at -- nobody had shown up, no
19 procedures had been done when you came to work; is that fair?

20 A Yes, sir.

21 Q This area where the scopes were, did you ever
22 come in any morning and notice that there had been -- you
23 know, where you put that chucks down below them, there had
24 been maybe been one -- a scope or two that didn't get cleaned
25 real well and maybe some residue came out of it onto the chux,

1 drained out of it overnight?

2 A I don't recall, sir.

3 Q As far as your involvement with the cleaning
4 though, did you have some specific training before you came
5 and did this?

6 A When we got hired we were -- I'd follow
7 experienced technician. I'd watch the person and he or she
8 would teach me how to do it and then they would put me in to
9 the procedure room where they would be watching.

10 Q Okay. How -- how much training? I mean, how
11 many days, weeks, whatever of training did you get before you
12 were --

13 A Probably like -- probably like one to two days
14 of training and then the rest of the time I think for like a
15 couple days, they'd be hovering over me making sure I was
16 doing something correct -- everything correct, I mean.

17 Q Did you have any training before you had come to
18 the endoscopy center?

19 A Just from my medical assistant training, that's
20 it.

21 Q Okay. While you were there, were there other
22 people that were like yourself that were coming in and getting
23 a day or two of -- of sort of direct hands-on training and
24 then just oversight for a couple of days thereafter?

25 A There was a couple, sir.

1 Q Was there a turnover of people that came through
2 there during that time?

3 A I don't know if you mean like there's people
4 getting --

5 Q People come, people go, that kind of thing?

6 A Not too many.

7 Q Who worked with you during that time period?

8 A Like the -- the names?

9 Q I'm talking about other GI techs that you worked
10 with directly.

11 A I don't remember any of the names.

12 Q Because it's been so long?

13 A It's been so long and --

14 Q Fair enough. So when you're back there doing
15 this work, I mean you're -- are you alone or are there two of
16 you, or three of you in a room?

17 A It would just be -- it would just be one person,
18 one or two person. But most of the time we would be
19 understaffed so I would be there in the sanitation room or the
20 other person would be in the procedure room or it would be
21 switched, I'd be in the procedure room, person would be in the
22 sanitation room.

23 Q Now, even though you're -- I mean, you're there
24 working, I know you're short staffed and you're kind of doing
25 both jobs at some times to help out, did you ever see other

1 technicians how they did the -- this -- the cleaning, so to
2 speak?

3 A Once in awhile I -- I'd witness what they were
4 doing.

5 Q Was there ever a concern about people that
6 weren't doing kind of the level that you were doing? At least
7 being conscientious and cleaning out the scopes well, that
8 kind of thing?

9 A Yeah. Some -- some of the newbies I caught them
10 and I basically told them -- I was like, hey, do it this way,
11 make sure you do it right. And --

12 Q What would you catch them doing?

13 A Like when the Medivator was broken, instead of
14 hooking up the -- the port to where you could stick the -- the
15 syringe, they would just stick the syringe directly into the
16 port instead of hooking the device.

17 Q What would that do?

18 A It's just --

19 Q Or not do?

20 A -- it just wouldn't give enough pressure and
21 push out all the fecal matter.

22 Q So it wouldn't adequately clean the scope?

23 A Yes, sir.

24 Q Is this something you had to tell them and
25 counsel them on?

1 A Just once. I mean, it was just something, you
2 know, something to make sure he corrected.

3 Q Okay. Was that -- did you know that that was an
4 issue with anybody else besides this one individual that you
5 talked to?

6 A No, sir.

7 Q Now as far as the -- the procedures themselves
8 are concerned, I mean -- whether you're in a room or not in a
9 room, I mean, you know the turnover, how quickly the scopes
10 are going in and coming back out, right?

11 A Yes, sir.

12 Q Because when a procedure is being done somebody
13 has to set up the room I assume?

14 A Yes, sir.

15 Q Would that be you at sometimes that you'd have
16 to come in and set up the room for the procedure?

17 A That's mostly the person who's going to be in
18 that room.

19 Q So that's what I mean. When you were in that
20 situation, would you go in and get the scopes and bring them
21 in and prepare the room?

22 A Yes, sir.

23 Q And vice versa. When you're in the -- when
24 you're in the cleaning area, do the technicians who were in
25 the rooms come in and get scopes and take them back to the

1 rooms to -- to do the procedures?

2 A Yes, sir.

3 Q Was there ever any time that you recall that --
4 any skip -- or steps were skipped in the process, meaning that
5 scopes were taken before they were completely done?

6 A Not that I recall of.

7 Q Beside that one instance with the scope not
8 getting cleaned well enough that you've mentioned, do you
9 recall any other steps that were skipped by anybody that was
10 there while you were working?

11 A Not that I recall, sir.

12 Q As far as the time -- timing of the procedures,
13 were the upper endoscopy procedures the same, faster or slower
14 than the colonoscopy procedures?

15 A No. The upper is -- it's shorter because it's
16 -- the scope is not going, you know, all the way down. Unlike
17 the colonoscopy, I mean, it's going all the way to the end of
18 your colon.

19 Q Did you ever -- as far as the doctors themselves
20 are concerned, was there a difference in the speed of the
21 doctors doing those procedures?

22 A Yes, sir.

23 Q Noticeable difference between some doctors and
24 others?

25 A Yes, sir.

1 Q On the top of the list as far as being the
2 fastest ones in the group, who -- who ranked up there?

3 A Dr. Desai was well known for speediness of his
4 colonoscopies.

5 Q What was the time range that he would do
6 procedures?

7 A It -- man, it'd be like --

8 Q Let's talk about an upper endoscopy, how long on
9 average for him?

10 A An upper endoscopy can take like five minutes.
11 It doesn't take too long.

12 Q For him would that be about the same or less or
13 more?

14 A It'd probably be the same for anything.

15 Q Okay. What about a colonoscopy?

16 A Colonoscopy on average -- the new doctor would
17 take like 40 minutes because he was new at it. But then the
18 more experienced would usually like 15 minutes. Well
19 experienced like Dr. Desai would be really less than 10
20 minutes, almost like five minutes in and out.

21 Q For a colonoscopy?

22 A Yes, sir.

23 Q Did he ever brag about that?

24 A No, I never heard any bragging.

25 Q And you're there -- and although you had limited

1 exposure in the room with him, are you present when he's
2 working with other techs or in the room right next to you?

3 A Yes, sir.

4 Q Did you ever get -- overhear him yelling and
5 screaming about anything in the clinic at the time?

6 A Not that I recall, sir.

7 Q What about the issue of patient complaints, were
8 there ever any complaints from patients that you're aware of
9 about procedures, about anything?

10 A All -- I heard some patients -- I heard that
11 patients were complaining that patients were being put before
12 they seen the doctor.

13 Q Put?

14 A Like they were put to sleep by the
15 anesthesiologist.

16 Q Before the doctor was -- was there?

17 A Uh-huh.

18 MR. SANTACROCE: I'm going to object to hearsay.

19 MS. WECKERLY: As well.

20 THE COURT: Did you hear this from the patients or
21 did you hear this talking --

22 THE WITNESS: This is what I was hearing from the
23 other techs.

24 BY MR. STAUDAHER:

25 Q Okay. Was there ever any meeting that was about

1 -- related to this issue?

2 A I believe so. I believe they made sure that it
3 didn't happen again.

4 THE COURT: Well, did you attend a meeting where they
5 talked about that or witness a meeting, anything like that?

6 THE WITNESS: Not that I recall.

7 BY MR. STAUDAHER:

8 Q Okay. Have you ever been in a room when -- you
9 know what propofol is, don't you?

10 A Yes, sir.

11 Q Anesthetic drug that puts people to sleep?

12 A Yes, sir.

13 Q Do you ever use -- been in a room where you
14 watched or observed that propofol was reused between patients?
15 Same -- same propofol bottle used between patients?

16 A I don't recall.

17 Q Do you remember giving a statement to the police
18 at one point?

19 A Yes, sir.

20 Q Would it refresh your memory to look at your --
21 a copy of your statement regarding -- in regards to some of
22 these questions?

23 A Sure.

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

25 THE COURT: You may.

1 MR. STAUDAHER: And pages 10 and 11 for counsel.

2 BY MR. STAUDAHER:

3 Q First of all, this is the cover page. It's got
4 your name on it and the date of April 15th, 2008.

5 A Yes, sir.

6 Q And you've seen a copy of this before, correct?

7 A Yes, sir.

8 Q Okay.

9 A It's a lot to remember.

10 Q No, I understand. You're free to read as much
11 before or after that you need to.

12 A Yes, sir.

13 Q But I just keep drawing your attention to --
14 which is -- let's see, make sure I have the right -- starts on
15 down here and it's -- see this here where it's talking about
16 the doctors and the procedures? And I believe it was actually
17 10, 11 and 12 for counsel. Here and here, bottom part going
18 over here, bottom of 11 going on to the top of 12. Go ahead
19 and read that as much of it as you need. Okay? Does that
20 refresh your memory a little bit?

21 A Yes, sir.

22 Q Okay. So I'll ask you the question again. Did
23 you ever witness propofol being reused from patient to
24 patient?

25 A Yes, sir.

1 Q And tell us what that was about or was this --
2 when I say propofol I'm talking about, was it -- you know, it
3 could be in a syringe or it could be in a vial, right?

4 A Yes, sir.

5 Q Did you see the syringe being reused from
6 patient to patient?

7 A No, sir.

8 Q Did you see the vial being reused from patient
9 to patient?

10 A Yes, sir.

11 Q And, in fact, did you ever -- I mean, what was
12 the situation? You saw it being reused until when?

13 A Until it was completely gone because I guess
14 each anesthesiologist, they have a couple bottles with them.

15 Q Were you aware of whether or not those vials
16 were -- were supposed to be single use or multiple use vials?

17 A I guess so.

18 MR. SANTACROCE: I'm going to object. It's beyond
19 his purview, Your Honor.

20 MR. STAUDAHER: Well, if he knows. I'm asking.

21 THE COURT: If he knows. If you don't know, don't
22 guess.

23 THE WITNESS: I guess I don't recall, sir.

24 BY MR. STAUDAHER:

25 Q The vials weren't being used as single-use vials

1 though -- or as multiple use -- excuse me, single-use vials
2 though, correct? Is that right?

3 A Yes, sir.

4 Q And you've got to answer yes or no or whatever
5 so we can get it down.

6 THE COURT: For the record.

7 THE WITNESS: Yes, ma'am.

8 BY MR. STAUDAHER:

9 Q Now, a couple of things. You go back to the
10 procedure room to get a scope?

11 A Yes, sir.

12 Q And you bring that in to the procedure room to
13 have a procedure -- to help a doctor and assist a doctor?

14 A Yes, sir.

15 Q Ever notice any problems with those scopes when
16 you brought them back in to the procedures rooms as far as
17 cleanliness is concerned?

18 A Couple times -- when you're hooking up the scope
19 you have to turn on the machine and when you turn on a machine
20 you would see the end of the scope, you basically see the fork
21 because it was hanging. And then sometimes it would be blurry
22 and then if you look there's like feces out the end.

23 Q So this is the scope that supposedly had gone
24 through the cleaning process and you had gone in to retrieve
25 to bring in.

1 A Uh-huh. Yes, sir.

2 Q Now I -- and just make -- I just want to be
3 clear on this. You didn't get it out of the bucket that's
4 sloshing around with a bunch of poop, right?

5 A No. No, sir.

6 Q You got it from the ones that were hanging up
7 that were at the end of the process?

8 A Yes, sir.

9 Q You bring that in to a room and you get it set
10 up and you actually see visible fecal material on the scope?

11 A No. It would just be like -- just a little bit
12 and it would be really blurry to see out the end of that
13 scope.

14 Q So there was stuff on the scope in the end that
15 was going to go inside somebody?

16 A Yes, sir.

17 Q What would you do in those instances?

18 A Disconnect it and get a new one, put that one to
19 be recleaned.

20 Q Did you ever tell anybody, hey, these scopes
21 aren't getting clean, there's one that's dirty?

22 A I would state it, I would say it right there.
23 I'd be like hey, this one's not clean. Give me a second, let
24 me go change it out.

25 Q But you wouldn't let that be used on the

1 patient?

2 A No, sir.

3 Q But that's because you had seen it, correct?

4 A Yes, sir.

5 Q Was there any issue in your personal observation
6 in the clinic with regard to just general cleanliness?

7 A Yeah, the place was dirty.

8 Q Are we talking about -- where specifically?

9 A Like the floors, on the walls it looked like
10 there was boogers but I thought that would be the cleaning
11 people that came at night were supposed to clean that.

12 Q So you come in in the morning and the floors and
13 things on the wall would still be there?

14 A Yes, sir.

15 Q What about the bathrooms?

16 A I really wouldn't go in the bathrooms unless I
17 was using the bathrooms.

18 Q Well, when you used the bathrooms were they
19 clean or not clean?

20 A Yes, they were clean, sir.

21 Q Now, you were -- although you didn't get much
22 exposure to Dr. Desai, you knew about the speed and how fast
23 he did procedures and things like that, right?

24 A Yes, sir.

25 Q Did you ever see him at any time insert a scope

1 into somebody or starting to do that?

2 A Yes, sir.

3 Q Can you describe that process, what you saw?

4 A Well, the -- I guess they would stick two
5 fingers in the prostate and check it and then they would
6 basically spread apart the behind and then inject the --
7 insert the scope.

8 Q Did he do that gently?

9 A Yes, sir. It would just be quick and fast.

10 Q Say that one more time, please.

11 A Yes, sir. It would just be quick and fast.

12 Q Did you ever feel that -- I mean, would you ever
13 let him do an endoscopy on you?

14 MS. STANISH: Objection --

15 MR. SANTACROCE: Oh man, objection.

16 THE COURT: What was your question?

17 MR. STAUDAHER: Would he let him do an endoscopy on
18 him?

19 THE COURT: Oh, no. That's sustained.

20 BY MR. STAUDAHER:

21 Q Did you think he was gentle with patients in
22 general?

23 A If he's going fast I -- I don't believe so.

24 MR. STAUDAHER: Court's indulgence, please.

25 THE COURT: Uh-huh.

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

2 BY MR. STAUDAHER:

3 Q Pages 26, 27, I want you to read -- read that,
4 both those pages and I want to ask you a question related to
5 it because I want to make sure I have the right person to talk
6 about it.

7 A From -- from where, like the whole page?

8 MS. STANISH: Excuse me. Objection. Are we
9 refreshing memory or what?

10 MR. STAUDAHER: It's a question that I want to ask
11 because there's a doctor mentioned there and I want to make
12 sure I have the right doctor.

13 THE COURT: Okay. Well, have him read it to himself
14 and then ask the question and then if you need to read it --

15 MR. STAUDAHER: Well, it goes -- and it goes to --

16 THE COURT: Okay. Well, I'll see counsel up here
17 then.

18 (Off-record bench conference.)

19 BY MR. STAUDAHER:

20 Q When you were interviewed by the police, did you
21 ever talk about sort of some rough treatment of patients at
22 some point?

23 A Yes, sir.

24 Q Was that something that gave you concern?

25 A Yes, sir.

1 Q And who was that that -- that gave you some
2 rough -- or that gave the patients rough treatment?

3 A Dr. -- I can't pronounce that, Neary?

4 Q So it was not Dr. Desai?

5 A No, sir.

6 Q Did you ever express your concerns to anybody
7 else?

8 A I mean, there's nurses in there. I mean, I
9 didn't know that my voice would be held -- heard.

10 Q I just asked you if you ever raised it to
11 anybody that was an authority over you?

12 A No, sir.

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

14 THE COURT: That's fine.

15 BY MR. STAUDAHER:

16 Q Oh, the last -- last question and this does
17 relate directly to Dr. Desai. Were -- did you ever see at the
18 end of the procedure the scopes come out of the person, Dr.
19 Desai take the scopes out?

20 A Yes, sir.

21 Q Can you describe what you saw there?

22 A He would just basically just yank it.

23 Q When he yanked it out what would happen?

24 A When he yanked it there would just be like feces
25 all over the table. But I guess that's understandable because

1 he -- you pump the stomach full of air anyways so --

2 Q So when the scope came out so did everything
3 else?

4 A Yeah. Just feces and just water because we --
5 we'd be spraying water and air.

6 Q Did you ever get any of that on -- well, it
7 wasn't you in the room, correct?

8 A When I would do the procedure -- but I'm not on
9 that side, I'm on this side.

10 Q So where would all this stuff go then?

11 A Just on the table, on the chux, because we would
12 put a clean chux to catch all the feces.

13 Q Would the other physicians -- well, when -- did
14 you notice that other doctors when you did procedures them
15 would evacuate that air in full before they took the scopes
16 out?

17 A Yes, sir.

18 Q Did that happen to your knowledge in the times
19 that you did observe Dr. Desai removing scopes from people?

20 A Not that I recall.

21 MR. STAUDAHNER: Pass the witness, Your Honor.

22 THE COURT: All right. Cross?

23 CROSS-EXAMINATION

24 BY MS. STANISH:

25 Q Hi.

1 A Hello, ma'am.

2 Q My name's Margaret Stanish; I represent Dr.
3 Desai. I got to ask you, were you in the military?

4 A Yes, ma'am.

5 Q I knew that. Yes, sir and yes, ma'am, right?
6 What did you do in the military?

7 A I was a field specialist.

8 Q For what service?

9 A The United States Army.

10 Q And I understood you to say that you had some
11 training as a medical assistant?

12 A Yes, ma'am.

13 Q Tell us about that.

14 A I went to Brandon College, I guess that Everest
15 College in Hayward, California and it lasted like eight
16 months.

17 Q And what did you do after that training?

18 A After that training I just basically -- I did my
19 internship at a general doctor who just, you know, took care
20 of sick patients. After that I was applying everywhere and
21 Dr. Desai's group the one that hired me.

22 Q And so you relocated from California to Las
23 Vegas?

24 A Yes, ma'am.

25 Q And did you do that in order to take this job or

1 were you here anyways?

2 A No. My mom got a teaching job and my wife
3 wanted to move to Vegas.

4 Q All right. So you move to Vegas and then you
5 started looking for a job in the medical field?

6 A Yes, ma'am.

7 Q And how did -- how was it that you came to learn
8 about the endoscopy center having an opening?

9 A I just applied and someone hired me and I was
10 excited.

11 Q Okay. And who was it that actually hired you?

12 A Kate -- I can't remember if it's Kate or Katie.

13 Q Katie Maley?

14 A Ooh, I'm so bad with names.

15 Q All right. Let's talk about your chain of
16 command, take you back to your military days and apply it to
17 the endo clinic. Who was directly above you as your
18 supervisor?

19 A The person who I talked to would be the head
20 nurse, it'd be Jeffrey Krueger.

21 Q Okay. And did you have any other supervisors
22 above him or was it primarily Jeff Krueger who supervised you?

23 A I -- I believe Katie was over him because if
24 like something was really wrong you would talk to him and then
25 he would talk to her.

1 Q And was she a nurse as well?

2 A Not that -- I mean, not that I recall, ma'am.

3 Q All right. Now, you started working there about
4 what, January of 2007?

5 A Bad with dates.

6 Q Okay, bad with dates. If you worked there for
7 13 months, correct?

8 A A year and three months.

9 Q All right. And you were there when the clinic
10 got shut down, correct?

11 A Yes, ma'am.

12 Q And do you remember when it got shut down?

13 A I believe it was around the end of the year.
14 I'm not too sure.

15 Q 2000 -- was it the beginning of 2008? That's
16 all right. If you don't know I don't want you to guess. You
17 worked there for 13 months -- or I'm sorry, one year and three
18 months prior to it being shut down?

19 A Yes, ma'am.

20 Q All right. And I want to talk to you, not about
21 the one or two things that were wrong, I want to talk to you
22 about the -- your overall practice, what you did on a day to
23 day basis and not the one or two occasions where you saw
24 something that was icky. So I'd like you to tell us, Mr.
25 Cavett, when you first started working there, what part of the

1 practice did you work in?

2 A When I first started?

3 Q Yes.

4 A They first started me in the sanitation room and
5 then I worked my way up to the procedure room.

6 Q All right. And when you say they, is there
7 anyone in particular you're talking about starting you off in
8 the cleaning room?

9 A They would assign me with the I guess the most
10 -- the most experienced technician.

11 Q And when you say they assigned me, who was it
12 that assigned you, was it Jeff Krueger?

13 A I can't remember. I just remember them showing
14 up and they were just -- someone telling me I had to show up
15 with this person.

16 Q Okay. And was that -- I'm just trying -- was it
17 Dr. Desai who said -- talked to you and tell you that you were
18 going to work in the procedure room or was it somebody else,
19 one of the nurses?

20 A It was somebody else, it wasn't Dr. Desai.

21 Q It was one of the nursing staff? And you were
22 started off in the cleaning room?

23 A Yes, ma'am.

24 Q All right. And when you were in the cleaning
25 room, were you supposed to stay in the cleaning room and

1 clean?

2 A Yes, ma'am.

3 Q Was there a reason for that?

4 A Well, they want -- I guess, they wanted us to be

5 familiar with the scopes.

6 Q Okay. How long did you stay in the cleaning

7 room?

8 A Really like one or two days, just cleaning.

9 Q Well, as far as overall, were you assigned to

10 the cleaning room? Like that was your job for several weeks?

11 A I stayed there pretty much a lot.

12 Q And is it the case that you preferred to work in

13 the cleaning room?

14 A It didn't matter to me, you can put me anywhere.

15 Q Okay. But did you work a lot in the cleaning

16 room?

17 A Yes, ma'am.

18 Q Did you work more in the cleaning room then in

19 the procedure room?

20 A More -- more in the sanitation room.

21 Q Okay. And is it the case that you had a child

22 and you didn't mind working in the cleaning room with feces?

23 A Yes, ma'am, it didn't bother me.

24 Q Okay. Did it bother some of the new people?

25 A I mean, yeah, I guess it bothers people when you

1 first start off. I mean, I can't say it didn't -- I didn't
2 get grossed out the first week. I mean, the smell but, I
3 mean, it's fecal matter.

4 Q Right and the -- I'd like you to walk us through
5 the cleaning, the normal cleaning procedures. You -- and
6 first I want you to clarify something for me.

7 A Okay.

8 Q These -- what's the name of the machine that's
9 used to clean items?

10 A Medivator.

11 Q And how many Medivators were there located in
12 the Shadow Lane facility?

13 A Two.

14 Q Is it possible that there was a third one?

15 A I don't recall. I've got a bad memory, ma'am.

16 Q All right. And did you also work in the Burnham
17 facility?

18 A Yes, ma'am.

19 Q And how many Medivators were there, if you --
20 what you recall?

21 A I believe two. I think they all had two.

22 Q They all had two. And were the Medivators --
23 was one Medivator used for upper endoscopy items and the other
24 Medivator used for lower colonoscopies?

25 A They all -- they all had -- they all had ports

1 on them for -- in the Medivator there was these tubes that go
2 -- connect to each -- one can connect -- they can basically
3 connect to anything.

4 Q Okay. And so let's -- walk me through your
5 standard procedure. Somebody has -- just had an endoscopy and
6 the GI tech hands you that scope. What do you do with it?

7 A I put it in the blue bucket where it's -- where
8 the solution is at and then I scrub it.

9 Q And that's that -- is it a bin or a bucket?

10 A I guess you could say a bin, it's a blue bin,
11 it's like that big, like that.

12 Q And you -- and what's in that?

13 A It has water and then it has a solution.

14 Q And is that a disinfectant?

15 A Yes, ma'am.

16 Q And you -- you scrub the -- well, this is an
17 endoscope so there's no fecal matter on it, correct?

18 A Correct.

19 Q And so you scrub that item nonetheless?

20 A Right.

21 Q And what do you do with it after you're done
22 scrubbing it?

23 A We would hook up the -- it would still go
24 through the process, you hook up that thing to where you would
25 flush it and then you would -- after you clean it with the

1 solution, put it in clean water, and then you would still
2 stick it in the Medivator to get its proper fluids to come
3 out.

4 Q Okay. So it goes in to the first bin what's
5 described as the dirty bin, correct?

6 A Uh-huh.

7 Q And then it goes in to a second bin?

8 A Yes, ma'am.

9 Q And what's in that bin?

10 A Just clean water.

11 Q Okay. Just water just to rinse it?

12 A It's just to -- it's just to make sure that
13 nothing else is left on it.

14 Q Okay. And in your standard procedure, if you
15 see any one of these bins getting too dirty, do you change out
16 the -- the solutions or water?

17 A Yes, ma'am.

18 Q Would -- would you wash a -- a item in fecal
19 soup?

20 A Excuse me?

21 Q Would you wash an item in fecal soup?

22 A No, ma'am.

23 Q What's fecal soup, do you know? Have you ever
24 heard of that term?

25 A I guess you're -- I guess you're saying a tub

1 full of fecal matter?

2 Q Is that what you would do -- was that your
3 standard procedure to -- to wash items in -- in fecal soup?

4 A Well, if you're cleaning it, of course fecal
5 matter would come out of it, but we eventually just change it.

6 Q Okay. And would you -- after you rinse the --
7 well, we're talking about endoscope -- endoscope so that
8 doesn't have the fecal matter in it, right?

9 A Yes, ma'am.

10 Q But a colonoscopy scope would?

11 A Yes, ma'am.

12 Q And after you're done cleaning it in the dirty
13 bucket you put it in a -- in a -- a clean water rinse,
14 correct?

15 A Yes, ma'am.

16 Q And then it goes in the Medivator, right?

17 A Yes, ma'am.

18 Q Now, as I understand this Medivator, can you
19 describe it for us, what's it look like?

20 A It's like a -- it's like a big box like that.
21 It has like buns in the front and then it has locks on the --
22 in the middle of it and then if you unlock it, it opens up
23 like a -- like a chess box and in it there's those ports and
24 there's like a drain and you just hook it up.

25 Q Okay. Because we don't have a videotape for

1 this, how big was this box? Just give us a rough dimensions
2 of it.

3 A Not good with dimensions. It's like this big.

4 Q Is that like two and a half feet maybe or what
5 do you think?

6 MR. STAUDAHER: Three and a half.

7 BY MS. STANISH:

8 Q Three and a half feet?

9 A Yeah, I believe so. I'm sorry, I'm really bad.

10 Q How -- how deep is it?

11 A It's -- it's pretty deep. It's probably like
12 this big.

13 Q Is that two and a half feet?

14 MR. STAUDAHER: No, 20 inches.

15 THE COURT: Two and a half maybe, two feet?

16 BY MS. STANISH:

17 Q We should -- I'm going to bring a measuring tape
18 one day to court because we don't need to guess. But it was a
19 -- how many -- this Medivator had tubes in it, correct?

20 A Yes, ma'am.

21 Q And what would shoot -- and those tubes would be
22 hooked up to the various ports in the -- let's say the
23 endoscope?

24 A Yes, ma'am.

25 Q How many ports are there in an endoscope?

1 A Well, it would -- one -- three.

2 Q And so there would be three separate ports that
3 you would hook in to the Medivator?

4 A No, there'd be a -- there'd be like these two
5 tubes that go into the port and it's -- the tubes are
6 connected as metal things that -- to -- so when the -- when
7 the fluid came out it went to this thing and it shot in there.
8 So you hooked it up to the two ports and on the top you would
9 hook this tube up and you would just twist it.

10 Q And so the -- and then you shut the lid, turn it
11 on?

12 A You just push a button.

13 Q Oh, you push a button?

14 A Yes, ma'am.

15 Q And -- and is there a solution, some kind of
16 chemical that's in the -- in the Medivator?

17 A Yes, ma'am. It just -- just comes out.

18 Q Okay. Is it some -- do you know what that
19 solution is?

20 A No, ma'am.

21 Q Something to sanitize the item though, correct?

22 A Yes, ma'am.

23 Q And you would run that machine I believe you
24 said for 16 minutes?

25 A Yes, ma'am.

1 Q And after you -- and how many -- the Medivator,
2 how many scopes could it clean at any one time?

3 A Two, ma'am.

4 Q And would you be normally cleaning two at a
5 time?

6 A Yes, ma'am.

7 Q And after you were done cleaning them you would
8 take them and hang them up to dry?

9 A Yes, ma'am.

10 Q And when -- how would you know if the item was
11 clean?

12 A Well, when -- before when you -- when it's
13 already dirty and you're cleaning the solution and you're
14 putting a brush through it, all the fecal matter will come out
15 and you hook up the vise and you spray the two -- two syringes
16 of water into it, there would be no more fecal matter. Plus,
17 when you put it in the Medivator it's supposed to just clean
18 it totally.

19 Q And if you noticed something was still dirty
20 what would you do?

21 A Put it back to reclean it.

22 Q That was your standard procedure?

23 A Of course.

24 Q Were those Medivators relatively new when you
25 started working?

1 A I mean --

2 Q If you know.

3 A -- from the time I've been there they've always
4 been there.

5 Q Okay. So it was the same ones the whole time
6 you were working there?

7 A Yes, ma'am.

8 Q All right. Was there anybody in your chain of
9 command who would periodically come into this cleaning room to
10 see how things were going?

11 A Once in awhile they would just come through
12 because -- because the two rooms were again connected together
13 so -- because there's one procedure room there, one procedure
14 room here, so they would just come in between.

15 Q And is the cleaning room in between the two
16 procedure rooms?

17 A Yes, ma'am. That would be -- that's only for
18 the Shadow Lane.

19 Q Okay, for Shadow Lane. And how was Burnham
20 constructed?

21 A Burnham was instructed -- you'd have to walk out
22 and then there's procedure rooms right along the line or along
23 the wall.

24 Q All right. So just adjacent to the cleaning
25 room were two separate procedure rooms?

1 A Yeah. So you would have to walk out the doors
2 and go through my door to get to the cleaning room.

3 Q All right. Had you ever seen anybody use an
4 unsanitary scope, one that had not been sanitized?

5 A I've seen it hooked up but I've never seen
6 anyone -- where the doctor would use it.

7 Q And why is -- why was that?

8 A Because as soon as they hooked it up they -- it
9 would say -- anybody would say, oh, it's dirty and they would
10 have to take it back because the doctor would not use it
11 because the -- they do the procedure through that scope. If
12 the camera was dirty then obviously the thing was dirty.

13 Q And just to elaborate on that a bit if you would
14 educate us, the scopes get attached to a computer, correct?

15 A Yes, ma'am.

16 Q And -- and the scopes have a little camera at
17 the end of it, is that what I understand?

18 A Yes, ma'am.

19 Q And so when you plug it in on the screen of the
20 computer is going to be whatever the camera is seeing?

21 A Correct, ma'am.

22 Q And so you could see on the computer screen that
23 oh, there's -- somebody missed a spot, we need to reclean
24 this?

25 A Yes, ma'am.

1 Q And it would be recleaned, right?

2 A Yes, ma'am.

3 Q And there were one or two occasions where you
4 recall the Medivator didn't work?

5 A Yes, ma'am.

6 Q And was that when you first got there if you --
7 do you know when that occurred?

8 A I don't know how far along in -- in the one year
9 and three months, but throughout the time twice it was like
10 broken.

11 Q Two times it broke?

12 A Yes, ma'am.

13 Q And if you needed an item, like you had an item
14 that wasn't cleaned yet but a doctor needed an item right
15 away, would you have a supply of items that you could reach
16 into and give the doctor a new item?

17 A Yes, ma'am because we -- we had a -- we had
18 quite a lot of scopes, both upper and lower.

19 Q Okay. And can you remember how many upper
20 scopes you had?

21 A No, ma'am.

22 Q Okay. You don't remember?

23 A We just -- we had a lot.

24 Q Okay. Did you have a lot of those bite blocks
25 available if a doctor needed a sanitized or clean one?

1 A Well, we would have -- originally we would have
2 our four, but if they were being sanitized we would go to the
3 back, to the supply room and grab more.

4 Q So you -- you could use more than four in one
5 day if you needed to?

6 A Yes, ma'am. If we needed to be, yes, ma'am.

7 Q And did Jeff Krueger ever give you instructions
8 on these bite blocks on sanitizing them?

9 A Like teaching me how to like clean them or if to
10 throw them away?

11 Q Either one.

12 A I can't recall when, but I know that we had a
13 meeting and they said that we had to start throwing them away.

14 Q Okay. And did that meeting occur after the CDC
15 came to visit or before?

16 A I -- I believe that was after.

17 Q Okay. And when you were -- tell us what -- what
18 you understood the policy to be on these bite blocks before
19 this CDC visit?

20 A We would just -- once they were used, clean
21 them, just dry them up and then it -- as long as they were
22 sanitized we'd reuse them.

23 Q Okay. And the -- this government Exhibit 71-C
24 that is in evidence, you -- you said it was different only
25 because of the color? You had a different color one?

1 A Yeah. There's -- there's many type of bite
2 blocks, but they all -- they all do the same function.

3 Q And it's pretty much a piece of plastic,
4 correct?

5 A Yes, ma'am.

6 Q Not a -- not any moving parts unless you call
7 the strap a moving part, correct?

8 A Correct, ma'am.

9 Q When -- when this came out of the Medivator and
10 you saw it, was it clean?

11 A Yes, ma'am.

12 Q Did you ever see it where it was not clean?

13 A No, ma'am.

14 Q Why is that?

15 A Because we would scrub them -- because they're
16 not going in -- they're not used for a colonoscopy, they're
17 used for upper and when they would go in the sterilization we
18 would clean it of all the saliva or mucus that came out of the
19 person.

20 Q Okay. And that -- by the time it got out of the
21 Medivator it was sanitized in your opinion?

22 A Yes, ma'am.

23 Q Did you ever put some item -- put any item into
24 the procedure room that was not properly sanitized?

25 A No, ma'am.

1 Q Did you ever see your supervisor, Jeff Krueger,
2 correct a GI's mistakes?

3 A Not that I recall, ma'am.

4 Q Okay. Would he -- would he circulate in the
5 area?

6 A Yes, ma'am.

7 Q Were you often in the procedure room?

8 A Sometimes, ma'am.

9 Q And were you in the procedure room at Burnham?

10 A Yes, ma'am.

11 Q Were you also in the procedure room at Shadow
12 Lane?

13 A Yes, ma'am.

14 Q And when the procedure begins, is the room dark?

15 A When the procedure room begins? No, ma'am.

16 Q When the -- I mean -- I'm sorry, when the doctor
17 begins the procedure, are the lights turned off so that they
18 can view the monitor?

19 A Yes, ma'am.

20 Q And when you are working as a GI in the
21 procedure room, where is your attention?

22 A At the TV screen.

23 Q You're not -- why aren't you watching what the
24 CRNA is doing?

25 A Because our job is to make sure if the doctor

1 sees something he says get this, I need to be there on the
2 spot or if he needs -- he tells me to put my hand some point
3 on the belly to help the scope get in, I have to be ready.

4 Q And did I understand to say that there were two
5 occasions -- two occasions where you actually assisted Dr.
6 Desai or did -- maybe I misunderstood that. You saw Dr.
7 Desai do procedures two times?

8 A I don't know if it was two times but I've seen
9 him -- I've seen him do a procedure.

10 Q Did you -- were you actually assisting him?

11 A Yes, ma'am.

12 Q All right. Do you even have any recollection of
13 how many times you assisted him?

14 A Not that many because Dr. Desai didn't want me
15 in the room.

16 Q And was that early on when you were working in
17 the cleaning room?

18 A That he didn't want me in the room?

19 Q He didn't want you in the procedure room because
20 you were working in the cleaning room?

21 A No. He just didn't want me working with him,
22 period.

23 Q And you don't know why?

24 A I still don't know why.

25 Q All right. You were interviewed by the police

1 on April 15th of 2008, correct?

2 A Yes, ma'am.

3 Q Were you interviewed by them at any date after
4 that?

5 A No, ma'am because after that I got called to go
6 in the military, I went to basic training.

7 Q I'm sorry?

8 A After that I basically went to basic training.

9 Q Oh. After you left here you went in to the
10 military at guard or something, reserves?

11 A No, I went active, ma'am.

12 Q You went active duty. Are you now active duty?

13 A No, ma'am. I'm out of the military.

14 Q Let me flip through your statement real quick.
15 Okay? Did you meet with the District Attorneys prior to your
16 testimony?

17 A You mean -- the only thing was I talked to them
18 over the phone.

19 Q Okay. Did you have a chance to review your --
20 your statement before testifying today?

21 A Yes, ma'am, but I have a hard time remembering
22 things.

23 Q All right. Why's that? Anything in -- do you
24 have any particular issue or are you like me, you just can't
25 remember things?

1 A Well, that and I've been -- I've been hit too
2 many head in times.

3 Q Are you a boxer?

4 A No, it's just got in to a lot of disputes and
5 those things.

6 Q All right, all right. We won't go any further.

7 A What can I say.

8 Q That's all right. Did you ever see anybody get
9 disciplined for doing something wrong at the clinic?

10 A I just heard.

11 Q Okay.

12 A That's all.

13 Q I don't want you to talk about things that you
14 just heard about.

15 A Yes, ma'am.

16 Q That would be hearsay. Did you ever do anything
17 to knowingly jeopardize a patient?

18 A No, ma'am.

19 MS. STANISH: I have nothing further.

20 THE COURT: Mr. Santacroce, any cross?

21 MR. SANTACROCE: Yes. Your Honor, I need a
22 clarification. Can we approach?

23 THE COURT: Sure.

24 (Off-record bench conference.)

25 THE COURT: Mr. Santacroce, are you ready to begin

1 your cross-examination?

2 MR. SANTACROCE: I am, Your Honor. Thank you.

3 THE COURT: All right. Go ahead.

4 CROSS-EXAMINATION

5 BY MR. SANTACROCE:

6 Q Good afternoon, Mr. Cavett.

7 A How are you doing, sir?

8 Q Good. Thanks. I want to talk -- we've been
9 over these cleaning procedures a number of times and quite
10 frankly, I've got a weak stomach and I just had lunch and I
11 don't really want to get into it a whole bunch more but we
12 need to talk a little bit about it. Okay?

13 A Yes, sir.

14 Q The training that you had for -- for doing this
15 job, cleaning these scopes and things, can you tell me what
16 training you had?

17 A Just whatever I was showed and taught by a
18 senior technician.

19 Q And that was like one or two days you followed
20 that person around and --

21 A Yes, sir.

22 Q -- learned that way?

23 A Yes, sir.

24 Q Were you aware that these scopes had written
25 instructions from the manufacturer about how to clean them?

1 A No, sir.

2 Q Were you ever shown or seen the procedures from
3 the manufacturer on how to clean them?

4 A We were eventually given a class on what had to
5 be done.

6 Q And when was that?

7 A I don't recall when, sir.

8 Q And who gave the class?

9 A I believe it's someone from a hospital or health
10 department, I can't remember who. But I know that someone
11 came to our office and they showed us what, you know, they
12 taught us and showed us.

13 Q And tell me what they taught you.

14 A Just taught us to -- how to clean it basically,
15 sir.

16 Q Okay. But I need you to tell me that. I don't
17 know, I've never done that job.

18 A All right, sir. They basically, to clean the
19 outside with a brush, then there was this metal brush where on
20 the tip of it it had all the things -- you basically put it
21 through. You put it through until it comes out the end of the
22 scope and then you just pull it out and then you redo it again
23 until there was no fecal matter and then it was all loosened
24 it up. And then you would hook up the device and then the
25 water syringe, it would basically give enough pressure to

1 where it would push it out and then -- to where, you know, you
2 feel it was clean and you put it in the Medivator, sir.

3 Q Okay. So the determination as to whether it was
4 clean or not was made by the GI techs, correct? There was no
5 standard of what made this clean and what didn't make it
6 clean, it was left to your interpretation, correct?

7 A Yes, sir.

8 Q And how many GI techs were employed there at the
9 Shadow Lane, do you know?

10 A Excuse me. I have no idea, sir. I don't
11 remember.

12 Q Was there more than five?

13 A I believe so, sir.

14 Q Okay. So each one of those had a subjective
15 viewpoint as to what was clean and what wasn't clean, correct?

16 A Yes, sir.

17 Q And when you determined when it was clean you
18 would hang them up in another room?

19 A No, it was in the same room. There was a closet
20 where you would hang them up and they would just hang and drip
21 dry, after it was clean from the Medivator and if you already
22 did the scrubbing and the brushing.

23 Q And the solution you used, I think you testified
24 that you used it like on four sets of scopes, correct, or
25 eight scopes before you changed the solution?

1 A That was after when the Medivator was broken.
2 Q Oh, that was only when the Medivator was broken?
3 A Yes, sir.
4 Q But when the Medivator wasn't broken, you would
5 put the scopes in this solution, clean them out as you
6 described and put them in the Medivator, correct?
7 A Yes, sir.
8 Q Okay. Now, you said the whole procedure took
9 how many minutes?
10 A For a colonoscopy --
11 Q Not the procedure, the cleaning procedure, I'm
12 sorry.
13 A Oh, I'm sorry.
14 Q The cleaning procedure, how long did that take?
15 A For the Medivator, like 16 minutes.
16 Q Total from start to finish?
17 A Oh, no. It probably take like 15 minutes to
18 scrub it and keep spraying the two waters and make sure
19 everything was clean before you put it in the Medivator.
20 Q Okay. And you had two rooms going on at the
21 same time at Shadow Lane, correct?
22 A Yes, sir.
23 Q And you had numerous patients throughout the
24 day, correct?
25 A Yes, sir.

1 three pages.

2 Q Did you confer with an attorney before you
3 signed that?

4 A No.

5 Q Your CPA?

6 A No.

7 Q You just signed -- you just signed it?

8 A Yeah.

9 Q Did you read it?

10 A No. As I said, not most part of it but how much
11 percentage will he charge from what I collect.

12 Q Did you at least skim through it?

13 A I can't remember. It's like --

14 Q You don't remember --

15 A -- seven, eight years ago, what did I do back
16 then?

17 Q Okay. Fair enough, fair enough. I appreciate
18 that. And how long ago was that?

19 A 2006.

20 Q 2006. So you don't really remember studying it,
21 it's just too long ago?

22 A Yeah, I just can't remember.

23 Q Fair enough. What -- what is -- describe for us
24 your relationship -- or before I move to that topic. You
25 worked with Dr. Chen doing independent contract work as an

1 anesthesiologist, correct?

2 A Correct.

3 Q And in that capacity you would go to various
4 hospitals as well as ambulatory surgical centers?

5 A I don't remember going to surgery centers
6 through Eugene Chen, it was hospitals.

7 Q Okay. So you didn't go to -- well, when -- when
8 exactly did you work with Dr. Chen?

9 A When?

10 Q Yes, what years approximately?

11 A I worked with him for a year and a half to two,
12 so it must be 2006 and 2007.

13 Q All right. And you don't recall whether or not
14 -- as far as you recall, you only performed services in
15 hospitals?

16 A To the best of my recollection, yes. I was
17 doing my pain procedures at the surgery center, but Eugene
18 Chen has no -- no involvement with that.

19 Q And which -- I'm sorry, which surgery center
20 would you do your pain procedures?

21 A It was Tenaya Surgery was one of them.

22 Q I'm sorry, what was it?

23 A Tenaya Surgery Center.

24 Q Tenaya?

25 A Yes.

1 Q Okay.

2 A They have changed the name now, whatever is the
3 name right now, but it's next to the Mountain View Hospital.

4 Q And can I ask you to clarify something?

5 A Yes, ma'am.

6 Q I'm probably going to go a little off track
7 here, but I'm curious. What kind of ambulatory surgical
8 center was that at Tenaya?

9 A What kind means?

10 Q Yeah, what kind of surgeries were performed
11 there?

12 A I do not know. I don't care what kind of
13 surgery they were doing. Well, I know -- I know they were
14 doing -- I saw like dental work there, I guess some
15 arthroscopic surgery, knees, joints and all that.

16 Q Okay.

17 A But I do not know.

18 Q You -- and you didn't have any -- you weren't
19 assisting in those surgeries, you were there just to use a
20 space for your pain management, correct?

21 A Right. I was in a separate room doing my pain
22 procedures.

23 Q Okay, I get it. Just trying to understand. And
24 aside from getting work, anesthesia work from Dr. Chen, did I
25 understand you to say that you would get work independent of

1 him?

2 A Yes.

3 Q And how did that come about?

4 A Like if you are a surgeon, you need to looking
5 for an anesthesiologist, somebody tells you my name, you call
6 me, can you provide -- are you available to provide anesthesia
7 and if I'm available I'll go and provide anesthesia.

8 Q So it was basically word of mouth?

9 A Correct.

10 Q Okay. And when -- when you would do that kind
11 of anesthesia service, was that also at hospitals?

12 A If I remember correctly, I cannot say 100
13 percent, but I can say, yeah, 99 percent.

14 Q What about the 1 percent, what would --

15 A I do not [indiscernible] because I'm like
16 keeping it for myself so that if I'm forgetting something I
17 don't want you to come back, oh, you said 100 percent I do it.

18 Q Oh, okay. Fair enough. It's just a margin --

19 A For the safety.

20 Q -- of error so to speak?

21 A That is correct.

22 Q Oh, okay. Fair enough. I'm not a prosecutor,
23 you know.

24 A Whatever.

25 Q All right. Fair enough. I understand. Have

1 you ever worked in an ambulatory surgical setting any time
2 during your career?

3 A For anesthesia or pain? Pain I already said I
4 did already. Let me recall. In Pittsburgh I did I know.

5 Q And was that a surgical center where you were
6 actually assisting or serving as the anesthesiologist during a
7 surgery?

8 A Yeah.

9 Q Can you tell us what type of surgical center you
10 would do those kind of procedures at?

11 A Could you repeat your question, please?

12 Q You went -- when you were in Pittsburgh --

13 A Uh-huh.

14 Q -- you performed anesthesia services at a -- at
15 ambulatory surgical centers, correct?

16 A That is correct.

17 Q What type of surgeries were involved in that?

18 A Most of them were minor surgeries. Endoscopy
19 was one of them at one hospital. It could be eye cases, some
20 nose cases, throat cases, like tonsillectomies and stuff like
21 that, plastic surgeries.

22 Q And did the ambulatory surgical centers where
23 you worked, did they specialize in certain procedures?

24 A There was one surgery center, well, you can call
25 it endoscopy center, they're in Pittsburgh, that was -- that's

1 where they were strictly doing endoscopies only.

2 Q All right. Is there a difference between the
3 staffing at a hospital versus a ambulatory surgical center
4 based on your experience in Pittsburgh, if you know?

5 A Not -- I -- like nothing apparently different.
6 I did not notice like some huge difference in staffing.

7 Q Is the surgeries that are done at hospitals, do
8 people rely on hospital staff to service technicians?

9 A Actually, let me just clarify it because it was
10 not the kind of surgery centers you see here. It was a huge
11 hospital, okay, bigger than UMC and all that. So it was
12 almost -- yeah, not almost, a nine-story huge hospital. Like,
13 for example, what I'm talking about the surgery center it was
14 at the ground -- in the ground -- ground floor and our main
15 hospital -- our main theaters, we had like I think 30, 35
16 operating rooms and they were at the third floor.

17 So to go to the surgery center, whether it was a
18 surgery center or endoscopy center, it was in the same
19 building but at the ground floor. So we were just going back
20 and forth, so it was a different kind of center. So all the
21 staffing and everything was like from the same department, it
22 was anesthesia department. It was same technicians so if
23 that --

24 Q All right. So it was all in-house, in the
25 hospital?

1 A In-house but still called surgery center.
2 Q Correct.
3 A Yes.
4 Q And the hospital would do different type of
5 surgeries?
6 A Yes.
7 Q They weren't specialized?
8 A Yes.
9 Q Okay. Doctors, if I was going to have a
10 colonoscopy, my doctor would have to sign up for this hospital
11 to conduct the colonoscopy in the outpatient surgical area of
12 that hospital?
13 A Yeah, for the endoscopy center. Yes.
14 Q If I needed a nose job, they would have to
15 arrange for space to have my nose job done at that outpatient
16 surgical center?
17 A That much details I do not know, but I don't
18 think there was a -- for endoscopy I know there was a GI
19 department.
20 Q All right.
21 A Gastroenterology department, they were doing
22 endoscopy there.
23 Q Uh-huh.
24 A But for nose and everything else, it was done in
25 routine operating rooms.

1 Q All right. Now you've mentioned Dr. -- is it
2 Vish Sharma?

3 A Yes.

4 Q What's his first name?

5 A Vishvinder.

6 Q Vishwind? Can you spell that?

7 A V-i-s-h -- I would -- I could be wrong.

8 Vishvinder, V-i-s-h-v-i-n-d-e-r.

9 Q You just call him Vish?

10 A Yes.

11 Q And how is it that you came to know Dr. Vish
12 Sharma?

13 A By doing endoscopies, providing anesthesia for
14 his endoscopy cases.

15 Q And how did that come about?

16 A Again, it was through using Chen.

17 Q Okay, through -- through Dr. Chen?

18 A Yeah.

19 Q And you and Dr. Vish Sharma was connected with
20 the Endoscopy Center of Southern Nevada, the clinics that Dr.
21 Desai owned in part?

22 A He was connected with the -- yeah, he belongs to
23 -- well, he -- he used to be a part of that group.

24 Q Uh-huh.

25 A But --

1 Q Okay.

2 A Your question again, please?

3 Q Yeah, that -- that was basically it. He was

4 part of the group --

5 A Of the group, yes.

6 Q -- that Dr. Desai was part of, correct?

7 A Yeah.

8 Q And you also did anesthesia services for Dr.

9 Faris of that group?

10 A Dr. Faris, yes, very occasionally.

11 Q Occasionally. And do you recall any other

12 doctors that you did services for out of that group?

13 A Dr. Wise, just very few times Dr. Carrol. Who

14 else? Yeah, there was one more -- there was one more -- I

15 know there was another Dr. Desai in that group.

16 Q Another Dr. Desai?

17 A Yeah.

18 Q Okay.

19 A So I worked -- provided few cases. I provided

20 anesthesia for a few, you know, for few cases. It was --

21 there was so many of them but most of the -- like just few

22 cases here and there.

23 Q But always in a hospital, never at the surgical

24 centers themselves, is that what you're saying?

25 A To the best of my recollection, yes.

1 Q Ninety-nine percent you think?

2 A Yes.

3 Q You keep that 1 percent just in case.

4 A Just for the safety, yes.

5 Q Fair enough. Fair enough. Now, I want to move

6 to the -- while you're here. You -- let's talk about how your

7 business relationship with Dr. Desai developed. And is it

8 fair to say you had a business relationship with him?

9 A Not really.

10 Q You were negotiating one?

11 A We were in the process, I believe, yeah, of the

12 negotiations.

13 Q Was Dr. Vish Sharma involved in that process?

14 A Not at all.

15 Q Is Dr. Vish Sharma a -- was he a friend of

16 yours?

17 A No.

18 Q Just a professional relationship you had with

19 him?

20 A Yes, and social acquaintance too.

21 Q So -- oh, okay. So --

22 A That developed actually later, initially it was

23 professional.

24 Q And then it became more social?

25 A Yes, and it still is.

1 Q Okay. In fact, Dr. Vish Sharma was the one who
2 invited you to Dr. Desai's party?

3 A That is correct.

4 Q And you're -- you continue to be friends with
5 Dr. Vish Sharma?

6 A You can call it a friend, but he's not my
7 friend.

8 Q What is he?

9 A Just a acquaintance.

10 Q An acquaintance. Do you socialize with him at
11 all aside from going to parties?

12 A No.

13 Q The facility that Dr. Desai was building was
14 going to -- was a large facility, correct?

15 A I don't know the definition of large.

16 Q It was supposed to house not only your pain
17 management operation, but also a gastrology section, correct?

18 A Yes.

19 Q And, Doctor, did you have any idea as to what --
20 was it being built at the time you were negotiating?

21 A Yes, it was still under construction.

22 Q Okay. Aside from Dr. Desai, did you have any
23 conversations with Dr. Vish Sharma about coming in to the
24 business?

25 A Not at all. We never -- I never had any

1 conversation with Vish Sharma at any point about the surgery
2 center or anything.

3 Q Okay. When you were -- so this business, you
4 were going to be the medical director, correct?

5 A Supposed to be, yes.

6 Q And what does a medical director do in your
7 experience?

8 A As I said earlier, she asked me the same
9 question, I would guess, you know, keeping an eye on
10 day-to-day business, but I do not know what is the --

11 Q Well, let me -- let me put it to you this way.
12 You've been a doctor for how many years?

13 A Since '99, I guess.

14 Q And you've worked for -- it sounds like you've
15 worked for some very large medical facilities?

16 A That is correct.

17 Q And those medical facilities had medical
18 directors?

19 A Just chief of anesthesia.

20 Q Okay. There was some kind of supervision of the
21 medical operation by other -- by another doctor?

22 A Not that I recall.

23 Q Okay. What does a director do, a medical
24 director, any idea?

25 A I do not know.

1 Q What did Dr. Chen do in connection with his
2 business with -- with you?

3 A Dr. Chen was not doing a whole lot. It was his
4 wife who was practically running his office.

5 Q Did he have other doctors working with him?

6 A Yes, I think there was one for sure. If he had
7 more than one I do not know.

8 Q Is it a fair statement -- statement to say that
9 when you came to Las Vegas you were out there trying to get to
10 know another doctors so you could get them to refer business
11 to you?

12 A Get to know, yeah, sure.

13 Q And is it your experience that doctors
14 oftentimes work in groups, partnerships?

15 A Depends. There are solo doctors like I am.

16 Q Correct.

17 A There are groups as well so --

18 Q And when you have a group of doctors, is there
19 usually a doctor that's responsible for managing the business
20 itself?

21 A I'm sure there is out of that group. There
22 could be one doctor who might looking into that part of it.

23 Q It's a business, correct?

24 A Yes.

25 Q And so it's --

1 A Well, they might hire somebody to do it.

2 Q All right. Suffice it to say, that doctor or
3 whoever, whether it's a wife or another professional or
4 somebody who is overall managing the business of the
5 organization, correct?

6 A Yes.

7 Q And you were going to -- you were negotiating to
8 become the medical director for this new facility that was
9 being built, correct?

10 A That is correct.

11 Q And you understood that that facility was going
12 to have both pain management and gastrology procedures being
13 conducted, correct?

14 A Yes.

15 Q Now, did you fill out any other paperwork, did
16 you sign any other paperwork besides this Exhibit 102 of the
17 State's?

18 A With Dr. Desai's office?

19 Q Yes.

20 A I remember signing some papers, some kind of --
21 I don't know, it was -- it was blank forms. They were signed
22 because once I was in his office and [indiscernible] took me
23 upstairs there was his office manager and I went somewhere
24 upstairs from his office and there I signed some papers and I
25 -- if I remember correctly, it was for some -- either for

1 privileges -- it was something. I don't remember, but I
2 signed the papers.

3 Q All right.

4 A But I don't know what those -- exactly those
5 papers were.

6 Q Well, let's -- let me go back to the time you
7 were interviewed by the metropolitan police. That was May
8 27th of 2009. Does that sound about right?

9 A 2009?

10 Q Yes. Do you know what date it was?

11 A No, I don't remember the year really.

12 Q You -- you had a -- you had an interview with
13 this fellow right here. Do you recognize him and I'm pointing
14 to Detective Whitely. Do you remember that fellow?

15 A I remember now his name when you are saying, but
16 I just -- no, I don't remember if it was him back then.

17 Q He has a nice haircut and a nice suit now,
18 right?

19 A No, I don't remember actually, honestly.

20 Q Okay. Fair enough. You do remember speaking
21 with personnel from the Metropolitan Police Department,
22 correct?

23 A Yeah.

24 Q Okay. And when you spoke with them you had two
25 attorneys present with you, correct?

1 A That is correct.

2 Q The --

3 A Two or one? It could be two, I don't know.

4 Q When did you hire those attorneys?

5 A No, I hired one. I remember that because I had
6 to pay for it. But the other one was -- I think if there was
7 another one -- the other one? It could be from the insurance.

8 Q Okay.

9 MS. STANISH: May I approach, Your Honor?

10 THE COURT: You may.

11 MS. STANISH: Oh, I'm sorry. I'm just showing him a
12 copy of the interview.

13 BY MS. STANISH:

14 Q I just want you to read the date -- oh, I'm
15 sorry. Let's see if we got the date.

16 A It was 2009.

17 Q May 27th.

18 A Okay.

19 Q And just read this to yourself so you know who
20 was present at that meeting, please.

21 A Okay.

22 Q Okay. When did that meeting occur?

23 A 2009.

24 Q And there were two attorneys there representing
25 you, correct?

1 A Yes.

2 Q And at that meeting, was this document, this
3 State Exhibit 102, was that document shown to you?

4 A I think so.

5 Q All right. And were other -- did you -- at your
6 interview, however, you didn't tell the detectives that you
7 unknowingly signed that document, did you? Or do you
8 remember?

9 A Don't remember.

10 MS. STANISH: Court's indulgence, please.

11 THE COURT: That's fine.

12 MS. STANISH: Your Honor, may I have this document
13 marked as whatever you're marking defense exhibits as? Desai
14 C?

15 THE COURT: That will be C-1.

16 MS. STANISH: C-1. May I approach the witness, Your
17 Honor?

18 THE COURT: You may.

19 BY MS. STANISH:

20 Q I'm handing --

21 MS. WECKERLY: Your Honor, may I just look over --

22 THE COURT: Sure.

23 MS. WECKERLY: -- Ms. Stanish's shoulder? Just -- I
24 want to see which --

25 THE COURT: When -- whatever she said.

1 MS. STANISH: Sure. You know, I was just going to
2 give it to him, but I will show you. I put a tab on this page
3 here, which is Bates stamped 7252. All right? Let's flip
4 right to that document.

5 BY MS. STANISH:

6 Q Do you recognize your signature on that
7 document?

8 A Yes, I do.

9 Q And what's the date that you signed it?

10 A (INAUDIBLE)

11 Q I'm sorry. Speak up, please.

12 A Oh, 7/10/07.

13 Q And what's the title of that document?

14 A Desert Shadow Endoscopy Center.

15 Q And can you read a little bit further at the
16 capitalized language?

17 A 4275 Burnham Avenue, Suite --

18 Q Right here.

19 A Request for privileges, yeah.

20 Q All right. Oh, I'm going to let -- I'm just
21 going to let you keep this.

22 A Okay.

23 Q I'll ask you questions from it if you need to
24 refer to it. I'm going to come back to that document in a
25 moment, but I want to discuss other documents that are in

1 there. Turning to the first document that begins at Bate
2 stamp 7238, what is that document? The Bates stamps are on
3 the bottom right.

4 THE COURT: They're on the bottom.

5 THE WITNESS: I'm lost. I have no idea what you are
6 talking about.

7 BY MS. STANISH:

8 Q These are -- this is lawyer talk. We call these
9 Bates stamps.

10 A Okay.

11 Q So when I say Bates stamp, that's what I'm --

12 A Okay, this number.

13 Q -- I'm looking at. So I asked you to refer to
14 the first page and that's Bates stamp 7238.

15 A 38, okay.

16 Q What is that document?

17 A My CV.

18 Q And your CV describes in some detail your
19 experience as an anesthesiologist, correct?

20 A That is correct.

21 Q And I -- I see that you were an attending -- I'm
22 looking on the first page, you were an attending
23 anesthesiologist. You were the co-director for the Center of
24 Pain Medicine, correct?

25 A That is correct.

1 Q And it also looks like you were an attending
2 anesthesiologist from June '99 to four -- April of 2000, you
3 were the director of the Richmond Pain Management Center,
4 correct?

5 A Yes, I guess. Yeah, correct.

6 Q So you have been a director in the past,
7 correct?

8 A On papers, yes.

9 Q Oh, on paper only?

10 A Yes.

11 Q Now, let me run you just through some of this.
12 I'm not going to go through each and every one of these
13 documents, but the -- turn to 7244.

14 A Okay, I'm there.

15 Q And this is where you signed a document,
16 correct? That's your signature?

17 A That is correct.

18 Q Also on July 10th of 2007, correct?

19 A Correct.

20 Q And that's a disclosure statement. It's
21 entitled Provider Initials Credential Disclosure Statement.

22 A Yes.

23 Q And the -- is the purpose of this document for
24 you to apply to participate in the ambulatory surgical center?

25 A Yes. As I said earlier, I did go upstairs,

1 there was his office manager and she gave me the -- okay, the
2 -- then this -- these must be the one --

3 Q All right.

4 A -- for the privileges.

5 Q All right. So you filled out -- this is all
6 your handwriting on here where you're summarizing your medical
7 school, your internship, your residency, et cetera?

8 A This is not my handwriting.

9 Q Okay. Did you -- whose handwriting is that, do
10 you know?

11 A I have no idea.

12 Q Okay. Did you give them a copy of your -- your
13 CV, your resume?

14 A That is -- that's quite likely, that goes
15 everywhere.

16 Q And did you do so for the purpose that the
17 surgical center could vet you? Do you know what I mean by
18 that?

19 A No.

20 Q Call up your references and find out how you
21 performed your services at various past locations.

22 A Okay. I'm still --

23 Q Pardon me?

24 A I'm not clear actually what you're saying but --

25 Q You had to apply to work for the ambulatory

1 surgical center, correct?

2 A Yeah.

3 Q And in doing that, they had to check your
4 background, correct?

5 A Okay.

6 Q No, I --

7 A Well, I don't know. Maybe they must be --

8 Q You don't know?

9 A They must be doing it, I do not know. Everybody
10 checks the background, I guess. The hospitals, I know they
11 do.

12 Q Okay. Well, let's flip through this so you
13 don't have to guess. Let's -- let's just go through it.

14 A Okay.

15 Q Did you -- jump up to page 7264.

16 A 7264. Okay.

17 Q And that document's entitled Peer Referenced
18 Verification, correct?

19 A Yep, yes.

20 Q And -- and do you recognize the name of Dr.
21 Stephen is it Gebhardt?

22 A Gebhardt, yes.

23 Q And that's somebody that you worked for here in
24 Las Vegas?

25 A I did not work for. He was providing anesthesia

1 for my pain procedures.

2 Q All right. And this is a person whose name you
3 gave to the gastro center as a reference?

4 A Quite likely, yes, yes.

5 Q And so somebody filled out this form after
6 talking to Dr. Gebhardt, correct?

7 A That is correct.

8 Q Now, I want to go back to -- can I -- let me
9 approach you there. All right? Let me get this back from
10 you. Now, I'm going to show you this Supervising Physician
11 Agreement. Do you see that right at the top the name of the
12 document, correct?

13 A That is correct.

14 Q And just describe this for the record. In bold
15 font at the top it says Supervising Physician Agreement,
16 correct?

17 A That is correct.

18 Q And the -- if we look here at -- in the second
19 paragraph it starts off Satish Sharma M.D., in conjunction
20 with the Dipak Desai, M.D. and Vishvinder, that's how we spell
21 his name, Sharma, at the Gastro Center of Nevada, agree to
22 co-supervise and consult with CRNAs employed at the Gastro
23 Center of Nevada. Correct?

24 A Yeah.

25 Q Okay. Now, this document that was in your --

1 I'm going to refer to this as a credential file, is that a
2 fair statement? That's Defense Exhibit --

3 MS. STANISH: What is it again, please?

4 THE COURT: C-1.

5 BY MS. STANISH:

6 Q C-1. So Defense Exhibit C-1, this is this
7 document that you earlier identified for us as the request for
8 privileges of the physician, correct?

9 A Correct.

10 Q And it's -- there's a table that says requested,
11 granted and procedures, correct?

12 A Correct.

13 Q And you requested anesthesiology privileges,
14 conscious sedation, correct?

15 A Correct.

16 Q Requested anesthesiology deep sedation, correct?

17 A Yes.

18 Q Requested anesthesiology co-supervisory,
19 correct?

20 A Correct.

21 Q And then, this is your signature here, July
22 10th, '07?

23 A Yes.

24 Q And then is that Dr. Desai's signature, do you
25 know?

1 A I have no idea.

2 Q Okay. It's dated August 20th, '07, correct?

3 A Yes.

4 Q And then going to this -- the next page, which
5 is Bates stamped 7253, it appears -- again, the signature of
6 the CEO that you are recommended for appointment on August
7 20th, '07, correct?

8 A Correct.

9 Q And then there's another signature,
10 unfortunately this copy is not clear, but also dated --
11 there's a signature of somebody who's designated as a member,
12 correct?

13 THE COURT: We can't see it where you have it.

14 MS. STANISH: Oh, I'm sorry.

15 THE WITNESS: Yes.

16 BY MS. STANISH:

17 Q And it's dated the same date as the CEO's
18 signature. And on August 20th the appointment is circled and
19 also recommended for appointment --

20 A Yes.

21 Q -- correct? So there was a bit of a process.
22 I mean, you were -- the center checked into your credentials
23 and on the same date you were being recommended for
24 appointment, correct?

25 A Yes.

1 Q Yeah. And you were recommended to be a co-super
2 -- do co-supervision in anesthesiology, correct?

3 A Correct.

4 Q Did you read this before you signed it?

5 A No.

6 Q In this document, the document that brings you
7 here, it is also signed by you on August 16th of '07, correct?

8 A That is correct.

9 Q And you're saying that you were in between
10 patients and somebody brought you this document?

11 A That's correct --

12 Q Correct?

13 A -- yes.

14 Q And when you say you were in between patients,
15 if you remember, were you in your office, like sitting at a
16 desk?

17 A Yes.

18 Q Someone handed you this page, this paper, which
19 consists of one, two, three, four, five paragraphs, two of
20 which are very -- three of which are very short. You didn't
21 read it, you just signed it?

22 A That is correct.

23 Q And did you see the signature of Dr. Desai on it
24 when you signed it?

25 A It was all -- if I remember correctly, it was

1 all blank when I signed the paper.

2 Q Oh. So you remember it being blank but you
3 don't remember reading it?

4 A I'm saying if I remember correctly.

5 Q Okay. So you may -- are you remembering
6 incorrectly? You're not sure?

7 A That is possible. It was seven, eight, seven
8 years ago.

9 Q All right. Is it a fair statement -- oh, by the
10 way, let's talk money. You were going to be paid how much
11 money to serve as a medical director?

12 A It was never decided.

13 Q What was your discussion on it?

14 A Nothing. It was no -- there was never a
15 concrete discussion. It -- he just threw one time, you know,
16 somewhere five to 10,000, but I do not -- it was like a -- not
17 a serious discussion or not like to the point, it was just
18 like casually.

19 Q You talked about how he was going -- Dr. Desai's
20 business was going to purchase you one of those C-arms, right?

21 A Yes, yes.

22 Q And that machine costs \$150,000, correct?

23 A Almost, yes.

24 Q So he was going to help set up a pain management
25 system -- center in this location that you were going to be a

1 medical director of, correct?

2 A That is correct.

3 Q And that included a gastrology part --

4 A First of all, medical director, it's not like
5 the final -- it was that you are the medical -- it was not a
6 designated -- it was not designated because it was never --
7 money was never decided, there was no formal agreement. So
8 you just cannot call me the medical director. But, yes, it
9 was in process, we were negotiating, we were discussing --

10 Q Okay. You were going to be a supervisor?

11 A You can say that.

12 Q You were going to be the supervisor, would you
13 say that?

14 A Only if everything goes through them, that's
15 when it -- you can -- I can call myself that I'm the
16 supervisor. But if it falls through, then there is nothing.

17 Q And how much were you going to -- what was the
18 discussion about money? You were going to be paid anywhere
19 from how much to how much each month?

20 A As I said, there was -- I -- I -- the numbers
21 were never discussed in a -- it's not like we sat down and
22 discussed the numbers, he just threw a number.

23 Q And was there discussion about supervising
24 CRNAs?

25 A No. Every time we -- I discussed everything

1 him, with him, it was all about pain. How much pain business
2 -- pain business I can bring to the surgery center and that --
3 that was it.

4 Q Okay.

5 A Or about the -- like what do you need, you know,
6 what --

7 Q Did you know that Dr. Desai was going to put --
8 have a gastroenterology center at this location?

9 A I did not know that when I signed the paper, but
10 when the construction was taking place I was asked by his
11 office manager, I forgot her name, and there was one also --
12 there was one nurse also, Katie or something like that --

13 Q Uh-huh.

14 A -- and I was asked them to come and look at the
15 room and it was -- must be like -- not that hard so I would
16 guess this must be like about April of 2008 when it was almost
17 ready and they just wanted to see that, you know, the pain
18 room is ready and what I need, the lighting and all that. So
19 I did go to that office and that's when they told me that
20 endoscopy will be done on that other side.

21 Q And when about did that occur?

22 A As I said, must be close to April. It was -- it
23 was almost like they were giving it like the final touch to
24 it.

25 Q So before you signed that document you went to

1 the facility?

2 A After. It was signed in '07 and I'm talking
3 about '08.

4 Q Oh, okay. I missed that. Just to be clear, I
5 didn't understand that. So you were having these discussions
6 in April of '07 and you were visiting --

7 A Not April of '07, April of '08.

8 Q Okay.

9 A That's when I'm talking -- I went to the -- that
10 facility.

11 Q Okay. Because we know from your credential
12 files that in July of '07 you are applying for credentials at
13 the surgical center.

14 A '07, okay. I don't remember the dates, yeah.

15 Q Well, let's put this one back up there to
16 refresh your memory. This is your request for privileges
17 including co-supervising -- oh, gosh -- this request for
18 privileges was dated by you July 10th, '07, correct?

19 A That is correct.

20 Q All right. And then you're saying -- and then
21 this agreement that you claim you didn't read, that was signed
22 about a month later on August 16th, '07 by you?

23 A Yes.

24 Q And on the same date it was signed by Dr. Vish
25 Sharma, correct?

1 A Okay.

2 Q Two days later by Dr. Desai?

3 A Okay, yes.

4 Q So just to understand the time frame. When did
5 you go to the facility to review it, to inspect it?

6 A It was in '08.

7 Q All right.

8 A As I said, I'm guessing it must be April, it
9 could be May, but during -- close to that time.

10 Q And this facility never opened because of the
11 hepatitis C outbreak; is that correct?

12 A That is correct.

13 Q Everything fell apart?

14 A That is correct.

15 Q Did you feel like you had a target on your back?

16 A Target on my back?

17 Q You're here -- well, if you don't understand
18 that, let me rephrase it. The super -- you said earlier you
19 are here in this courtroom today because of this document,
20 correct?

21 A Yes.

22 Q And were there other plaintiff attorneys who
23 felt like you had some involvement in the clinic?

24 A Yes. I was sued by like I think 18 patients or
25 so. I don't know how many attorneys were involved --

1 Q Right.

2 A -- but all those cases were dropped because I
3 was not involved in any of the cases.

4 Q Were there any settlements?

5 A No, not at all.

6 Q Were there -- were there settlement -- you were
7 -- you were represented by a court -- two attorneys, right?

8 A That was only when I went to his office.

9 Q Right. And one was your personal attorney that
10 you said you had to pay for, correct?

11 A Yes, because insurance said that they will not
12 cover the criminal aspect of it, which I don't understand so,
13 yes, I had to pay out of my pocket.

14 Q And then the other was an insurance -- an
15 attorney hired by the insurance company?

16 A Yes -- or -- yes.

17 Q And were you aware that there were a number of
18 confidential settlements with insurance company attorneys?

19 A No. Until today I do not know anything about --

20 Q And it's your understanding the lawsuits against
21 you were dismissed; is that correct?

22 A No. It was way back, later though.

23 Q Okay. Your -- the lawsuits against you have
24 been dismissed, is that what -- I'm just asking you a
25 question.

1 A Yeah. They were dropped -- like all the --
2 about my, cases against me I heard after his first meeting.
3 So the sequence of events -- sequence of events were he called
4 me --

5 THE COURT: He meaning the detective?

6 A Yes. He called me and he called me to his
7 office. I called my insurance and they, because of all of
8 that I, you know, there were two attorneys with me. I was
9 there with them for I don't know, maybe an hour or so. And he
10 asked me about this -- you signed this paper and did you
11 provide anesthesia, blah, blah, all that details. I'm sure
12 you already have all those. And then later I got sued. I got
13 this many papers from the attorney's office, so that all
14 happened later.

15 Q Right.

16 A Then I had a jury trial or testimony, whatever
17 you call it, I don't know the term. So that's -- and even
18 those cases I guess may be dropped even before that or after
19 doing -- after jury trial.

20 Q Okay. Did you actually testify in front of a
21 jury?

22 A Before, yes, I did.

23 Q In a civil case?

24 A Yes.

25 Q And were you, in that particular civil case,

1 were you a named defendant or merely a witness like you are
2 now?

3 A I was a defendant.

4 Q Okay. And do you remember the name of the
5 person who sued you?

6 A No.

7 Q And do you remember if you were named with other
8 defendants?

9 A No. All I remember there was this attorney who
10 was representing me in that particular -- that's the only
11 thing I remember.

12 Q When -- was your first contact with this
13 hepatitis C issue, was it when you met with the Metropolitan
14 Police in May of '09, or did you have some contact with any
15 law enforcement person before that?

16 A No, that was my first encounter.

17 Q Okay. Did you have any contact with anyone from
18 the Southern Nevada Health District?

19 A No.

20 Q CDC?

21 A Nobody. I never cared because I was not -- I
22 forgot that paper that I signed and I was just thanking God
23 that I'm glad it is -- it broke out before I could be a part
24 of that surgery center.

25 Q Were you concerned at the time you were

1 interviewing with the detective that you could be the subject
2 of a criminal case?

3 A No. And even today I'm not.

4 Q Okay. But you thought --

5 A I just signed two lines --

6 Q -- it was necessary -- you thought it was
7 necessary to have two attorneys with you, correct?

8 A No. That was -- that is something -- that is
9 something that was recommended --

10 Q Okay.

11 A -- by my insurance.

12 Q All right.

13 A None of the attorneys did anything in that
14 meeting.

15 Q Okay. All right.

16 A And you can read the statement of attorneys,
17 they were just sitting like my bodyguard.

18 Q We all need bodyguards. One more topic briefly.
19 I want to talk to you a little bit about propofol.

20 A Yes, ma'am.

21 Q And I want to make sure I understand your
22 testimony on a point. I understand that before propofol was
23 common there was another anesthesia that came in that was used
24 to multi-dose patients, correct?

25 A That is correct.

1 Q Meaning that I could use this large vial of
2 anesthesia to go in with a clean syringe, come out with a
3 clean syringe, insert in the patient, and then use that same
4 vial on another patient, correct?

5 A We talked about that. Pentothal you're talking
6 about?

7 Q Yeah. I want to make sure I understand your
8 testimony at this point.

9 A That is correct.

10 Q And then with propofol, you're familiar that
11 propofol comes in 20 and 50 cc vials?

12 A Yes.

13 Q And is -- is it appropriate, in your mind, to
14 use aseptic technique to use -- to use a larger vial or even a
15 smaller vial for that matter, on more than one patient so long
16 as you're using aseptic technique?

17 A That -- I -- I personally do not have any
18 problem with that.

19 Q And in your -- your explanation was that aseptic
20 technique would involve putting in a clean syringe and a clean
21 needle each time you entered the vial?

22 A That is correct. Actually, for -- a knowledge
23 of everybody, we do have -- it's not -- usually we do not use
24 needles to go back and forth. There are connect -- like --
25 it's a connector --

1 Q Like a spike?

2 A Yes. And it has -- one end you put your syringe
3 and then there's another port through which the air can go in
4 the bottle.

5 Q Uh-huh.

6 A So basically -- and that is sitting on top of
7 the bottle. So you go over there with syringe, clean syringe,
8 take the pentothal or whatever you want to take, and then
9 other person will come and -- so we are not using the needles,
10 like real needles. It was all plastic connect -- connectors.

11 Q All right. So you -- as I understand your
12 explanation, the propofol would come with a device called a
13 spike or is it known as another name?

14 A No. It's -- it's not -- it has nothing to do
15 with propofol.

16 Q Okay.

17 A There are connectors, if you are using
18 pentothal, you can put this kind of spike in, one end is
19 sharp, other end has little grooves you can put your syringe
20 on and then here on the side there's a port -- kind of port
21 for the air --

22 Q Okay.

23 A -- because you cannot put anything out unless
24 the air goes in.

25 Q Okay, I understand. So instead of using needles

1 on each syringe, you would just put a syringe to this spike
2 and draw the medication --

3 A That is correct.

4 Q -- that way?

5 A And you can use that on any bottle.

6 Q And that's my question. Do you know if the 50
7 cc vials of propofol had -- came with spikes, if you know?

8 A I don't know if it came with spikes but you can
9 use -- the connector I'm talking about you can use that on
10 that if you want to.

11 Q So you could -- some people could use -- some
12 people would use a spike on propofol so that it could be used
13 without a needle, correct?

14 A If somebody wants to.

15 Q And I understand your aseptic technique is
16 something that you learned on the job as well as at school?

17 A Yes.

18 Q And when you testify here about what the
19 standard is, it's based on your experience and your training,
20 correct?

21 A That is correct.

22 Q And most of your experience occurred in
23 Pennsylvania -- Pittsburgh, correct?

24 A That is correct.

25 Q And the -- your experience with CRNAs was

1 primarily in the state of Pittsburgh, correct?

2 A That is correct.

3 Q And do the practices between Pennsylvania and
4 Nevada, do they -- are they different as far as CRNAs, if you
5 know?

6 A I do not. I never worked with any CRNA in
7 Nevada.

8 Q Okay. And over time, do standards change?

9 A I guess if there are -- yeah, that's -- sure
10 they do.

11 MS. STANISH: I have nothing further, thank you.

12 THE COURT: All right. Ladies and gentlemen, we're
13 going to take a quick recess until -- about ten minutes, about
14 11:25. During the brief recess you're, of course, reminded
15 that you're not to discuss the case or anything relating to
16 the case with each other or with anyone else. You're not to
17 read, watch, listen to any reports of or commentaries on the
18 case, any person or subject matter relating to the case by any
19 medium of information. Do not do any independent research by
20 way of the Internet or any other media and please do not form
21 or express an opinion on the trial. If you would all please
22 place your notepads in your chairs and follow the bailiff
23 through the rear door.

24 THE WITNESS: Can I ask a question, please?

25 THE COURT: In a moment. And, Doctor, on the break,

1 you're admonished that you're not to discuss your testimony
2 with any other witnesses in the case.

3 (Jury recessed at 11:13 a.m.)

4 THE WITNESS: My question is that I have my 12 or 15
5 procedures scheduled starting --

6 THE COURT: Here's the deal. We're going to finish
7 with your testimony before the lunch break.

8 THE WITNESS: Okay.

9 THE COURT: I don't know -- Mr. Santacroce, do you
10 have cross?

11 MR. SANTACROCE: Yes.

12 THE COURT: And then there's going to be some
13 redirect and possibly a couple of juror questions. So Mr.
14 Santacroce, what do you figure -- if you're -- my guess would
15 be you are not going to be there by 12:05.

16 THE WITNESS: Well, as long as I am done by 12, 12:15
17 I'm good.

18 THE COURT: Well, we'll go straight through until we
19 finish with you. I can't limit the questioning from the
20 lawyers unless there's objections and things like that. Mr.
21 Santacroce, how long do you anticipate?

22 MR. SANTACROCE: Twenty minutes to a half an hour.

23 THE WITNESS: Okay. Thank you.

24 (Court recessed at 11:14 a.m. until 11:23 a.m.)

25 (Outside the presence of the jury.)

1 THE COURT: Is everyone ready? All right, Kenny, go
2 get the jury.

3 MS. WECKERLY: Your Honor, do -- is it possible to
4 admonish -- I understand we're going to do our lunch break,
5 but is it possible to admonish the --

6 THE COURT: So the lawyers can leave? Absolutely.
7 Kenny wait, hold up on the jury. All right.

8 MS. WECKERLY: They're here so --

9 THE COURT: Okay. We'll -- he'll -- we'll catch
10 Kenny in the hallway. Go ahead, bring your clients in.

11 MS. WECKERLY: Just one of them's a Spanish speaker.
12 We have the interpreter.

13 THE COURT: Okay. Yeah, let's -- let's get rid of
14 people who don't need to wait around.

15 MS. WECKERLY: Would you like us to approach?

16 THE COURT: Just stand, you can stand in the well.
17 And then your client needs the Spanish interpreter?

18 MS. WECKERLY: Correct, Your Honor.

19 THE COURT: All right. Sir, come on down and stand
20 next to the lady right here, the other lady. I guess I should
21 have been more precise, the lady, there's like four ladies in
22 the -- all right. And your client's name is Weiss?

23 MS. WEISS: Yes. My name's Patty Weiss. This is my
24 client Sonia Orellana Rivera.

25 THE COURT: All right. And basically, my

1 understanding is you entered into -- Ms. Rivera, you entered
2 into an agreement in connection with your civil lawsuits,
3 correct, for settlement? And then as part of that agreement
4 there was a confidentiality provision wherein you agreed that
5 you would not disclose the terms of the settlement; is that
6 correct?

7 MS. WEISS: I don't think he's doing translation the
8 same way you are, Your Honor. So I think maybe he needs to
9 take a break to translate what you're saying because he didn't
10 say anything about the amounts. I want to make sure we're
11 clear. I speak Spanish too. That was translated incorrectly.

12 THE COURT: Okay. Well, he is a certified
13 translator. I didn't say the precise amount.

14 MS. WEISS: Right.

15 THE COURT: Okay.

16 MS. WEISS: Can you just let her know that she has to
17 say the precise amount of the settlement on the record.

18 THE COURT: All right. And, ma'am, basically, you
19 cannot enter into a private agreement that inhibits the rights
20 of criminal defendants and their attorneys to cross-examine
21 you if you're a witness in a criminal case. Do you understand
22 that?

23 MS. RIVERA: Yes.

24 THE COURT: Okay. So basically, if one of the
25 lawyers or the Court asks you a question and I deem that it's

1 acceptable, you must answer the question even if it calls for
2 the amounts that you received as part of the settlement with
3 the various defendants in your civil case or cases. Do you
4 understand?

5 Okay. Ms. Weiss, is there anything else you'd like
6 me to advise your client of?

7 MS. WEISS: If you don't mind, Your Honor, I'd like
8 to just kind of brief her.

9 If she tells you that you have to say the amount,
10 that's a court order. Even if it violates the confidentiality
11 agreement, she's instructing you by court order to do that.

12 THE COURT: Do you understand? Basically as a
13 witness in this case, you must answer any question that the
14 Court deems relevant. Okay? Thank you.

15 MR. STAUDAHER: Your Honor, can I just clarify one
16 thing? I just want to make sure she's aware of it. But the
17 order of the court is for the net amount for what she got --

18 THE COURT: Right, exactly. It's the net amount.
19 You don't get -- they're not going to ask you -- I'm sure they
20 won't ask like how much your lawyer made and all that kind of
21 stuff, how much other plaintiffs may have gotten. That's not
22 relevant to your testimony. All right. Thank you. Okay.

23 And then, ma'am, we're probably going to get to you
24 after lunch so I don't really know what time that's going to
25 be because I don't know how much longer it's going to be with

1 the doctor. I mean, it's safe for her to leave for at least
2 an hour, you know, hour and -- probably an hour and a half is
3 safe for her to leave for.

4 And Mr. Staudaher, Ms. Weckerly, I don't know which
5 -- which witness you're going to have first.

6 MR. STAUDAHER: Well, we're not done with this --
7 this one --

8 THE COURT: No, this guy, I know -- Doctor, I know.
9 I'm saying after the lunch break when we -- he's going to be
10 finished before lunch. Then we're going to go to lunch for an
11 hour, and then I'm assuming these people are going to be our
12 next witnesses. So which one do you -- who's going to be
13 first or do you know?

14 MS. WECKERLY: I would probably leave it up to them
15 at this point.

16 THE COURT: Okay.

17 MS. WECKERLY: Whatever's easier for them.

18 THE COURT: So basically your client's safe to leave
19 for at least an hour, hour and a half.

20 All right. Let's move on to Ms. Killebrew's clients
21 and Ms. Killebrew --

22 MS. KILLEBREW: Thank you, Your Honor.

23 THE COURT: -- who do you have with you?

24 MS. KILLEBREW: Nia Killebrew for plaintiff's
25 Gwendolyn and Lovey Martin. For clarification of the Court

1 with respect to this order, it is Gwen Martin that is here
2 subject to the subpoena of the court. Mr. Martin was a
3 plaintiff loss of consortium claim in the lawsuit --

4 THE COURT: Okay.

5 MS. KILLEBREW: -- he -- they both were a -- the
6 recipients of a settlement. Mr. Martin had a separate
7 settlement, a separate award designated to him for that claim.

8 THE COURT: As an individual plaintiff?

9 MS. KILLEBREW: As an individual plaintiff and spouse
10 of Mrs. Martin. So to the extent that that differs a little
11 bit from the stipulations or the orders of the court
12 previously, I wanted to point that out so that Mr. Martin as
13 well as directed if the court so sees fit to disclose his net
14 settlement amount through his wife Gwendolyn.

15 THE COURT: Okay. So Mr. Martin has not been
16 subpoenaed as a witness, correct?

17 MS. KILLEBREW: To the best of my knowledge that is
18 my understanding. Although I will represent to the Court that
19 Ms. Martin is obviously aware of Mr. Martin's net settlement
20 amount. I just wanted for purposes of the order him to be
21 personally admonished or ordered and give to -- that she's to
22 be ordered to disclose that amount if the Court so orders.

23 THE COURT: Okay. Basically, Ms. Martin, you heard
24 what I said to the other witness and you understand that you,
25 you know, can't enter into a private agreement whereby you

1 witness -- I'm sorry, you limit an accused right in a criminal
2 case to have their lawyers conduct a thorough examination
3 subject to, you know, findings of relevancy and other things
4 by the Court. Do you understand that?

5 MS. MARTIN: Yes.

6 THE COURT: And for that reason, since you are going
7 to be called as a witness, you are ordered to answer any
8 questions, you know, which the Court deems relevant. And you
9 cannot use the -- you know, the fact that you signed the
10 agreement to not answer a question. Do you understand that?

11 MS. MARTIN: Yes.

12 THE COURT: Okay. So you're ordered, as long as I
13 deem it relevant, that you have to answer the question. Okay.
14 And basically, as you heard me tell the other witness, that
15 includes the net amount of the settlement that you received.
16 And since it's also a part of your household, you know,
17 benefits that went to your household, the amount that your
18 husband received as an individual plaintiff. Okay?

19 And again, that's amounts that you folks actually
20 got. What your lawyer made and costs and other things like
21 that are not relevant so you don't have to get in to that.
22 And if you're aware of what other plaintiffs may have received
23 as part of a settlement or what a global settlement amount
24 was, you only -- likewise, don't have to answer those things.
25 Do you understand?

1 MS. MARTIN: Yes.

2 THE COURT: Okay. And Mr. Martin, you've heard me
3 inform your wife --

4 MR. MARTIN: Yes.

5 THE COURT: -- that she cannot utilize the
6 confidential terms of your settlement agreement to refuse to
7 answer a question that the Court deems relevant regarding any
8 amount you have. As that I'm assuring you live together and
9 that benefits both of you as members of the same household.
10 Do you understand that?

11 MR. MARTIN: Yes, I do.

12 THE COURT: Okay. Ms. Killebrew, is that acceptable?

13 MS. KILLEBREW: Yes. Just in sum, Your Honor, the
14 Court is therefore ordering both Mr. and Mrs. Martin to
15 disclose the net settlement amounts awarded to both of them
16 through Mrs. Martin's testimony here today.

17 THE COURT: Well, essentially, Ms. Martin is the
18 witness so I'm directly ordering her, but I'm saying that
19 neither one of them -- you know, basically, ma'am, you can't
20 use the fact that your husband entered into this agreement and
21 that's confidential to not answer the question.

22 And then Mr. Martin, obviously if you were called as
23 a witness, you would have to answer those same questions
24 regarding the amount of the settlement agreement that -- that
25 you were given.

1 And Mrs. Martin, obviously you're aware of those
2 terms because you're in the same household and him disclosing
3 that to you is not, in my view, a violation of that agreement.

4 MS. WEISS: Your Honor, just for clarification, the
5 same kind of thing happened with her and her husband --

6 THE COURT: Okay.

7 MS. WEISS: -- so I'm assuming that the same --

8 THE COURT: Is he -- is he -- was he also a
9 plaintiff?

10 MS. WEISS: He was for loss of consortium.

11 THE COURT: Okay.

12 MS. WEISS: He is not here. He is not -- he was not
13 subpoenaed to be a witness.

14 THE COURT: Okay.

15 MS. WEISS: But I'm just assuming that the same --

16 THE COURT: Same -- same exact thing and we need the
17 interpreter -- did he leave?

18 MR. STAUDAHER: He did. He's going to be back at
19 1:30. We're going to start with her.

20 THE COURT: Okay. Well, let's -- ma'am, you can
21 just --

22 MS. WEISS: -- I can make representation --

23 THE COURT: -- you can just translate that basically
24 it's the same exact thing as a member of the same household,
25 any amounts that went to her husband benefit her and therefore

1 she must disclose the amounts that her husband received.

2 Again, the net amount he received not, you know, money to the
3 lawyers or anything like that.

4 MS. WEISS: Okay.

5 THE COURT: Okay.

6 MS. WEISS: She's -- she's acknowledging that.

7 THE COURT: All right. You folks can go to lunch and
8 we'll see you back here, you know, like I said, probably it's
9 going to be at least 1:30 maybe -- one?

10 MR. STAUDAHER: That's -- we told the interpreter to
11 be back at 1:30 for [indiscernible]. We're going to start
12 with her and then we'll do --

13 THE COURT: Okay. All right. Thank you.

14 MS. WEISS: Thank you, Your Honor.

15 THE COURT: Can we get the jury?

16 Well, Doctor, we'll get you out of here as soon as we
17 can.

18 THE WITNESS: Thank you.

19 THE COURT: Mr. Santacroce, you said you think about
20 30 minutes?

21 MR. SANTACROCE: Yes, maybe less.

22 (Jury reconvened at 11:35 a.m.)

23 THE COURT: All right. Court is now back in session.
24 And Mr. Santacroce, you may begin your cross-examination of
25 the witness.

1 CROSS-EXAMINATION

2 BY MR. SANTACROCE:

3 Q Thank you. Good morning, Doctor. How are you?

4 A I'm doing well, sir. How are you?

5 Q Good. Thank. I represent Ronald Lakeman here.

6 Mr. Lakeman's a CRNA. Do you know Mr. Lakeman?

7 A No.

8 Q Never worked with him, have you?

9 A No.

10 Q You became a doctor in 1999; is that correct?

11 A That is correct.

12 Q And you came to Las Vegas in 2006, is that also
13 correct?

14 A That is correct.

15 Q I'm going to be asking you some questions about
16 your testimony this morning. I'm going to ask those questions
17 based on what I recollect your testimony to be, so if I
18 misstate that testimony, please correct me. Okay? You
19 testified as to what the standard of care was in using
20 propofol. Do you recall that?

21 A Yes.

22 Q Can you just tell me again what your standard of
23 care is for administering propofol to a patient?

24 A Very simple. Keep the whole technique clean.
25 That's the basic rule of administering any medication.

1 Q Okay. And you -- you understand that propofol
2 comes in two sizes, correct?

3 A Yes, I understand that.

4 Q Twenty cc and 50 cc?

5 A I know that.

6 Q So on a 50 cc bottle of propofol, if you were
7 going to induce that into a patient, tell me what you would
8 do.

9 A Well, first of all, I have never used 50 cc
10 because usually it is not available in the operating rooms.
11 Whenever we see -- what I have seen in my experience in the
12 operating rooms, it is always a 20 cc vial.

13 Q Well, let's talk about the 20 cc vial then.
14 Tell me what you would do to use that on a patient.

15 A Just take the vial, take the lid off, put in a
16 clean needle, clean syringe in propofol, inject it
17 intravenously.

18 Q Let's say you used 10 cc on the patient --

19 A Yes.

20 Q -- and the patient began to wake up during the
21 procedure and you need to induce more propofol to that
22 patient, tell me what you would do in that case.

23 A I would take the remaining 10 cc -- first of
24 all, that's all hypothetical because when I'm pulling out the
25 propofol, it's all -- 20 cc all pulled out.

1 Q Okay.

2 A Okay. And let's say what you said, that you --
3 okay, I give 10 cc and now 10 cc still there in the syringe so
4 I will inject to the -- it's the same patient so that's --
5 that's absolutely fine as far as I'm concerned.

6 Q I believe that you testified earlier that it was
7 okay to use the same syringe to reenter the propofol bottle
8 with another clean needle and then reinduce it into the
9 patient; is that correct?

10 A Well, okay -- here is the needle -- we have
11 three or four things here. We have needle, we have syringe,
12 we have patient and we have medication. As long as these four
13 entities are a single unit, I do not see anything wrong --
14 even if it is the needle, so-called dirty needle, but it
15 belongs to that particular patient, you can go back in that
16 vial of propofol or any medication and still you -- you can
17 use it. The only problem is that when you use that on some
18 other patient.

19 Q Correct. So it's your standard of care that you
20 could reuse that needle, that syringe on that one patient
21 multiple times; isn't that correct?

22 A That is -- that is correct.

23 Q And that's fairly -- that's widely accepted by
24 you and others, right?

25 A That is -- that is accepted by me, yes.

1 Q And that is what you believe the standard of
2 care to be; isn't that correct?

3 A In my opinion.

4 Q In your opinion. Okay. Would it surprise you
5 to know that in 2002 the AANA, the American Association of
6 Nurse Anesthetists said that that's not the standard of care?

7 A Okay, I do not know.

8 Q Would it surprise you to know that they said
9 that you could only use one needle, one syringe at a time,
10 that if you had to reinduce it to another -- to the same
11 patient, you'd have to throw that away, get a new needle, new
12 syringe, are you aware of that?

13 A I'm not aware but I -- does not make sense to
14 me.

15 Q Okay. Are you aware that the CDC came out with
16 a directive saying that you could only use one syringe and one
17 needle on a patient and if you had to go back into the bottle
18 you had to use another syringe and needle, are you aware of
19 that?

20 A No, I'm not aware of it but there -- there has
21 to be an explanation for that. I do not --

22 Q Well, the fact of the matter is, is that based
23 upon your description of standard of care and based upon the
24 AANA directive of 2002 and CDC directive, you are in violation
25 of the standard of care.

1 A Well, I do not know. I do not know this but to
2 me somebody has to explain how can I transmit the infection --
3 forget about any -- any laws of violation who said what. Give
4 me explanation how can you transmit the infection from like in
5 one patient when you are using the same needle -- let's say
6 hypothetically, same needle, same syringe, same vial, same
7 patient, how are you going to transmit the infection some
8 other way. It is like telling a surgeon when the surgeon is
9 operating and the surgeon used the same knife making multiple
10 incisions, so it is like telling a surgeon, or like me for a
11 pain specialist, that whenever you use a needle, every time
12 you poke a patient with a needle you have to use a different
13 needle. Why? Give me one -- somebody has to explain it to me
14 and convince me and I will stop doing it.

15 Q I'm looking for the same explanation in this
16 trial. You said that the standard of care is what your
17 teachers taught you; is that correct?

18 A Teachers taught -- or yes, that is correct and
19 sometimes it's from your observation too, looking at your
20 teachers and other of your colleagues.

21 Q Now, you were trained where?

22 A In Pittsburgh.

23 Q They trained you in anesthesia in Pittsburgh?

24 A That is correct.

25 Q I believe you testified that you were -- went to

1 medical school in India; is that correct?

2 A That is correct.

3 Q So you were trained in Pittsburgh. In what
4 year?

5 A From 2005 to -- from '95 to '98 I did my
6 anesthesia; '98 to '99 I did my pain fellowship.

7 Q When did propofol be introduced into the market?

8 A That I do not know. It must be -- well, I
9 started using it in '95 when I started anesthesia residency.
10 And even in internship I think I saw it in intensive care
11 unit. So back then it was still relatively new because the
12 genetic propofol was not available back then. So it must be
13 within those five years, I guess.

14 Q So it was already introduced when you began
15 practicing anesthesia, correct?

16 A That is correct.

17 Q And prior to that time sodium pentothal was
18 used, correct?

19 A That is correct.

20 Q And you have experience in using sodium
21 pentothal?

22 A Yes.

23 Q And sodium pentothal came in big bottles,
24 correct?

25 A That is correct.

1 Q And it wasn't expected to use sodium pentothal
2 on one patient, was it?

3 A No.

4 Q You would use what's in that bottle on multiple
5 patients, correct?

6 A Absolutely.

7 Q Now, are you familiar with training and
8 practices of the United States Military as far as it relates
9 to the use of anesthesia?

10 A No, sir.

11 Q So if someone was trained in the United States
12 Military they may have been trained differently then you were
13 trained, correct?

14 A Quite likely.

15 Q And you -- you've heard of the American
16 expression hindsight is 20/20? We're throwing all kinds of
17 American stuff at you --

18 A That's fine.

19 Q -- target on your back and hindsight is 20/20.
20 It means that you can look back -- everybody has perfect
21 vision when you look back; isn't that correct?

22 A Uh-huh.

23 Q But you have to look at the situation as it was
24 at the time. Wouldn't you agree with that?

25 A That is correct.

1 Q You have to look at what the practices and
2 customs were at the time; isn't that correct?

3 A Yes.

4 Q And you have to look at the training of the
5 individual at the time, correct?

6 A That is correct.

7 Q And you already acknowledged that standards and
8 practices change over the years, correct?

9 A Correct.

10 Q In fact, we had that director from the AANA in
11 2002 and we had the CDC practice changes later on; isn't that
12 correct?

13 A Yes.

14 Q So things become refined, practices change, but
15 the standard of care, as you said, was predicated upon what
16 you learned from your teachers.

17 A That is correct.

18 Q I want to talk about your experience in clinics
19 now or what your practice is today. You say that your
20 practice is pain management, correct?

21 A That is correct.

22 Q And how much of your practice is pain
23 management?

24 A One hundred percent.

25 Q Do you use propofol in pain management?

1 A No.

2 Q When was the last time you used propofol?

3 A I guess about four years ago.

4 Q Four years ago?

5 A Yes.

6 Q And what was the circumstance of you using it in
7 that case?

8 A Can't remember. Must be providing anesthesia
9 somewhere.

10 Q Someplace, somewhere?

11 A Right.

12 Q Okay.

13 A Because I stopped doing it -- practicing
14 anesthesia about four years ago so that's --

15 Q And -- and you testified that most of your
16 practice had to do with hospital settings.

17 A That is correct.

18 Q And hospital settings you testified they use 20
19 cc bottles --

20 A That is correct.

21 Q -- of propofol, correct? So your experience
22 with 50's is basically non-existent I believe was your
23 testimony?

24 A That is correct.

25 MR. SANTACROCE: I have no further questions. Thank

1 you.

2 THE COURT: All right. Thank you. Redirect?

3 REDIRECT EXAMINATION

4 BY MS. WECKERLY:

5 Q Doctor, that -- that large packet of papers
6 where you were applying for privileges that Ms. Stanish
7 discussed with you, what did that relate to, that whole
8 packet?

9 A I think, as I said earlier, it was for the
10 privileges.

11 Q The privileges for that surgery pain center that
12 was going to be built?

13 A No. Actually, what she showed me was it also
14 had some other surgery centers too.

15 Q And why -- why would you -- or explain to those
16 of us who aren't doctors what that means to apply for
17 privileges?

18 A Well, it's like performing whatever you -- kind
19 of work you do whether you are providing anesthesia or
20 performing pain procedures for example in my case, to do at
21 any particular facility surgery center or hospital you have to
22 have the privileges to do so.

23 Q And so you were applying for privileges, where
24 in this instance?

25 A In this instance, I guess then at whatever it

1 was -- whatever papers were put in front of me, look, here are
2 the papers for the privileges and I signed the papers for the
3 privileges.

4 Q Okay. And did you -- did you ever perform any
5 procedures at any of the endoscopy centers owned by Dr.
6 Desai?

7 A Never.

8 Q And the -- the discussions you had were this --
9 were for this yet to be completely built surgery center where
10 you were going to do pain management?

11 A That is correct.

12 Q And the deal was you were going to be the
13 director and Dr. Desai is -- was going to get you a C-arm and
14 in exchange he would pay you a certain salary per month?

15 A Not a C-arm per se, but, yes, to bring the
16 business, pain business, to the surgery center. You know, to
17 compensate me for, I guess, my loss -- loss of, you know,
18 money by bringing the patient to the pain -- to the surgery
19 center. So that's how he was trying to compensate me.

20 Q And then he was going to be able to collect a
21 facility fee from all those patients you brought, right, under
22 the deal?

23 A Yeah.

24 Q But, I mean, as I understand it, none of this
25 really ever got completely discussed or the deal was never

1 formed?

2 A That is correct.

3 Q And the center's never built, none of this ever
4 happened?

5 A That is correct.

6 Q Okay. Now you were asked about your lawyers and
7 lawsuits and some of the people that contracted hepatitis C
8 from the clinic. You were initially named as a defendant in
9 those lawsuits?

10 A That is correct.

11 Q Were you -- did you ever have to pay anybody?

12 A No, not --

13 Q You were just -- were you dismissed out?

14 A Yes.

15 Q So when you mentioned like that you testified at
16 a jury trial, do you recall where that was or what the
17 circumstances were? Was that in relation to this?

18 A Endoscopy, yes, yes.

19 Q Okay. And you don't remember when that was?

20 A Not really. I mean, you have all those records
21 so I -- there's no point I should guess about it, it's on the
22 records.

23 Q But you don't -- I mean, as you sit here, you
24 never -- you know that you never had to pay on any of those
25 claims?

1 A Not a single one, no.

2 Q Okay. Because you had no connection to it,
3 right?

4 A Exactly.

5 Q Other than this?

6 A Absolutely, yes. Unfortunately.

7 Q Which is State's 102 and if I look at this
8 correctly, Ms. Stanish was asking you about the format that it
9 came to you in and you indicated that it was your recollection
10 that it was blank when you received it, to the best of your
11 recollection?

12 A That is correct.

13 Q And it looks like you signed it on the 16th?

14 A Yes.

15 Q Of August of 2007, correct?

16 A Correct.

17 Q And at least -- I mean Dr. Sharma signed the
18 same day, but at least Dr. Desai it appears signed two days
19 after you, correct?

20 A Yes.

21 Q So that would be consistent at least with your
22 recollection?

23 A Yes.

24 Q Lastly, I -- I just want to talk about aseptic
25 technique. Now, Mr. Santacrocce asked you questions about 50

1 cc liter bottles of propofol and other forms of medication.
2 Aseptic technique, as I understand it, applies to all
3 medication, is that true?

4 A That is correct.

5 Q There's nothing unique in how you treat
6 propofol?

7 A No, not at all.

8 Q Or versus any other kind of medication?

9 A Only thing is about propofol is the duration you
10 can keep it open in the air.

11 Q Okay.

12 A And that is like about five hours. But other
13 than that, as far aseptic technique is concerned, that applies
14 on every medication.

15 Q And is aseptic technique sort of a -- a common
16 sense way of handling medication?

17 A That is correct.

18 Q And you mentioned that if you prefill a bunch of
19 syringes -- you discussed this on cross-examination, that
20 there'd be no possibility for contamination if you had a big
21 bottle and you took out 10 syringes all at once, correct?

22 A Yes, provided, you know, your hands are clean.
23 If you have gloves, then your gloves has to be -- everything
24 has to be clean.

25 Q Okay. Okay. Assuming all of that --

1 A And they are sitting like -- yeah, at a distance
2 so you accidentally don't even touch -- if your hands are
3 dirty and you are planning to take one that has already been
4 used, it should be like kind of separate from each other.

5 Q Okay. But assuming you drew up 10 syringes out
6 of a vial of medication and all -- all 10 were separate units,
7 there would be no danger of contamination, correct?

8 A I don't see it.

9 Q You don't see how that would happen? So that
10 wouldn't make -- that wouldn't be a form of contamination in
11 your mind?

12 A No.

13 Q No matter what directives are in place by the
14 CDC or by any other groups, correct?

15 A No. Honestly speaking, when you go to medical
16 school, when you have [indiscernible] what the gentleman said,
17 you never know about these directives. They are all on
18 papers, nobody teaches you in the residency or when you are a
19 student and these are all [indiscernible] to discuss in the
20 court.

21 Q But you teach aseptic technique, correct -- or
22 when you taught?

23 A Yes.

24 Q And what does that mean?

25 A It means you have to keep it clean, basically.

1 Q Okay.

2 A And that's all common sense.

3 Q And it's all common sense, this isn't hard to
4 figure out?

5 A Not at all.

6 Q Okay. So you don't have to have a whole special
7 class on aseptic technique?

8 A No.

9 Q So if you have -- just to be clear, a vial of
10 medication where you enter it with a syringe and a needle and
11 you inject a patient, you think the patient needs more
12 medication, you go back in with the same syringe but a
13 different needle and then you inject the patient again, can
14 you use that vial, assuming there was remaining medication, on
15 a subsequent patient?

16 A No. I will -- everything is thrown out once the
17 patient is done.

18 Q And why is that?

19 A It's to keep everything clean --

20 Q Okay.

21 A -- so you don't -- do the -- there is no
22 possibility of spreading the infection.

23 Q And when you reenter the vial with the same
24 syringe, the bottle becomes contaminated or potentially
25 contaminated, correct?

1 A With the same syringe, yes.

2 Q Okay. And so you could never use that on a
3 subsequent patient?

4 A That is true.

5 Q Do you remember how you described that practice
6 for the grand jury when you testified in this case?

7 A What are you talking about?

8 Q That type of reentering a vial and then using a
9 vial on a subsequent patient, do you remember how you
10 described that for the grand jury?

11 A Was it in this today?

12 Q Yeah.

13 A Okay. Okay.

14 Q If you don't, I'll show you.

15 A Yes. Yeah, I remember so --

16 Q Did you say that's beyond my imagination doing
17 something like that?

18 THE COURT: Why don't you refresh --

19 MR. SANTACROCE: I'm going to object --

20 THE COURT: Yeah, she -- yeah --

21 THE WITNESS: There is some confusion somewhere.

22 THE COURT: -- she needs to refresh his recollection.

23 BY MS. WECKERLY:

24 Q Sure. These are four pages, 97, 98 -- like
25 that. So just why don't you read -- and this is on page 98.

1 THE COURT: Just read it quietly to yourself.

2 BY MS. WECKERLY:

3 Q Just read this to yourself to see what you were
4 discussing.

5 A I don't need to read that. I know enough about
6 the question --

7 Q Okay.

8 A -- like what is your question?

9 Q Okay. My question is if you take a needle and a
10 syringe and access a vial of medication and inject a patient
11 thereafter, you decide that patient needs additional
12 medication, you remove the needle, you put a new needle on,
13 you go back to that same vial of medication with the same
14 syringe and you inject the patient again, that patient
15 procedure ends, a new patient comes in and you go back to that
16 same vial of medication and then you inject patient number
17 two, what is that practice?

18 A No, but why would I go to the same vial though?

19 Q Why -- if you did, what would -- how would you
20 describe that?

21 A No, that's -- that's unsafe practice.

22 Q It's an unsafe practice. Thank you.

23 THE COURT: Recross, Ms. Stanish?

24 MS. STANISH: No, Your Honor.

25 THE COURT: Mr. Santacroce?

1 MR. SANTACROCE: Just one question.

2 RECROSS-EXAMINATION

3 BY MR. SANTACROCE:

4 Q Doctor, how many 50 cc bottles of propofol have
5 you thrown away after using it on one patient?

6 A As I said earlier, I have never used it.

7 Q So that would be none?

8 A Yes.

9 Q How many big bottles of sodium pentothal have
10 you thrown away after using it on one patient?

11 A You don't throw them unless they are
12 contaminated accidentally or whatever.

13 Q So the answer would be none?

14 A Yes.

15 Q Nothing further.

16 THE COURT: All right. Anything else, Ms. Weckerly?

17 MS. WECKERLY: No.

18 THE COURT: We have a juror question up here.

19 Doctor, you mentioned that there are two Doctor
20 Desai's, correct?

21 THE WITNESS: That is correct.

22 THE COURT: Okay. And you did work for a different
23 Dr. Desai. Do you recall that Dr. Desai's first name?

24 THE WITNESS: I do not.

25 THE COURT: Okay. What kind of doctor is the other

1 Dr. Desai, and where did you do work with him?

2 THE WITNESS: He was also a gastroenterologist, and I
3 worked with him -- I remember doing one emergency case at
4 Spring Valley Hospital and I remember working with him at --
5 what is that on the north side hospital -- Mont -- Mount
6 Vista?

7 THE COURT: But at a hospital?

8 THE WITNESS: At a hospital, yes.

9 THE COURT: Okay. Any follow-up based on that?

10 MS. WECKERLY: No, Your Honor.

11 THE COURT: Mr. Santacroce?

12 MR. SANTACROCE: No, Your Honor.

13 MS. STANISH: No, Your Honor.

14 THE COURT: Any additional juror questions for this
15 witness?

16 All right, sir, there are no further questions for
17 you. You are excused at this time. Please don't discuss your
18 testimony with anyone else who may be called as a witness.
19 Thank you, you are excused.

20 THE WITNESS: Thank you. Thank you all.

21 THE COURT: All right, ladies and gentlemen. We're
22 going to go ahead and take our lunch recess at this point.
23 The recess for the lunch break until 1:30. During the lunch
24 break you're reminded that you're not to discuss the case or
25 anything relating to the case with each other or with anyone

1 else. You're not to read, watch or listen to any reports of
2 or commentaries on this case, any person or subject matter
3 relating to the case by any medium of information. Don't do
4 any independent research by way of the Internet or any other
5 medium. And please do not form or express an opinion on the
6 case.

7 If you would all please place your notepads in your
8 chairs and follow the bailiff through the rear door.

9 (Court recessed at 12:00 until 1:31 p.m.)

10 (Outside the presence of the jury.)

11 THE COURT: Are the jurors back?

12 THE MARSHAL: Yes, Judge.

13 THE COURT: Everybody ready? All right, let's bring
14 them in.

15 (Jury reconvened at 1:32 p.m.)

16 THE COURT: All right. Court is now back in session.
17 Record should reflect the presence of the State, the
18 defendants and their counsel, the officers of the Court and
19 the ladies and gentlemen of the jury. And the State may call
20 its next witness.

21 MS. WECKERLY: Sonia Orellana Rivera.

22 THE COURT: Do we have the court interpreter here?
23 Kenny, also look for the court interpreter, please. Okay,
24 thanks. Do we have another witness available?

25 MS. WECKERLY: Let me see if Ms. --

1 THE COURT: That we don't need the interpreter for?

2 MS. WECKERLY: There's -- the other witness isn't
3 here yet. We said 1:30.

4 THE COURT: Yeah, it's 1:37. Apparently, the
5 interpreter is on his way -- his or her way. But I will give
6 you the instructions now that I normally give prior to the
7 time a witness using the -- with the aide of the interpreter
8 testifies. I don't know if any of you are Spanish speakers
9 but if you are, it's important that you rely upon the
10 translation as given by these certified court interpreter.

11 So for those of you who may speak Spanish, if you
12 hear something the translator says that maybe differs from
13 what your understanding is or a word is used and you have a
14 question regarding the translation, write down the question so
15 we can clarify the issue with the court interpreter while he's
16 here with the witness.

17 What you're prohibited from doing is going back in
18 the jury room and providing your own translation or changing
19 the translation that's been given by the certified court
20 interpreter because everyone must rely upon the same
21 translation and that is the official translation that's given
22 by the court interpreter at the time of trial. So I don't
23 think -- in our questioning we asked whether any of you were
24 Spanish speakers, but if you are it's important that you do
25 that.

1 From time to time a juror will hear something and
2 their translation may differ. As you know, there can be
3 regional differences within individual languages. You know,
4 South America may have certain idioms that are different from
5 someone in Mexico or someone in Cuba or something like that.
6 So from time to time that does occur. If it does, that's not
7 a problem, just make sure you write down your question and we
8 can clarify -- have a clarification when the court interpreter
9 is here. Yes?

10 MS. WECKERLY: We -- we actually -- Mr. Staudaher and
11 I miscommunicated. There is a witness we can call if you want
12 to do that.

13 THE COURT: Okay. All right. Sir, just up those
14 couple of stairs please and then face this lady right here who
15 will administer the oath to you.

16 JOSHUA LEE CAVETT, STATE'S WITNESS, SWORN

17 THE CLERK: Thank you, please be seated. And if you
18 could please state and spell your first and last name for the
19 record?

20 THE WITNESS: Joshua Lee Cavett, J-o-s-h-u-a, L-e-e,
21 C-a-v as in Victor, -e-t-t.

22 THE COURT: Thank you. Mr. Staudaher, go ahead.

23 MR. STAUDAHER: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY MR. STAUDAHER:

1 Q Mr. Cavett, couple questions for you. Have you
2 ever worked as a GI tech at any time?

3 A Only for the endoscopy center.

4 Q Okay. And you pointed to somebody. Do you
5 recognize somebody in the courtroom that you personally worked
6 with?

7 A Yeah, I was employed by Dr. Desai.

8 Q Okay. Can you point to him, describe something
9 he's wearing for the record, please?

10 A Like describe him?

11 Q Just something he's wearing --

12 THE COURT: You know, like something he's got on.

13 A He's wearing a black, a black suit, white tie --
14 I mean a white top.

15 MR. STAUDAHER: Let the record reflect the identity,
16 Your Honor.

17 THE COURT: It will.

18 BY MR. STAUDAHER:

19 Q You said that you worked for Dr. Desai. How
20 long was that?

21 A Year and three months, I believe, sir.

22 Q When was that?

23 A My goodness. I'm not too sure. I believe like
24 maybe five years ago.

25 Q Okay. Were you there when the clinic closed?

1 A Yes, sir.

2 Q So was it a year and three months prior to that?

3 A Yeah, it was like one year and three months.

4 Q So early 2008 if the clinic closed at that time,
5 it was the time before that that you worked; is that correct?

6 A Yes, sir.

7 Q Okay. So tell us what you did, what your job
8 duties were when you were working there.

9 A I was a gastroenterologist -- or GI technician.
10 I basically assisted the doctor with the colonoscopies, upper
11 and lower. Basically got ready, the patient, brought them in
12 the room, set the 4x4s where you put the scope and the
13 specimen bottles and, you know, hooked up the scope to the
14 machine and assisted the doctor whatever he needed.

15 Q Aside from your work in the room directly
16 assisting the doctor, did you ever work any other places in
17 the clinic itself?

18 A Yes, sir. I also did the sterilization room and
19 I also assisted in cleaning the beds.

20 Q So the bed cleaning, the -- assist where they
21 process the scopes and equipment, things like that?

22 A Yes, sir.

23 Q So those three areas primarily?

24 A Yes, sir.

25 Q Did you ever work in the recovery area or the

1 pre-op area?

2 A Pre-op, you mean when we're getting the patient
3 ready?

4 Q Yeah, when they first come in there and they're
5 in the waiting room and they first have to get ready to go
6 back to the procedure room.

7 A I mean, I would call the patient in and give him
8 his -- I would give the patient the -- the gown but that was
9 it. But the recovery room is when the patient -- we would --
10 after the procedure's done we would roll them out to where the
11 curtain was at and we -- I would hook them up to the monitor.

12 Q Where did you actually work? Because we
13 understand there were a number of different clinics around.

14 A I worked at the Burnham, the Spanish Hill and
15 the Shadow Lane.

16 Q So three different clinics?

17 A Yes, sir.

18 Q Was there a particular time during -- did you
19 shift between them or was there a time you worked at one and
20 then a time you worked at another, that kind of thing?

21 A It was kind of like that, but if one clinic was
22 understaffed they would sometimes tell some of us to go over
23 there, wherever was needed.

24 Q Did you ever work directly with Dr. Desai?

25 A No, sir because every time I come in the room he

1 Q And was that an open and free flowing
2 discussion?

3 A No.

4 Q Okay. Tell me why not.

5 A There was, like I said before, there was no real
6 process. There will be recommendations coming down from Dr.
7 Desai as of the things that we could do to improve the profits
8 of the practice.

9 Q And you would give suggestions and input?

10 A Correct.

11 Q Other doctors would do the same?

12 A Yes.

13 Q And then, I guess, there would be some decision
14 making process regarding those suggestions.

15 A Right.

16 Q You mentioned about the reuse of equipment, that
17 you could reuse snares, correct?

18 A No.

19 Q What did you say?

20 A I said it has been suggested by the
21 manufacturers that perhaps you could reuse those snares with
22 appropriate cleansing procedures. But I was uncomfortable
23 with it.

24 Q Okay. So manufacturers of the snare suggested
25 you could do that.

1 A Yes.

2 Q You did mention that you could reuse certain
3 other items, correct?

4 A Right.

5 Q Biopsy forceps?

6 A No. The bite blocks.

7 Q Okay. Bite blocks. And that would have to
8 comply with a certain cleaning process, correct?

9 A Correct.

10 Q But they could be reused?

11 A Yes.

12 Q And what other things could be reused?

13 A The scopes. That's about it.

14 Q Okay. And tell me about the scopes. Tell me
15 what they look like, how they're cleaned.

16 A A scope is basically a long hose that has
17 channels within the hose through which we insert instruments
18 to perform different procedures during the endoscopy. And
19 once the procedure is completed, they get taken by the
20 technician to a cleaning room in which they receive both
21 mechanical and chemical cleansing.

22 Q Have you watched that process?

23 A I have.

24 Q There's been some testimony here in this court
25 that some of the scopes in the Shadow Clinic were hanging up

1 and there was fecal matter dripping from them and they were
2 reused. Have you ever witnessed anything like that?

3 A No, sir.

4 Q If that was the case, if in fact scopes were
5 dirty or not property cleaned and reused, could that be a
6 possible transmission for disease?

7 A Sure.

8 Q If bite blocks were used and not properly
9 cleaned, could that be a possible transmission for disease?

10 A It's likely, but possible.

11 Q Possible. Because there is some blood to the
12 bite blocks, correct?

13 A Correct.

14 Q When you saw patients, they had hep-locks,
15 correct?

16 A Correct.

17 Q And that hep-lock would be started in a
18 different procedure room; isn't that also correct?

19 A Yes.

20 Q And that would be started by a nurse.

21 A Yes.

22 Q And are you familiar with the term flushing?

23 A Yes.

24 Q Tell me what that is.

25 A Once you start the IV, you introduce through the

1 IV an amount of saline to make sure that everything flow
2 through into the vein.

3 Q And if you backflush that there's a possibility
4 of withdrawing blood, correct?

5 A Yes.

6 Q And that could be a possibility or a mechanism
7 for transmission; isn't that correct, for disease?

8 A Yes.

9 Q You mentioned these various partnership
10 meetings. I want to be clear, who attended those? Can you
11 tell me who attended those meetings?

12 A Partners.

13 Q Just partners?

14 A Just partners.

15 Q Never saw Mr. Lakeman in a partnership meeting,
16 did you?

17 A No.

18 Q Were you ever present at a meeting with Mr.
19 Lakeman and Dr. Desai or Dr. Carrol or Dr. Carrera?

20 A No.

21 Q I have no further questions. Thank you, sir.

22 A You're welcome.

23 THE COURT: May I see counsel at the bench?

24 (Off-record bench conference.)

25 THE COURT: Doctor, unfortunately we're not going to

1 finish your testimony today. We're required to end at a
2 certain time. Can you be back tomorrow morning at 9:00 a.m.?

3 THE WITNESS: I cannot. I have a full office and
4 hospital schedule.

5 THE COURT: Okay. Then you're going to need to
6 coordinate with the DAs when you can come back because
7 obviously, we're not through with you yet.

8 Ladies and gentlemen, we're going to go ahead and
9 take our evening recess right now. We'll reconvene tomorrow
10 morning at 9:30 a.m. During the evening recess you're
11 reminded that you're not to discuss the case or anything
12 relating to the case with each other or with anyone else.
13 You're not to read, watch or listen to any reports of or
14 commentaries on this case or any person or subject matter
15 relating to the case by any medium of information. Don't do
16 any independent research by way of the Internet or any other
17 medium. And please do not form or express an opinion on the
18 trial. Please leave your notepads in your chairs and follow
19 the bailiff through the rear door.

20 (Jury recessed at 4:27 p.m.)

21 THE COURT: Basically, for the record, it's 4:30. We
22 took the evening recess because Ms. Stanish indicated that she
23 needed time to confer with her client.

24 Doctor, you indicated you can't come back tomorrow
25 morning at nine. Is there a time tomorrow that you can come

1 back?

2 THE WITNESS: I can come back Wednesday afternoon. I
3 have a lot of patients that will have to be rescheduled.
4 That's a lot of a burden for these people.

5 THE COURT: I only care about the ones who have
6 actually done the -- I mean, I don't know if you'd had people
7 who had actually gone today and been doing their preps. To me
8 that's kind of cruel to make those people do their preps and
9 then reschedule them and make them re-prep. That's why I -- I
10 would just note that -- let me ask you to do this, Doctor. Go
11 ahead and just step into the vestibule so we may be arguing
12 about your testimony a little bit here.

13 Before you're excused for the day and whenever you
14 may come back, you are admonished you're not to discuss your
15 testimony with anyone else who may be a witness in this case.
16 Okay? Just go ahead and step into the vestibule, please.

17 Basically, just so everyone knows, the way I handle
18 these situations with the jury is I tell the jury okay, we
19 haven't finished with the witness, but we're calling other
20 witnesses before and they've been instructed the order in
21 which the testimony comes in doesn't matter. They have to
22 still, of course, keep an open mind and that doesn't matter if
23 we interrupt testimony in the order it comes in.

24 Would everyone be fine then with him coming back
25 Wednesday afternoon?

1 MS. WECKERLY: Sure.

2 THE COURT: Is that fine with you, Ms. Stanish?

3 MS. STANISH: Yes, Your Honor.

4 THE COURT: Mr. Santacroce, are you fine with that?

5 MR. SANTACROCE: I have nothing else to say to him.

6 THE COURT: Well, you might have some recross or
7 something like that. Mr. Staudaher, then you can just let him
8 know we're fine with him coming back Wednesday afternoon.

9 MR. STAUDAHER: You want me to do that right now,
10 Your Honor?

11 THE COURT: Sure. And then you can kind of
12 coordinate the time with him.

13 Then, for tomorrow, our start time is 9:30 tomorrow.
14 And my understanding is the State, you have a physician and
15 he's going to be the first witness?

16 MS. WECKERLY: That's correct, Your Honor.

17 THE COURT: Okay. So nothing else to do today.
18 We'll see everyone back, and then just for the record, then
19 obviously, that gives ample time since he's not coming back
20 until Wednesday afternoon for Dr. Desai to confer with his
21 counsel prior to cross-examination of that witness.

22 Juror number 16 has indicated that she has a
23 physician's appointment at eight a.m., not this Thursday, but
24 next Thursday and would like a 10:00 start time. I'm fine
25 with that because I think these nine to five days are probably

1 getting a little difficult for the jurors. So a 10:00 start
2 time might be a good thing occasionally.

3 MR. WRIGHT: Is that this coming Thursday?

4 THE COURT: No, not this Thursday, but the following
5 Thursday. So I'm fine with doing a 10:00 start time. Okay,
6 then. Everyone's excused.

7 (Court recessed for the evening at 4:31 p.m.)
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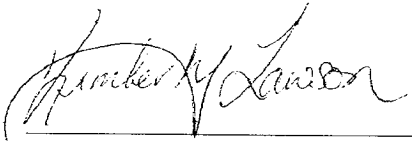
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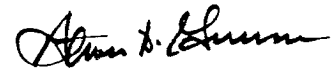
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CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA
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| THE STATE OF NEVADA, |) | |
| |) | |
| Plaintiff, |) | CASE NO. C265107-1,2 |
| |) | CASE NO. C283381-1,2 |
| vs. |) | DEPT NO. XXI |
| |) | |
| DIPAK KANTILAL DESAI, RONALD |) | |
| E. LAKEMAN, |) | |
| |) | |
| Defendants. |) | TRANSCRIPT OF |
| |) | PROCEEDING |

BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE

JURY TRIAL - DAY 14

TUESDAY, MAY 14, 2013

APPEARANCES:

FOR THE STATE: MICHAEL V. STAUDAHER, ESQ.
PAMELA WECKERLY, ESQ.
Chief Deputy District Attorneys

FOR DEFENDANT DESAI: RICHARD A. WRIGHT, ESQ.
MARGARET M. STANISH, ESQ.
FOR DEFENDANT LAKEMAN: FREDERICK A. SANTACROCE, ESQ.

Also Present: PATTY WEISE, ESQ.
NIA KILLEBREW, ESQ.

Interpreters: Hector Vazquez
Sonia Rivera
Yul Naasmann

RECORDED BY JANIE OLSEN COURT RECORDER
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I N D E X

WITNESSES FOR THE STATE:

SATISH SHARMA

| | |
|---------------------------------------|-----|
| Direct Examination By Ms. Weckerly | 5 |
| Cross-Examination By Ms. Stanish | 28 |
| Cross-Examination By Mr. Santacroce | 91 |
| Redirect Examination By Ms. Weckerly | 100 |
| Recross Examination By Mr. Santacroce | 109 |

JOSHUA LEE CAVETT

| | |
|---------------------------------------|-----|
| Direct Examination By Mr. Staudaher | 113 |
| Cross-Examination By Ms. Stanish | 148 |
| Cross-Examination By Mr. Santacroce | 170 |
| Redirect Examination By Mr. Staudaher | 178 |

SONIA ORELLANA RIVERA

| | |
|-------------------------------------|-----|
| Direct Examination By Ms. Weckerly | 185 |
| Cross-Examination By Mr. Wright | 198 |
| Cross-Examination By Mr. Santacroce | 208 |

GWENDOLYN MARTIN

| | |
|-------------------------------------|-----|
| Direct Examination By Ms. Weckerly | 211 |
| Cross-Examination By Mr. Wright | 232 |
| Cross-Examination By Mr. Santacroce | 237 |

E X H I B I T S

| STATE'S EXHIBITS ADMITTED: | PAGE |
|-----------------------------------|-------------|
| 102 | 18 |
| 71-B and 71-C | 123 |
| 50 through 58 | 228 |

1 LAS VEGAS, NEVADA, TUESDAY, MAY 14, 2013, 9:30 A.M.

2 * * * * *

3 (In the presence of the jury.)

4 THE COURT: All right. Court is now in session,
5 everyone can be seated. The record should reflect the
6 presence of the State through the deputy district attorneys,
7 the presence of the defendants and their counsels, the
8 officers of the Court and the ladies and gentlemen of the
9 jury.

10 Ladies and gentlemen, you recall yesterday when we
11 took our evening recess we were in the middle of Dr.
12 Herrero's testimony. Dr. Herrero was unable to return this
13 morning so the State's going to move forward with their next
14 witness and Dr. Herrero will appear, I believe, tomorrow to
15 resume his testimony. I would just remind all of you that the
16 order in which the testimony is given is of no importance,
17 that you still, of course, must keep an open mind until you've
18 heard all of the testimony presented by both sides. Go on,
19 call your next witness.

20 MS. WECKERLY: Dr. Sharma.

21 THE COURT: Sir, just right up here next to me,
22 please, up those couple of stairs. And then just please
23 remain standing facing that lady right there who will
24 administer the oath to you.

25 SATISH SHARMA, STATE'S WITNESS, SWORN

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1 THE CLERK: Please be seated. And sir, could you
2 please state and spell your name?

3 THE WITNESS: My first name is Satish, S-a-t-i-s-h,
4 last name Sharma, S-h-a-r-m-a.

5 THE COURT: All right, thank you.

6 Ms. Weckerly.

7 DIRECT EXAMINATION

8 BY MS. WECKERLY:

9 Q Sir, are you a doctor?

10 A Yes, ma'am.

11 Q Can you explain your medical training.

12 A I -- medical training, well, I'm an
13 anesthesiologist and a pain specialist.

14 Q And where did you go to medical school?

15 A In India.

16 Q And when did you have training specifically in
17 anesthesia?

18 A I had training in anesthesia in India, that was
19 for three years like here. And then I immigrated to this
20 country on New Year's Eve of 1993. I passed my required
21 exams. I did internship in 1994 to '95 and then I did
22 anesthesia residency again or training from '95 to '98.

23 Q Where was your internship?

24 A It's called the Western Pennsylvania Hospital in
25 Pittsburgh.

1 Q And was that -- was the internship focused on a
2 particular area of medicine?

3 A Internal medicine.

4 Q Internal medicine?

5 A Yes, ma'am.

6 Q And then I'm -- I'm sorry. Where did you work
7 after that or where did you go after that?

8 A I was in the same hospital, but then I did my
9 anesthesia residency there.

10 Q Okay. In Pennsylvania?

11 A That is correct.

12 Q Obviously at some point you moved to Las Vegas?

13 A That was in 2006.

14 Q And when you came to Las Vegas, you were a
15 practicing physician?

16 A Yes, ma'am.

17 Q And what type of practice did you have when you
18 first got here?

19 A I started both anesthesia as well as pain. I
20 started my pain practice.

21 Q And when you say "pain practice," what does that
22 mean?

23 A It's my solo practice, my personal practice I
24 started. So basically you see pain patients and treat them.

25 Q Is it like managing patients that have chronic

1 pain?

2 A Usually chronic, but sometimes it could be acute
3 too.

4 Q And then when you first got here in 2006, you
5 did anesthesia as well, correct?

6 A That is correct.

7 Q When you were working in anesthesia would you be
8 called to hospitals to do the anesthesia for surgeries or for
9 other procedures?

10 A No. I actually -- I don't remember exactly at
11 what point, but I joined -- not really joined either. I was
12 working -- working in association with a doctor, Dr. --

13 Q Chen? Chen? Was it Eugene Chen?

14 A Eugene Chen. Yes, I'm sorry. It was seven,
15 eight years.

16 Q So you were working with that doctor. What were
17 you doing with -- with that doctor?

18 A It was like I -- I was working kind of
19 autonomously there, but since I was new nobody knew me so
20 nobody will call me to provide anesthesia. So his office used
21 to get the calls and he will -- his office will tell me where
22 to go to provide anesthesia.

23 Q Okay. So when you first started no one knew who
24 you were?

25 A Exactly.

1 Q And so if someone needed anesthesia they would
2 call Dr. Chen and Dr. Chen might send you out to those
3 locations?

4 A That is correct, for most -- for most part.

5 Q When you were going out to those locations, to
6 your knowledge, did you ever provide anesthesia for patients
7 of Dr. Dipak Desai?

8 A Not for Dr. Desai. I may for his group, but not
9 for Dr. Dipak Desai personally.

10 Q Okay. And for his group that would be like Dr.
11 Carrol and Dr. Carrera?

12 A Yes. More -- more often for Dr. Vish Sharma.

13 Q Okay. And he has the same last name as you?

14 A That is correct.

15 Q Are you related?

16 A Not at all.

17 Q Okay. So Dr. Vishvinder Sharma would sometimes
18 have you do anesthesia for his patients?

19 A You can call it -- he will have to but he will
20 -- they usually -- they used to call Eugene Chan's office and
21 Eugene Chen will tell me, okay, you have this many cases at
22 this hospital.

23 Q Okay. Was all that work, and I think you just
24 answered that, at hospitals?

25 A Indeed, yes.

1 Q And was any of it done at the Endoscopy Center
2 of Southern Nevada on Shadow Lane?

3 A Never.

4 Q How about at the Burnham location?

5 A I don't know that location as well, answer is
6 no.

7 Q So the answer is no. There's a couple other
8 locations I assume the answer would be the same. You didn't
9 go to the one on Rainbow or any other location, it was --

10 A I don't know -- I don't know any of their
11 locations.

12 Q Okay. So it was all in hospitals?

13 A That is correct.

14 Q Did you ever in your work, work directly with
15 Dr. Desai?

16 A I never did.

17 Q Never. Did you meet him at some point?

18 A Yes, I did.

19 Q When -- when was that approximately?

20 A First time I met him was -- must be one of our
21 biggest festival that we have in Hindu religion and that is --
22 that is called Diwali, which is like Christmas for Christians.
23 So that was the first time I met him at his house.

24 Q At his house. Was it a pretty large gathering?

25 A It was hundreds of people, yes.

1 Q Okay. So you were one of many quests?

2 A Yes, indeed.

3 Q And what year was that, do you think?

4 A I would guess it must be 2006.

5 Q At that gathering or -- did you talk to him at
6 all?

7 A Actually, he was standing at his main entrance
8 and I was invited by Dr. Vish Sharma to this party and I did
9 not know him. He was standing there and he shook hand and
10 said, welcome, I'm Dr. Desai. And then I was like okay, nice
11 to meet you, Dr. Desai. That's how -- that was the first
12 encounter.

13 Q Why were you like, okay, and, you know, did you
14 know who he was?

15 A No. I heard his name --

16 Q Okay.

17 A -- but I did not know. But for me it was
18 surprising because I was going to somebody's house and didn't
19 know who that person was. So it was a little, you know --

20 Q A little awkward?

21 A Yeah, exactly.

22 Q Okay. At some point after you meet him, do you
23 start having discussions with him about a possible business
24 arrangement between the two of you?

25 A No, it was absolutely a party of his.

1 Q Okay. But like after that party?

2 A Repeat your question, please.

3 Q Sure. Do you ever have -- did you ever start
4 having discussions with Dr. Desai about a business arrangement
5 or you doing part of your practice in partnership with him?

6 A No, never in partnership with him initially. It
7 was -- I went to his office and -- like I was absolutely new,
8 I didn't know anybody. So obviously, I went to his office and
9 asked for his help, if he could introduce me to some doctors
10 so that help my, you know, starting my pain practice.

11 Q Okay. And so was that before the party or
12 after?

13 A That was after the party.

14 Q Okay. After the party you're trying to build up
15 your practice because you're new?

16 A Yes. I was meeting different doctors and he was
17 one of them.

18 Q Okay. Did you ever talk about like a surgery
19 center that he was building, Spring Valley Hospital?

20 A That came quite late in the picture, actually.
21 It -- but it did come, yes, at some point. I don't remember
22 when it -- when it -- we started talking about it.

23 Q Okay. Well, did any -- did you have any
24 substantive discussions between you going to his office and
25 trying to build up your practice and then these discussions

1 about the surgery center?

2 A Well, it was -- he was building the surgery
3 center kind of opposite to the Spring Valley Hospital and he
4 offered me the directorship of that surgery center.

5 Q Okay. Can I ask you a question?

6 A Please.

7 Q What is -- what would that mean if you were the
8 director?

9 A Honestly speaking, neither back then I knew nor
10 even now I know what are the responsibilities because I've
11 never been a director of any surgery center or any department
12 or facility for that matter. But I would assume, you know,
13 some little supervising things or like keeping an eye on --

14 Q Okay.

15 A -- the functioning of that particular surgery
16 center, I guess.

17 Q So he -- did he discuss with you being the
18 director of this surgery center that was going to be built?

19 A It was never discussed in details --

20 Q Sure.

21 A -- as far as what would be my function. It was
22 a very preliminary discussion.

23 Q And what would you bring to the table, you know,
24 in the deal?

25 A What -- and that was a part of the discussion

1 too. That I, back then, I already started my practice. I was
2 doing my pain procedures at the surgery center and back then
3 it was [indiscernible] Surgery Center near Mountain View
4 Hospital, if I remember correctly. Some procedures I'm doing
5 at Spring Valley Hospital too, pain procedures I'm talking
6 about. So he was building this surgery center and he wanted
7 me to do my pain procedures at the surgery center, which was
8 still under construction. So that's what was basically, I
9 guess, a source of business for that surgery center.

10 Q And why would it be beneficial for him for you
11 to do your pain procedures at his surgery center?

12 A Well, when you do any procedure at surgery
13 center you bill for the facility charges.

14 Q Okay. So your patients, they would have to pay
15 a facility charge that he would get if you did the procedure
16 there; is that right?

17 A That is correct.

18 Q And you were going to get to be the director, I
19 guess, in exchange for that?

20 A That is correct.

21 Q But you're not, to be fair, you weren't sure
22 quite what that would be other than maybe some supervisory
23 work?

24 A Yeah. That was all assumption because it was
25 never discussed in detail. So I don't know, yes.

1 Q Was there any -- were there any money
2 discussions about -- about what you -- what your compensation
3 would be?

4 A Never precisely. It was just like, you know, I
5 will compensate you for being the director of the surgery
6 center but we never like -- there was like the number thrown
7 back and forth, you know. I don't remember those numbers. It
8 was 5,000 or 10,000, I don't remember actually. But -- and
9 that was because when I explained to him, you know, asked him
10 -- you will ask this question, I know, is that when we do the
11 pain procedures in the office versus at the surgery center,
12 the reimbursement is better when we do it in the office
13 because the insurance company's Medicare, whatever, they do
14 not have to pay the facility charges, whether the surgery
15 center or the hospital.

16 Q Okay.

17 A So if I do procedures in the office, then
18 obviously, for me it's a financial loss and his -- obviously I
19 expressed that to Dr. Desai that, you know --

20 Q That's not good for you?

21 A -- I'm going to lose money if I do it.

22 Q Right.

23 A And so then he offered a little kind of
24 partnership in the surgery center. Again, details -- never
25 discussed the details and like, you know, some salary as a

1 director of the surgery center.

2 Q Some -- I'm sorry?

3 A Some kind of, you know, financial like, you
4 know, some payment -- some fee as a --

5 Q To be the director?

6 A To be the director of that surgery center, yeah.

7 Q Because if you -- if -- if I'm understanding it,
8 if you were going to see your -- or if your patients were
9 going to be seen at his surgery center, that would be less
10 money for you than if they were seen in your office?

11 A Seen, but we are talking in terms of performing
12 the procedures, yes.

13 Q Correct.

14 A Correct.

15 Q Yes. Okay. But these --

16 THE COURT: Can everybody hear okay? Okay. Sorry.

17 BY MS. WECKERLY:

18 Q And -- oh, okay. If I understand you though,
19 these discussions were all sort of in the abstract and not --
20 not written down or not, you know, they didn't ever come to
21 pass?

22 A That is correct.

23 Q Were there ever any discussions that you had
24 with him about supervising CRNAs?

25 A Never.

1 Q Have you ever done that?

2 A Many times.

3 Q In Las Vegas?

4 A In Pittsburgh.

5 Q And where did you -- where did you supervise in
6 Pittsburgh?

7 A At the -- a lot of hospitals. We had a very
8 huge group of anesthesia, about 25 anesthesiologists and 70
9 CRNAs and we were covering four or five hospitals and all
10 major hospital, including teaching hospitals in Pittsburgh.

11 Q And how many did you -- how many --- would --
12 were you the supervisor of all 70 of the CRNAs?

13 A No.

14 Q No?

15 A They were 25 of us.

16 Q Okay.

17 A Four or five were also like me, like
18 anesthesiologist as well as pain specialist. So we were
19 supervising -- depending on wherever you were assigned, to
20 whichever hospital, that's where we were supervising either
21 CRNAs or the anesthesia residents.

22 Q When you were -- when you were supervising, were
23 you in the same building as the CRNAs? Were you -- did you
24 observe their -- them doing their procedures?

25 A You mean anesthesia?

1 Q Anesthesia, yes.

2 A Yes. It usually, as a standard, like we were
3 there and that's our standard practice kind of that when --
4 when we put patient to sleep we are there.

5 Q Okay.

6 A When you wake patient up, usually those CRNAs or
7 the residents will call us, okay, we are ready to wake patient
8 up. So most of the time we are there at that point too.

9 Q Okay.

10 A And in between, depending on the length of the
11 case, you know, you go in just keep an eye or sometimes if
12 they have any problem they will call us, come on, we have a
13 problem here.

14 Q Okay. And if they called you and you had a
15 problem, were you able to -- I mean, were you close enough to
16 where you could respond pretty quickly?

17 A Yes, ma'am.

18 Q But as I understand it, the discussions you had
19 with Desai weren't about any kind of supervision of CRNAs?

20 A No, not at all.

21 MS. WECKERLY: May I approach, Your Honor?

22 THE COURT: You may.

23 BY MS. WECKERLY:

24 Q Sir, I'm showing you what's been marked as
25 State's Proposed Exhibit 102.

1 A Yeah, I remember this. That's why I'm sitting
2 here.
3 Q So this is a document you recognize, correct?
4 A Very well, yes.
5 Q Okay.
6 A That's why I'm suffering.
7 MS. WECKERLY: State moves to admit 102.
8 THE COURT: Any objection?
9 MR. SANTACROCE: No.
10 MS. STANISH: No, Your Honor.
11 THE COURT: All right.
12 (State's Exhibit 102 admitted.)
13 BY MS. WECKERLY:
14 Q What -- what does it say at the top?
15 A Supervising Physician Agreement.
16 Q Okay. And there is a signature at the bottom
17 there?
18 A That is correct.
19 Q Is that your signature?
20 A Indeed they are.
21 Q Did you sign that?
22 A Yes, I did.
23 Q Did you read this agreement?
24 A I did not.
25 Q Okay. And fair to say you signed something

1 without reading it?

2 A Absolutely. That's the honest truth.

3 Q Okay. I'm going to put it on the overhead just
4 for -- so you can probably see it on your screen there if it's
5 on.

6 THE COURT: Can you see that there, Doctor?

7 THE WITNESS: Yes, ma'am.

8 BY MS. WECKERLY:

9 Q Okay. And Doctor, this -- this agree -- can you
10 get the [indiscernible]?

11 MR. STAUDAHNER: I'm doing it right now. I'll put it
12 back on.

13 THE COURT: Can everybody see that now?

14 BY MS. WECKERLY:

15 Q Okay. Now, Doctor, this agreement seems to be
16 about the supervision of CRNAs. Would you agree with me?

17 A Yes. I -- yes.

18 Q Okay. It says that in the second paragraph
19 Satish Sharma, which is you, correct? Along with Dipak Desai
20 and Vishvinder Sharma agree to co-supervise and consult with
21 CRNAs employed at the Gastroenterology Center of Nevada; is
22 that correct?

23 A Yes.

24 Q Okay. But if I understand you correctly, that
25 -- that isn't what you were ever discussing?

1 A No. We always discussed whenever we met -- we
2 always discussed like bringing the pain patients to the
3 surgery center and also the requirement. He will ask me what
4 do you need to do your pain procedures --

5 Q Sure.

6 A -- so obviously we talked about, you know, all
7 the things that we need; supplies, to -- a special table and
8 an x-ray machine what we call a C-arm. And so that's what we
9 were discussing.

10 Q Okay. And I'm going to just move the document
11 up just a little bit. Sir, though, you don't dispute that
12 this is your signature that I'm pointing to?

13 A Not at all.

14 Q Okay. Can I ask you why you signed something
15 without reading it?

16 A Well, first of all, it was -- I still remember,
17 it was kind of middle of the day. I was between my patients,
18 you know, I -- it was -- back then my office was at Fort
19 Apache and one of the girls from Dr. Desai's office, she came
20 over with this paper and I just assumed it must be, you know,
21 pain and the medical director and all that. But since it was
22 -- we were very early in the discussions, nothing was
23 discussed in details, forget about the final numbers --

24 Q Right.

25 A -- so I was just like, you know, sign the paper

1 and went back to see my patients.

2 Q Okay.

3 A Number one. Number two, that's what I was
4 honestly speaking was used to doing it because I came from a
5 huge anesthesia group. We have, you know, your office girls
6 will bring the papers with the flags and you basically sign
7 it --

8 Q Right.

9 A -- without reading. So that's -- that's what
10 kind of a habit and I never did my own kind of -- I was never
11 involved in like any individual -- setting up individual
12 business or anything. So, yeah, obviously that was my fault
13 to sign it without reading.

14 Q And at some point I believe detectives from the
15 Las Vegas Metropolitan Police Department came to you and asked
16 you about this document?

17 A Yes, they called me to their office.

18 Q And was that when you kind of read it for the
19 first time?

20 A That is correct.

21 Q As an anesthesiologist, I'm assuming you've
22 dealt with the drug propofol?

23 A Yes, sure.

24 Q Probably thousands of times?

25 A Yes.

1 Q How would you describe propofol in terms of what
2 kind of sedation it induces?

3 A It's -- it's for sedation and general anesthesia
4 both.

5 Q Okay. And it -- it's used -- it's widely used;
6 is that fair?

7 A That is correct.

8 Q When -- as -- when you're working as an
9 anesthesiologist, and probably as a pain doctor as well, but
10 in particular as an anesthesiologist, is it your practice to
11 get a patient history before administering a drug like
12 propofol?

13 A That is correct.

14 Q Why would you need to do that?

15 A Because you want to know the medical condition
16 because in certain medical conditions it may not be the right
17 medication to use.

18 Q Is it potentially dangerous for a patient to
19 administer a drug without getting that history?

20 THE COURT: You mean a doctor?

21 BY MS. WECKERLY:

22 Q For the doctor to administer?

23 A It is danger -- it could be dangerous in either
24 way, whether or not you take history when sometimes you take
25 history, you do everything, is still dangerous.

1 Q Okay. But do you take the -- do you take the
2 history to -- I mean at least to the extent you can avoid that
3 type of problem?

4 A To minimize the possibility, yeah, sure. You
5 can take some extra precautions. You -- we can decide which
6 particular agent should we use. Like, for example, if
7 somebody has a bad heart then there are other agents which are
8 preferred over propofol. So that history basically makes you
9 think, okay, what would be the best agent for this particular
10 patient and some extra monitoring and all that.

11 Q Okay. When you've administered propofol, I
12 assume you've done it with like a needle and a syringe?

13 A Yeah.

14 Q Have you ever reused a syringe while
15 administering propofol?

16 A It's the same patient or different patient?

17 Q Same patient first.

18 A It is possible, yes -- yeah, yeah, same patient,
19 yeah, sure.

20 Q You can -- if you have one patient and one vial
21 of propofol, you can administer it, go back into the propofol
22 and administer it --

23 A Put it in the same patient, yeah, no problem.

24 Q Okay. What if it's a different patient? Could
25 you ever use the syringe --

1 A No.

2 Q -- on a different patient?

3 A No.

4 Q What if you remove the needle?

5 A Doesn't matter. You -- once you use a
6 particular medication, it doesn't matter if it's propofol or
7 what, but you used it on a particular patient then you just
8 don't want to use it. It's like considered contaminated.

9 Q And is that some secret bit of knowledge you
10 have or is that pretty well known?

11 A You just -- that's just like standard kind of
12 practice, I don't know.

13 Q Is that the standard of care?

14 A Yes.

15 Q And what's the standard of care mean to you?

16 A What -- the way you are -- you basically
17 observe, and because remember I was -- first I -- obviously, I
18 did my training in anesthesia pain and all that, and then I
19 was in a teaching institute for almost eight years before
20 coming here. So that's the way we are training the residents
21 and fellows and all that. So standard of care, it's like -- I
22 don't know how to define but the -- whatever you learn from
23 your -- your teachers and then you practice and what you've
24 learned from your other colleagues, like how to do a certain
25 thing.

1 Q Okay.

2 A And -- and I -- you can say it in the best
3 possible way.

4 Q Let me give you another hypothetical. Okay?

5 What if you -- you have a patient and you're going to
6 administer propofol. So you administer -- you draw it out of
7 the propofol vial. You administer it to the patient, and you
8 decide that you -- the patient needs additional propofol
9 during the procedure. So you remove the needle, put a new
10 needle on the syringe and redraw more medication out of the
11 vial of propofol, administer it to that patient. Okay? That
12 vial of propofol, could you reuse it on a subsequent patient?

13 A No.

14 Q Why not?

15 A It's contaminated. It's dirty now.

16 Q Okay. And is that pretty obvious?

17 A Yeah. I mean, I will not use it. For me it is
18 obvious like I, you know --

19 Q Would you consider that below the standard of
20 care?

21 A Yeah, obviously.

22 Q And it's -- there's a -- there's a risk of it
23 being contaminated?

24 A That is possible.

25 Q Is --

1 A Having -- having said that, I had grand jury one
2 like, I don't know, two, three years ago --

3 Q Yes.

4 A -- but -- in that case I gave the example of
5 pentothal we used to use before propofol.

6 Q Sure.

7 A And it used to be a big bottle, not a vial, and
8 we, you know, used to use that multiple times where the --
9 without any problems. That was the standard care back then.

10 Q And was that because you would predraw all of
11 the -- this -- the drug out in syringes before you
12 administered it on a patient?

13 A That is correct. We will take a -- fill up
14 like, for example, if I have five cases in my room in that
15 day, I'll fill up five syringes from that bottle and take five
16 syringes to my room --

17 Q Right.

18 A -- or like two, three initially and then come
19 back and take two more or fill up two more and take it back to
20 the room.

21 Q Right. Because as long as you're not going back
22 in to the -- the vial with --

23 A Dirty, yes.

24 Q -- with the needle and syringe you've used on a
25 patient, it -- there shouldn't be contamination, right?

1 A That is correct.

2 Q Okay. So if you have a big vial of the
3 medication, you could draw 10 syringes out of it as long as
4 you're not going to the patient in between; is that fair?

5 A That is correct.

6 Q Okay. But if you go to the patient and then go
7 back to the vial and then use that vial on a subsequent
8 patient, there's a risk of contamination?

9 A Sure.

10 Q Is doing something like that anything you've
11 ever observed in your years of practice?

12 A Doing what? I'm sorry.

13 Q Have you ever observed anyone administer
14 propofol, go back into the vial to give the first patient an
15 additional dose of propofol and then use that vial on the next
16 patient?

17 A No, I have never seen that.

18 Q If you saw something like that, would -- would
19 that cause you concern?

20 A Indeed it would.

21 Q Big concern or --

22 A Obviously, that's a -- if I'm supervising I will
23 say don't use it. I don't care what somebody else does, but
24 not in front of my eyes.

25 Q Thank you.

1 MS. WECKERLY: I'll pass the witness.

2 THE COURT: All right. Ms. Stanish?

3 CROSS-EXAMINATION

4 BY MS. STANISH:

5 Q Good morning, Dr. Sharma.

6 A Good morning, ma'am.

7 Q My name's Margaret Stanish, I represent Dr.
8 Desai.

9 A Hi.

10 Q I'm going to jump around a bit because I want to
11 hit certain areas of your testimony. If you don't understand
12 my question, just say I don't understand your question.

13 A Sure.

14 Q As I understand it, you came here in the year
15 2006 to establish a practice; is that correct?

16 A That is correct.

17 Q And as I understand your testimony, you ended up
18 doing two different things. One was you opened your own solo
19 practice and the other one was working for Dr. Chen?

20 A For the most part, yes. Sometimes I will get
21 some individual call from people I knew or sometimes they may
22 not know me but -- for the most part, yes.

23 Q Thank you. I'd like you to educate us a bit
24 more about how you got started here in Las Vegas. Let me
25 first start with your solo practice.

1 A Yes, ma'am.

2 Q What did you have to do to get your solo
3 practice up and running?

4 A First you have to have a license, Nevada
5 license, to practice in Nevada. And then -- I don't even know
6 how many certifications or licenses do you need. Do you need
7 business license, you need to rent a space, you -- so.

8 Q Well, let's break that down. You -- you had to
9 rent a space. So, I mean, did you actually have an office
10 where people would come to be treated?

11 A Yes, ma'am.

12 Q And did you employ people?

13 A I did.

14 Q How many people did you employ?

15 A I started with one person.

16 Q And what did -- what was that person's role?

17 A To schedule the patients.

18 Q Was that -- did that person have medical
19 training or where they just an administrative person?

20 A I'm trying to recall who was the first person.
21 But, yeah, it was a medical person with medical training.
22 They were either medical assistant or -- yeah, has to be
23 medical assistant.

24 Q Okay. And where was your office located?

25 A The first one was on Fort Apache.

1 Q And -- and how -- did you -- how long was that
2 office located there?

3 A About two years, almost.

4 Q All right. Let me run you through a few
5 questions. Okay? I'm assuming when you came here you had to
6 first go to the medical board of examiners and get certified
7 to practice medicine in the state of Nevada; is that correct?

8 A That is correct.

9 Q Did you have to fill out paperwork to do that?

10 A I'm sure, yeah.

11 Q Okay.

12 A I don't remember when I did it, but --

13 Q Okay. Did you read the paperwork?

14 A Not really.

15 Q You just trusted the board of examiners and
16 signed it?

17 A You cannot read every papers honestly speaking.

18 Q Okay.

19 A I bought my house, over a million dollar, this
20 many papers, could I read it? There was no way in the world.

21 Q We're not -- I don't want to talk about your
22 mortgage right now, I'd like to talk about your medical
23 practice. All right?

24 A Yes.

25 Q All right. Let's talk about your medical

1 practice.

2 A Yes.

3 Q Did you have an attorney assist you in
4 establishing your medical practice --

5 A No.

6 Q -- or did you do it on your own?

7 A Yes.

8 Q You did it on your own? Did you talk to other
9 doctors about establishing your medical practice?

10 A No.

11 Q All right. So let's go back to the -- you get
12 your certification from the medical board of examiners --

13 A Yeah.

14 Q -- and you went to the business licensing
15 somewhere in the county to get a business license?

16 A Yes.

17 Q And you filled out paperwork and signed
18 paperwork for that purpose?

19 A Yes, I guess.

20 Q Did you have to -- what -- did you get
21 incorporated like a professional corporation?

22 A Yes.

23 Q So you had to deal with the Nevada Secretary of
24 State for that purpose?

25 A Yes. My CPA did it all.

1 Q Okay. So you did have someone helping you, it
2 was your CPA?

3 A Yes.

4 Q Okay. So your CPA helped you form the business
5 entity, some kind of corporation?

6 A That is correct.

7 Q All right. Did your CPA help you do any other
8 part of the business establishment?

9 A I do not remember --

10 Q All right.

11 A -- what did he help with but whatever this
12 license for this particular corporation, establishing
13 corporation, that he did, that I remember.

14 Q Okay. So he helped you get the Secretary of
15 State paperwork and the business licensing from the county?

16 A Yes.

17 Q And I got to believe you have to have medical
18 malpractice insurance, correct?

19 A Yes.

20 Q And did you make arrangements to have medical
21 malpractice insurance?

22 A Yes.

23 Q And how did you go about doing that?

24 A I do not remember. How did I start -- when did
25 I do the paperwork, I can't remember.

1 Q Did you do it yourself or did you have to get
2 someone to help you?

3 A Someone must have helped me. I don't remember
4 actually how did I and when did I do the paperwork. Usually
5 when you apply -- when you do this -- the malpractice
6 paperwork, there are agents. Again, they do the paperwork,
7 all the paperwork, and they bring the papers and you sign it.

8 Q All right, I understand. So you went to like an
9 insurance broker who helped you get medical malpractice
10 insurance?

11 A Yes.

12 Q And that person also helped you get like workers
13 comp insurance for your individual employee?

14 A That is correct.

15 Q And gee, there's probably general liability
16 insurance too?

17 A Quite likely.

18 Q And did the broker give you different options
19 that you could review to select which insurance coverage you
20 wanted?

21 A Yeah, I'm sure he did.

22 Q Now, who selected the facility where your office
23 was located on Fort Apache, did you do that?

24 A I did it.

25 Q And tell us how you went about doing that.

1 A Well, there was -- there's a -- still here -- he
2 is still here, there's a one Dr. Pannu, P-a-n-n-u. He has his
3 offices there and I just subleased from him. I think just --
4 I don't remember, one half day a week, I think, if I remember
5 correctly or it could be two half days a week. So it was his
6 office, I would just pay him.

7 Q I see. You subleased from him or rented a space
8 within his office?

9 A No, subleased from him.

10 Q Okay. Did you have to sign a contract for that?

11 A I don't remember. Probably -- maybe not.

12 Q Maybe not?

13 A Because initially it was -- it could be in just
14 good faith or it could be if I signed, that is possible.
15 Maybe I did, but I don't remember.

16 Q Okay. Your insurance company probably wanted to
17 know where you were operating out of, right?

18 A Yeah.

19 Q Did you relocate your office after a couple of
20 years?

21 A Yes, I did.

22 Q And where did you relocate to?

23 A To -- I think it was 5990 South Rainbow.

24 Q And was that -- describe that office space for
25 us.

1 A That was a complete office. I rented that space
2 and I remember doing paperwork for that.

3 Q Lots of paperwork?

4 A Yes.

5 Q For like what?

6 A Basically whatever the standard lease papers,
7 rental, you know.

8 Q And you had to again do some county paperwork to
9 show the county where you were relocating?

10 A Usually office girls do that. I was not
11 actively involved, again, just --

12 Q How many employees did you have at that
13 location?

14 A I would guess four at that point.

15 Q So you grew over the two years?

16 A Correct.

17 Q Good. Now, were you doing pain management at
18 this location?

19 A I was doing -- like when you say pain management
20 means, yes, at Fort Apache location also I was doing pain
21 management, so yeah. It was basically -- the name was -- it
22 was a pain clinic.

23 Q Okay. And when you were out -- when you had
24 these clinics, whether it was on Fort Apache or in the larger
25 facility, I assume it was a larger facility you --

1 A Yes.

2 Q -- did you have to have office -- office
3 equipment?

4 A Yes. I -- I bought that C-arm later.

5 Q You bought what? I didn't understand.

6 A An x-ray machine, it's called C-arm.

7 Q A C-arm, like this arm?

8 A It's like C and, yes, it's like arm. That is
9 correct, absolutely.

10 Q And so you purchased a C-arm, which is a fairly
11 expensive piece of equipment, correct?

12 A That is correct.

13 Q Did you have to purchase other medical
14 equipment?

15 A Yeah. Table and the other two expensive one and
16 the like needles and stuff, yes.

17 Q Did you have any involvement in purchasing those
18 large pieces of equipment?

19 A Yes, I was involved.

20 Q It wasn't just one of your office persons,
21 girls, women, whatever?

22 A No. Actually, it was -- it was -- in all these
23 purchasing it is the price that matters. So I was discussing
24 the price factor. Once that is discussed then I do not know
25 -- I'm sure I -- at some point I, you know, signed the papers.

1 Q Okay. How much does a -- a piece of -- a C-arm
2 cost?
3 A It was I think about somewhere between 140 to
4 \$145,000.
5 Q And did you just come out of pocket for that or
6 did you have to get a loan to purchase that?
7 A I have to -- I have a loan.
8 Q Oh, more paperwork?
9 A Yeah.
10 Q You had to sign it?
11 A That is right.
12 Q You had to read it?
13 A No.
14 Q No. You didn't read it, you just signed it?
15 A Uh-huh.
16 Q Now, in addition to these -- the solo practice
17 that you were operating -- or let me clarify something.
18 You're doing pain management at these facilities that you
19 rented --
20 A Yes.
21 Q -- any idea -- can you give us an idea of what
22 your patient base was? How many patients you would treat per
23 year or however you normally measure that?
24 A First of all, I had two locations at this point.
25 We are talking about when I moved to Rainbow. So I was seeing

1 patients at Rainbow location and then I subleased in Henderson
2 also.

3 Q Okay. So I didn't realize that. Thank you for
4 clarifying it. You had both the Rainbow facility as well as
5 the Henderson facility?

6 A Correct.

7 Q You would go back and forth between the two --

8 A Yes. Two half days I was working in
9 Henderson --

10 Q Uh-huh.

11 A -- and then most of the time I was at the
12 Rainbow office.

13 Q Did you work with another doctor at either of
14 those locations?

15 A Not a way. The other location in Henderson,
16 he's a cardiologist so I was subleasing from him so he was
17 there in the office, but I was not working with him.

18 Q All right. So you rented a space in Henderson
19 from a cardiologist?

20 A That is correct.

21 THE COURT: Did you use his own staff there or did
22 you bring in staff to Henderson?

23 THE WITNESS: My -- I had my own staff.

24 THE COURT: Okay.

25 BY MS. STANISH:

1 Q Did you have to bring in your own equipment,
2 medical equipment?

3 A No. Equipment is required to see the patients
4 in Henderson, I was simply seeing the patient. If I was
5 scheduling the procedure then they have to come to the Rainbow
6 office.

7 Q I understand. So Henderson was just having a
8 location for the, I assume, the purpose of expanding your
9 business in to Henderson to make it convenient for patients to
10 visit with you in Henderson, correct?

11 A That is correct.

12 Q So it was just a consultation office?

13 A That is correct.

14 Q And then they would come to the other side of
15 town for the procedure itself?

16 A That is correct. For most part again because --

17 Q What's the other part?

18 A -- because certain procedures can be done --
19 like very minor procedures, what we call trigger point
20 injections or like, for example, knee joint injection, they
21 can be done without the x-ray help. So those -- once in a
22 blue moon I will do those procedures in there, but that's not
23 the major part of the practice.

24 Q All right. And how many staff did you employ at
25 the Henderson location?

1 A I did not employ those -- those -- the staff was
2 going with me. If -- like from Rainbow -- for example, it
3 Wednesday afternoon, so Wednesday morning we were working at
4 the Rainbow office and then the Henderson office will start at
5 1:00. So at about 12:30 we'll -- the staff would drive and I
6 would drive.

7 Q And I assume you also had to arrange for the
8 various insurance providers who would cover your patients, you
9 know, Blue Cross, you know, whatever the big health care plans
10 are, you accepted insurance from your patients for your
11 services?

12 A Sure.

13 Q And did that involve you getting -- making
14 applications to various insurance companies for that purpose?

15 A Sure.

16 Q Aside from pain management, did you do any other
17 kind of anesthesia service in the -- in connection with your
18 solo practice or was that done in connection with Dr. Eugene
19 Chen?

20 A As I said earlier, it was initially it was with
21 Dr. Eugene Chen and then at times I might be providing
22 anesthesia without involvement of Eugene Chen.

23 Q All right. Let me break that down because I
24 want to make sure I understand what your experience is. When
25 you worked with Dr. Chen he was an anesthesiologist, correct?

1 A That is correct.

2 Q And you -- you were an independent contractor or
3 an employee of his?

4 A Independent contractor.

5 Q Did you have a contract with him?

6 A Yes, I did.

7 Q You know what I'm going to ask you next, don't
8 you?

9 A I do not know.

10 Q I'm going to ask you --

11 A Did I sign it -- did I read it?

12 Q -- read the contract? Good, so you're saying
13 you just --

14 A Yes. I -- I -- you know, read the main aspect
15 like what percentage would he charge from what I collect from
16 the patients.

17 Q You're going to read the money term, is that
18 what you're saying?

19 A That is correct. That's all that counts.

20 Q Okay. All right.

21 A The terms and condition, because in any contract
22 the rest is like all, you know, standard language I guess, I
23 do not know.

24 Q Well, was it a long contract, several pages?

25 A I can't remember, but I'm sure at least two,

IN THE SUPREME COURT OF THE STATE OF NEVADA

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SEP 02 2014 09:02 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

| | | |
|-----------------------|---|----------------|
| DIPAK KANTILAL DESAI, |) | CASE NO. 64591 |
| |) | |
| Appellant, |) | |
| |) | |
| vs. |) | |
| |) | |
| THE STATE OF NEVADA, |) | |
| |) | |
| Respondent. |) | |
| _____ |) | |

APPELLANT'S APPENDIX VOLUME 9

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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 |

| <u>DOCUMENT</u> | <u>VOL.</u> | <u>PAGE(S)</u> |
|--|--------------------|-----------------------|
| 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 |

| <u>DOCUMENT</u> | <u>VOL.</u> | <u>PAGE(S)</u> |
|--|--------------------|-----------------------|
| 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 |

| <u>DOCUMENT</u> | <u>VOL.</u> | <u>PAGE(S)</u> |
|--|--------------------|-----------------------|
| 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 |

| <u>DOCUMENT</u> | <u>VOL.</u> | <u>PAGE(S)</u> |
|---|--------------------|-----------------------|
| 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 |

| <u>DOCUMENT</u> | <u>VOL.</u> | <u>PAGE(S)</u> |
|--|--------------------|-----------------------|
| 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 Q And then, did some -- when did your husband join
2 you?

3 A It would have been sometime after I came out of
4 the dressing room. I honestly don't remember even how --
5 excuse me, he got from -- from the front office to where I
6 was, but I assume either I went and got him or they brought
7 him out back because we walked out the back way, we walked out
8 the backdoor.

9 Q And -- but before walking out you visited with
10 the discharge nurse.

11 A Yes.

12 Q And you described to her how you felt like you
13 had laryngitis and she gave you instructions for after care.

14 A Yes. Well, actually, I didn't say anything to
15 her about the laryngitis because I thought it was just because
16 -- I honestly didn't know why I had a scratchy voice. I just
17 thought maybe I snored really loud, I don't know, you know.
18 But it went on for weeks, it didn't just end, you know, the
19 next day, it went on for weeks.

20 And when I went back to the doctor I told her, I
21 said, I had laryngitis, I said I didn't have a sore throat but
22 I had laryngitis. And she said well, sometimes when you go
23 through these procedures your immune systems are -- are -- are
24 weak so you tend to get a cold. I didn't have a cold, it was
25 just my voice, I just didn't have one. So I wasn't -- I

1 didn't feel sick.

2 Q Okay. And speaking of your immune system, am I
3 to understand you really didn't need -- your decision was
4 after talking to multiple doctors and getting different
5 opinions, your decision was you're going to let your immune
6 system try to fight off the hepatitis C virus?

7 A Actually, just keep it in check as -- as much as
8 possible.

9 Q Keep it in check so that it -- your -- your --
10 your -- the blood tests that you have been getting every six
11 months or so are showing that the hepatitis C is in check.

12 A It's still active.

13 Q Correct. But it's -- you're not having
14 symptoms.

15 A No, I'm not.

16 Q And if -- if you did you would visit with your
17 doctor and decide whether to get additional --

18 A Yes --

19 Q -- treatment.

20 A -- if I was to go back to where I was five years
21 ago I would definitely go back and start reexamining.

22 Q And am I to understand that you had a discussion
23 with the nurse that administered the anesthesiology before you
24 went under?

25 A I did. Well, I made a joke but I don't remember

1 what the joke was now.

2 Q He didn't think it was funny, he didn't laugh.

3 A No, he didn't laugh. Actually, he never even
4 turned around and looked at me. So I thought that was kind of
5 odd because, you know, I'm laying here on the bed and the
6 nurse was over here and he was standing here with his back to
7 me and I said something and he -- he didn't say anything, he
8 didn't turn towards me. I don't even -- never even saw his
9 face.

10 Q And then once you were out you don't have much
11 recollection of what happened thereafter?

12 A No.

13 Q All right. At some point in time, did you
14 retain an attorney to represent you in civil litigation?

15 A I did, but it wasn't until after I had been in
16 touch with the CDC.

17 Q And so that would have been, as I understand
18 your testimony, ma'am, a few days before President's Day when
19 the CDC contacted you, you thereafter retained an attorney.

20 A Yes.

21 Q And can you tell us approximately how many days
22 after getting the notification from the CDC, how long
23 thereafter was it before you hired an attorney?

24 A Maybe a week, week and a half.

25 Q Did you change attorneys at any time?

1 A Yes.

2 Q And when did that occur?

3 A I think it was maybe four months after we hired

4 Ahab that we went to Billie Marie Morrison's office.

5 Q So Billie Marie Morrison represented you four

6 months after the notification --

7 A Uh-huh.

8 Q -- and who was your first attorney?

9 A Ahab Omar, I think was his name.

10 Q Okay. And did you eventually reach settlements

11 in the litigation?

12 A Yes.

13 Q And can you tell us who the defendant -- well,

14 let me ask you this. Did you receive a settlement?

15 A Yes.

16 Q And would you describe for us the settlement,

17 the monies that you received?

18 A We received 300,000 from the medical and --

19 Q I'm sorry. When you say medical, do you mean

20 the clinic?

21 A I'm sorry. That was from the -- the doctors.

22 Q Okay.

23 A And 2.6 million from the pharmaceutical.

24 Q Do you know what pharmaceutical that was?

25 A I know one was Teva.

1 Q Is that the manufacturer of the propofol?
2 A Yes.
3 Q Anybody else?
4 A I don't recall the other -- the other ones.
5 Q Were there other ones?
6 A I think there was one other one with that, but I
7 don't recall.
8 Q Was there a pharmacist?
9 A I don't think so.
10 Q Are you currently waiting on any other
11 settlement?
12 A Yes, one more from our HMO.
13 Q I'm sorry?
14 A From our HMO.
15 Q You have Blue Cross and Blue Shield -- or what
16 -- who is -- who were your insurance companies?
17 A I actually have UnitedHealthcare and Blue Cross
18 Blue Shield.
19 Q And so when you say HMO, you're talking about
20 UnitedHealthcare?
21 A Yes.
22 MS. STANISH: Court's indulgence.
23 THE COURT: Okay.
24 MS. STANISH: Nothing further. Thank you, Your
25 Honor.

1 THE COURT: Mr. Santacroce.

2 MR. SANTACROCE: Thank you.

3 CROSS-EXAMINATION

4 BY MR. SANTACROCE:

5 Q Good afternoon, Mrs. Aspinwall.

6 A Hi.

7 Q I just have a few questions about the time
8 period from when you were taken out of the waiting room but
9 before you went into the procedure room. Can you describe
10 that for me?

11 A From the waiting room to the procedure room, the
12 time frame?

13 Q The time in between.

14 A I can tell you this, that I got in there -- they
15 took me in at 20 minutes to 12 and they took me out at 10
16 minutes after 12. That is when I clocked out and went home.
17 So the nurse or the gentlemen that took me into the changing
18 room, the dressing room, took me back to the little room where
19 the bed was, where I put my stuff, then I went into the room
20 where they put the little hep-lock there, went back to that
21 room with the bed and then into the procedure room.

22 Q Okay. Do you have any medical training at all?

23 A None.

24 Q You used the term hep-lock. How are you
25 familiar with that term?

1 A Just through my settlements, things that we
2 discussed.

3 Q Okay. Because when you -- you gave an interview
4 to Detective Whitely, correct? Is that a yes?

5 A Yes.

6 Q Okay. And in that interview you described it as
7 a shot like thing. Do you remember that?

8 A No.

9 Q Okay. That shot like thing, I'm assuming was
10 the hep-lock you were referring to --

11 A Yes.

12 Q -- is that correct?

13 A I think so.

14 Q And I believe you testified that you didn't
15 actually watch the nurse put the hep-lock in, correct?

16 A Right.

17 Q And that was a female nurse that did that?

18 A Yes.

19 Q And I believe you testified that -- that -- and
20 correct me if I'm wrong, this is my recollection, that it
21 didn't fall off so they must have put tape on it, correct?

22 A Correct.

23 Q So you didn't actually see them put tape on it,
24 right?

25 A No.

1 Q So it's fair to say that you didn't watch any of
2 that procedure where the hep-lock went in and they taped it --

3 A Just felt it.

4 Q -- just felt it, correct?

5 A Right.

6 Q The times that you mentioned when you got there
7 and when you left, how -- how did you determine those times?

8 A I looked at my watch. I was very concerned
9 about my husband being to work on time. So when they took me
10 in I happened to look at my watch and then when we left I
11 said, you've got -- it's -- it's 10 after 12, you're already
12 late for work. And he still had to take me home. So I was --
13 I was really paying attention to the time frame so he wouldn't
14 get in trouble.

15 Q Okay. Do you remember in the interview with
16 Detective Whitely, I believe you testified that you were in
17 the recovery room for between 15 and 20 minutes, correct? Do
18 you remember that?

19 A No.

20 Q Do you remember that you told Detective Whitely
21 that after you were in the recovery room for about 15 or 20
22 minutes you left and it was about 12:00?

23 A No, I don't remember that.

24 MR. SANTACROCE: I have no further questions. Thank
25 you.

1 THE COURT: Any redirect?

2 REDIRECT EXAMINATION

3 BY MR. STAUDAHER:

4 Q Just so I'm clear, you went -- were taken back
5 at about 10 minutes to 12?

6 A About -- I seem to recall 20 minutes to 12.

7 Q Twenty minutes to 12, okay. And so 20 minutes
8 to 12 and then ten minutes after 12 is when you were walking
9 out of there?

10 A Yes.

11 Q Thirty minutes total?

12 A Yes.

13 MR. STAUDAHER: Nothing further, Your Honor.

14 THE COURT: Any recross?

15 MR. SANTACROCE: Yes.

16 RECROSS-EXAMINATION

17 BY MR. SANTACROCE:

18 Q When you got into the procedure room, were you
19 hooked up to a machine?

20 A I have no idea.

21 Q So you don't recall --

22 A I was just -- my arms were out like this.
23 That's -- that's all I remember.

24 Q But you could have been, you just don't
25 remember?

1 A Right, right. I don't know.

2 Q You don't remember any kind of sticky things on
3 your arm or your chest or anywhere like that?

4 A No.

5 Q You don't remember the anesthesiologist asking
6 you some questions?

7 A No. I remember the nurse, but I don't remember
8 anything after that.

9 Q And the only thing I think you told in your
10 interview was the only thing you remember is waking up in the
11 recovery room?

12 A Right.

13 Q Thank you.

14 THE COURT: Ms. Stanish, anything else?

15 MS. STANISH: No, Your Honor.

16 THE COURT: Anything else from the State?

17 MR. STAUDAHER: No, Your Honor.

18 THE COURT: Any juror questions for the witness? No?
19 All right, ma'am. I'm about to excuse you, but before I do I
20 must admonish you to please not discuss your testimony with
21 anyone else who may be called as a witness in this case.

22 THE WITNESS: Okay.

23 THE COURT: Thank you and you are excused and you can
24 just exit the courtroom.

25 And ladies and gentlemen, we're going to go ahead and

1 take a break until about 3:15. During the break you're
2 reminded that you're not to discuss the case or anything
3 relating to the case with each other or with anyone else.
4 You're not to read, watch, or listen to reports of or
5 commentaries on this case, any person or subject matter
6 relating to the case. Don't do any independent research and
7 please don't form or express an opinion on the trial.
8 Notepads in your chairs and follow the bailiff through the
9 rear door.

10 (Jury recessed at 3:02 p.m.)

11 THE COURT: Who -- who's next?

12 MS. STANISH: Herrero, Dr. Herrero.

13 MR. STAUDAHER: And that's actually our last witness
14 in this case.

15 (Court recessed at 3:02 p.m. until 3:13 p.m.)

16 (Inside the presence of the jury.)

17 THE COURT: Court is now back in session. The State
18 may call its next witness.

19 MR. STAUDAHER: States calls Dr. Herrero to the
20 stand, Your Honor.

21 CARMELO HERRERO, STATE'S WITNESS, SWORN

22 THE CLERK: Please be seated. Sir, would you please
23 state and spell your name?

24 THE WITNESS: Carmelo, C-a-r-m-e-l-o, last name
25 Herrero, H-e-r-r-e-r-o.

1 THE COURT: Thank you. Mr. Staudaher.

2 MR. STAUDAHER: Thank you, Your Honor.

3 DIRECT EXAMINATION

4 BY MR. STAUDAHER:

5 Q Dr. Herrero, what do you do for a living?

6 A I'm a gastroenterologist.

7 Q How long have you done that work?

8 A I've been practicing for 15 years.

9 Q Can you tell us a little bit about your
10 background and training that led you up to that?

11 A I did my medical school in Puerto Rico, Ponce
12 School of Medicine. Did my residency in internal medicine at
13 Hahnemann University in Philadelphia. Subsequently, did a
14 gastroenterology fellowship at the same university in
15 Philadelphia.

16 Q Where did you go after that?

17 A Moved to Las Vegas in 1998.

18 Q 1998?

19 A '98.

20 Q Is this the place you practiced since that time?

21 A That is correct.

22 Q So stayed in town the whole period between then
23 and now?

24 A Correct.

25 Q Did you ever work -- well, tell us the places

1 you've worked in town.

2 A From 1998 to 2007 I was part of the
3 Gastroenterology Center of Nevada.

4 Q Now, since or during that window of time, did
5 you work in the same location all the time or did you vary to
6 the different clinics and centers?

7 A Multiple locations.

8 Q Where did you work?

9 A Worked at a clinic in Henderson, Horizon Ridge.
10 Worked out of a clinic at Burnham Avenue. Worked out of
11 clinics with University Medical Center. At some point I also
12 worked out of a clinic for the Veterans Administration. And
13 then, numerous hospitals in the city.

14 Q Did you ever work at Shadow Lane?

15 A Yes, I did.

16 Q So you worked at many of the associated clinics
17 of the endoscopy centers?

18 A Correct.

19 Q Do you know an individual by the name of Dipak
20 Desai?

21 A I do.

22 Q Do you see him in court today?

23 A Yes, I do.

24 Q Would you point to him and describe something
25 that he's wearing for the record, please?

1 A He's wearing a black jacket and a gray tie.
2 MR. STAUDAHER: Let the record reflect the identity,
3 Your Honor.
4 THE COURT: It will.
5 BY MR. STAUDAHER:
6 Q With regard to your role in the practice, whose
7 practice was it, first of all?
8 A It was considered a partnership, but it was the
9 original founder member was Dr. Dipak Desai.
10 Q Were you a partner?
11 A Yes, I was.
12 Q And so what role did you play in the
13 partnership?
14 A For the most part, we were all practicing
15 clinicians, taking care of patients on a daily basis.
16 Q So who ran the operation?
17 A Dr. Desai.
18 Q Anybody else?
19 A He also had a chief operating officer, Tonya
20 Rushing, who would help in the day-to-day operations of the
21 practice.
22 Q When it came to issues of actual import, meaning
23 anything that really had any significance to the practice, was
24 Tonya the one that had the final word or was that Dr. Desai?
25 A I would say it was Dr. Desai.

1 Q Was he -- or were you ever party to various
2 meetings and so forth, partnership meetings where Dr. Desai
3 was present?

4 A Please ask the question again.

5 Q Were you party to, did you attend membership or
6 sort of meetings where all the different partners get together
7 and discuss the practice, what's going to happen, things like
8 that?

9 A Yes, I did.

10 Q Was there ever votes on how things would happen
11 or was there sort of direction as to how he wanted things to
12 be done?

13 A More of a direction. It was not necessarily a
14 process or a vote. It was more of an information session of
15 the things that were transpiring in the practice and the
16 things they were going to do.

17 Q Did you have any say in the practice?

18 A Day-to-day operations, no. I would express
19 opinions on particular issues every once and then, like
20 everybody else in the practice.

21 Q So what was his role? I mean, I know you say
22 that he's the head of the practice, he makes the decisions,
23 but what kinds of decisions is he making?

24 A For the most part, everything that has to do
25 with operations, which offices get opened, which clinics get

1 opened, when to hire new physicians, when to expand to new
2 hospitals, how to negotiate contracts for the practice.
3 Anything that had to do with the business aspects of the
4 practice he was in charge.

5 Q What about the CRNAs?

6 A Also.

7 Q So he was in charge of them?

8 A He was in charge of hiring the CRNAs and -- yes.

9 Q You said hiring. Is that the only thing he did
10 was just hire them and then they were on their own?

11 A Well, there's a process that I have become aware
12 of since then in which policies --

13 Q Let's wait for just a second.

14 A Yes.

15 Q I don't want to talk about things you've become
16 aware of since then. I'm talking about the state of affairs
17 when you were back working up to 2007 when you stopped
18 working.

19 A Right.

20 Q So what was your knowledge of his interaction
21 with the CRNAs at that point?

22 A He will be basically dictating how the work will
23 take place through the day.

24 Q Anything else?

25 A Specifically, not that I can think of. I mean,

1 just general.

2 Q Now, were you aware that there was billing for
3 the CRNAs?

4 A Yes.

5 Q Did you participate in getting reimbursed for
6 CRNA billing?

7 A No.

8 Q So you didn't get any part of that?

9 A There was never a direct payment from that. My
10 understanding how the process worked was that reimbursements
11 from facility fees, anesthesia fees and professional fees were
12 going to a pool and that will get distributed among all the
13 partners depending on the interest the partners had.

14 Q Did you ever become aware at any point that
15 there was a specific pot of money set aside for the CRNA
16 billing and that that was divided up?

17 A Afterwards. After I left the practice.

18 Q And you again, just so we're clear, you didn't
19 participate or get any payments from that fund? You didn't
20 get disbursements from the CRNA pool of money?

21 A There was no direct payment coming from the CRNA
22 money. Like I said, it was a distribution based on the
23 reimbursements for the endoscopy centers.

24 Q So are you in the practice as really a partner
25 or an independent contractor? I mean, how would you describe

1 yourself?

2 A I would describe myself as an independent
3 contractor. Partnership, I guess in the legal sense, was how
4 it was filed in terms of the paperwork for the operations of
5 the practice. But we were not really partners in the sense of
6 voting or making decisions. We would basically come to work
7 every day, take care of our patients, finish the day, go home
8 to our families. And every once in awhile we will have
9 business meetings to discuss various issues of the practice.
10 But there was no actual process.

11 Q So membership partner meetings. What would
12 happen during these besides just being told how the practice
13 was going to go forward?

14 A It will be different agendas to the meetings.
15 The meetings could be related to discussion of new contracts
16 or pursuing new contracts. Sometimes it would be related to
17 issues regarding patient care in the hospital. Sometimes it
18 would be regarding complaints from referring physicians,
19 strategies to stay in the market. Those are some of the
20 things that we would discuss in those meetings.

21 THE COURT: How many physicians are of the so-called
22 partners?

23 THE WITNESS: Well, the number changed throughout the
24 years. I believe that by 2008 when the practice ceased to
25 exist --

1 THE COURT: Just when you were there, not later.

2 THE WITNESS: Again, from the very beginning there
3 was probably five or six by the end of the practice, probably
4 12.

5 THE COURT: Okay. Go on, Mr. Staudaher.

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

7 THE COURT: You may.

8 BY MR. STAUDAHER:

9 Q Showing you what's been admitted by stipulation
10 as State's Exhibit 98 and also 97. I'm going to ask you about
11 97 first. Have you ever seen any kind of organizational chart
12 like that before in the practice?

13 A No.

14 Q Look at that, if you would, and tell me if that
15 comports with what you think the organization was, who
16 reported to whom in the practice.

17 A Seems accurate.

18 Q Okay. And I'm going to leave this one up here.
19 I'm going to give you a few minutes to just flip through that,
20 if you would, and tell me if you recognize or have ever seen
21 that document. The tabbed portions are the things I put on
22 there.

23 A Yes, I have seen this document.

24 Q What is it?

25 A It's an agreement regarding the practice for the

1 endoscopy centers.

2 Q That was Exhibit 98. You're part of this
3 agreement, correct?

4 A Correct.

5 Q Before I get into that in more detail, I want to
6 show you 97. You said this kind of matches up, although you
7 haven't seen this actual chart, you didn't see anything that
8 was different other than what you believed it to be, correct?
9 I mean, the way things were in the practice.

10 A Correct.

11 Q Now, I'm going to shift up. We see that there's
12 a large number of people down here, sort of clerical staff,
13 billing department and the like. Do you see that?

14 A Yes.

15 Q As we move back up, at the very top is managing
16 partner and that's Dipak Desai and everything flow below him.
17 Is that fair?

18 A Yes.

19 Q Now, as managing partner, what was it your
20 understanding that the managing partner did related to this
21 organization that you were part of?

22 A My understanding was he was, again, in charge of
23 the operations of the practice. He would be in charge of
24 contract negotiations. He would be in charge of overseeing
25 distribution of funds. He would be in charge of managing the

1 finances of the practice. He would be in charge of the hiring
2 of staff and for that matter, the firing of staff. He would
3 be the one signing the checks coming out of the practice.

4 Q Was there any part of the practice that he
5 didn't deal with, specifically?

6 A Not that I'm aware of.

7 Q And what I mean by that, too, is did he immerse
8 himself to the level of maybe supplies, ordering or at least
9 being aware of what supplies needed to be ordered or how they
10 would be utilized at the various clinics, scheduling, things
11 like that.

12 A My understanding is yes.

13 Q Is that your experience when you were dealing
14 with him in the clinics that that was the case?

15 A Yes.

16 Q Was there -- although on the organizational
17 chart he's listed as everything flowing into him, it does not
18 appear as though there's a co-equal or a second in command on
19 that chart. Is that fair?

20 A That's fair.

21 Q And I notice that down here there's a box called
22 CRNA. Do you see that?

23 A Yes.

24 Q It has various lines going to this Tonya Rushing
25 you told us about as well as staff physicians, like yourself;

1 is that right?

2 A Yes.

3 Q What control, if any, did you have over the
4 CRNAs?

5 A The control I would have would basically be
6 related to the actual patient management at the time of the
7 procedure.

8 Q So just in the endoscopy suite, so to speak?

9 A Correct.

10 Q And that's the only time you really dealt with
11 them was during a procedure then?

12 A Correct.

13 Q Now, as far as the agreement and this is just
14 the first page of the agreement, a lot of paper here, correct?

15 A Yes.

16 Q Specifically, I'm just going to go forward to
17 the section where it talks about -- and I know this is hard to
18 read. Can you read that on your screen up there?

19 A Yes.

20 Q Talking about distribution of assets and so
21 forth. How were you paid as part of being a partner in a
22 group? What percentage did you own, if any, and the like?

23 A I do not recall the specific percentage and it's
24 probably listed there on the contract, but basically, at the
25 end of the month, I believe it was a monthly basis, perhaps it

1 was less than that, we were called to receive our distribution
2 checks. The process prior to that or the process of how that
3 sum became to fruition, we were not aware of that process. Or
4 at least I wasn't aware of that process.

5 Q What about if for some reason you didn't see eye
6 to eye with Dr. Desai and you had to leave, you wanted to
7 quit, how would that work?

8 A How would that work if I wanted to quit the
9 practice?

10 Q Let's just say you wanted to quit the practice,
11 I'm done, I don't like what's going on, whatever.

12 A I would basically ask for a meeting to sit down
13 with him and discuss that need.

14 Q Now, I notice where it goes down to article six
15 here, do you see that?

16 A Yes.

17 Q It says covenant not to complete. Do you see
18 that?

19 A Yes.

20 Q What did that mean?

21 A If we were to leave the practice, we were
22 restricted as of where can we practice immediately after
23 leaving the operations. We would be restricted. I believe
24 there is a mile radius that we were not allowed to practice
25 within a particular set time.

1 Q Okay. So right, I'm just going to point to it
2 and direct you, it says that you wouldn't essentially compete
3 for three years?

4 A Right.

5 Q And if you come down here, within a 25-mile
6 radius of the location.

7 A That is correct.

8 Q That's Shadow Lane, correct?

9 A Uh-huh.

10 Q So 25-mile radius of Shadow Lane. Is there any
11 portion of Las Vegas that that would not include?

12 A It would have to be in the outskirts pretty
13 much, perhaps Henderson, Boulder City, places like that.

14 Q Okay. So at least not Las Vegas proper,
15 correct?

16 A Correct.

17 Q And for a period of three years?

18 A Correct.

19 Q Was there any issue with that and you and
20 feeling like you couldn't leave if you needed to?

21 A No. I kind of realized from the very beginning
22 that if I wanted to leave I'd basically have to leave town.

23 Q That's what I was getting at. Did you feel that
24 you could practice here anywhere based on that non-compete
25 clause if you got sideways with Desai?

1 A I had seeked advice regarding that possibility
2 when I read the contract. The advice that I received was that
3 you can always challenge it that in court because that's
4 considered not necessarily legal in certain states. So you
5 want to spend the money to take it to court, you're welcome to
6 do that. You might be able to win it.

7 Q But you felt that at least if you abided by this
8 that you couldn't practice anywhere in town?

9 A Right.

10 MR. SANTACROCE: Your Honor, I'm going to object to
11 the whole relevance of this covenant not to compete. Move to
12 strike that part of that testimony.

13 THE COURT: It's overruled on the relevance ground,
14 but you were getting a little leading there, Mr. Staudaher.
15 BY MR. STAUDAHER:

16 Q I'm showing you this page, which is page eight.
17 And I know there's a number of different sections to this, but
18 it's page eight in this. It's a signature page. Do you see
19 that?

20 A Yes.

21 Q Do you see your signature anywhere on that page?

22 A Yes, I do.

23 Q And you can draw -- we don't necessarily need
24 this for the whole time, but you can draw with your
25 fingernail. Just clear it down here if you need to clear it.

1 A Okay.

2 Q Can you show us where your signature is?

3 A (Witness complies.)

4 Q And is that, in fact, your signature?

5 A It is my signature.

6 Q So in signing this agreement, did you agree to
7 all those things we talked about?

8 A Correct.

9 Q You can clear that if you would, please. And
10 the next page, which is entitled action by written consent of
11 the operations manager. The operations manager was different
12 than managing partner; is that correct?

13 A I can't say that I understand the difference.

14 Q Okay. I mean, what was your -- beside Dr.
15 Desai and him being the managing partner, did you understand
16 the terms operation manager, anything like that within the
17 practice, what they did, what they didn't do, who answered to
18 whom in that regard?

19 A Not in a full extent.

20 Q But I see that on this you're also listed here,
21 are you not?

22 A Yes, I am.

23 Q And you said that you didn't know what
24 percentage or whatever you had before, but I see it says at
25 least here, you see a number of shares.

1 A Correct.

2 Q What does that mean?

3 A At the point of distribution it will be the
4 number, the equivalent number of the total amount that I will
5 get distributed.

6 Q So you have 11 and various other people have 17,
7 eight and Dr. Desai, looks like he has 36 and three-sevenths.

8 A Correct.

9 Q Do you see that? Now, were you aware that if
10 other -- you mentioned that when you started there were around
11 five, I think?

12 A Correct, five or six.

13 Q By the time you got to the end it was how many?

14 A I believe there was 11 to 12.

15 Q When new people came in, new doctors, what would
16 happen to the value of your shares?

17 A We would be asked to surrender some of the
18 shares that we have in order to distribute to the new members.

19 Q What about Dr. Desai, did he surrender any
20 shares?

21 A Not that I remember.

22 Q So he kept his shares intact and the rest of you
23 had to essentially dilute yours, surrender them?

24 A Correct.

25 Q And I saw that there were various partners who

1 wrote checks in here and I just didn't -- and there's one here
2 listed for you. Do you see that?

3 A Yes.

4 Q The amount, can you read that?

5 A \$45,000.

6 Q What was this for?

7 A That was actually the purchase of the shares to
8 be part of the endoscopy center.

9 Q For those 11 shares?

10 A Correct.

11 MR. SANTACROCE: Objection. Misstates the testimony.
12 I think it was 11 shares or 11 percent.

13 MR. STAUDAHER: It said 11 shares.

14 THE WITNESS: It says 11 shares on the contract.

15 BY MR. STAUDAHER:

16 Q We'll go back to it just so we're clear. Right
17 here, does it say number of shares, 11?

18 A Yes.

19 Q Okay. Is that your understanding of what your
20 -- what you had?

21 A Correct.

22 Q That 45,000, was that to purchase those 11
23 shares?

24 A That is correct.

25 Q So what did that entitle you to as far as like

1 do you get -- does it translate into percentages?

2 A I can't recall precisely, but I believe it
3 equals to 11 percent.

4 Q Now, there were different clinics and endoscopy
5 centers, correct?

6 A Correct.

7 Q Did that mean that you got 11 percent if that's
8 what it translated to for all the different clinics, the
9 endoscopy centers, the gastroenterology centers or was it just
10 one or two or three of those?

11 A No. That was just only for the Endoscopy Center
12 Two, which was the one located at Burnham Avenue.

13 Q Okay.

14 A So there were revenues proceeding from that
15 facility.

16 Q What about revenues that came from Shadow Lane
17 or from one of the gastroenterology centers?

18 A I was not entitled to that.

19 Q So just that one little slice; is that right?

20 A Correct.

21 THE COURT: In order to get revenues, did you have to
22 work a certain number of hours or certain amount?

23 THE WITNESS: No. The workload was distributed
24 pretty equally in terms of hospital assignments and number of
25 patients that we will see at the clinics. Periodically, on

1 the partners meeting we will have statistics presented in
2 terms of who's see what number of patients and what have you
3 to try to keep things even.

4 THE COURT: Who's doing what. Okay. Go on, Mr.
5 Staudaher.

6 BY MR. STAUDAHER:

7 Q Remember, I asked you a moment ago about if
8 Desai inserted himself just beyond the main things, down to
9 even something as -- well, as lower level, sort of
10 administration as a scheduling issue?

11 MS. STANISH: Objection.

12 THE COURT: I'm sorry, I --

13 MS. STANISH: I object, Your Honor. Basically
14 testifying again. Reading.

15 THE COURT: State your question.

16 MR. STAUDAHER: I'll rephrase it.

17 BY MR. STAUDAHER:

18 Q You said Dr. Desai was the managing partner,
19 made the big decisions, right?

20 A Correct.

21 Q I think I asked you if he made lesser decisions
22 as well.

23 A Correct.

24 Q How far down he inserted him into the management
25 of the practice.

1 A How far down would I --

2 Q How far down did he do it? I asked you about
3 scheduling and things like that and you said that he did.

4 A I think that he was pretty much involved with
5 all aspects, all the way down to scheduling.

6 MR. STAUDAHER: May I approach again, Your Honor?

7 THE COURT: You may.

8 BY MR. STAUDAHER:

9 Q I'm just going to show you three -- because
10 these relate to you. Take a look at those and see if you
11 remember not receiving them but any communication about such
12 items that are depicted there.

13 A Yeah, I do have some vague recollection of
14 seeing some of these documents.

15 Q Okay. Again, just for the record, we're looking
16 at 99, 100, 101 also admitted by stipulation. Can you tell us
17 what these refer to?

18 A Those are memos going back and forth between
19 Tonya Rushing and some of the local office managers regarding
20 preferences on the schedule, what times I preferred to see
21 patients or do patients and which facility at.

22 Q Just showing you 99 first. This actually
23 appears it's from Dr. Desai, managing partner, correct?

24 A Correct.

25 Q Does it discuss in the very first paragraph

1 something about you?

2 A Yes.

3 Q And what's the issue there? What's the --
4 what's going on?

5 A Basically, I have expressed that I wanted to do
6 my own patients and the days that I wanted to do them.

7 Q So he, at least, was involved at that level with
8 scheduling and working with physicians to adjust their
9 schedules?

10 A Correct.

11 Q Is it similar for the next one which also
12 appears to be -- and this is 101, which appears to be from,
13 also from Dr. Desai here?

14 A Yes.

15 Q And in this one, it looks like the very first
16 part is where it talks about you primarily; is that correct?

17 A Correct.

18 Q And what's that about? Same thing?

19 A This is the same. Basically, me requesting to
20 see patients at a particular facility.

21 Q And the last one it looks as though it's -- it's
22 about you again. It says per Dr. Desai. Do you see that?

23 A Correct.

24 Q And it's specifically talking about scheduling.
25 What's this about?

1 A This is basically an assignment of the times
2 that I will be doing cases or endoscopies.

3 Q It doesn't just talk about time, does it? It
4 talks about numbers.

5 A The numbers, uh-huh.

6 Q So when you will start through a certain period
7 and how many procedures you will do?

8 A Correct.

9 Q And then down here there's a handwritten
10 reference. And it looks like there's been communication with
11 you about this. Do you recall that?

12 A Yes.

13 Q What was that about?

14 A Basically, one of the local office managers
15 stating that I have requested for the Shadow Lane office to
16 know what my change in schedule were.

17 Q Does it appear as though you were communicated
18 with?

19 A Correct.

20 Q Do you recall that at all or something similar
21 to that?

22 A Vaguely.

23 Q Does it sound familiar?

24 A It sounds familiar.

25 Q Now, a couple of things. During procedures when

1 you -- and you did endoscopy procedures, correct, upper
2 endoscopies and colonoscopies?

3 A Yes.

4 Q During the procedures, how involved are you with
5 staff inside the room, CRNAs, nurses, GI techs?

6 A I can give you sort of like the routine.
7 Basically, walk in the room, greet the patient, confirm this
8 is the right patient and the procedure that we're doing. Then
9 I will direct the nurse anesthetist to initiate the induction.
10 And thereafter, my communication was mostly with the endoscopy
11 technician who's handing me equipment so I can complete the
12 procedure.

13 Once I finish the procedure I basically go to a
14 computer station to generate report of what I just did. So my
15 interaction will be with the nurse anesthetist asking to begin
16 the anesthesia and the technician in the room. Limited
17 interaction with the nursing staff or anybody else in the
18 room.

19 Q Were you aware that you were essentially the de
20 facto supervisor for the CRNA?

21 A Yes. There is such a thing as once you walk
22 into the operating room you're the captain of the ship. So
23 basically, everybody's your responsibility.

24 Q Did you feel as though -- I mean, were you aware
25 at least that you were a supervisor of the CRNAs' activities

1 other than just you being generally in charge when you walked
2 in the room?

3 A To an extent, yes. That is subject to
4 interpretation in my opinion.

5 Q Well, what is your interpretation of it at the
6 time anyway?

7 A We're basically asking them to initiate the
8 anesthesia. The actual process of how they dose the
9 medications or how do they use the vials and syringes, you
10 would expect these people to be trained for that procedure.
11 So you're not necessarily overlooking to every single step
12 that they take. My responsibility, my main responsibility
13 during a procedure is the patient's life in front of me. I
14 need to be attentive and paying attention to what's happening
15 during the procedure with that patient.

16 Q Did you ever start procedures on patients before
17 anesthetic was on board?

18 A No.

19 Q Did you ever direct the anesthetist to not give
20 additional medication if the patient started to wake up before
21 you were done?

22 A No.

23 Q Do you think that would be appropriate to do?

24 A No.

25 Q As far as your direct involvement with the CRNA,

1 and you know who I'm talking about, the person who does the
2 anesthetic, correct?

3 A Yes.

4 Q Did you ever direct their activities in any way
5 when you were in the room other than to say go ahead and put
6 them to sleep?

7 A No.

8 Q Did you feel comfortable jumping around the
9 screen, so to speak, and doing that particular work?

10 A No.

11 Q Have you ever been trained in anesthesia or
12 anesthetic practice in any way?

13 A We're trained on conscious sedation, but not
14 specifically with the type of anesthesia that CRNAs do.

15 Q And this is not conscious sedation what these
16 people are going through. They're actually unconscious at
17 some point.

18 A It's deep sedation is the actual term that we
19 use.

20 Q Now, related to that, did you ever at any point
21 order anybody to minimize the use of supplies or re-use
22 supplies, anything like that?

23 A No.

24 Q I'm talking -- when I say supplies, I'm talking
25 about anything from the drug propofol to an alcohol pad, four

1 by four, K-Y Jelly, anything like that.

2 A No.

3 Q Were you aware, did you have any knowledge of
4 any orders out there in the practice to economize supplies?

5 A Yes. There will be times that we'll talk about
6 how to make the practice more efficient, more effective. It
7 is a business, so part of the business is looking at how we
8 spend the money for the practice.

9 Q So are these at the partner meetings?

10 A Yes.

11 Q Who ran the partner meetings?

12 A Dr. Desai.

13 Q Would it be suggested, agreed to, voted on as to
14 how this was supposed to take place?

15 A There is no process. Like I said, there is no
16 voting. The recommendations would be presented by Dr. Desai
17 and, of course, if somebody had a problem with it or if there
18 was any objections, that person will voice it.

19 Q How did the dynamic go? Were you ever present
20 when anybody stood up to him and said no, we're not doing
21 that, I'm not going to be party to any of that?

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

23 THE COURT: Overruled.

24 MR. STAUDAHER: It doesn't suggest the answer.

25 THE COURT: I said overruled, Mr. Staudaher.

1 MR. STAUDAHER: Sorry, Your Honor.

2 THE COURT: You can answer.

3 THE WITNESS: Can you please rephrase it or state it
4 again?

5 BY MR. STAUDAHER:

6 Q When you were in the meetings, did anybody ever
7 stand up to Dr. Desai about anything he was saying he wanted
8 to have done in the practice?

9 A Sure.

10 Q Okay. How did that go?

11 A I have personally done it a couple of times.
12 There would be situations in which I do recall there was one
13 manufacturer that was suggesting that we could re-use snares
14 or biopsy devices for polypectomies. And I had voiced that I
15 was uncomfortable with that, that I would like to see the
16 literature and that I wasn't going to do it.

17 Q What was his response?

18 A I can't recall the exact response, but basically
19 he will respect my opinion and I will look into it.

20 Q Okay. So that's you. Are there other doctors
21 around at this same time?

22 A Sure.

23 Q So he's told you what he wants you to do, you
24 say I'm not doing it until I do more work.

25 A Correct.

1 Q Anybody else say anything?

2 A It will be others agreeing to that opinion, yes.

3 Q Did he say okay, let's table this and not
4 introduce any -- do it until we have a better consensus or
5 something along those lines?

6 A Yeah. Don't recall the exact verbiage on the
7 conversation, but if there is objections to a particular
8 procedure, he will recant and will be subject to further
9 discussion.

10 Q What about propofol?

11 A What about it?

12 Q Was there any discussion about economizing
13 propofol use?

14 A There have been discussions in regards to the
15 way that the propofol was supplied. Some of the manufacturer
16 companies basically allowing for larger vials so you can
17 actually use it on multiple patients. And also discussions in
18 terms of how would be that accomplished safely without
19 jeopardizing the patient care.

20 Q So this is an actual discussion that's going on
21 with Dr. Desai and the other doctors?

22 A Yes, it have. I can't remember the exact
23 meeting, but I remember that when the first review from the
24 health district came through, we talked about the fact that
25 they have recommended we needed to stop purchasing those large

1 vials and go to single-dose vials because of the risk of
2 cross-contamination. And the arguing came upon that yes,
3 there is a risk but there is a very legitimate safe way to use
4 these large vials on multiple patients.

5 Q So let's -- I want to go back before the health
6 district gets involved and ask you about that. So was there a
7 discussion before the health district came in about using
8 larger vials in a multiple patient setting?

9 A Yes.

10 Q Describe for me what the discussion was at the
11 time about that. And you mentioned also on how that would be
12 implemented. So tell me about that as well.

13 A Right. You could, again, the discussion was in
14 the sense that it will save money when you actually have a
15 large vial as opposed to multiple single vials. It also save
16 resources. And the conversation was in the sense of how can
17 that be accomplished safely and we all know from medical
18 school that that can be done. Basically, if you have a large
19 vial, as long as you withdraw from that vial with a new set of
20 needles and syringes, that vial will never be contaminated or
21 cross-contaminated. But it always has to be used with a new
22 syringe and needle. So long as that was the policy and the
23 procedures followed, we were comfortable with that.

24 Q So who's coming up with this in the meeting?
25 Where did this come from?

1 A I can't recall the details of that particular
2 meeting on who actually came up with it.

3 Q Were there any written policies, to your
4 knowledge, to that regard?

5 A There was written policies, yes.

6 Q And the written policies said what, exactly?

7 A I do not recall.

8 Q Is it essentially what you talked about, that if
9 you have a larger vial you're going to use it in a multiple
10 patient setting that you can only enter it with a clean,
11 unused syringe and needle?

12 A Correct.

13 Q To withdraw the medication?

14 A Yes.

15 Q Was there any discussion about, you know, it's
16 okay to just change the needle out. If you take it out -- and
17 here's the scenario. Clean needle syringe going into the
18 propofol bottle, putting that needle syringe into a patient
19 through the hep-lock, administering medication through that
20 hep-lock, administering medication, then taking that syringe
21 which has been in contact with the patient, and either
22 directly going back into the bottle or removing the needle,
23 putting on a new needle on the same syringe and going back
24 into the bottle?

25 A No, that would be asking for trouble.

1 Q Why?

2 A Subject to human error. You may not be paying
3 attention how the needle was taken off from the syringe and
4 end up inserting a syringe and it's actually contaminated into
5 the vial and using it in another patient.

6 Q Now, propofol itself, is that a long,
7 short-acting agent?

8 A A short-acting agent.

9 Q During a procedure, typical procedure, would
10 there -- with you being there, you seeing this take place,
11 would it be required that a patient undergo multiple doses
12 throughout the procedure?

13 A Yes.

14 Q Would there be the requirement to go -- you know
15 the syringes where these 10 cc syringes, correct?

16 A Correct.

17 Q Would it be required that more than one syringe
18 be used on a patient?

19 A Yes.

20 Q How many syringes in your estimate, based on
21 your own personal experience, would be used on a patient or
22 would necessarily need to be used?

23 A Probably average about four.

24 Q So four different syringes per patient is what
25 we're talking about?

1 A Correct.

2 Q If you were going to do it in the way you
3 described?

4 A I'm sorry, I take that back. That will be in a
5 colonoscopy which takes longer. For an endoscopy it would
6 probably be less than that, maybe one or two at the most.

7 Q Fair enough. And what was the length of
8 procedure time that we're talking about?

9 A It depends on the procedure, but endoscopy can
10 be anywhere from two to five minutes. And a colonoscopy can
11 last anywhere from 10 minutes to half hour.

12 Q Okay. On average, though, how long do the
13 colonoscopies last?

14 A About 10 minutes.

15 Q So the half hour was kind of an outlier then as
16 far as time?

17 A Yes.

18 Q Do you recall interviewing with the police at
19 some point?

20 A Yes.

21 Q Do you recall when I asked you about where this
22 came from about economizing propofol and do you recall talking
23 to them and telling them who you thought told you about this?

24 A Yes.

25 Q Who was it?

1 A Who was the --

2 Q Person who told you about this economizing of
3 propofol.

4 A At the time it could have been from Clifford
5 Carrol, could have been from one of the nurse managers in the
6 facility. I can't recall exactly who would have initiated
7 that conversation.

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

9 THE COURT: You may.

10 MR. STAUDAHER: And Page 29 for counsel.

11 BY MR. STAUDAHER:

12 Q You can read as much before and after for
13 context as you can. Go ahead and read this section and tell
14 me if that refreshes your memory.

15 A Are you talking about the one that is in
16 asterisk or the whole page?

17 Q Just read as much of that as you need to to
18 refresh your memory. I'm going to ask you about 32, so you
19 might as well just look at that as well.

20 A Page 32? Okay.

21 Q Does that refresh your memory on who was the one
22 who directed you about the use of propofol?

23 A Yes.

24 Q Who was it?

25 A Dr. Desai.

1 Q You didn't mention anybody else, you mentioned
2 Dr. Desai, correct?

3 A Correct.

4 Q And also, with regard to questions that were
5 asked of you about who made the decisions, who did you say
6 made all of the decisions and created all of the policies?

7 A Dr. Desai.

8 Q One last thing related to that was Dr. Desai,
9 you remember in that discussion saying that Dr. Desai was the
10 one who decided he was going to buy multiple-use vials of
11 propofol?

12 A Correct.

13 Q Basically told you that that's the way it was
14 going to be.

15 A Right.

16 Q Now, I asked you before, I gave you the scenario
17 of how, you know, re-use of the propofol, if you had one
18 syringe, let's just say and you were going back into the
19 bottle with that same patient, would you ever see a legitimate
20 or even a possible way of using that bottle then on a new
21 patient?

22 A No. I would discourage that.

23 Q And why?

24 A Because of the risk of cross-contamination.

25 Q Did anybody ever discuss that in any of these

1 meetings with Dr. Desai about well, you know, you've got to
2 make sure that it's clean needle, clean syringe every single
3 time if you're going to use it for the next patient?

4 A Yes, we have.

5 Q And during that discussion, was there discussion
6 about the risk that might be involved if, in fact, you didn't
7 follow that procedure?

8 A Yes.

9 Q Was everybody speaking English at the time? Did
10 anybody not understand that?

11 A Everybody was speaking in English and I think
12 everybody understood.

13 Q If you were aware that a patient came in that
14 had Hepatitis C, Hepatitis B, HIV, some communicable disease,
15 a patient you're going to do a procedure on, do you treat
16 those patients any differently?

17 A No.

18 Q Do you take any extra precautions?

19 A No.

20 Q Is there any issue about when they get
21 scheduled? If you have a Hepatitis C or HIV positive patient
22 and you schedule them at the beginning, middle or end of the
23 schedule, does it matter?

24 A No.

25 Q And why not?

1 A If you follow standard procedures, all the
2 patients are treated the same way, there's no risk of
3 cross-contamination, hence, everything will be safe.

4 Q Okay. Are there breaches?

5 A Are there breaches?

6 Q Breaches in -- what are those procedures, those
7 standard procedures called?

8 A I'm not sure that I understand the question.

9 Q Have you ever heard the term universal safety
10 precautions?

11 A Yes.

12 Q Is that what we're talking about?

13 A Yes.

14 Q So if you follow those there should be no
15 problem?

16 A Right.

17 Q Do the universal safety precautions ever
18 contemplate the scenario I gave you before of re-use of say a
19 bottle of propofol on one patient and then that bottle going
20 and being used on another patient?

21 A Not that I'm aware of.

22 Q Would that alarm you if someone, a CRNA did that
23 on a patient that you were dealing with?

24 A Yes.

25 Q Now, with regard to the universal safety

1 precautions, going back to what I asked you about, are there
2 sometimes breakdowns in how patients are handled or how things
3 are taken care?

4 A Not that I'm aware of.

5 Q There's never a time when there's a breakdown on
6 that?

7 A Not that I'm aware of.

8 Q Okay. What about the re-use of other items
9 besides propofol? You mentioned snares. You said you
10 wouldn't do that.

11 A Right.

12 Q What about biopsy forceps, were those okay to be
13 reused?

14 A No.

15 Q What about bite blocks?

16 A Yes.

17 Q Okay. Tell me about that.

18 A There's a safe way to use these blocks in
19 multiple patients. In fact, the manufacturer expects the bite
20 locks to be used in multiple patients. As long as you follow
21 a very strict process for cleaning them between patients,
22 which is the same process that the scopes go through, it will
23 be safe and without risk of cross-contamination.

24 Q Okay. Are you saying that you think it's okay
25 to take a scope that's been in somebody's bottom, put it in

1 the same, put the bite block in sort of the same cleaning
2 process as that scope?

3 A That is correct.

4 Q Okay. And you think that the bite blocks
5 themselves are labeled or the manufacturers are okay with that
6 happening?

7 A Yes.

8 Q Any discussion on how much those things actually
9 cost?

10 A No.

11 Q Do you know?

12 A I do not know.

13 Q And you think they're reusable?

14 A Yes.

15 Q Any other things like that that you think are
16 reusable, besides the bite blocks. You said snares and biopsy
17 forceps, no, correct?

18 A Correct.

19 Q Anything else besides the scopes, obviously.
20 You process those.

21 A That's it.

22 Q What about -- you know there's a -- when you do
23 the procedures there is a large 60 cc syringe that gets used.

24 A Correct.

25 Q Have you ever known a plastic type syringe t be

1 multiple use syringe?

2 A No.

3 Q Is it pretty clear, universally, that those are
4 just disposable?

5 A Correct.

6 Q Would you ever think that it was reasonable to
7 reuse that large irrigation syringe on a new patient?

8 A Absolutely not.

9 Q What about the basin and the bowl that they pull
10 the fluids out and gets irrigated into it?

11 A No.

12 Q And that contains, at least at some point, even
13 with a patient that has good, a good prep, some fecal material
14 gets on and in those types of things.

15 A It could.

16 Q To your knowledge, did you know that any kind of
17 reuse was going on with that item?

18 A Not that I'm aware of or that I was aware of.

19 Q At the end of a procedure for you, how do you
20 withdraw the scope? Regardless of how long it takes you, when
21 you get to the end, how do you take it out?

22 A The actual withdrawal process is where you do
23 most of the inspections. So you very gently and carefully
24 remove the scope from the patient's body.

25 Q Do you ever just yank it out?

1 A No.

2 Q Why not?

3 A Again, that's the most important part of the
4 procedure, the actual withdrawal time in which you're looking
5 for any abnormalities through the colon. So there's
6 absolutely no reason to just pull it out. Besides the fact
7 that by yanking it out, as you said, you can actually harm the
8 patient.

9 Q So that would put the patient at risk?

10 A Sure.

11 Q When you do the procedures, you said that you
12 really look, the withdrawal time is the most important?

13 A Correct.

14 Q Do you ever use anything like air to blow up the
15 colon a little bit so you can see better?

16 A Yes.

17 Q And we talked about irrigation. Do you also
18 irrigate?

19 A Yes.

20 Q At the end of the procedure or as you're
21 withdrawing, what do you do about all that air and that fluid
22 that's inside the colon?

23 A Once you get to the rectum, you try to withdraw
24 as much air as you can to allow for the patient to become more
25 comfortable.

1 Q So if you just yank the scope out for want of a
2 better word and left all that in there, what would be the
3 result?

4 A The patient will be uncomfortable when they wake
5 up.

6 Q And about how much fluid would you introduce
7 into the colon during a procedure like that, on withdrawal?

8 A It varies. It can be none to probably a liter
9 or more.

10 Q So it could be a fair amount of fluid?

11 A Substantial.

12 Q The air itself, would that just cause the
13 patient to have discomfort?

14 A Correct.

15 Q How long would that typically last? If you
16 didn't take any of it out and just took the scope out, didn't
17 suck out all the air, suck out all the fluid and the like?

18 A It varies, but once the anesthesia wear and
19 they're able to pass the gas on their own, that discomfort
20 should subside.

21 Q Would that be at least a period of time then?

22 A Anywhere from two to five minutes, perhaps.

23 Q So you think that that would happen before they
24 left the facility?

25 A Correct.

1 Q Did you ever feel at any time during the course
2 -- and you worked primarily where again, at Burnham?

3 A My main office was in Horizon Ridge and the
4 procedures I did at the Burnham facility.

5 Q Did you ever do endoscopies at the Shadow Lane
6 facility?

7 A I have.

8 Q Was there any difference in your experience at
9 the Shadow Lane facility versus the Burnham facility as far as
10 patient numbers, the way things were done, the atmosphere,
11 that kind of thing?

12 A I don't have a good way to compare it. I worked
13 out of the Shadow Lane facility when I first came into town in
14 '98 to 2000, perhaps. It was a smaller facility. It was just
15 one endoscopy room. At the time, the Burnham facility wasn't
16 available.

17 Q But the times that you did work at Shadow Lane,
18 was there any difference?

19 A In terms of?

20 Q Just well, the speed of the procedures, the
21 number of procedures and so forth, compared to when you worked
22 at Burnham?

23 A Everybody had their own speeds so I will take my
24 time, do my procedure and move on. Other individuals might be
25 faster than me.

1 Q Did you ever hear any grumbling about how things
2 were at Shadow Lane versus --

3 A Yes.

4 MS. STANISH: Objection. Hearsay.

5 MR. STAUDAHER: I'm just asking -- not asking what
6 was said, Your Honor.

7 THE COURT: He just said yes.

8 BY MR. STAUDAHER:

9 Q So you did hear issues?

10 A Yes.

11 THE COURT: That may be hearsay, depending on what he
12 heard and who he heard it from.

13 BY MR. STAUDAHER:

14 Q Did you ever confront Desai about anything like
15 that, anything you heard?

16 A No. We didn't really have a, I would say, a
17 personal relationship to confront about these things. It will
18 be brought up in partners meetings. If there was some
19 concerns, that would be the time to voice them.

20 Q Well, did it happen? I mean, he's there at the
21 partners meeting, correct?

22 A Yes.

23 Q Concerns about what we just discussed come up?

24 A Yes.

25 Q And I'm talking about differences or things that

1 are happening at Shadow Lane.

2 A Yes.

3 Q Since he's there, what kinds of things came up
4 at the partners meetings regarding that?

5 A The volume of the patient load. It was
6 considered excessive by most of the staff and there was a lot
7 of rumbling, complaints by the staff about the pace of the
8 procedures and the pace of the day.

9 Q So Desai got confronted with that?

10 A Yes.

11 Q And what was his response?

12 A I do not recall.

13 Q Were you surprised at his response?

14 A Do not recall.

15 MR. STAUDAHER: Nothing further, Your Honor.

16 THE COURT: All right. Cross.

17 MS. STANISH: Your Honor, may we approach?

18 THE COURT: Sure.

19 (Off-record bench conference.)

20 THE COURT: All right, Mr. Santacroce, why don't you
21 begin your cross-examination.

22 CROSS-EXAMINATION

23 BY MR. SANTACROCE:

24 Q Good afternoon, Dr. Herrero.

25 A Good afternoon.

1 Q I'm Frederick Santacroce. I represent Ron
2 Lakeman. Do you know Mr. Lakeman?
3 A I do.
4 Q How do you know him?
5 A He was one of the nurse anesthetists working for
6 the endoscopy centers at a time.
7 Q Have you performed procedures with him?
8 A Probably have.
9 Q At which center?
10 A Probably at the Burnham facility.
11 Q Do you recall, have an independent recollection
12 of working with him?
13 A Vaguely. Ron was mostly at the Shadow Lane
14 facility, so I don't recall working with him with any
15 frequency.
16 Q But you had opportunity to observe his
17 procedures and practices?
18 A Sure.
19 Q Did his procedures and practices comport with
20 reasonably medically safe practices?
21 A Of course.
22 Q Yes?
23 A Yes.
24 Q You came to Las Vegas in 1998, correct?
25 A Correct.

1 Q And you became part of gastroenterology clinic.

2 Did you obtain a partnership at that time, in 1998?

3 A No.

4 Q So you went to work for a salary?

5 A Correct.

6 Q And then when did you first get your partnership
7 interest?

8 A Three years after being part of the practice.

9 Q Is that the check we saw for 45,000?

10 A Is your question --

11 Q I'm sorry. Was that the check we saw for 45,000
12 that you had written, did that purchase those share?

13 A No, sir, that's for something different.

14 Q What was that for?

15 A That's for the shares at the Endoscopy Center
16 Two.

17 Q Okay. Did you obtain interest -- tell me,
18 what's Endoscopy Center Two?

19 A There was two endoscopy facilities, one on
20 Shadow Lane, one on Burnham Avenue. And the Endoscopy Center
21 Two was the one on Burnham.

22 Q Did you ever have any interest in the Shadow
23 Lane center?

24 A Yes, I did.

25 Q When was that?

1 A Don't recall specifically the dates, but
2 probably in the mid 2000s.

3 Q You purchased shares in that?

4 A Yes.

5 Q And how much did you pay for those shares?

6 A I do not recall.

7 Q Did you eventually sell those shares?

8 A I was asked to sell them.

9 Q Do you recall how much you got for those shares?

10 A Do not recall.

11 Q I'm going to show you this State's Exhibit 97
12 again. Do you remember testifying regarding the hierarchy of
13 the partnership structure? Do you recall that testimony?

14 A Yes.

15 Q The managing partner was Dipak Desai and under
16 him were staff physicians and partnership physicians. What's
17 the distinction between partnership physicians and staff
18 physicians?

19 A Staff physicians are basically employees. They
20 get a base salary. And the partnership physicians are the
21 ones that share the net income of the practice.

22 Q And you were in the partnership physicians
23 category?

24 A From 2001 on.

25 Q Until it closed in '08.

1 A Right.

2 Q And what was your responsibility as a
3 partnership physician?

4 A Patient care on a daily basis, taking care of
5 patients in the offices, at the endoscopy centers and in the
6 hospitals.

7 Q And you see under partnership physicians, the
8 chief operating officer falls, Tonya Rushing, correct?

9 A Yes.

10 Q And I guess she is under both staff physicians
11 and partnership physicians, correct?

12 A Yes.

13 Q Did you have any interaction with Ms. Rushing?

14 A Yes.

15 Q What -- can you tell me the nature of that?

16 A She will be the person that we will go to
17 whenever we had issues, concerns or suggestions about the
18 operations of our individual practices.

19 Q Can you give me some specific examples, what
20 would that be?

21 A Whenever we needed new staff, medical assistance
22 to room patients, we needed a blood pressure cuff at a
23 facility, we needed new pans or pads or whatever we needed for
24 the facilities to work.

25 Q Would she be the one that would do the hiring of

1 extra staff, if needed?

2 A At the offices, yes. I'm not too sure that she
3 was in charge of the endoscopy centers.

4 Q And she would be in charge of both number two
5 and Shadow Lane, correct?

6 A Right.

7 Q And in Henderson?

8 A Yes.

9 Q Who would hire the CRNAs, do you know?

10 A I don't know for sure.

11 Q You were never involved in the hiring of any
12 CRNAs?

13 A I was not.

14 Q Were you involved in any of the hiring
15 practices?

16 A Never.

17 Q You talked about being captain of the ship.
18 What does that mean, being captain of the ship?

19 A For billing purposes, particularly through
20 federal government and Medicare, in order to bill for a
21 procedure there has to be a physician responsible for that
22 patient. There has to be a diagnostic code associated to the
23 actual procedure. Hence, that physician is in the documents
24 in charge of everything that happens in the operating room.
25 Again, for billing purposes.

1 Q So you would be essentially responsible for all
2 the billing that went on in that procedure room for that
3 procedure?

4 A No.

5 Q Okay. Where am I mistaken?

6 A The billing actually takes place after the
7 procedure is completed. All we do is provide codes. It goes
8 to the billers and then the billers take care of the billing.

9 Q And you would provide a code for your services?

10 A Correct.

11 Q And for the anesthesia services?

12 A No.

13 Q Who would do that?

14 A I do not know.

15 Q Would the billings appear on both of the same
16 billing sheet?

17 A No. When we actually finished the procedure,
18 the procedure actually generates what is called the CPT code.
19 Only refers to the fact that I did a colonoscopy or an
20 endoscopy. Doesn't have anything to do with anesthesia.

21 Q And is that computer generated?

22 A Right.

23 Q You talked about an anesthesia fund, a CRA fund;
24 is that correct?

25 A I didn't talk about it. He mentioned it.

1 Q Okay. You answered a question about it, right?

2 A Right.

3 Q All right. He mentioned it, you answered the

4 question. There was a CRNA fund, correct?

5 A Correct.

6 Q And that CRNA fund was actually the proceeds

7 received from the anesthesia billing system; is that correct?

8 A Right.

9 Q And that CRNA fund was distributed monthly,

10 correct?

11 A I do not recall. I think it was less than

12 monthly. Perhaps every two to three months.

13 Q Okay. That CRNA fund was never distributed to

14 the CRNAs, was it?

15 A Not that I'm aware of.

16 Q It was distributed to the physicians, correct?

17 A Not directly.

18 Q Okay. Tell me the indirect path that it took.

19 A We, at least I wasn't aware of how these funds

20 will get distributed. I'm not a businessman, I don't care for

21 business. But the only thing that we would see is a check or

22 a distribution that includes whatever collection they have

23 from the anesthesia, reimbursements and from the facility fees

24 and from the professional fees. So basically, it's a global

25 total that gets divided among the partners at the end of the

1 two months or three months period.

2 Q Okay. So that fund, the anesthesia fund, all
3 the money collected for the anesthesia, would be part of that
4 global sort of fund, correct?

5 A Correct.

6 Q And it would be made up of three facets?

7 A Correct.

8 Q CRNA fund.

9 A Facility fee and professional fee.

10 Q And what is professional fee?

11 A That's my part of the procedure. That's me
12 performing the procedure.

13 Q So all of you doctors would pool that money and
14 divide it?

15 A Correct.

16 Q So the money, all those monies from those
17 different entities, what the physician were, what the
18 anesthesia was charged and facility fees, all put into a big
19 pot and distributed pro rata based on your shares, correct?

20 A Correct.

21 Q And can you give me an idea of what you made in
22 let's say 2007 out of that?

23 A Do not recall.

24 Q Would it be over a million dollars?

25 A No.

1 Q Over 500,000?

2 A No.

3 Q How much?

4 A Probably less than a hundred.

5 Q Okay. So is it your testimony that you received
6 only \$100,000 for 2007, the work you performed at the
7 endoscopy center?

8 A I do not recall the exact number, but it was
9 probably somewhere around that number.

10 Q Are you aware of what the other doctors
11 received?

12 A We did not encourage that type of conversation.

13 Q That wasn't what I asked you. I said are you
14 aware --

15 A I'm not aware.

16 Q Okay. Would it surprise you to know that, for
17 example, Clifford Carrol possibly made near almost two million
18 dollars?

19 A That won't surprise me.

20 Q Would it surprise you that possibly Eladio
21 Carrera made over a million dollars?

22 A That won't surprise me.

23 Q I want to go back to the responsibility that you
24 have as a physician in the procedure room. You're basically
25 in charge of that procedure room, correct?

1 A Correct.

2 Q There's a doctor, there's a CRNA, there's a tech
3 and there's a nurse, correct?

4 A Correct.

5 Q You have an opportunity to watch all of these
6 people work?

7 A Sure.

8 Q If there was some gross negligence you would
9 call them on it?

10 A Absolutely.

11 Q For example, if the tech gave you a dirty scope,
12 you'd call him on it?

13 A Absolutely.

14 Q If the CRNA employed unsafe practices you would
15 call him on it?

16 A Absolutely.

17 Q If the nurse did something that was against what
18 you know to be medically safe, you would call them on it?

19 A Yes.

20 Q And the buck stops with you, I guess, doesn't
21 it?

22 A Sort of, yes.

23 Q Now, on these particular incident dates on July
24 25th, 2007 and September 21st, 2007, you weren't involved in
25 any of the procedures at the clinic, correct?

1 A No.

2 Q Therefore, I guess you weren't charged
3 criminally with anything, correct?

4 A No.

5 Q Were you aware of any improper billing practices
6 at the clinic?

7 A No.

8 Q You would agree, however, that you did receive
9 money from these billing practices, correct?

10 A Yes.

11 Q You weren't charged in any way with any kind of
12 fraud to insurance companies, were you?

13 A No.

14 Q You weren't charged in any way with any kind of
15 theft from insurance companies, were you?

16 A No.

17 Q You didn't lose your medical license over this,
18 did you?

19 A No.

20 Q Still practicing?

21 A Yes.

22 Q Where are you practicing?

23 A Henderson.

24 Q In another type of clinic setting?

25 A I have my own office.

1 Q So you perform colonoscopies and endoscopies
2 where, at hospitals?

3 A Hospitals and a surgical center.

4 THE COURT: Do you have any physician partners now or
5 is it just you?

6 THE WITNESS: I do. One.

7 THE COURT: So you're in a group or there's one
8 other.

9 MR. SANTACROCE: Court's indulgence.

10 BY MR. SANTACROCE:

11 Q You testified as to the procedures when you --
12 let me ask you what the procedure was when you actually went
13 into a procedure room. Was the patient there waiting for you?

14 A Yes.

15 Q Did you see the patient prior to entering the
16 procedure room?

17 A Yes.

18 Q Did you do a history and a physical on the
19 patient?

20 A A quick assessment prior to it, yes.

21 Q Tell me what a quick assessment is.

22 A Ask them a few questions and confirm the reason
23 why they're there for.

24 Q And what questions would you ask?

25 A What's the reason why they're there, what kind

1 of symptoms we're addressing, do they have any questions about
2 the procedure itself.

3 Q Would you fill out a form for that?

4 A Yes.

5 Q And that would be part of the patient's file?

6 A Correct.

7 Q Would you sign that form?

8 A Yes.

9 Q And then, what happens after that?

10 A I ask the anesthesiologist to begin induction
11 and I start my procedure.

12 Q So in your experience and practice, which
13 includes working with Mr. Lakeman, correct, you would also
14 instruct the anesthetist, the CRNA to induce the patient,
15 correct?

16 A Correct.

17 Q The anesthetist wouldn't do that prior to you
18 coming into the room, would they?

19 A No.

20 Q You mentioned that being a partner in the
21 business it was a business, correct?

22 A Right.

23 Q And as any good business, you would have
24 discussions about cost saving measures, correct?

25 A Yes.