

1 Q So they would just stand there or sit there or
2 what?

3 A They always came out in beds from the procedure
4 room.

5 Q I'm talking about when there was too many people
6 -- meaning that people were in the beds recovering --

7 A Uh-huh.

8 Q -- you're trying to get people to go back into
9 the rooms, would you ever bring anybody back -- maybe that's a
10 better question. Would you ever bring anybody back until
11 there was a slot left open?

12 A From the waiting area?

13 Q From the waiting area.

14 A Yes, sir. If they were brought back it was
15 always directly to that back room there and there's a couple
16 of chairs. Usually they were full, so.

17 Q During the time you worked there, in this area
18 or the back room area or the -- not the waiting room, you said
19 that was pretty full, did this area ever get pretty crowded
20 with people?

21 A Yes, sir.

22 Q Was that a regular occurrence?

23 A Yes, sir.

24 Q Would it be hard -- was it difficult in any way
25 to maneuver around all these people that were there?

1 A At times.

2 Q Now, what did you -- besides moving patients
3 from, you know, the waiting room to -- to this area, into the
4 procedure rooms and back out, was there anything else you did
5 in that area?

6 A Checked for supplies to make sure that they were
7 always well stocked, clean up the trash bags if they were full
8 and that's the bulk of my -- my time, sir.

9 Q Okay. And you said that you then at one point
10 did work in the procedure rooms too?

11 A Yes, sir.

12 Q So when you worked in the procedure rooms, tell
13 us what you did there, what was your job?

14 A My job was to assist the doctors with their
15 procedures.

16 Q Did you ever assist Dr. Desai?

17 A A few times.

18 Q Do you see him in court today?

19 A Yes, sir.

20 Q Can you point to him and describe something he's
21 wearing for the record, please?

22 A It's the gentlemen over there with the dark suit
23 and glasses.

24 MR. STAUDAHER: The record reflect the identity of
25 Dr. Desai.

1 THE COURT: It will.

2 BY MR. STAUDAHER:

3 Q Back in the rooms, whether you were with Desai
4 or somebody else, what kinds of things would you do back
5 there?

6 A Before a procedure it was just to make sure that
7 my -- my workstation was set up and ready to go. Get the
8 scope hooked up to the machine and have everything set for the
9 doctor before he came in.

10 Q Did you help with the procedures?

11 A In what way, sir?

12 Q Well, did you assist the doctor in doing the
13 procedure at all?

14 A Whenever he needed something, yes, sir.

15 Q Would you hand them the scopes or deal with the
16 scopes, anything like that?

17 A Yes, sir.

18 Q So that's -- that's what I meant by assisting.

19 A Yes.

20 Q So let's leave that room for a moment. And you
21 said there was a third place that you worked while you were
22 there?

23 A Yes, sir.

24 Q Where was that?

25 A The scope room.

1 Q What was your job in the scope room?

2 A To clean the scopes.

3 Q When you say clean the scopes, did you have any
4 special training before you came to work at the facility on
5 how to do that?

6 A Not prior, no.

7 Q So who trained you or how were you trained to do
8 that work?

9 A I can't remember her name. I think something
10 like Shawna or something. But at first it was just
11 observation, just watching, going through the steps until I
12 felt comfortable to do it on my own.

13 Q Okay. I'm going to show you some -- some
14 pictures of that too. This is 125. I'll ask you if this
15 looks familiar to you?

16 A Yes, sir.

17 Q What are we looking at there?

18 A The Medivators and I believe the -- the sterile
19 section of the room.

20 Q Okay. The Medivators are where?

21 A This one right here and this one right here.

22 Q So these -- these devices up here?

23 A Yes, sir.

24 Q And for the record, this is the right-hand side
25 middle of the picture. And also going to 126, I think we're

1 just moving around the room visually. You see the other side
2 of the room now?

3 A Yes, sir.

4 Q Now there's some blue buckets over here on the
5 right hand side of this picture, 126. What are those?

6 A Those are where we placed the scopes to be
7 washed.

8 Q So when the scopes are done, how would you get
9 the scopes? Would you have to go into the room, would
10 somebody bring them in to you? How did that go?

11 A To get a dirty scope or a clean scope, sir?

12 Q If you're in the room working and cleaning --

13 A Yes, sir.

14 Q -- procedure rooms being -- a person's --
15 patient's getting a procedure, at the end of that procedure
16 the scope's done?

17 A Yes, sir.

18 Q It's been used. What -- how does that scope get
19 to you?

20 A This room is in between the two procedure rooms
21 so when the scope was done they would come inside.

22 Q So the tech -- if you were the tech working as
23 the assistant, would you be the one to bring it in?

24 A Yes, sir.

25 Q So you would never have to leave this room to go

1 into one of those rooms to get a scope then?

2 A No, sir.

3 Q So you -- is it -- is it fair to say that you
4 were basically in this room to just clean scopes when you were
5 doing that job?

6 A Yes, sir.

7 Q So the scope comes in and you would place it in
8 one of these buckets?

9 A Yes, sir.

10 Q And in 127, a different perspective of the room,
11 we get a little bit of a different angle or -- or perspective
12 of the bucket itself; is that fair?

13 A Yes, sir.

14 Q Now, when the scopes came in to this room, what
15 would you do with them?

16 A As soon as they came in, the two buckets were
17 placed side by side, next to each other. They were placed in
18 to the first bucket, which was filled with water and cleaning
19 solution. My first -- can I walk you through the procedure of
20 how I cleaned --

21 Q Yeah.

22 A Okay. And what I would do is remove the knobs
23 that were on the handle of the scope. I would take a blue
24 sponge that had soap on it, wipe down the outside of the scope
25 as best as possible. After I was done I would I would then

1 take a caterpillar and snake it through the three ports to
2 clean out anything inside the scope. After that was done I
3 would hook it up to the -- it's not seen here but there's a
4 little machine that would run air through it to -- to flush it
5 out.

6 Q And when you said little machine, are we -- are
7 we talking about something different then the Medivator?

8 A Yes, sir.

9 Q Okay. I want to go back and ask you about one
10 thing and I have to zoom in and then I'll zoom back out so I
11 apologize if it makes anybody sick. Can you see those
12 cabinets?

13 A Yes, sir.

14 Q Do you see those things in the cabinets?

15 A Yes, sir.

16 Q What are those?

17 A I believe those are the blue sponges that we
18 used.

19 Q So they look all like a circular tube and they
20 -- I know if I bring it up to you you might be able to see it
21 a little closer, but did the scope go in the middle of those
22 and you used those to clean the scope?

23 A That's how I would do it, yes, sir.

24 Q Okay. And what would happen to those after you
25 were done?

1 A I would throw them away.

2 Q Now, I'll back out, I'm sorry about this.

3 THE COURT: So you used one sponge for each scope?

4 THE WITNESS: Yes, ma'am.

5 BY MR. STAUDAHER:

6 Q Ever see anybody use those, re-use those?

7 A Not to my knowledge, no, sir.

8 Q Did you ever re-use them?

9 A No.

10 Q Do you know what I mean by re-use, right?

11 A More than one time, yes, sir.

12 Q Okay. Now, the buckets themselves, these two
13 buckets you said would be side by side while you're working --

14 A Yes, sir.

15 Q -- one containing a solution that was a
16 disinfectant of some nature?

17 A Yes, sir.

18 Q Do you know what that was?

19 A Not the specific name, but I know it -- it
20 contained cleaning solution.

21 Q What was -- was the other bucket empty?

22 A No, it had fresh water in it.

23 Q Just water?

24 A Yes, sir.

25 Q Now, how many times -- how many scopes could you

1 put in the bucket at any one time?

2 A I always tried to do one scope at a time but for
3 -- there were some instances when there would be two scopes at
4 a time.

5 Q And so you might have two scopes at a time but
6 usually you tried to do one?

7 A Yes, sir.

8 Q So you go through this cleaning process and then
9 what would you do after you snaked it out and done all the
10 things you described?

11 A After it was snaked and run through the machine,
12 I would then place it inside the Medivators and then hooked
13 them up and then set the machine to run.

14 Q Well, what about that other bucket?

15 A The first one or the second one?

16 Q The second one.

17 A The one with the fresh water?

18 Q Yeah.

19 A I would just take the scope from the -- if there
20 was a scope in the first bucket I would then remove it and
21 then place it into the second bucket.

22 Q Okay. So where does the Medivator come in to
23 play here? Is it before it gets to the second bucket or is it
24 before -- or is it -- and how -- how does the process occur?

25 A It -- you start with the first bucket, it's

1 brought in, the scope is rinsed out with the sponge, then it's
2 snaked with the caterpillar through the three ports. After
3 that is done, that little blue machine here has some
4 connections, it's connected to the three ports. The cleaning
5 solution is run through the scope. After that is done it's
6 then removed, placed into the second bin, which has fresh
7 water and then run again with just the fresh water.

8 Q Okay. Now, I just want to be clear on this.
9 I'm showing you 29. Can you see that?

10 A Yes, sir.

11 Q What are we looking at here?

12 A That's the Medivator.

13 Q So with the lid open?

14 A Yes, sir.

15 Q So I've got -- and just so we're clear on it.
16 I've got you cleaning out the scope in the first bucket and
17 then pulling it out. Do you then put it directly in here and
18 hook it up to these things?

19 A It's only after the second bucket.

20 Q Okay. So it goes from the first bucket to the
21 second bucket to Medivator?

22 A Yes, sir.

23 Q Where does it go after it gets out of this
24 device?

25 A It goes to the left-hand side of the room, which

1 is considered the sterile area, where it's laid out.

2 Q I'm showing you 130. Does that look familiar as
3 the kind of thing you would hang up the scope?

4 A Yes.

5 Q Going back to the Medivator. Let's -- let's
6 look at this one again. So how many scopes -- I know you said
7 you try to do one or at most two at a time in a bucket. How
8 many scopes -- well, let me step back and ask you that because
9 I didn't. Does -- do you ever change the solution in the
10 first bucket?

11 A Yes.

12 Q Okay. How often would that get changed?

13 A I tried to change it at least after every two
14 scopes.

15 Q Realistically, how often did it get changed?

16 A It's hard to say. I couldn't tell you a
17 specific number.

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

20 A A while back.

21 Q Will it refresh your memory to look at a copy of
22 that statement?

23 A Yes, please.

24 MR. STAUDAHNER: And for counsel I'm referring to page
25 eight.

1 MS. STANISH: I'm sorry?

2 MR. STAUDAHER: Page eight.

3 MS. STANISH: Thank you.

4 BY MR. STAUDAHER:

5 Q And you can read as much before and much after
6 to get context as you need. It's in the middle -- middle
7 portion of that page on that transcript.

8 A Yes, sir.

9 Q And you don't have to read it out loud --

10 A Oh.

11 Q -- just -- just to refresh your memory.

12 A Yes.

13 Q Okay. What did you tell the police back then?

14 A That it got changed maybe every three or four
15 cases.

16 Q So a case would be a scope?

17 A Yes.

18 Q So at least three or four scopes went through
19 that cleaning solution before it was changed?

20 A Yes, sir.

21 Q Now in the process of cleaning it, I assume that
22 there is stuff that's inside the scopes, on the scopes, around
23 the scopes that flushes into that solution, correct?

24 A Yes. Yes, sir.

25 Q At the end of that, where would you take the

1 solution containing all of that? And was -- what was the
2 stuff?

3 A Inside the scope was usually, you know, excess
4 KY -- I'm sorry, excess KY Jelly, fecal matter, blood if there
5 was anything.

6 Q So all of that, blood, fecal material, whatever
7 was in this bucket with this solution?

8 A Yes, sir.

9 Q And then you would take that and do what with it
10 after the three or four cases?

11 A Pour it into the sink right there.

12 Q Okay. And then what would you do?

13 A Refill it with fresh water from the hose right
14 here.

15 Q Did you ever see anybody change that solution
16 less often than you did?

17 A No, sir.

18 Q Did you ever observe other people doing this as
19 well?

20 A Cleaning, yes.

21 Q How -- how many other people did you watch do
22 this?

23 A Just whoever was there. I think it was Ruda
24 that was primarily the scope cleaner.

25 Q Before you were kind of --

1 MR. WRIGHT: Can he speak up, please?
2 MS. STANISH: Yeah, I can't hear.
3 THE WITNESS: I'm sorry. I apologize.
4 THE COURT: Can you restate your answer?
5 THE WITNESS: I'm sorry. What was the question
6 again, please?
7 BY MR. STAUDAHER:
8 Q I was asking you about other people that you
9 watched --
10 A Yes. Normally I only ever observed Ruda, I
11 believe was her name. She was primarily the scope cleaner.
12 Q Who trained you, to the best of your knowledge?
13 A I think her name was Shawna. I think that was
14 her name.
15 Q How -- how long of a training period was this?
16 A Maybe a day or two.
17 Q I mean, you were kind of let go and had -- told
18 to do this now based on your training?
19 A Yes, sir.
20 Q So after you go through this cleaning process
21 you then -- if I understand you correctly, it goes in the
22 second bucket. What do you do in the second bucket?
23 A The second bucket, it's flushed with fresh
24 water.
25 Q Okay. And then you take it and put it in --

1 A The Medivator.

2 Q -- the Medivator? And it runs?

3 A It's -- it's set and it runs, yes, sir.

4 Q What do you do after it finishes running?

5 A Before we take it out of the Medivator, I'll
6 change my gloves to get clean gloves. I'll disconnect it and
7 then I'd place it on this table right here. I would dry it
8 off to the best of my ability and then take it and hang it up
9 into the adjoining closet.

10 Q The solution that was in the Medivator was
11 different than the solution that was in the buckets?

12 A I couldn't say for sure.

13 Q Did you ever change or do anything with the
14 solution or anything in the Medivators?

15 A I would check to make sure that there was
16 solution there from time to time.

17 Q So you would check to see if it was there. Was
18 there any issue about it -- it having to have some sort of
19 color in order for it to be considered good? Did anybody ever
20 tell you about that?

21 A I know there were test strips that we used from
22 time to time to make sure that it was still solvent.

23 Q And which -- which test -- you were using the
24 test strips on the Medivator fluid?

25 A Yes, sir.

1 Q Not on the bucket fluid?

2 A No.

3 Q Because that one you dumped after every --

4 A Couple cases, yes.

5 Q -- three or four cases or whatever?

6 A Yes, sir.

7 Q So the Medivator fluid gets -- is it just

8 something that cycles through the machine over and over again

9 and then you have to test it periodically?

10 A I believe so, yes.

11 Q Did you ever change that yourself?

12 A Not to my recollection.

13 Q And I'm talking about in the days, weeks,

14 however -- this whole period of time. You said you worked

15 from August of '07 until --

16 A It closed.

17 Q -- '08?

18 A Yes, sir.

19 Q In the times that you were working back in this

20 -- in this procedure room, did you ever change the solution in

21 the Medivators?

22 A Not that I remember, no.

23 Q Did you ever test the solution?

24 A Yes, sir.

25 Q And when you say test, what were you looking

1 for? Were you looking for a specific color change in the --
2 in the solution?

3 A Yes, sir. There was a color strip and it had to
4 be a certain color to know that it was still safe to use.

5 Q Were you there when the CDC came in?

6 A I believe so, yes.

7 Q After the CDC came in, did you actually start to
8 deal with that Medivator solution a little more?

9 A Not entirely. I didn't work in this room often.

10 Q Okay. So I'm just asking, did your procedures
11 change after the CDC came in?

12 A I know our patient count went down considerably,
13 among other things.

14 Q I'm talking about procedures that you were
15 involved with back here in this room. Did you do anything
16 differently than you had before?

17 A No, sir.

18 Q Nobody ever came and told you that you needed to
19 change the solutions out, whether it be the bucket solution or
20 the Medivator solution any more often than you had before?

21 A The blue buckets, yes.

22 Q So that was a change?

23 A Yes.

24 Q What was the -- what were you supposed to change
25 to do that?

1 A Just to clean out the water after every scope.
2 Q Every scope?
3 A After every scope.
4 Q When you say that the patients dropped after the
5 CDC came in, what are we talking about? What were the numbers
6 before, what were the numbers after?
7 A The numbers could be anywhere from 50, 60 up to
8 80 patients a day, those were most days. And then after the
9 CDC came they dropped considerably, to around 40, 50 a day.
10 Q So when you said most days, are we talking about
11 most days are 50 or most days are 70, 80? When -- what was
12 the range?
13 A Most days were, you know, 65 plus, 70.
14 Q And that's before the CDC comes in?
15 A Yes, sir.
16 Q Now, you know -- let's go take you out of this
17 room for just a minute, put you in a procedure room. You're
18 assisting the doctors. What are -- well, let me ask you that.
19 Are you doing anything to the scope to help the doctor during
20 the procedure?
21 A No. They're just -- they're handling it
22 themselves.
23 Q Was there any flushing of the scopes that took
24 place while they were in the patient?
25 A Only when the doctors asked for it.

1 Q Okay. So when you would -- would you typically
2 do that on every case?

3 A Yes.

4 Q More than one time?

5 A If the doctor asked for it, yes.

6 Q Typically would you flush it multiple times?

7 A Yes.

8 Q When you flushed it, what did you use to flush
9 the scope with?

10 A I had a large syringe filled with water.

11 Q And was it just water or was it some sort of
12 solution?

13 A Just water. Sometimes they would add like this
14 little dye to help keep the lens from fogging, but that's
15 about it.

16 Q And that was actually going to go inside a
17 patient, correct?

18 A Yes, sir.

19 Q Now when you flush that, the syringe itself,
20 you're back in the procedure room. Do you change that syringe
21 out to a new syringe between each patient?

22 A The syringe -- not always.

23 Q In fact, how many syringes would you use in a
24 day typically?

25 A I'd -- me, I'd try to change it every other case

1 but sometimes they would just be the same syringe throughout
2 the day.

3 Q Do you remember tell -- talking to the police?

4 A Vaguely.

5 Q Do you remember what you told them?

6 A Somewhat. It's been a while.

7 Q If I brought you a copy of the transcript would
8 that refresh your memory?

9 A Yes, sir.

10 Q Page 15. And again, you can read as much for
11 context as you need. The lower portion of that -- the area.

12 A Yes, sir.

13 Q Does that refresh your memory?

14 A A bit, yes.

15 Q Okay. How many -- how many syringes would you
16 use on the patients in a single day?

17 A Usually just one.

18 Q Okay. So you were dealing -- I mean you're
19 talking about 60 to 70 patients a day on average. Would you
20 be primarily in one room or both rooms?

21 A Normally I'd be in just one room.

22 Q Would you ever take a syringe from one room to
23 another room?

24 A No, sir.

25 Q So that syringe would be used by all patients

1 coming through there in a single day?

2 A Yes, sir.

3 Q Were there also little basins that the water
4 would be put into to draw up for the flushing?

5 A Yes, sir.

6 Q Would those be used all throughout the day as
7 well?

8 A Basins, yes.

9 Q So the basin and a syringe combination basically
10 one for the whole day?

11 A Yes, sir.

12 Q Did you ever ask why that was or did anybody
13 ever say?

14 A No, I never asked.

15 Q Now, in fact, on rare occasions did -- did you
16 finally change out a syringe for some reason?

17 A Yes.

18 Q What would be the reason?

19 A That it was just old or I think it was primarily
20 after the CDC arrived or the inspectors.

21 Q So you started changing those after the CDC
22 came?

23 A Yes, sir.

24 Q Now, let's talk about a couple of things.
25 Supplies. You mentioned supplies earlier about you would

1 actually go out and stock supplies in the -- I think it was
2 the recovery area that you were talking about; is that right?

3 A Yes, sir.

4 Q Dr. Desai specifically, but any other doctor if
5 -- if this was the case, did anybody ever instruct you, talk
6 to you about limiting the use of certain supplies?

7 A Not that I can recall, no, sir.

8 Q What about 4x4s? And you know what I'm talking
9 about a 4x4, right?

10 A A small cotton --

11 Q It's a little -- little gauze pad kind of thing?

12 A Yes, sir.

13 Q What are those used for typically in the
14 procedure rooms?

15 A Those were used to put the KY Jelly on and then
16 also kept -- used as a grip for the scope because sometimes
17 the scope got slippery.

18 Q Did Desai talk to you about not using many of
19 those?

20 A I know he wanted us to conserve them.

21 Q Okay. How many did he want you to use?

22 A I believe it was just one.

23 Q Other doctors got more?

24 A Yes, sir.

25 Q And what would you -- when he said that, did he

1 actually tell you to only use one?

2 A He might have.

3 Q Do you remember talking to the police in this
4 case again?

5 A I mean, I remember speaking to the police, but
6 it's --

7 Q Would it refresh your memory to look at a copy
8 of your transcript?

9 A I can look at it again.

10 Q Sure. Now, I'd like you to read that whole page
11 because it goes to the next question also about KY Jelly. I
12 want to make sure you're familiar with that.

13 MR. SANTACROCE: I'm sorry. What page?

14 MR. STAUDAHER: Seventeen, yes, 17.

15 BY MR. STAUDAHER:

16 Q Just take your time.

17 A Yes, sir. Okay.

18 Q Did Desai tell you to only use one
19 [indiscernible]?

20 A Yes. I mean, that's what he liked.

21 Q Okay. And did you say that he was actually very
22 particular about that?

23 A Yes.

24 Q Did you actually quote him as saying certain
25 things related to that?

1 A I might have, yes. I believe so, I did.

2 Q Okay. Did you say that he would tell you not to

3 put down so much -- because he just only used one?

4 A Yes, sir.

5 Q What about the KY, was there any issue about

6 that?

7 A Just to use a very small amount.

8 Q So he was -- excuse me, specific about how much

9 KY he wanted you to use?

10 A Yes, sir.

11 Q How much would he want you to use, size wise?

12 A About a dime size.

13 Q Now, that's pretty small?

14 A Yes, sir.

15 Q Those scopes are pretty big?

16 A Yes, I would say.

17 Q Besides just using a dime sized dollop of KY

18 Jelly on a single 4x4, did he ever say anything more to you

19 about the KY Jelly, about how -- how not to waste it, that

20 kind of thing?

21 A Yes. He was always telling us not to waste and

22 roll up the tube and use --

23 Q You -- you just described rolling and you said

24 roll up a tube. What are you talking about?

25 A The KY Jelly comes in something that looks like

1 a toothpaste tube and just to use it and never waste any.

2 Q I mean, did he specifically instruct you on
3 this?

4 A He might have, yes.

5 Q Might have? Would it refresh your memory to
6 look at a copy of your transcript?

7 A No, sir. But he did say never to waste it.

8 Q And, in fact, did you attempt to throw away a
9 remnant bottle or remnant tube of KY Jelly that had a little
10 bit left in it one time?

11 A I did.

12 Q What happened when you did that?

13 A He told me not to, that I could still use it.

14 Q In fact, didn't he show you how you could
15 squeeze the last drops out?

16 A Yes, sir.

17 Q And how did he show you to do that?

18 A Take it and kind of roll it so you could squeeze
19 it all out.

20 Q So he actually demonstrates this for you?

21 A I believe so.

22 Q And I -- I've got your transcript if you want to
23 look at it. Is that -- do you want -- want to look at it
24 again?

25 A Yes, please.

1 MR. STAUDAHER: Page 18 for counsel.

2 THE WITNESS: Roll it up and squeeze -- yes, sir.

3 BY MR. STAUDAHER:

4 Q Okay. You basically said that he told you when
5 he saw you doing that, he yelled at you?

6 A I wouldn't say yell, but he did, you know --

7 Q Or he stopped you?

8 A -- he did stop me.

9 Q And then he took the tube and demonstrated how
10 you could every last drop out of it?

11 A Yes, sir.

12 Q What about if you weren't moving fast enough or
13 if other people weren't moving fast enough, would there be any
14 issues with regard to Dr. Desai?

15 A I know he -- he'd get on their case and tell us
16 -- he always liked us to keep moving, keep busy, so.

17 Q And you've used bite blocks, correct?

18 A Yes, sir.

19 Q And you can look up at the screen, Exhibit
20 Number 71-C. Does that look familiar to you? You want me to
21 bring it to you?

22 A Could you, please? I mean, ours were -- these
23 are -- ours were shaped a little different but.

24 Q You know what that is though?

25 A It's a bite block.

1 Q Okay. Would it surprise you to learn that that
2 actually came from the clinic or did you -- have you seen
3 something like that there at some point?

4 A I saw something similar, yes.

5 Q Okay. Are these reusable?

6 A Not to my knowledge.

7 Q Did you re-use them?

8 A On occasion.

9 Q Who directed you to re-use them?

10 A We were just instructed --

11 Q By whom?

12 A One of the other -- I believe it was the other
13 GI technicians.

14 Q How many of those would you use in a day?

15 A I couldn't say for sure, but I know we would --
16 we would re-use them. As to how many, I couldn't say
17 specifically.

18 Q Do you remember talking to the police and
19 telling them about three to four maybe a whole day?

20 A That sounds about right.

21 Q Okay. And what would you do with those?

22 A We would place them in the Medivators with the
23 scopes.

24 Q So I'm showing again 129. Would you just toss
25 them in there or what would you do?

1 A Place in there, yes, with the scopes.

2 Q And this is in a solution that you never -- the
3 whole time you were there ever changed yourself?

4 A No.

5 Q Now the scopes that you're putting there, I saw
6 that there were two Medivators. Going back to 127. Was one
7 of those Medivators for colonoscopies and the other one for
8 endoscopies or did it matter?

9 A It didn't matter.

10 Q So the -- both scopes went into the same
11 solution, same Medivator at the same time?

12 A Yes, sir.

13 Q And bite blocks?

14 A Yes, sir.

15 Q Do you remember an individual by the name of
16 Keith Mathahs, CRNA?

17 A Yes, sir.

18 Q Do you remember observing him do procedures on
19 patients? When I say procedures I'm talking about him doing
20 the anesthesia for a procedure. I misspoke.

21 A I might have, yes.

22 Q Do you remember whether or not you ever saw him
23 move from one room to another --

24 A I believe he --

25 Q -- during the day?

1 A I believe he did from time to time, yes, sir.

2 Q When he moved from one room to another, did you
3 ever see him carry anything with him from one room to another?

4 A No, sir.

5 Q No?

6 MR. SANTACROCE: I didn't hear that.

7 THE WITNESS: No, I never actually saw him carry
8 anything.

9 BY THE WITNESS:

10 Q Do you remember talking to the police and
11 telling them -- telling them about a tackle box that he would
12 carry with him?

13 A The -- the tackle box?

14 Q Yes.

15 A Yes, I mean -- I remember --

16 Q That's what I was referring to.

17 A The tackle box, yes.

18 Q So he would carry this tackle box from room to
19 room?

20 A Yes, sir.

21 Q You actually saw that?

22 A From time to time, yes.

23 Q I'm not asking you what was contained in it, but
24 did -- have you ever seen him use anything out of it?

25 MR. WRIGHT: Can we approach your bench, please?

1 THE COURT: Sure.

2 (Off-record bench conference.)

3 BY MR. STAUDAHER:

4 Q Now, I used the word tackle box but that was
5 your word to the police, wasn't it?

6 A Yes, sir.

7 Q Okay. Now I want to be clear on this just so
8 there's no mistake. Was Keith Mathahs going fishing?

9 A No.

10 Q Okay. So he wasn't -- there were no lures and
11 fishing line and things like that hanging off this box or
12 anything like that?

13 A No.

14 Q Was this a box that contained supplies for doing
15 his job?

16 A I would assume so, yes.

17 Q Did you see --

18 THE COURT: Don't assume. You can only tell us what
19 you actually observed.

20 A Yes.

21 BY MR. STAUDAHER:

22 Q Okay. So you saw stuff in there that he would
23 access to do things?

24 A Yes, sir.

25 Q I'm not asking you specifically on a day in

1 Q And it's different than in a hospital, correct?

2 A Qualify that, please.

3 Q Well, I'll -- I'll -- I'll break it down to --
4 to try to give you more specifically what I'd like to learn
5 from you. When you go to the hospital to do a colonoscopy,
6 the hospital itself provides a staff, correct?

7 A Correct.

8 Q And when you go to a surgical center at a
9 hospital, will that surgical center do a variety of different
10 type of surgeries?

11 A Correct.

12 Q And so is it a fair statement that the staff at
13 a hospital surgical center will not have the -- oh, I don't
14 know if expertise is the right word, but the experience, the
15 concentration that a staff at a freestanding ambulatory
16 surgical center would have?

17 A I don't think so.

18 Q Okay.

19 A I think they will be as qualified.

20 Q Oh, you think they would be as qualified. And
21 the -- at hospitals are CRNAs employed?

22 A They're not employed by the hospital but some of
23 the anesthesiologists have their own CRNAs.

24 Q All right. And in the hospital you basically --
25 if you're doing your procedure in the hospital, you have to

1 make arrangements with a group of anesthesiologists, go to a
2 group practice and get somebody to be there when you're going
3 to be there?

4 A Correct.

5 Q And you're not able to do as many colonoscopies
6 in the practice that you currently have compared to a
7 freestanding ambulatory surgical center, am I correct?

8 A No, I'm able to do as many as I need. The
9 amount -- if I am at the ambulatory surgical center. You can't
10 do as many in the hospital.

11 Q And why is that?

12 A Unions. I qualify that. You know, the nursing
13 staff in the hospitals have very specific times that they're
14 allowed to work and they're allowed breaks at a certain time.
15 So turnover for a procedure is much longer.

16 Q And does -- but you're also -- aren't you also
17 kind of competing for time? Other doctors have to use that --
18 make -- you have to schedule procedure rooms?

19 A No, they typically have blocked times. So if
20 you're a provider that like to use that facility, the hospital
21 will allow you to have a blocked time that you can schedule as
22 many as you want.

23 Q Okay. So you are able in your new -- new
24 practice, able to do colonoscopy procedures every -- every day
25 of the week?

1 A Yes.

2 Q And do you?

3 A No.

4 Q I want to first double check my notes. I want
5 to talk a bit about the structure of the Endo Center because I
6 understood you to say when you were last here, that Dr. Desai
7 was the director, he was on top of the charts that we saw, of
8 course. But I -- I want to understand a bit more about the
9 structure of the -- the practice. There were a number of
10 different facilities, correct?

11 A Yes.

12 Q And did each facility have its own management
13 team or group of people who were responsible for that
14 particular facility?

15 A Yes.

16 Q And who -- who was responsible for the Burnham
17 facility?

18 A I want to say that at the time it was a lady
19 named Katie. I can't remember her last name. She was sort of
20 like the nurse manager at the facility.

21 Q Katie Maley?

22 A Yes, that's her.

23 Q And were any doctors kind of in charge?

24 A No, not in the individual facilities that I
25 recall.

1 Q Okay. Were there -- and maybe I'm using the
2 wrong terminology. You had partnership interest in one of the
3 facilities, correct?

4 A Correct.

5 Q And that was Burnham, right?

6 A Correct.

7 Q And did you -- you also -- and I think I
8 understood you to testify that you earned like in 2007
9 \$100,000 that you -- that you realized that amount of money
10 from that partnership?

11 A Correct.

12 Q And you also had an interest in the Gastro
13 Center? Did you have an interest --

14 A Oh, yes, of course.

15 Q -- in the Gastro Center?

16 A Yes.

17 Q And when I say Gastro Center, what does that
18 mean to you?

19 A That's the actual consultation practice.

20 Q Okay. So all the -- the visits to the --

21 A Office and hospital visits and so forth.

22 Q Can -- can you estimate for us how much you
23 earned from that?

24 A Probably six, 700,000.

25 Q In addition to the 100,000 from the Burnham?

1 A Correct.

2 Q And is that unusual for doctors to earn that
3 kind of money from -- if you know, from being part of a large
4 group?

5 A No.

6 Q Were there, if you know, were there various
7 committees established to handle certain responsibilities?

8 A Not that I'm aware of.

9 Q You don't -- you don't know?

10 A I wasn't part of any of them.

11 Q Okay. Were you aware of any delegation of
12 authority by --

13 A No.

14 Q -- Dr. Desai?

15 A No.

16 Q You weren't aware?

17 A No.

18 Q Do you know what hours he worked?

19 A Do not.

20 Q You were describing for us how you would have
21 periodic meetings --

22 A Uh-huh.

23 Q -- of doctors. Was that just the partnership
24 doctors? I -- I -- just to clarify. I understood you have
25 partnership doctors who own a piece of the practice and then

1 you have employee doctors, correct?

2 A Correct.

3 Q And would you have -- when you had meetings,
4 would it be the employee doctors and the partnership doctors
5 all together?

6 A It depends of the nature of the meetings. Some
7 of the meetings will be everybody, some of the meetings will
8 be partners only.

9 Q And as I understand it, Dr. Desai would make
10 presentations at the -- this -- these meetings?

11 A Right.

12 Q And would anybody else make presentations at
13 these meetings?

14 A Not typically.

15 Q You would just sit there and listen?

16 A Pretty much.

17 Q You would participate?

18 A At times.

19 Q And you would voice your opinion, correct?

20 A Yes.

21 Q If there was something being told to you that
22 you thought was unsafe, would you say something?

23 A Absolutely.

24 Q I want to clarify something because I -- you
25 were talking about the policy that related to propofol and the

1 -- using the larger vials on multiple patients so long -- so
2 long as aseptic technique was employed, correct?

3 A Correct.

4 Q And that was something that in your experience
5 it was acceptable to use a bottle of propofol on more than one
6 patient so long as it was done so with aseptic technique?

7 A Correct.

8 Q And I believe you talked about protocol --
9 protocol in order for that to occur.

10 A Correct.

11 Q All right. And do you recall when the CDC came
12 and did their inspection and found issues with the propofol,
13 do you recall that the clinic drafted very specific guidelines
14 for the CRNAs on how they should administer propofol?

15 A Yes.

16 Q And do you recall what that -- I'm going to call
17 it the new protocol, the post-CDC protocol was, do you recall
18 what it was?

19 A No, I do not recall the specifics.

20 Q Do you -- have you ever heard of a CDC campaign
21 called, you know, one patient, one vial, one syringe?

22 A Yes, I have.

23 Q And where did you hear that?

24 A I do not recall, but probably -- I can't
25 remember.

1 Q All right. But you heard it?

2 A Yes.

3 Q And was it something you heard that -- that kind
4 of message was being broadcasted because of this case?

5 A It was after this case, yes. I don't know if it
6 was necessarily related to this case, but yes.

7 Q All right. Prior to the CDC coming to town,
8 your expectation of the CRNAs was that they would use aseptic
9 technique.

10 A Yes, ma'am.

11 Q And I think I understood you to say -- and
12 correct me if I'm wrong, that aseptic technique is something
13 that you are trained for.

14 A Yes.

15 Q Okay. You learn it early on in your career.

16 A Correct.

17 Q It's something that you may also learn on the
18 job?

19 A Sure.

20 Q When -- when the CDC came to town and you were
21 -- you were informed, were you not, that there was some
22 cross-contamination?

23 A Yes.

24 Q Did you know how that occurred?

25 A There were some theories tossed around, yes.

1 Q And who -- who -- who -- who was it that was
2 tossing around theories?

3 MR. STAUDAHER: Objection, Your Honor. Foundation as
4 to --

5 MS. STANISH: Okay.

6 BY MS. STANISH:

7 Q Do -- I'm sorry. I'll withdraw that. After the
8 CDC came to town and -- and you learned from -- that they
9 discovered cross-contamination, did you know how it occurred?

10 A Did I know how did it occur?

11 Q Yeah --

12 A No.

13 Q -- did you know? Did -- did the clinic try to
14 investigate and figure out what happened?

15 A My understanding is that yes, they were trying
16 to figure it out.

17 Q Were you involved in that?

18 A No.

19 MS. STANISH: Court's indulgence.

20 THE COURT: Sure.

21 BY MS. STANISH:

22 Q I -- correct if I'm wrong. I believe I recall
23 you saying when you were on direct, there was questions being
24 asked about the protocol used by CRNAs to -- once the larger
25 bottles were being purchased, and you thought that there was a

1 meeting beforehand to discuss the use of that, correct?

2 A Correct.

3 Q Do you have specific recollection of that
4 meeting?

5 A No.

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

7 THE COURT: You may.

8 BY MS. STANISH:

9 Q This -- I'm showing you -- counsel, it's page 30
10 of the interview. Just read to yourself here this section
11 right there.

12 A Which part would you like me to read?

13 MR. STAUDAHER: Of his interview, counsel? I'm
14 sorry, of his interview?

15 MS. STANISH: Yes, page 30.

16 MR. STAUDAHER: Okay, I'm sorry.

17 BY MS. STANISH:

18 Q Just starting here and read it to yourself. No,
19 no, read it to yourself --

20 A Oh, okay.

21 Q -- not out loud. Is it fair to say when the
22 detective asked you about communications relating to the --
23 how CR -- how CRNAs were going to use the propofol, your
24 response was that, "I can't recall any particular time in
25 which that appeared, but in my memory I know that some

1 conversations of that nature might have taken place. The
2 nurse anesthetists have been given guidelines how to do it."

3 A Yes.

4 Q Is those written guidelines, does that relate,
5 if you know, does that relate to the guidelines, the very
6 specific guidelines that were put into place after the CDC
7 came to town?

8 A That was my assumption.

9 Q You -- to your knowledge, was there any quality
10 assurance being done by the clinic to --

11 A Yes.

12 Q And can you describe for us what that was, if
13 you know?

14 A There would be periodic inspections from various
15 agencies and I believe that during those inspections they will
16 be reviewing operation manuals, they will be doing direct
17 observations of procedures and also they will be -- the nurse
18 manager for that facility will carry on to probably debriefs
19 with the nurse anesthetist and the nurses discussing policies
20 and techniques.

21 Q And did -- were you aware whether or not the
22 patients themselves were surveyed regarding their experience
23 at the clinics?

24 A Yes.

25 Q And do you know who was actually doing the

1 surveys?

2 A I do not.

3 Q It wasn't anybody at Burnham, to your knowledge?

4 A Don't know.

5 Q You just don't know. Okay. Several doctors
6 worked at the clinics at the time they were shut down,
7 correct?

8 A Correct.

9 Q And the -- can you tell us who those doctors are
10 and if you know what they're doing today?

11 A The doctors that were part of the practice at
12 the time?

13 Q Right. We know you and Dr. Mason are in
14 business together. Can you tell us, if you know, what some of
15 the other partners are doing?

16 A Sure. I know Dr. Vish Sharma and Dr. Carrera
17 and Dr. Carrol, they share call so they're here in town
18 practicing --

19 Q They share what?

20 A Call.

21 Q What's that?

22 A They -- they're -- I don't know if they're
23 billed under the same umbrella, but they basically cover each
24 other in the hospitals. So they will take weekend call for
25 each other.

1 Q Oh, they share call, c-a-l-l?

2 A Right.

3 Q Okay. I didn't hear you properly. Go ahead.

4 A And there's a -- there's a large number of them
5 that are together, Dr. Wahid, Dr. Mukherjee, Dr. Banker, Dr.
6 Nayvar. They're in private practice together here in town.
7 There was two that left town, Dr. David Manuel and a Dr.
8 Decarly [phonetic]. I think I got them all.

9 Q Were you cognizant of any practice, any practice
10 that put a patient in harms way?

11 A No.

12 MS. STANISH: Nothing further, Your Honor.

13 THE COURT: All right. Redirect.

14 REDIRECT EXAMINATION

15 BY MR. STAUDAHER:

16 Q I'm going to start off with going through a
17 couple of things that counsel asked you about related to that
18 transcript. Do you recall that? You were reviewing your
19 transcript about that?

20 A Yes.

21 Q And this is about the issue of moving to the 50
22 cc bottles of propofol.

23 A Moving from the 50 cc.

24 Q From the c -- from the 50 cc, okay. Now, do you
25 -- what do you consider a multi-use vial of propofol?

1 A A large bottle.

2 Q So would that be --

3 A Probably a 50 cc, 30 to 50 cc will be a
4 multi-use.

5 Q Are you aware that it comes in typically 10s,
6 20s, 50s, 100s, like that?

7 A I have some vague ideas, yeah.

8 Q So would a 20 be considered a multi-use vial for
9 you?

10 A Yes.

11 Q So a 20 could be multi-use, but that's what you
12 were using from day one essentially, correct?

13 A Yes.

14 Q And did you ever see them use 10s in the
15 facility?

16 A Can't recall.

17 Q But you -- eventually at some point you move
18 from 20s to 50s; is that right?

19 A No. I think that we moved from the larger ones
20 to the smaller ones.

21 Q So you think you started off with 50s and moved
22 to the --

23 A Correct.

24 Q -- to the 20s. Okay. So that discussion about
25 what counsel asked you about, you that was occurring after the

1 CDC came in?

2 A Yes.

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

4 THE COURT: You may.

5 BY MR. STAUDAHER:

6 Q This time, just so we're clear on this because I
7 -- I want to make sure there's no confusion. I want you to go
8 back to the bottom of 29 and read all of 30.

9 A Okay.

10 Q And if you have to go past that or before that,
11 that's fine too. Go ahead and read all that and then when
12 you're done tell me if that doesn't refresh your memory about
13 that issue.

14 MS. STANISH: What page did you have him start at?

15 MR. STAUDAHER: Twenty-nine.

16 THE WITNESS: Okay.

17 BY MR. STAUDAHER:

18 Q Does that refresh your memory at all?

19 A Yes, it does.

20 Q So that whole area that you were questioned
21 about, what was the subject?

22 A There's two -- there's two issues. Number one
23 is the time frame in which they're asking me there is not
24 clear and I was asked whether at some point there were
25 discussions in what -- in the sense or the terms to try to

1 minimize costs for the facility. And I answered affirmative
2 and one of the things that we had spoken about was purchasing
3 larger vials that were considered multi-dose because that
4 would save money. But this is not related to a conversation
5 that might have taken place after the CDC recommendations came
6 through.

7 Q This does not?

8 A Does not.

9 Q Okay. So this is before CDC comes through.

10 A Correct.

11 Q Discussions with Dr. Desai in a partners meeting
12 about moving to larger bottles of propofol?

13 A Correct.

14 Q Not the other way around?

15 A Correct.

16 Q Okay. So tell us again so we're clear on the
17 same page here, what did Dr. Desai say in that meeting?

18 MS. STANISH: Objection, foundation.

19 MR. WRIGHT: Foundation.

20 BY MR. STAUDAHER:

21 Q The meeting that we're -- they referred to. I'm
22 talking about the meeting where you're -- this is being
23 discussed.

24 THE COURT: The first meeting before the CDC or the
25 meeting after the CDC?

1 MR. STAUDAHER: Before the CDC came.

2 THE COURT: Before the CDC. Okay. We're talking
3 about that meeting.

4 THE WITNESS: It was -- it was a meeting about
5 general -- it was very general, no specifics, but basically we
6 have talked about ways to maximize productivity --

7 MS. STANISH: Objection, foundation. That means a
8 date, a time frame.

9 THE COURT: Do you recall when prior to the CDC
10 coming, approximately this meeting occurred?

11 THE WITNESS: No, do not.

12 BY MR. STAUDAHER:

13 Q Well, give us your best estimate. Was it a
14 week, a month, half a year, a year?

15 A Could have been a couple years, maybe a year
16 before.

17 Q A year before?

18 A Uh-huh.

19 Q So it could -- it was a while before the CDC
20 came?

21 A Yes.

22 Q Okay. Now in that meeting, because this is the
23 subject, right? Moving to the 50 cc bottles or the larger
24 bottles of propofol?

25 A Amongst other subjects, yes.

1 Q Okay. So that's what we're talking about just
2 so we're clear.

3 A Uh-huh.

4 Q In that meeting, what did Desai say?

5 A The specific of what he said, I cannot recall,
6 but we did talk about the fact that purchasing bigger bottles
7 will save money.

8 Q Okay. In fact, since you're having difficulty,
9 I'm going to ask -- just give you your -- what you -- what you
10 answered in relation to that question. You said Dr. Desai
11 makes all the decisions essentially is what you told them.

12 A Correct.

13 Q He created all the policies?

14 A Yes.

15 Q Told the rest of the partners this is the way we
16 are going to do it?

17 A Yes.

18 Q There was no discussion, this is what he's
19 dictating to everybody else, correct?

20 A Yes.

21 Q Okay. Again, the question from the interview we
22 were asking you, well, was there a vote on this, was it a
23 discussion and your answer was "This is the way we are going
24 to do it."

25 A Yes.

1 Q That's what his response was?

2 A Yes.

3 Q In fact, you quoted him, at least in this --

4 MS. STANISH: Objection. I think we're -- he's
5 testifying now.

6 MR. STAUDAHER: Well, I'm reading from the
7 transcript, Your Honor, based on --

8 THE COURT: Well, see if he -- okay.

9 MR. STAUDAHER: I've already asked --

10 THE COURT: See -- first --

11 MR. STAUDAHER: Okay, I'm sorry.

12 MS. STANISH: It's improper impeachment or whatever.

13 THE COURT: Ms. -- enough, both sides. Mr.
14 Staudaher, first, you know, if he answers it fine, if not, see
15 if his memory is refreshed. If not, then read directly from
16 the transcript and ask him the question then.

17 BY MR. STAUDAHER:

18 Q Do you remember any specific statement made by
19 Dr. Desai about multi-use vials?

20 A Yes.

21 Q What did he say about those?

22 A Again, we were using a certain size of a vial
23 and at some point the conversation might have been directed
24 towards we're going to be purchasing larger vials because it
25 saves -- it helps in saving money.

1 Q Okay. Do you remember him saying -- and I
2 quote, "I have made a decision to buy multi-use -- or
3 multi-dose vials." --

4 MR. SANTACROCE: I'm going to object and move to
5 strike that.

6 THE COURT: Well, overruled. Do you recall whether
7 or not he made that statement?

8 THE WITNESS: He probably did, yes.

9 BY MR. STAUDAHER:

10 Q Is that what it says in the -- that I let you
11 review, is that what --

12 A Yes.

13 Q -- it says in the transcript?

14 A Yes.

15 Q And they even asked you if it was Desai that you
16 were talking about, right?

17 A Yes.

18 Q And you said it was him?

19 A Yes.

20 Q Now, you also were asked some questions about
21 guidelines that were put in place around that time for the
22 CRNAs. Remember the questions from counsel about that?

23 A Yes.

24 Q And, in fact, that's what you're -- in the very
25 same answered paragraph you mention that very thing, that

1 there were guidelines in place or something?

2 A Yes.

3 Q So back before the CDC comes, long before on
4 this issue, you believe there were guidelines in place for the
5 CRNAs with regard to the use of multi-dose -- multi-dose vials
6 of propofol?

7 A Yes, sir.

8 Q Did you ever see any of those guidelines?

9 A I might have browsed through the operations
10 manual.

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

12 THE COURT: You may.

13 BY MR. STAUDAHER:

14 Q I'm showing you what has been marked as State's
15 10 -- or excuse me -- is this 106 I believe, 106. And the
16 highlighted portion is what I put in there --

17 A Okay.

18 Q -- okay? I'm just going to go to the portion
19 that is marked as Number 9, anesthesia services, it is Bates
20 number 8492. First of all, just for context, I'm just going
21 to flip through this. Have you seen a document like this
22 before? It's in parts, it says rights of patients,
23 administration, facilities, environment and the likes?

24 A I do not recall seeing it before you presented
25 to me earlier today.

1 Q Have you seen something similar to this?

2 A Probably, yes.

3 Q Okay. Is this -- what would you refer to this
4 as?

5 A This is the Operations Manual.

6 Q Okay. So when you say Operations Manual, the
7 document that I'm describing -- or giving to you right now to
8 look at is similar to what you've seen before?

9 A Correct.

10 Q Okay. So under section nine it says anesthesia
11 services. Take a moment if you would to read that section
12 because there's some things I want to ask you about related to
13 your involvement that CRNAs testified to earlier.

14 MR. SANTACROCE: Your Honor, I'm going to object to
15 this. He's testified he's never seen the document before. He
16 might have seen something like it --

17 THE COURT: Okay. This wasn't stipulated into
18 evidence?

19 MR. SANTACROCE: Yeah, but the testimony -- the
20 document --

21 THE COURT: Well, I don't know --

22 MR. SANTACROCE: -- the testimony by this witness --

23 THE COURT: -- okay, if it's -- okay, excuse me.
24 I'll see counsel at the bench.

25 (Off-record bench conference.)

1 THE COURT: Mr. Staudaher, please proceed according
2 to the Court's direction.

3 MR. STAUDAHER: Thank you.

4 BY MR. STAUDAHER:

5 Q Before I ask you about --

6 A I -- I did.

7 Q Okay. In relation to that, before -- we were
8 talking before about the issue of whether or not -- oh, I
9 think you mentioned captain of the ship and the whole thing
10 about CRNAs being in the rooms and the like. Do you recall
11 that?

12 A Yes.

13 Q This period of time when you had that discussion
14 about the -- the vials of propofol and the guidelines for the
15 CRNAs, is this part of the guidelines that you believe that
16 CRNAs had about who was responsible for whom, and who they
17 answered to, how they did their job?

18 A Yes.

19 Q Okay. So this -- this is related to that, is it
20 not?

21 A Yes.

22 Q Indicate -- have you ever seen a policy like
23 that before that I just showed you under section nine under
24 anesthesia services?

25 A Sure.

1 Q Okay. So you've seen that before?

2 A Uh-huh.

3 THE COURT: Is it the same policy that you've seen
4 before or similar to the policy you've seen before --

5 THE WITNESS: Similar.

6 THE COURT: -- or essentially the same or what?

7 THE WITNESS: Similar, Your Honor. I cannot recall
8 exactly which document I have reviewed seven years ago.

9 BY MR. STAUDAHER:

10 Q In that policy it talks about the fact that
11 you're -- as the procedure doctor, the attending doctor during
12 the procedure, that you have responsibility to the CRNA?

13 A Yes.

14 Q Were you aware of that at some point during the
15 time you were working there?

16 A Yes.

17 Q How did you learn that you were going to be
18 responsible in some way for the CRNAs?

19 A I think I would have to go back to training as a
20 fellow you --

21 Q No, I'm not talking about that, I'm talking
22 about in the clinic. How did you know that you would be
23 responsible for them during the procedures?

24 A Oh, it's an assumption.

25 Q Okay. Nobody ever told you?

1 A No. Again, it's part of training. You realize
2 that when you're the operating physician, you're in charge of
3 everything that happens in the room.

4 Q But this policy that you say you've seen similar
5 talks about that, correct?

6 A Right.

7 Q So that was similar to what you had been trained
8 about?

9 A Correct.

10 Q No big surprise?

11 A No big surprise.

12 Q Now in that policy, does it not talk about a
13 contracting supervising anesthesia doctor for the CRNAs as
14 well?

15 A Yes.

16 Q What was your understanding of that situation?

17 A There was a physician named Tom Yee who was an
18 anesthesiologist and my understanding was that he was the
19 supervising anesthesiologist for the nurse anesthetists.

20 Q Did you ever see him?

21 A I have seen him.

22 Q Now, I'm not talking about in general, I'm
23 saying in the clinics.

24 A At the facilities, no.

25 Q Ever?

1 A No, I have. Not during procedures, but I have
2 seen him in the facilities.

3 Q Okay. How often would you say that you -- over
4 the entire time you worked at the facility, Burnham, Shadow
5 Lane, wherever you were, did you see Thomas Yee come in?

6 A Maybe half a dozen times.

7 Q Was that for him to give anesthesia services?

8 A At times, yes.

9 Q Okay. Were you aware at -- was that at a time
10 when there were CRNAs practicing at your clinic?

11 A I believe, yes.

12 Q Okay. So you think that he was actually
13 supervising the anesthesia people then?

14 A Yes.

15 Q What would he -- what did he do in your
16 experience?

17 A During the procedures that I worked with him?

18 Q The ones where he is supervising the CRNAs, what
19 did he do?

20 A Oh, I -- I'm not -- I don't know that I -- that
21 I recall him supervising a nurse anesthetist during any
22 procedures.

23 Q Okay. So you saw him in the facilities, you
24 worked with him directly on procedures where he was the
25 anesthetist but you don't know if you saw him do any kind of

1 supervision --

2 A No.

3 Q -- is that fair?

4 A That's fair.

5 Q So when you saw this policy back in place, did
6 you ever wonder who this -- or what relationship this -- the
7 co-supervising anesthesiologist had to the CRNA and to you?

8 A Not sure that I understand the question.

9 Q Bad question. This talks about the -- and let's
10 just put it up -- up for us.

11 MS. STANISH: I'm sorry. Could we clarify for the
12 record, Your Honor, that the yellow highlighting is --

13 MR. STAUDAHER: Yes. The yellow highlighting was not
14 in the original document, that was put on for clarification.

15 THE COURT: Is the yellow highlighting in the
16 stipulated exhibit?

17 MS. STANISH: No.

18 MR. STAUDAHER: No.

19 THE COURT: Okay. So ladies and gentlemen, the
20 actual exhibit is the exhibit without any highlighting or
21 anything like that by the State. That's the exhibit that
22 you'll be seeing. This has just been added by Mr. Staudaher
23 to, I guess, highlight his -- his points and direct the
24 witness. I would note it's not even really that clear what's
25 highlighted on the screen that I'm looking at.

1 MS. STANISH: My screen's pretty clear --

2 THE COURT: Oh, okay.

3 MS. STANISH: -- and so is the jurors.

4 THE COURT: Okay, mine isn't. So to the extent
5 people can see that, they're directed that -- the highlighting
6 is just put on by Mr. Staudaher, it's not part of the official
7 exhibit and you can just use it to direct the witness and for
8 no other purpose.

9 MR. STAUDAHER: Yes. And I will say that any
10 additional highlighting at any other exhibit is not something
11 that would be part of the original exhibit, would be added.

12 THE COURT: Okay. All right. Then go -- go ahead
13 and ask your question.

14 BY MR. STAUDAHER:

15 Q So the attending physician, that would be you;
16 is that correct?

17 A Correct.

18 Q On-site supervision and continuous --

19 A Yes.

20 Q -- of the CRNAs. And -- and is that what you
21 did?

22 A Yes.

23 Q Now the contracting anesthesiologist it says
24 will provide co-supervision. Do you see that?

25 A Yes.

1 Q Available for phone consultations and on-call
2 premises consultations as necessary?

3 A Yes.

4 Q Did you ever have occasion to even try to find
5 anybody to talk to regarding the CRNAs?

6 A We didn't have to.

7 Q But you said that you never saw any of the CRNAs
8 actually do anything that would call their professional
9 activities in to question, correct?

10 A Correct.

11 Q And did you have -- when you're in the rooms,
12 the way you've describe things, are you paying attention to
13 what they're doing or are you focused on what you're doing?

14 A I'm focused on what I'm doing.

15 Q So if they were reusing propofol inappropriately
16 or syringes or anything like that, would that be something you
17 would necessarily see?

18 A That is correct.

19 Q Would it be something you would necessarily see?

20 A Would not necessarily see it.

21 Q If you became aware that there was, for example,
22 something outside -- what I think you described as aseptic
23 technique for the use of propofol.

24 A Correct.

25 Q And just -- I just set that up so that I want to

1 ask if you had seen someone take a single syringe, access a
2 bottle of propofol, go in to a patient, whether remove the
3 needle or not, go back into that bottle of propofol, that
4 would be acceptable at that point, correct?

5 A Yes.

6 Q However, in that very situation, if that bottle
7 was moved to the next patient, would that be acceptable?

8 A No.

9 Q Have you ever seen that, to your knowledge?

10 A No.

11 Q Is that something that you would get a hold of
12 or find out who the co-supervising person was or Dr. Desai or
13 whomever and bring that to someone's attention?

14 A Yes.

15 Q Now, a bottle of propofol can go from one
16 patient to another as long as those aseptic techniques are in
17 place, correct?

18 A Correct.

19 Q Could you ever have a situation where you go in
20 to a patient with a syringe and go back into a bottle with
21 that same syringe, needle changed or not, and then use that on
22 another patient?

23 A No.

24 Q You were asked some questions about -- oh, the
25 other -- other thing related to that whole thing about

1 professionalism or -- or things you would call in to question.
2 Have you ever seen a CRNA or anybody else pre-chart or put
3 things down on the chart when it hasn't happened yet to a
4 patient for example?

5 A No.

6 Q Would that be appropriate?

7 A I don't think so.

8 Q You don't think so?

9 A If -- if nothing has happened and the patient's
10 not in the room, there's no reason to be charting anything.

11 Q Would you ever chart that the patient was awake
12 and alert and ambulating, things like that after a procedure
13 before the procedure even happened?

14 A No.

15 Q Would that be appropriate?

16 A No.

17 Q Even if most of the time the person is, you
18 know, awake and alert and ambulating at the end, would that be
19 okay to just go back and correct any errors at the end?

20 A No.

21 Q Now you were asked some questions about KY Jelly
22 specifically. Do you remember that?

23 A Yes.

24 Q Sometimes, you know, you have a whole bunch
25 dripping off the scope that it's too much?

1 A Correct.

2 Q Is there too little?

3 A It could be.

4 Q Can you use too little?

5 A It can be too little.

6 Q What is the purpose of KY Jelly?

7 A It's to assist on lubricating the instrument but

8 for passage through the anus.

9 Q So getting it into the patient?

10 A Correct.

11 Q Once it gets into the patient what do you rely

12 on?

13 A Basically maneuvering of the instrument and

14 water flushes.

15 Q Water and I think you mentioned some air or

16 something as well? So is it fair to say that it's for patient

17 comfort and safety?

18 A Patient comfort, the patient's not going to feel

19 anything because they're deeply sedated. But I will say that

20 it's for safety purposes.

21 Q So using enough would be something you would do

22 for safety purposes then?

23 A Yes.

24 Q Now, you've obviously used it many times I

25 assume?

1 A Correct.

2 Q Have you ever told anybody that you only want
3 like a dime sized amount?

4 A No.

5 Q And you know that these scopes that -- that
6 you've seen, these long scopes, we've got pictures of them as
7 well, they're big, right? They're long?

8 A I've seen plenty.

9 Q And they're -- they have a large surface area?

10 A Correct.

11 Q When you need to have lubrication, I mean, it
12 takes at least some KY Jelly to lubricate the scope
13 appropriately?

14 A Correct.

15 Q If you felt that -- I mean, have you ever
16 limited anybody on the amount that they could put on?

17 A No.

18 Q Have you ever had a problem with that where they
19 hand you a scope so dripping with KY Jelly from stem to stern
20 that you couldn't use it?

21 A Yes.

22 Q And so in those instances that would be a lot of
23 KY Jelly?

24 A Correct.

25 Q But still you were able to use it then?

1 A Sure.

2 Q Now, in going through -- you mentioned times on
3 -- on procedures. Would you agree that -- that faster
4 procedures are potentially more risky then if you take your
5 time?

6 A Yes.

7 Q Is there any reason to do a procedure faster
8 just for speed sake?

9 A No.

10 Q You mentioned that the average time that you've
11 experienced for an upper endoscopy was, I believe, you even
12 said it in seconds, 100 to 120 seconds, something like that?

13 A Sure.

14 Q I mean we're talking under two minutes?

15 A Correct.

16 Q That's going from mouth down to the stomach and
17 duodenum or whatever; is that correct?

18 A That is if you have plenty of experience doing
19 it, yes.

20 Q Okay. No problem with that?

21 A No.

22 Q Did you ever just try to beat the clock and see
23 just how fast you could do it?

24 A No.

25 Q Would that ever be appropriate?

1 A No.

2 Q Let's go the other direction. You mentioned I
3 think about an eight to ten-minute window; is that fair --

4 A Yes.

5 Q -- for a colonoscopy?

6 A Correct.

7 Q And I know that it could vary if you were doing,
8 you know, biopsies and you've got a poor prep or things like
9 that but I'm saying on average; is that fair?

10 A Yes, it's fair.

11 Q What would you be concerned about if you were
12 just trying to rush through the procedure? What might happen
13 to the patient?

14 A The main thing would be missing abnormalities
15 and that's the whole purpose of the colonoscopy, trying to
16 detect small polyps through the inspection. So if you try to
17 rush coming out from the patient's colon, you will be
18 subjecting yourself to missing pathology or subjecting the
19 patient to missing pathology.

20 Q Now, you mentioned tortuous colon I think at one
21 point --

22 A Right.

23 Q -- might make it more difficult?

24 A Yes.

25 Q Have you seen that happen?

1 A Of course.

2 Q Does it happen? I mean are -- do people
3 sometimes have tortuous colons?

4 A Of course.

5 Q So it might get -- be difficult to get around a
6 fold or through a corner or something along those lines?

7 A Yes.

8 Q In those instances when you have had that
9 happen, do you have to slow down?

10 A Yes.

11 Q If you don't slow down, what would you be at
12 risk of?

13 A Perforating the intestine or rupturing the
14 intestine.

15 Q Would that be a big deal?

16 A Yes.

17 Q What would happen if somebody got a perforation
18 or a rupture, what would you have to do?

19 A Well, first of all, the patient will have to be
20 transferred to the hospital immediately for further care and
21 probably require surgery to fix the problem.

22 Q Would they have to like open up the stomach
23 area?

24 A Yes.

25 Q I mean, when I say stomach, I'm talking about

1 the abdomen.

2 A Yes.

3 Q Is that one of the reasons why you wouldn't rush
4 a procedure beyond what you think was appropriate?

5 A Correct.

6 Q And you said after the CDC came in, things
7 changed?

8 A Yes.

9 Q Tell us about that again because I want -- I
10 know that there was some confusion about some of the paperwork
11 we saw there before and after. So what was it that actually
12 changed after the CDC came?

13 A I don't recollect specific details, but the one
14 thing that was a highlight was that we were going to be using
15 only one vial per patient, they're going to be small volume
16 vials and it's only -- or that we're going to be using
17 multiple syringes if it is necessary to complete a procedure
18 but never reuse a syringe inside it.

19 Q So that was different than things that happened
20 before?

21 A Yes.

22 Q So the multi-use thing was going on, you weren't
23 going to do that anymore?

24 A Right.

25 Q What about the syringes?

1 A Right. I think that in the past we have had
2 times in which the syringe will be used more than one time in
3 one patient. And after the CDC recommendations came through,
4 that was also scratched and we're supposed to use only a
5 syringe one time.

6 Q Now you had also mentioned -- talked -- since
7 we're talking about reuse, bite blocks, do you recall that?

8 A Yes.

9 Q I'm showing you what has been admitted as
10 State's 71-C. I'm going to have to turn that off again.
11 71-C, does that look familiar to you?

12 A Yes.

13 Q Now, you have mentioned that there were two
14 different types. There was a type that was disposable and a
15 type that was not disposable?

16 A Correct.

17 Q If I show you this -- well, let me bring it up
18 to you because I -- I'll zoom in on it but that's -- I'm going
19 to show you the front part of this and ask you if that is what
20 you consider a disposable or a non-disposable bite block?

21 A A single-use disposable bite block.

22 Q So this is the one that you don't know if you
23 could actually process it correctly?

24 A I would expect that you would not be able to
25 process it.

1 Q Would you be okay with somebody reusing this on
2 multiple patients?

3 A No.

4 Q Even if it went through that process we talked
5 about?

6 A No.

7 Q So what does single-use mean to you?

8 A Use it one time, discard it.

9 Q You mentioned that you thought that Diprivan or
10 propofol was a multi-use item.

11 A Yes.

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

13 THE COURT: Uh-huh.

14 BY MR. STAUDAHER:

15 Q Showing you what has been marked as State's 107.
16 Have you -- and were you shown some of these in advance
17 because they're kind of big documents --

18 A Yes.

19 Q -- and so forth. Does this look familiar to you
20 as something you've looked at before you testified?

21 A Yeah, just shown maybe an hour ago.

22 Q Have you ever seen this product information
23 regarding Diprivan before?

24 A I have not.

25 Q But do you work with Diprivan?

1 A No, I do not.

2 Q Okay. So what -- if that's -- how did you get
3 the determination that it was a multi-use type drug?

4 A How do I get that determination?

5 Q Because didn't -- isn't that what you said,
6 you --

7 A Well, yes. I would have to answer this
8 basically based on recommendations of the anesthesia societies
9 or the body that they use as a consultant to put together the
10 policies for the procedures in the facility.

11 Q Do you review those kinds of policies?

12 A No.

13 Q So where do you hear these from?

14 A Where do I hear these from? From some of the
15 partners perhaps. I don't remember having a conversation
16 specifically about that but --

17 Q Partners. Who would the partners be that told
18 you about this?

19 A Perhaps Dr. Carroll, Dr. Sharma, Dr. Carrera, Dr.
20 Mason, anyone in particular.

21 Q That meeting where Dr. Desai says I've made a
22 decision to buy multi-use vials of propofol, did it come up
23 then?

24 A Yes.

25 Q Okay. So who -- since he's talking about it,

1 was he the one or was it somebody else?

2 A No, it was Dr. Desai.

3 Q So he was telling you that it was okay that the
4 drug was something that could be used multiple -- or multiple
5 patients, that kind of thing?

6 A Sure.

7 Q Showing you the first page of this and again the
8 highlighted portion of this is something I added. This is
9 Diprivan. Do you see that, the name? It also goes by the name
10 propofol. Do you see that?

11 A Yes, I do.

12 Q What does the highlighted portion say?

13 A Single-use parenteral product.

14 Q Do you know what that means?

15 A It would imply that you use it only one time and
16 discard the bottle.

17 Q And what does parenteral mean?

18 A Intravenous or through the veins, not oral.

19 Q Going to Bates number 223 for counsel, same
20 exhibit. Again, this is on -- talking about -- you talked
21 about strict aseptic technique. Do you remember that?

22 A Yes.

23 Q On this does it talk about that very same thing
24 that the title here, it says strict aseptic technique.

25 A Yes.

1 Q Do you see that? And then it says single-use
2 parenteral product.

3 A Yes.

4 Q It's talking about -- it's off the screen but
5 it's talking about Diprivan; is that right?

6 A Yes.

7 Q Now, go to -- and I'll have to zoom out so we
8 can get it.

9 THE COURT: Diprivan and propofol are the same thing?

10 THE WITNESS: Yes.

11 THE COURT: One would be like a brand name and the
12 other is a --

13 THE WITNESS: Right, the --

14 THE COURT: -- sort of like the no-name --

15 THE WITNESS: Diprivan is the brand, propofol is the
16 generic compound.

17 THE COURT: Okay.

18 BY MR. STAUDAHER:

19 Q So this section here where it says -- it's not
20 highlighted. It says do not use if contamination is
21 suspected.

22 A Correct.

23 Q Do you see that?

24 A Yes.

25 Q Now, if you were to do what we talked about

1 before, which you said you wouldn't agree with, which was
2 reuse a syringe on a single bottle of propofol and a single
3 patient and then use that propofol on the next patient,
4 correct?

5 A Yes.

6 Q What would you be concerned about then?

7 A Cross-contamination and infection.

8 Q So in this case if contamination was suspected
9 would you suspect at least there could be contamination,
10 that's why you don't use it?

11 A Correct.

12 Q If you suspected it, the product -- and the
13 information even says do not use if contamination is
14 suspected, correct?

15 A Correct.

16 Q And then it's followed by discard unused
17 portions?

18 A Yes.

19 Q Now down here under guidelines for aseptic
20 technique, general anesthesia, do you see that?

21 A Yes.

22 Q The portion here that says -- it's highlighted,
23 should be prepared for use -- and it's talking about Diprivan,
24 should be prepared for use just prior to initiation of each
25 individual anesthetic sedative procedure.

1 A Yes.

2 Q Down here, should be prepared for single patient
3 use only. Do you see that?

4 A Yes.

5 Q Any unused portions must be discarded at the end
6 of the anesthetic procedure or, going to the next page at the
7 top, I know that's kind of hard to read because of the fold,
8 but at six hours, whichever occurs sooner?

9 A Yes.

10 Q Now, it's talking about, again, next paragraph,
11 for single patient use only.

12 A Yes.

13 Q Did you see anything in that -- this document,
14 Exhibit 106 -- or 107, when you looked at it or in the
15 highlighted portions that I showed you that indicates that
16 that drug can be used on multiple patients?

17 A No.

18 Q Matter of fact, just the opposite?

19 A Correct.

20 Q Based on that meeting that you had with Dr.
21 Desai where he's telling you about the drug and what he's
22 going to do, does that surprise you?

23 A It does.

24 Q Do you think that that would be comport with
25 good professional practice to use it now that you know that?

1 A No.

2 Q Ms. Stanish asked you about those chux. Do you
3 remember that? The non-absorbent on one side, absorbent on
4 the other?

5 A Yes.

6 Q She mentioned eight feet long. Have you ever
7 seen a chux that is eight feet long?

8 A I don't recall.

9 Q And typically are they not square?

10 A Yes.

11 Q Do you know how much those cost?

12 A Do not.

13 Q You said that they were cut in half to save on
14 expenses.

15 A Correct.

16 Q Where did you hear that?

17 A I saw it myself.

18 Q No. You -- I know you saw them cut it in half,
19 but why do you know it was done to save expenses?

20 A I do not recall.

21 Q The scope cleaning, you said that the device,
22 the machine that was used -- and I know you're not completely
23 familiar with it, but you know its general operation --

24 A Yes.

25 Q -- is that right? That it used -- if I -- if I

1 use your words correctly, high-pressure, high heat with the
2 solution that's the anti-whatever to do the cleaning.

3 A Correct.

4 Q Is the high heat, high pressure flushing through
5 important?

6 A Absolutely.

7 Q If the machine broke, would it be okay to just
8 take the scopes and just dump them into a bucket with some of
9 the disinfectant solution?

10 A No.

11 Q Why not?

12 A Well, it used to be but research has been done
13 and that wasn't appropriate enough so we move into this
14 machinery to actually achieve better cleansing of the
15 instruments.

16 Q How long ago was that figured out?

17 A When I was a fellow, maybe 15 years ago we were
18 still dipping the scopes in tubs.

19 THE COURT: And that gets to a juror question that
20 kind of is related to that. A juror had asked, on the
21 machines was it clean water and a new chemical mixture every
22 cycle?

23 THE WITNESS: Correct.

24 THE COURT: I mean, is it like a dishwasher or
25 washing machine, it goes through and then cleans it out and

1 goes down the drain or wherever to Lake Meade?

2 THE WITNESS: Yeah. The machines don't have any
3 reservoirs so it's just fresh water and chemicals every cycle.

4 THE COURT: All right. Thank you.

5 BY MR. STAUDAHER:

6 Q Would you have to then add the chemicals or
7 whatever to -- then at the start of the procedure?

8 A Correct.

9 Q And if you knew that your GI techs didn't even
10 know how to change that out, would that be a concern to you?

11 A That would be inappropriate.

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

13 THE COURT: Sure.

14 BY MR. STAUDAHER:

15 Q Showing you State's 108. Now, I know you had a
16 chance to just thumb through that. I'm not going to ask you
17 much about it, I just want to know if you're familiar with
18 that -- that study?

19 A No.

20 Q So this report on colonoscopies was done in 2006
21 was never disseminated to you in the practice?

22 A No.

23 Q Have you ever read about the Institute for
24 Quality Improvement?

25 A I have -- I know some excerpts of -- the

1 recommendations, yes.

2 Q What are the excerpts that you know about?

3 A It talks about withdrawal time to achieve a
4 better yield on the colonoscopy. It talks about -- I think it
5 talked about a type of aseptic technique to clean the
6 instruments. This was only the highlights that I remember.

7 Q Now a withdrawal time, you mentioned and I think
8 Ms. Stanish asked you there's a portion of the colon called
9 the cecum?

10 A Correct.

11 Q From the anus going backward, is that kind of
12 the end of the large intestine before it becomes part of the
13 small intestine?

14 A Correct.

15 Q Is there anything that -- that is attached or
16 dangles off of that -- that cecum, that end of the colon?

17 A The appendix.

18 Q Is that something that you actually use as a
19 landmark to know that you're actually there when you're doing
20 your -- or your endoscopic procedures?

21 A Yes.

22 Q So do you ever take a picture of -- from the
23 inside, the orifice, the place where you can actually see it
24 from the inside?

25 A Yes.

1 Q Is that kind of to document that, hey, I got all
2 the way around?

3 A Yes.

4 Q Do you try to do that in every case --

5 A Yes.

6 Q -- so you can show that? Now when you're
7 withdrawing you said the withdrawal time is important?

8 A Yes.

9 Q Is that the most important time as far as
10 observing?

11 A Yes.

12 Q Getting over there -- you get over there but if
13 -- but if you run into difficulty what do you do?

14 A You take your time, you maneuver the instrument
15 to be able to advance through the areas that are difficult
16 until you get to the cecum. You can use abdominal pressure,
17 torquing of the instrument, reposition the patient, a number
18 of maneuvers.

19 Q Now, let's -- let's present that we get all the
20 way -- we've done -- gotten around, visualized it and you've
21 done your inspection all the way out, almost all the way
22 out --

23 A Uh-huh.

24 Q -- is there anything you do at the very end
25 before you take out the scope?

1 A You do something called a retroflexion in which
2 you're basically -- flip the tip of the scope, looks like an
3 umbrella handle so you can see the rectum from the inside.

4 Q And for the record, it looked like you took your
5 index finger and turned it 180 degrees so that if that end was
6 the -- the end of your finger was the end of the scope it
7 would be pointing completely opposite direction the scope was
8 traveling?

9 A Correct.

10 Q So you look around the inside of the rectum?

11 A Correct.

12 Q What are you looking for?

13 A Lesions that you would ordinarily see if you
14 just look forward.

15 Q What is a lesion?

16 A Could be polyps, could be fissures, could be
17 warts or condylomas, all kinds of different things.

18 Q Cancer?

19 A Yes.

20 Q So is that kind of an important last step?

21 A It's standard.

22 Q Have you ever been in a situation where you just
23 yank the scope out of somebody at the end?

24 A No.

25 Q Is that appropriate?

1 A No.

2 Q Now you would ask -- been asked a question
3 directly by Mr. Santacroce regarding Mr. Lakeman. Have you
4 ever seen him do anything that you thought was inappropriate
5 or unprofessional, anything like that?

6 A No.

7 Q Okay. You did not?

8 A I did not.

9 Q Okay. If you knew that he had done any of the
10 things that I described to you, admitted to them, would that
11 change your opinion?

12 A Yes.

13 MR. STAUDAHNER: Court's indulgence, Your Honor. Pass
14 the witness, Your Honor.

15 THE COURT: Re-cross, Mr. Santacroce?

16 MR. SANTACROCE: Thank you.

17 RE-CROSS-EXAMINATION

18 BY MR. SANTACROCE:

19 Q Doctor, this meeting that you were at where it
20 was discussed that you would go from 20 to 50 cc propofol
21 bottles, who was present at that meeting?

22 A Don't have a precise recollection, but I would
23 assume all the partners.

24 Q Just the partners?

25 A Correct.

1 Q There weren't any CRNAs involved in that
2 meeting, were there?

3 A No.

4 Q They didn't have any say so as to a decision as
5 to what propofol bottles would be used, correct?

6 A No. Correct, yes.

7 Q That's not correct?

8 A It is correct.

9 Q So basically whatever was ordered for the clinic
10 they would be required to use, correct?

11 A Yes.

12 Q Now the 50 cc bottles of propofol, you said at
13 this meeting it was discussed to go to that because it would
14 save money. How would that save money?

15 A It is actually cheaper to purchase larger vials
16 than smaller vials.

17 Q And would those vials be expected, in your
18 opinion, to be used on one person?

19 A The larger vials --

20 Q Yes.

21 A -- no.

22 Q It would be used on multiple people --

23 A Correct.

24 Q -- multiple patients. So if the vial said
25 single dose uses on the vial, the common practice and

1 procedure for 50 cc propofol vials would be used -- to be used
2 on multiple patients; isn't that correct?

3 A Correct.

4 Q So it didn't matter what the vial said on it,
5 single or multi-use, it would be expected to be used on
6 multiple patients?

7 A No. If -- if there's specific instructions by
8 the manufacturer I would expect that we will not be using that
9 bottle on more than one patient.

10 Q Well, if I told you that every 50 cc bottle of
11 propofol had single use language on it, would that make sense
12 to you?

13 A It makes sense, but it surprise me.

14 Q I'm sorry?

15 A It surprises me. I did not know --

16 Q It surprises you?

17 A -- I was not aware that there was such writing
18 on the bottles of 50 cc of propofol.

19 Q But you've seen 50 cc bottles of propofol used
20 on more than one patient?

21 A Sure can -- I sure have.

22 Q In fact, that was the common practice for 50 cc
23 bottles, correct?

24 A In the facilities and in the hospitals too.

25 Q Both hospitals. So it was done not only in this

1 clinic but everywhere else that you worked?

2 A Everywhere else.

3 Q Now you would -- you talked about -- or it was
4 talked about to you -- exhibit -- State's Exhibit 106 and you
5 were shown some language about anesthesia services, correct?

6 A Yes.

7 Q Can you read that or do I need to blow that up?

8 A I can read it.

9 Q Under B1 you were asked about the attending
10 physicians responsibility. What are those responsibilities in
11 a procedure room?

12 A It says to provide on-site and continuous
13 supervision to the Certified Registered Nurse Anesthetist.

14 Q And do you see that word continuous supervision?

15 A Yes.

16 Q You were required -- not just you, but Dr.
17 Carrera, Dr. Carrol, Dr. Mukherjee, all the other doctors,
18 Mason, everybody else you worked at were required to provide
19 continuous supervision of the CRNAs; isn't that correct?

20 A Correct.

21 Q And being, quote, captain of the ship, you were
22 expected to do that, correct?

23 A Correct.

24 Q So as you testified, if you saw any
25 inappropriate procedures you would call the CRNA on that,

1 correct?

2 A Yes.

3 Q And you didn't have occasion to do that, did
4 you?

5 A No.

6 Q You were also asked about this Institute for
7 Quality Improvement report, State's Exhibit 108. You were
8 shown that report, correct?

9 A Yes.

10 Q And I believe your testimony was that you are
11 aware of some excerpts of that report?

12 A Yes.

13 Q You didn't read this whole report, did you?

14 A No.

15 Q In fact, you didn't read -- read everything that
16 you got, every report that ever came across your desk you
17 didn't read, did you?

18 A No.

19 Q You -- you were asked about certain guidelines
20 that were incorporated by the endoscopy center, CRNA
21 Guidelines. Do you recall that testimony?

22 A Yes.

23 Q And I believe you said that those guidelines
24 were -- you weren't exactly sure the date that those
25 guidelines came out; is that correct?

1 A Correct.

2 Q And it could have been a year or two years
3 before the CDC recommendations?

4 A Sure.

5 Q But you don't know exactly when?

6 A No.

7 Q But you said that you believe that the CRNAs
8 were aware of those guidelines?

9 A Yes.

10 Q How did you make that -- come to that
11 conclusion?

12 A Well, I think it becomes in terms of -- or
13 becomes part of professional trust. These are people that are
14 trained on what they're doing. They go through scrutiny when
15 they get hired and they're expected to read manuals and
16 procedures while they're performing at the facility. Again,
17 this is expectation of trust.

18 Q Well, you just testified you didn't read the
19 Institute for Quality Improvement report. Aren't you expected
20 to read -- read that report?

21 A No.

22 Q So the CRNAs you believe were expected to read
23 that report but you don't know if the CRNAs were even ever
24 disseminated those guidelines were -- are you?

25 A I do not.

1 Q You never saw any lists with the CRNAs initialed
2 receiving those guidelines, did you?

3 A No.

4 Q You never saw a meeting where the CRNAs were
5 given those guidelines --

6 A No.

7 Q -- did you? You never asked the CRNA if he read
8 those guidelines, did you?

9 A No.

10 Q So you were just making the assumption that they
11 should be aware of those guidelines?

12 A Yes.

13 Q You testified that the Burnham clinic went to
14 single-use bite blocks at some point in time, correct?

15 A Yes.

16 Q When was that?

17 A Do not recall.

18 Q Could it have been after the CDC?

19 A Previous.

20 Q Previous to the CDC?

21 A Correct.

22 Q Do you know what bite blocks were being used at
23 Shadow Lane, whether they were multi-use or single-use?

24 A I do not.

25 Q And I believe you testified -- no, strike that.

1 MR. SANTACROCE: I have no more questions.

2 THE COURT: All right. Ladies and gentlemen, we're
3 going to have to take a quick break, just about ten minutes.
4 During the quick break you're advised that you're not to
5 discuss the case or anything relating to the case with each
6 other or with anyone else. You're not to read, watch, listen
7 to any reports of or commentaries on this case, any person or
8 subject matter relating to the case by any medium of
9 information. Please don't do any independent research on any
10 subject connected with the trial. Please do not form or
11 express an opinion on the case. If you would all please exit
12 through the double doors -- or the rear door and please place
13 your notepads in your seat.

14 (Jury recessed at 3:08 p.m.)

15 THE COURT: And, Doctor, during the break, please
16 don't discuss your testimony with anyone else.

17 How much cross do you have?

18 MS. STANISH: I think I'm -- I don't have anything
19 further. It's been pretty much covered.

20 THE COURT: Any redirect?

21 MR. STAUDAHER: No.

22 THE COURT: We have one juror question. You can come
23 up and have a look at it, leave it up there.

24 (Court recessed at 3:09 p.m. until 3:20 p.m.)

25 (Outside the presence of the jury.)

1 THE COURT: Was everyone okay with the question? Did
2 they indicate they weren't?

3 MR. STAUDAHER: Yes, yes.

4 THE COURT: It's been 12 minutes according to
5 everyone.

6 MS. WECKERLY: I'm sorry, Your Honor. It's just --

7 THE COURT: No, I mean, I'm not mad at you. It's Mr.
8 Santacroce and Mr. Wright. My -- my patience has hit a wall.
9 I have been more than patient -- get Mr. Wright. I've been
10 more than patient with the two of you and I'm done.

11 MS. STANISH: I'm sorry, Your Honor. This
12 document --

13 THE COURT: It's not you. It's not you.

14 MS. STANISH: No, I understand --

15 THE COURT: Well, perhaps we need to now wait for Mr.
16 Santacroce.

17 MS. STANISH: I'm just not -- this is a -- I'm still
18 reading this interview. That's all I wanted to tell the
19 Court. Sorry.

20 THE COURT: We have a new juror question. He's not
21 in the men's room?

22 MR. STAUDAHER: Mr. Santacroce, there's a juror
23 question.

24 THE COURT: There was an additional juror question.
25 Were you fine with this first juror question?

1 MR. SANTACROCE: Yes.

2 THE COURT: Well, since we're waiting for Mr.
3 Wright, Ms. Stanish, you may as well as use the time to read
4 the report.

5 MS. STANISH: I will.

6 THE COURT: Mr. Wright, Mr. Santacroce --

7 MR. SANTACROCE: Yes, ma'am.

8 THE COURT: -- my comments are directed at you two.
9 I think I've been more than patient. I've certainly tried to
10 be more than patient with both of you, but I'm not going to
11 tolerate the rudeness anymore. Perhaps you didn't feel that
12 you were being rude, but let's just all try to -- I've tried
13 to be as courteous as I can be and I expect courteousness
14 towards opposing counsel and towards the Court in return.

15 Secondly, throughout the breaks, as you know, I'm
16 pretty punctual. In fact, I'm usually here prior to the
17 conclusion of the breaks. I am trying to move this through as
18 quickly as we can and inconvenience the jurors as little as
19 possible. A 10-minute break means a 10-minute break. A
20 15-minute break means a 15-minute break. As you know, you
21 know, we're trying to keep the jury in the back so that they
22 don't, you know, inadvertently hear conversation or something
23 like that and we have to God forbid declare a mistrial.

24 So that means that my marshal and my staff is kind of
25 focused on the back end and we don't have the resources to be

1 hunting you down at the conclusion of the breaks. It's been
2 happening that, you know, you're late and so I just want to
3 remind everyone that if I say a 10-minute break and, you know,
4 you feel ill or something like that and that's not long
5 enough, than let us know. But otherwise, if we have a
6 10-minute break or a 15-minute break or something like that, I
7 expect everyone in their chairs at the conclusion of the
8 10-minute break or the 15-minute break with their clients and
9 the State as well. That doesn't mean that at 10 minutes we go
10 to the bathroom after 10 minutes has elapsed. That doesn't
11 mean that at 15 minutes we have to send the other lawyers or
12 court staff out looking for you.

13 So, you know, let's just moving forward be cognizant
14 of the fact. I know some courts are not that cognizant of
15 times and they say I respect your time, I respect the jurors'
16 time and I try to respect the witnesses' time. But in
17 exchange for that, I ask that you respect my time and my
18 staff's time and the jurors' time and the witnesses' time and
19 that everybody be back here at whatever the break is. You
20 know, going forward let's just be mindful.

21 As I said, I know from practicing as a lawyer, some
22 courts really didn't care, 10 minutes meant 30 minutes. But I
23 think you've seen in here that I'm pretty punctual and when I
24 say 10 minutes I'm usually here at 8 minutes chomping at the
25 bit to get started again.

1 So can we all please be mindful of that so that at
2 the breaks we don't have to send people looking out into the
3 hall or looking into the back or something like that. And
4 like I said, if for some reason you need longer at the break
5 then, you know, let the staff know or let another lawyer know
6 so at least we're not out there looking for you.

7 So hopefully moving forward we're not going to have
8 any problems and we can, you know, make this as pleasant an
9 experience as possible and at least, you know, I understand
10 it's an adversarial system. I understand you're not agree
11 with, you know, everything that's done. But at least if we
12 can all try to treat each other courteously and make this as
13 pleasant as -- an experience as possible given what it is and
14 again be mindful and respectful of everyone's time.

15 So Kenny, bring them in.

16 (Jury reconvened at 3:28 p.m.)

17 THE COURT: All right. Court is now back in session.
18 The record should reflect the presence of the State through
19 the deputy district attorneys, the presence of the defendants
20 and their counsels, the officers of the Court and the ladies
21 and gentlemen of the jury and -- all right.

22 Let's move in to some juror questions here. A juror
23 wants to know in your practice of endoscopy -- endo and
24 colonoscopies in regards to volumes of patients, do you think
25 60 to 70 patients per day for a doctor and two CRNAs is

1 excessive?

2 THE WITNESS: Yes, I do.

3 THE COURT: And what is your specific belief of what
4 aseptic techniques are regarding the handling of propofol
5 during a colonoscopy by an anesthesiologist or anesthetist?

6 THE WITNESS: The -- there's several aspects of it.
7 We talked about the fact that you could use a large vial in
8 multiple patients as long you're withdrawing from that vial
9 from one syringe at a time. And every time that you would
10 draw with that syringe, that syringe gets discarded. So as
11 long as the syringe is new and fresh and you're withdrawing
12 propofol or Diprivan or any drug from that vial, it is okay to
13 use it in multiple patients, that is aseptic.

14 The other aspect is, if you actually -- if you
15 actually start using a vial with a patient and you have
16 committed that vial to be just for that one patient, you could
17 use the same syringe multiple times because you're not
18 cross-contaminating. You're staying within that patient.
19 After you're finished with that patient you discard
20 everything, the one vial and the one syringe. So that would
21 be considered aseptic as well.

22 THE COURT: All right. Does the State have any
23 follow-up to either the cross-examination or those last juror
24 questions?

25 MR. STAUDAHER: No, Your Honor.

1 THE COURT: All right. Do we have any follow-up from
2 Mr. Santacroce or Ms. Stanish?

3 MR. SANTACROCE: Not from me.

4 MS. STANISH: Just to -- just to clarify the one
5 doctor to 60 patients, if you know, at Shadow Lane were there
6 two doctors working at any given time?

7 THE WITNESS: Yes.

8 MS. STANISH: And additionally, would the doctors
9 work in shifts so that later in the day two other doctors
10 would come in and do the procedures?

11 THE WITNESS: Yes.

12 THE COURT: State, anything else?

13 MR. STAUDAHER: No, Your Honor.

14 THE COURT: Do we have any additional juror questions
15 for this witness? All right, Doctor, thank you for your
16 testimony. Please don't discuss your testimony with anyone
17 else who may be a witness in this matter.

18 THE WITNESS: Thank you.

19 THE COURT: Thank you, sir, and you are excused. And
20 the State may call its next witness.

21 MR. STAUDAHER: State calls Daniel Sukhdeo, I believe
22 -- I'm sure I didn't pronounce that properly.

23 THE COURT: Sir, just face this lady right there and
24 she'll administer the oath to you.

25 DANIEL SUKHDEO, STATE'S WITNESS, SWORN

1 THE CLERK: Thank you. Please be seated. And sir,
2 would you please state and spell your name?

3 THE WITNESS: My name is Daniel Sukhdeo, D-a-n-i-e-l,
4 last name is S-u-k-h-d-e-o.

5 DIRECT EXAMINATION

6 BY MR. STAUDAHER:

7 Q Mr. Sukhdeo, I'm going to take you back in time
8 a little bit to 2007. Did you work at a place called the
9 Endoscopy Center of Southern Nevada at any time?

10 A Yes, sir.

11 Q What was the window of time that you worked
12 there?

13 A From August of 2007 until it was closed.

14 Q So that would have been going in 2008, March of
15 '08?

16 A Yes, sir.

17 Q So that entire time period?

18 A Yes, sir.

19 Q Did you work anyplace else beside the endoscopy
20 center at the time?

21 A No, sir.

22 Q Now when you first started working there, what
23 background and experience did you have to come in and do
24 whatever you did there?

25 A I'm a pharmacy technician. I went to school for

1 it and I worked as an anesthesia technician before then for a
2 brief time.

3 THE COURT: Oh, are you having trouble hearing? Sir,
4 the jurors are having trouble hearing you. Do you see that
5 black box right there? That's the microphone.

6 THE WITNESS: Oh.

7 THE COURT: So if you speak into that then hopefully
8 you can hear. Ladies and gentlemen, if you still can't hear,
9 just give a signal.

10 THE WITNESS: Oh, okay.

11 THE COURT: So can you state your question again and
12 have him answer it again so we make sure everybody heard.

13 BY MR. STAUDAHER:

14 Q You worked there from what year -- or what
15 months to what months?

16 A From August of 2007 until it closed in -- or
17 early 2008, March of 2008.

18 Q So it closed in March of '08. You worked up
19 until that point?

20 A Yes, sir.

21 Q Okay. And what did you do there?

22 A I was a GI technician.

23 Q Now, before you became a GI technician at the
24 clinic, I think you said you didn't work anyplace else except
25 for Shadow Lane; is that right?

1 A Yes, sir.

2 Q And we're talking about Shadow Lane, which is
3 over by -- or Valley Hospital?

4 A 700 Shadow Lane, yes.

5 Q At that clinic before you came to work there,
6 did you have any training or experience to be a GI tech?

7 A No.

8 Q What had -- training and experience did you have
9 which gave you any kind of leg up, so to speak, for that kind
10 of a job?

11 A I worked as an anesthesia technician for a brief
12 time and I was also trained as a pharmacy technician, but that
13 is the extent of my training.

14 Q So you dealt with drugs and anesthesia and --
15 for procedures you mean?

16 A As an anesthesia technician my primary
17 responsibility was just to make sure that the CRNAs at my
18 previous job always had their drugs. I was just to keep it --

19 Q So you worked with CRNAs in the past?

20 A Yes, sir.

21 Q Now at the endoscopy center you said a GI
22 technician is what you were. Did you work in any area -- were
23 there specific areas -- let me back up. Were there specific
24 areas within the clinic that you worked?

25 A I worked pre-op, the procedure rooms and the

1 scope room were my three --

2 Q What -- what did you do out in the pre-op area?

3 A At the beginning of the day when a patient would
4 come back I would greet the patient. We would inform them
5 they -- inform them that they were here for either a
6 colonoscopy or endoscopy. Make sure that the patient had --
7 confirmed that. Once the patient did, we would explain if --
8 or we would ask if they had anything to eat or drink before
9 their procedure -- within the prior 24 hours. After that we
10 would just get the patients ready, bring them back to see the
11 nurse.

12 Q Now, I'm going to show you what's been admitted
13 as 10 -- as State's 103, and I'll zoom that just a little bit.
14 And you can -- you can draw on that screen with your -- with
15 your fingernail, just so you know. Usually it works best with
16 your nail and then you just tap down here to clear it if you
17 need to. Okay?

18 A Yes, sir.

19 Q So I'm going to represent to you that this is a
20 general floor plan of that location. Does that look familiar
21 to you at all?

22 A It's been awhile, but generally yes.

23 Q Okay. Now the area that you worked in pre-op,
24 where -- where would that have been?

25 A I want to say here.

1 Q Right there? In that facility, the pre-op area,
2 is that where the patients came in in the morning and waited?

3 A There was the waiting area and they would come
4 in and be seated.

5 Q At the beginning of the day, I mean how many
6 patients would typically be booked for a particular time slot?

7 A Usually, in the beginning it -- about four
8 patients in the morning. I'm trying to understand the
9 question, sir.

10 Q Okay. Do you have patients -- do you have
11 everybody for the whole day show up all at once or do you
12 stagger them throughout the day?

13 A They come in periodically throughout the day,
14 sir.

15 Q So at 8:00 in the morning how many people would
16 you have show up typically or 7:00 or whenever you started?

17 A I couldn't say for sure, a couple.

18 Q Was there ever any overbooking of patients?
19 Meaning, for a single time slot more than one patient?

20 A I -- yes, there would be. I saw maybe two
21 patients booked for the same time if that's what you're
22 referring to.

23 Q Booked for the same time period?

24 A Yes, sir.

25 Q Okay. Now when the -- as the day progressed,

1 since you were working in that area, what did the -- what did
2 the room look like as far as people, like did it fill up?

3 A The waiting area generally, as the morning went
4 on, it would fill up, yes.

5 Q And as the -- as it filled up, did there ever
6 come a time when there were not enough seats for the people
7 who were there?

8 A There were sometimes, yes.

9 Q And I'm showing you -- going to show you a
10 couple of photographs of that area and ask you about those.
11 These are State's 112 and go ahead and clear that screen if
12 you would, just tap it in the corner. There you go. 112, 113
13 and 114. Does that look familiar to you?

14 A Yes, sir.

15 Q Okay. So again, as the day progressed, when
16 you're going out and getting patients, is there ever a point
17 where patients -- there's so many patients out there that they
18 have to just stand because there's no seats?

19 A Yes.

20 Q Was that a regular occurrence?

21 A Yes.

22 Q As far as patients that had been there and
23 checked in, did you know roughly -- I mean if they had come in
24 and checked in, how did you become aware of that?

25 A I believe that they got checked in by the two

1 girls working at the front desk and if they were there in the
2 morning, you'd see them and then depending on whether or not I
3 came back if they were still waiting or not.

4 Q How long would patients typically have to wait
5 as the day progressed to get their procedures done?

6 A It varied. Anywhere from 30 minutes to an hour
7 to maybe up to three hours.

8 Q As it got further in the day, were the waits
9 longer?

10 A Yes, sir.

11 Q Did the patients get upset and complain at all?

12 A Yes, sir.

13 Q Would you have to deal with that in your
14 position?

15 A At times, yes, sir.

16 Q After you worked at the procedure room, is that
17 where -- or excuse me, the pre-op area, is that where you
18 started predominately?

19 A My -- no, sir. I worked in the patient bay
20 areas when I first started at the clinic.

21 Q When you say patient bay areas, what are you
22 referring to? I can show you some pictures if that will help.
23 I'm going to show you 117 and ask if you ever worked in the
24 area before the procedures took place?

25 A Not in that room specifically.

1 Q I'm showing you 118. Does that look familiar to
2 you?

3 A Yes, sir.

4 Q Okay. What are we looking at there?

5 A That is the main patient bay area.

6 Q So when you say patient bay, that's where you
7 started working was in this area?

8 A Yes, sir.

9 Q Eventually do you go out and work in the pre-op
10 area as well?

11 A To call patients back, yes, sir.

12 Q And so what are you doing back here in this --
13 in this particular area?

14 A In the mornings it was just to get patients
15 ready for their procedures. We'd call them back and then have
16 them change into their gown. After they'd change into their
17 gown, we would take them to the back room there would they
18 would meet with the nurse.

19 Q So where was the room that they would meet with
20 the nurse?

21 A The far back room.

22 Q Go ahead and mark it for us.

23 A Right there.

24 Q Okay. So the patients, you would bring them
25 back and they would wait where before they went back into that

1 room?

2 A There's a changing bay off screen right about
3 here. When they were brought in they would get changed into
4 their hospital gown and after they were changed into their
5 hospital gown we'd bring them back to that room there.

6 Q Okay. I'm going to go through a couple of these
7 more to give you some perspective. Go ahead and clear that
8 screen if you would, please. I'm showing you 119. Then I
9 think it's -- the next one 120 is probably -- looks like it's
10 going to be a perspective the other direction from what you
11 saw on 118. Do you see that?

12 A Yes, sir.

13 Q And 121 is I think similar, just looking another
14 direction. Do you see that?

15 A Yes, sir.

16 Q Now, in -- in that particular area, the places
17 that you were seeing patients or the patients were waiting,
18 was it over -- did the patients ever wait in -- in this area
19 where these beds are?

20 A Just before they went inside to the room.

21 Q So they wait initially after you bring them back
22 to get changed?

23 A Yes. They -- they're brought in, they get
24 changed. Once they get changed they're taken to see the nurse
25 and after they see the nurse they're placed into a bed waiting

1 to be brought inside to a room.

2 Q So once they get seen by the nurse, what does
3 the nurse do to them, to your knowledge?

4 A From what I understand they start a IV line.

5 Q When they came out did they have an IV thing in
6 -- in their arm?

7 A In their arm, yes, sir.

8 Q Then you would get them again?

9 A Yes. And we would take them to one of the beds
10 and place them there until they were ready to be brought
11 inside.

12 Q So I'm going to go back just so we get a little
13 different perspective. This is 118 again. Do you see that?

14 A Yes, sir.

15 Q Now, the beds themselves, is that where the
16 patients would wait, is that what I understand --

17 A Yes, sir.

18 Q -- before they went into the procedure rooms?

19 A Yes, sir.

20 Q After they went into the procedure rooms and
21 they came back out, what would happen to them? Where would
22 they go?

23 A Back into an empty bay.

24 Q How many beds were in those -- in those areas,
25 how many bays were there?

1 A About five I believe.

2 Q And if we look at the diagram, and this is 103,
3 is this the area we're talking about?

4 A Yes, sir, right --

5 Q You think there were about five slots for beds?

6 A Five beds, yeah.

7 Q Again, going back to 118 we can actually see --
8 at least in this picture it looks like there's one, two,
9 three, four beds that you can directly see, correct?

10 A Yes, sir.

11 Q Patients wait there before the procedure and
12 then they come back out after the procedure to the same place?

13 A The same bays, yes, sir.

14 Q What -- did you ever get backed up where there
15 were patients that were still recovering out in the recovery
16 area and you didn't have anyplace to put the new patients that
17 were coming in?

18 A At times.

19 Q What would you do in those instances?

20 A Just wait until a bay became available.

21 Q But where would the patient be or have to wait?

22 A Just generally in the floor area here.

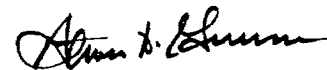
23 Q Go ahead and whenever you do that just take your
24 finger -- a fingernail and just draw right on the screen.

25 A Right there.

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TRAN



CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

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 15

WEDNESDAY, MAY 15, 2013

APPEARANCES:

FOR THE STATE:	MICHAEL V. STAUBAHER, 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.

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1 LAS VEGAS, NEVADA, WEDNESDAY, MAY 15, 2013, 12:44 P.M.

2 * * * * *

3 (In the presence of the jury.)

4 THE COURT: All right. Court is now back in session.
5 The record should reflect the presence of the State through
6 the deputy district attorneys, the presence of the defendant
7 -- defendants and their counsel, the officers of the Court and
8 the ladies and gentlemen of the jury.

9 And the State may call its next witness.

10 MS. WECKERLY: Thank you, Your Honor. The State
11 calls Johnna Irbin.

12 THE COURT: Ma'am, just right up here, please, next
13 to me, up those couple of stairs there. And then just remain
14 standing, face that lady right there and she'll give you the
15 oath.

16 JOHNNA IRBIN, STATE'S WITNESS, SWORN

17 THE CLERK: Please be seated. And if you could
18 please state and spell your first and last name for the
19 record?

20 THE WITNESS: Johnna Irbin, J-o-h-n-n-a, I-r-b-i-n.

21 THE COURT: All right. Thank you. Ms. Weckerly.

22 DIRECT EXAMINATION

23 BY MS. WECKERLY:

24 Q Ms. Irbin, were you employed in 2007? What are
25 you -- can you tell us what you're referring to?

KARR REPORTING, INC.

1 A I --

2 THE COURT: For the record. Is it -- is that like a
3 calendar printout or something?

4 THE WITNESS: It's my performance appraisal when you
5 had my dates on it so I --

6 THE COURT: Okay. So does that -- just does that
7 refresh your memory when you were working?

8 THE WITNESS: Yes.

9 THE COURT: Okay. Go ahead and look at that.

10 THE WITNESS: Okay. From October 2nd, 2008 to
11 February 28th, 2010.

12 BY MS. WECKERLY:

13 Q Where were you working then?

14 A For the Endoscopy Center of Southern Nevada.

15 Q Okay. The endoscopy center, do you remember the
16 CDC coming in and the Nevada Board of Health coming in to the
17 endoscopy center?

18 A I knew they were there.

19 Q Okay.

20 A Yeah.

21 Q If they -- if they came there in 2008, how long
22 had you worked there before that? Did you work there like a
23 year or a couple of years?

24 A I was there from October, 2006 until February of
25 2010.

1 Q Okay. When you were working there, when you
2 first started working there, where did you -- where were you
3 assigned?

4 A My title was discharge nurse.

5 Q A discharge nurse. So you were an LPN?

6 A I'm an LPN, not an RN.

7 Q Not an RN. As an LPN, what was your training
8 that you had before you worked at the endoscopy center to work
9 as an LPN?

10 A I worked in the ER and ICU back in Missouri.

11 Q In Missouri?

12 A And out here I had worked for Urgent Care when
13 we first moved here and I worked in a home health agency.

14 Q When you -- so when you first started your
15 career as an LPN, you were working in Missouri?

16 A Yes.

17 Q And you worked in an intensive care unit and the
18 emergency room?

19 A Yes, only those two places.

20 Q And that was in a hospital setting?

21 A Yes.

22 Q Then at some point you moved to Las Vegas?

23 A Yes.

24 Q And when you moved to Las Vegas, did you work
25 anywhere before you worked at the endoscopy center?

1 A Yes.

2 Q Where did you work?

3 A At Southwest Medical Urgent Care. I worked the
4 trauma beds there and then -- oh, I worked for Sunrise
5 Hospital. I was a supervisor of their senior friends.

6 Q Okay. And then you started at the endoscopy
7 center, it sounds like sometime in 2006?

8 A Yes.

9 Q Okay. And I think you said that you worked as a
10 discharge nurse; is that right?

11 A Yes.

12 Q Did you work full time there or were you part
13 time?

14 A I was part time. I worked Monday, Tuesday and
15 Friday.

16 Q And do you recall what your hours were?

17 A They varied. Usually I went in at seven or
18 eight and I got off at four p.m.

19 Q Okay. So seven or eight in the morning until
20 four in the afternoon?

21 A Correct.

22 Q And as the discharge nurse what -- what did you
23 do? What were your job duties?

24 A After the patient's procedure was finished and
25 they were dressed, they came to me and I had a copy out of the

1 computer of the procedure and I advised them what type foods
2 or drinks they should have for the evening and their
3 activities and I made follow-up appointments for them on the
4 computer.

5 Q Okay. So you'd give them their discharge
6 instructions?

7 A Correct.

8 Q And you'd set up a follow-up appointment for
9 them?

10 A Yes.

11 Q Did you ever go over the results of their
12 procedure with them?

13 A Oh, yes. I left that out, yes.

14 Q Okay.

15 A I -- I read the results from the computer
16 printout that was given to me.

17 Q Okay. And so you were sort of the last person
18 that they would talk to before they left -- the patients?

19 A Correct, uh-huh.

20 Q Who was it that -- do you remember who it was
21 that hired you for the endoscopy center?

22 A What was her name? Tonya.

23 Q Tonya Rushing?

24 A Tonya Rushing, yes.

25 Q Okay. Did you ever work in the procedure rooms?

1 A No, never.

2 Q Did you ever work in the pre-op area?

3 A Perhaps a small amount of time.

4 Q Okay. But primarily discharge?

5 A Primarily all I did was discharge.

6 Q Okay. And then I assume you weren't in the
7 recovery area, were you?

8 A No.

9 Q Okay. So mainly discharge, maybe a time or two
10 in pre-op, but never in procedure and never in recovery?

11 A Never.

12 Q Okay. Give us a sense of the volume of patients
13 that -- that were seen on the days that you were working.

14 A The volume --

15 Q Uh-huh.

16 A -- was great.

17 Q And by great, what type of numbers are -- are
18 you talking about?

19 A Eighty to 90 patients a day.

20 Q Okay. Was -- had you ever worked -- well, it
21 sounds like you were only in the ICU and the ER, you hadn't
22 worked in this type of setting before; is that right?

23 A Correct.

24 Q Because of the -- the volume of patients, was it
25 hard to get the paperwork done associated with those patients?

1 A For me it wasn't.

2 Q Okay. Did anyone -- do you know what
3 pre-charting is?

4 A Yes.

5 Q What is that?

6 A Well, pre-charting is to assemble a patient's
7 chart to me.

8 Q Okay. And what do you call it if you fill out a
9 chart before a procedure happens or before you're actually
10 seeing a patient, what would you call that?

11 A Illegal.

12 Q Okay. Illegal. Is that -- is -- I mean, is
13 that ever called pre-charting or what would you call that
14 besides illegal?

15 A Well, I think you're referring to assembling the
16 charts for the patients to be seen.

17 Q Yes.

18 A That's what it means to me --

19 Q Okay.

20 A -- pre-chart.

21 Q In your experience at the endoscopy center, did
22 you ever see people fill out charts ahead of time, meaning
23 before the -- the patients got to those areas or before
24 procedures were done?

25 A Yes.

1 Q And how was that done at the endoscopy center
2 that you -- in your experience, how did you see that?

3 A Well, there was one -- I think she was an LPN
4 and I think her name was Paula or Pauline Bailey, I think, and
5 she assembled the charts.

6 Q Okay.

7 A And so they asked me to learn the procedure and
8 that's how I saw her do it.

9 Q Okay. And what did you see her do?

10 A Make checkmarks in areas concerning the patient
11 that she'd never seen.

12 Q Okay. And where was the patient as she's making
13 these checkmarks?

14 A I assume in the waiting room because I never saw
15 them.

16 Q Okay. And so she -- the type of checkmark she's
17 making on charts, what was that indicating? What information
18 was being recorded onto those charts with the checkmarks?

19 A That they were awake, alert and oriented and
20 ambulatory.

21 Q Okay. And this is while the person has yet to
22 be seen and is sitting in the waiting room?

23 A Has yet to be called back.

24 Q Okay. So before their procedure even starts?

25 A Yes.

1 Q And were you asked to or instructed to do that
2 sort of charting?

3 A Yes.

4 Q And did you -- did you do that or --

5 A No, I refused.

6 Q Okay. And when -- when that sort of charting
7 took place, where -- at what point in the -- or at what part
8 of the facility did it take place in? Was that in pre-op, or
9 in the procedure room, or in recovery, or in discharge?

10 A It was in like pre-op.

11 Q Okay. So she was working in pre-op when she was
12 filling out all those checkmarks --

13 A Yes.

14 Q -- for someone who hadn't even come in yet?

15 A Correct.

16 Q Okay. And they asked you to -- someone
17 instructed you to do that?

18 A Yes.

19 Q And you said you didn't want to?

20 A I said I wouldn't.

21 Q Okay. Had you ever charted like that in your
22 experience in Missouri?

23 A No.

24 Q Okay. So you -- you refused to do that. Did
25 that sort of end your time in pre-op and you were -- is that

1 why you were in discharge mainly?

2 A Well, no. I was in discharge to begin with and
3 in the mornings, you know, when they first started doing the
4 procedures there was a little time on my hands and that's when
5 they wanted me to start assembling the charts.

6 Q Okay.

7 A But when I refused they didn't ask me again.

8 Q Okay. So then you stayed in discharge; is that
9 fair?

10 A I what?

11 Q Then you were just in the discharge area?

12 A Yes.

13 Q Okay. So they didn't ask you to go back to
14 pre-op? Is that no?

15 A That's true.

16 Q Okay.

17 A They didn't ask me to go back.

18 Q When you were in discharge, did you have a sense
19 of whether or not the patients were being seen on time or, you
20 know, if -- if things were moving through, you know, people
21 were being seen at their appointment times or anything like
22 that?

23 A Well, the -- usually they weren't seen on their
24 appointment time.

25 Q Okay. How far off would you say generally the

1 appointments were?

2 A It would be like 30 minutes to two hours.

3 Q Okay. Behind schedule?

4 A Behind schedule.

5 Q When you were in discharge, could you -- did you
6 have a view or could you see into the recovery area of the
7 center?

8 A Yes.

9 Q And could you see patients being brought from
10 the procedure rooms into recovery?

11 A Yes.

12 Q Who -- who would be responsible for bringing
13 those patients into the recovery area?

14 A The RNs.

15 Q The RNs?

16 A Uh-huh.

17 Q Did you ever see the doctors come into the
18 recovery area?

19 A Occasionally, but not often.

20 Q Okay. And when you say occasionally, is it like
21 once a day or more than that or --

22 A It wasn't even once a day.

23 Q Okay. Did you see all the doctors come into
24 recovery?

25 A Not that I recall, no.

1 Q Okay. Did you see Dr. Desai come into recovery?

2 A No.

3 Q The whole time you were there?

4 A I don't remember him going into recovery, no.

5 Q Okay. How about the -- the CRNAs, did you ever
6 see them come into the recovery room with their patients?

7 A That would be occasionally also, but not even
8 once a week.

9 Q Not once a week would you see them come in?

10 A But you have to understand, I wasn't sitting
11 there watching the recovery area --

12 Q Sure, you --

13 A -- I'm discharging patients, so I saw what I
14 saw.

15 Q Yeah. From what you saw, it wasn't -- it wasn't
16 something you saw very often it sounds like?

17 A Correct.

18 Q Did you ever have an occasion where you -- you
19 saw what the evaluation was on the procedure and you wanted
20 the doctor to discuss the results with the patient?

21 A Yes.

22 Q What would you do in those situations?

23 A Well, a lot of times when they brought me the
24 chart to discharge the patients, there would be a note on it.
25 It said doctor so and so wants to speak with patient. And so

1 I would get the physician to come in and speak to the patient.

2 Q Okay. And did you ever see anyone of those
3 notes from Dr. Desai?

4 A No.

5 Q Now, you said that you were there when the --
6 when the State came in and the CDC came in to -- to view the
7 procedures at the center, you were working those days?

8 A Yes. Somebody said they were there, I didn't
9 know why.

10 Q Okay. Did you actually see people though that
11 weren't working there that appeared to be observing?

12 A Strangers, yes.

13 Q Okay. Did you notice anything different about
14 the schedule, the number of patients that were seen on the --
15 on the observation days?

16 A As I recall they tried to cut it back.

17 Q So there were fewer patients on those
18 observation days?

19 A Yeah, when the State was there, whoever.

20 MS. WECKERLY: I'll pass the witness, Your Honor.

21 THE COURT: All right. Thank you. Cross?

22 CROSS-EXAMINATION

23 BY MS. STANISH:

24 Q Good morning, ma'am.

25 A Good morning.

1 Q How you doing?

2 A Fine.

3 Q Good. My name's Margaret Stanish. I represent
4 Dr. Desai sitting over there.

5 A Okay.

6 Q I want to start with something that you
7 mentioned. You saw what I saw, meaning you could only testify
8 about what you saw, correct? Is that what you meant by that
9 statement?

10 A Well, I can testify to what I saw, yes.

11 Q Good, because that's what I want to talk about.
12 I want to talk about your duties, all right?

13 A Okay.

14 Q You explained to us that you're the discharge
15 nurse and can you tell us who else was a discharge nurse?

16 A When I went to lunch or on the days I didn't
17 work it was the RNs.

18 Q Okay. Do you know any of their names, if you
19 recall?

20 A Oh, God. There was Karen and Maggie -- I don't
21 recall all their names.

22 Q That's fine. What you saw and what you recall
23 is all I'm interested in.

24 A Okay.

25 Q You said that you never got behind in your

1 paperwork. Why is that?

2 A That I never got behind in my paperwork?

3 Q Yes. Ms. Weckerly asked you if it was difficult
4 for people to keep up with paperwork and you said not for me.

5 A Not for me, no.

6 Q Okay. Well, why is that?

7 A Because I was the last nurse to see the patient
8 and they had to wait on me to fill out their discharge
9 paper --

10 Q And was --

11 A -- so I'm not behind.

12 Q All right. And was there anybody else working
13 with you at the -- on the same shift to do the discharge
14 function?

15 A Was there anyone what?

16 Q Was there -- can you hear me okay? Am I --

17 A No.

18 Q -- speaking too quietly? I'm sorry. I'm sorry,
19 I'll speak up. I'm going to step this much closer to you.

20 A Thank you.

21 Q Was there anybody else who worked with you at
22 the same time doing the discharge function?

23 A No.

24 Q So it was -- you were by yourself.

25 A I was by myself, yeah.

1 Q All right. And when people would come to you to
2 be discharged, did they usually have an escort with them?

3 A When I called a patient in to my little office
4 to discharge them, I asked them first thing, who is here with
5 you today because everyone -- every patient needed to have a
6 driver. And they would say my son, my daughter, my husband,
7 my wife and I would go to the waiting room and get that person
8 and bring them in.

9 Q Okay. And so you had to leave your workstation
10 and go fetch the escort to bring them back to your
11 workstation?

12 A Yeah. It was right around the corner to the
13 waiting room, yes.

14 Q And generally speaking, how long would it take
15 you to discharge somebody?

16 A Generally it was a short period of time, but you
17 have to take in to consideration what the results of their
18 procedure was. Okay? If they had a big problem and they had
19 to have follow-up appointments made or maybe follow-up
20 procedures made, it took longer.

21 Q Okay. And when -- when you're visiting with the
22 patients, is your attention on your patient?

23 A Well, yes.

24 Q You're not looking at what's going on in the
25 recovery room?

1 A No. I don't -- I don't care what's going on in
2 there, you know. I'm -- my patient comes first.

3 Q I bet you have a lot of experience as a nurse,
4 correct?

5 A Yes.

6 Q How long have you been a nurse?

7 A Oh, since in the '80s.

8 Q All right. And when you were at the endoscopy
9 center --

10 A Uh-huh.

11 Q -- did you do anything to jeopardize patients?

12 A To jeopardize patients?

13 Q Correct.

14 A Not to my knowledge, no.

15 Q And if you saw somebody jeopardizing the health
16 of a patient, what would you do?

17 A Well, if I ever saw that anyplace I would report
18 it to the higher up.

19 Q Did you do -- did you see anybody jeopardize
20 somebody's life at the clinic?

21 A No.

22 Q You said that patients would generally have to
23 wait anywhere from 30 minutes to two hours.

24 A Correct.

25 Q In your experience as a nurse, is it unusual for

1 patients to have to wait to have a procedure done?

2 A I had never worked in an endoscopy center under
3 those conditions before, so I don't know how the others
4 operate.

5 Q In your experience -- I mean it sounds -- am I
6 correct in understanding that you primarily worked in a
7 hospital setting?

8 A Yes.

9 Q In -- in a hospital setting did patients have to
10 wait?

11 THE COURT: Let me ask you this: Were you a floor
12 nurse where patients had already been admitted to the hospital
13 and you took care of the admitted patients when you were at
14 the --

15 THE WITNESS: No. I worked in the emergency room and
16 ICU.

17 THE COURT: Oh, okay. Okay. So in intensive care
18 they would have already been there?

19 THE WITNESS: Well, we'd get them from the ER.

20 THE COURT: Okay. Go on, Ms. Stanish.

21 BY MS. STANISH:

22 Q Okay. This sounds like it was the first time
23 that you worked in an ambulatory surgical center; is that
24 correct?

25 A Correct.

1 Q So you're not really familiar with how other
2 ambulatory surgical centers operate. Is that a fair
3 statement?

4 A No. I -- that's a fair statement, yes. I don't
5 know how the others operate.

6 Q And you estimated that they would see anywhere
7 from 80 to 90 patients a day or I should say at least the
8 three days a week that you were there?

9 A Yes.

10 Q And is it possible that it was less than that?

11 A Some days it was less than that, yes.

12 Q And, in fact, there's records that were
13 maintained that would tell us exactly how many patients were
14 seen on any given day.

15 A Were seen and I'm sure the records are correct.
16 But --

17 Q Are you aware of any patient surveys being done
18 to follow up with patients about their experience at the
19 clinics?

20 A I don't recall that, no.

21 Q It's not something you would have done?

22 A No.

23 Q As I understand your testimony about the
24 pre-charting, it had to do with the area putting checkmarks on
25 when somebody was ready to -- when they should be released

1 from the recovery room. Am I understanding that right?

2 A No. This is -- no. What I was talking about
3 earlier was comprising the charts. In other words, putting
4 the patient's chart together.

5 Q What does that mean? I -- I -- you said --
6 you've used that term assembling the chart. I didn't
7 understand what you meant by that.

8 A Well, the charts contained printed out
9 information containing the patient's name, their address and
10 their PCP, their primary care physician, all those kind of
11 things.

12 Q And can I interrupt you to ask you, would the
13 chart also contain -- didn't most the patients see a doctor,
14 have an appointment with a doctor before the procedure day?

15 A Yeah, right next door.

16 Q And that happened before the procedure day, on a
17 different day before the procedure?

18 A They would see somebody -- we call the other
19 side right next door to us, they would see them and that
20 doctor -- a doctor there would recommend that they would have
21 a procedure, yes.

22 Q And would there be documentation, such as a
23 history and physical from that exam in the file that you were
24 just now describing to us?

25 A I believe there was an H&P in there, but it's

1 been so long I don't recall.

2 Q All right. And so you were describing for us
3 assembling the file. So there would be this H&P probably from
4 the other side, as you say. And what else would be in the
5 chart?

6 A Perhaps if they had x-rays maybe or there would
7 be an impression or a copy of what the x-ray meant, that's
8 called an impression. I don't recall what all was in because
9 I wasn't -- that wasn't what I was there for, you know, to go
10 through the charts and --

11 Q Sure, I understand. And then you were asked to
12 help out -- I guess, let's go with that. Originally you were
13 hired for being a discharge nurse, correct?

14 A Correct.

15 Q And when you first started, am I right to
16 assume, that you were asked to help out in pre-op and you --
17 and you saw something that Pauline was doing that you didn't
18 like and you said I don't work there anymore?

19 A No. I didn't say I don't want to work there
20 anymore. I said, I'm not doing that.

21 Q Okay. And so you said I'm not doing that and
22 you just went to the, just back to working the discharge?

23 A Correct.

24 Q All right. When you were -- when people would
25 come to you to be discharged --

1 A Uh-huh.

2 Q -- would you ever let somebody leave the
3 premises if you thought it was -- they were groggy or
4 unstable?

5 A Well, I wouldn't let anyone leave the premises
6 if they were groggy or unstable, no.

7 Q And was that part of your job to make sure the
8 person was safe to leave the clinic?

9 A As a nurse I should have been up on that, yes.

10 Q And were you?

11 A Yes, because like I said, I always made sure --
12 if they didn't have a driver there I wouldn't let them out.

13 Q All right. I'm just reading my notes, I want to
14 make sure I got this right. You said you saw -- did you see
15 Pauline on occasion -- you said you saw her filling out charts
16 before the patient was --

17 A Called back.

18 Q -- awake and ambulatory. That's what I was
19 talking about.

20 A Yeah.

21 Q I wanted to clarify that. She made checkmarks
22 before the -- that indicated the person was awake and
23 ambulatory?

24 A Awake, alert and ambulatory and I think there
25 was another checkmark in there about having accompaniment with

1 them.

2 Q Okay.

3 A As I recall. I'm not sure.

4 Q Okay, I understand. And you -- obviously you
5 didn't like what Pauline was doing and you refused to do it,
6 correct?

7 A Correct.

8 Q But you would not, as a very experienced nurse,
9 let a patient who was not awake and not able to walk, you
10 wouldn't let them out -- out of the clinic. Is that what I
11 understand you to say?

12 A That's correct or -- or if they didn't have a --

13 Q Escort.

14 A -- someone -- an escort, someone to drive them
15 and we had -- we had on occasion patients that had no one to
16 drive them and --

17 Q And by the way, did you come to Las Vegas to
18 retire or did you come here for purpose of employment?

19 A Neither.

20 Q Neither?

21 A No.

22 Q Well, okay. I was just wondering if -- you
23 know, some people they don't want to retire.

24 A I don't.

25 Q Okay. And so they want to continue to work

1 because they get bored and that's what I was wondering if you
2 took the job because you absolutely had to or you took it
3 because you wanted to work.

4 A I wanted to work. I enjoy being a nurse.

5 Q Good. Are you a nurse now?

6 A Yes.

7 Q Good. Where do you work?

8 A I'm recent -- I'm unemployed now because my
9 husband recently passed away.

10 Q Oh, I'm sorry. I'm sorry to hear that.

11 A Thank you.

12 Q Sorry to hear that. Well, thank you for coming
13 today.

14 A You're welcome. It was my pleasure.

15 THE COURT: Mr. Santacroce, do you have any questions
16 for this witness?

17 MR. SANTACROCE: Maybe just one or two.

18 THE COURT: Okay.

19 CROSS-EXAMINATION

20 BY MR. SANTACROCE:

21 Q Good afternoon, ma'am.

22 A Hi there.

23 Q Hi. I represent Ron Lakeman. You know Ron,
24 don't you?

25 A Oh, yes.

1 Q Okay. In fact, you got him a Christmas present
2 one year, didn't you?

3 A Yes.

4 Q I hope he liked it.

5 A He did.

6 Q Good.

7 A We drew names and --

8 Q The only question I have for you is you never
9 saw Mr. Lakeman pre-chart anything, did you?

10 A No.

11 Q That's all I have.

12 THE COURT: Any redirect?

13 MS. WECKERLY: No, Your Honor. Thank you.

14 THE COURT: Any juror questions for the witness? No
15 juror questions?

16 THE WITNESS: Oh, darn.

17 THE COURT: Ma'am, thank you for your -- all right.

18 THE WITNESS: I'm teasing.

19 THE COURT: Thank you for your testimony. Please
20 don't discuss your testimony with anybody else who may be a
21 witness in this case.

22 THE WITNESS: None of their business.

23 THE COURT: That's right. All right. Thank you,
24 ma'am, and you are excused and just follow Kenny from the
25 courtroom. And the State may call its next witness.

1 MR. STAUDAHER: State calls Daniel --

2 MS. WECKERLY: Can we approach?

3 THE COURT: Sure.

4 (Off-record bench conference.)

5 THE COURT: Ladies and gentlemen, we're going to have
6 to take about a 15-minute break until 1:40. During the break
7 you are reminded that you're not to discuss the case or
8 anything relating to the case with each other or with anyone
9 else. You're not to read, watch or listen to any reports of
10 or commentaries on this case or any person or subject matter
11 relating to the case. Don't do any independent research and
12 please do not form or express an opinion on the trial. If
13 you'd place your notepads in your chairs and follow Kenny
14 through the rear door.

15 (Jury recessed at 1:23 p.m.)

16 THE COURT: Okay. We can either take it to another
17 floor to copy it or the three of you, defense types, can read
18 it over together.

19 MS. STANISH: We're going to try it again.

20 MR. SANTACROCE: I don't need it, except the
21 cross-exam. I read it while you were examining the last
22 witness.

23 MS. STANISH: Oh, okay.

24 MR. SANTACROCE: But I don't have a copy so I may
25 need to use yours when I cross-examine.

1 MS. STANISH: Oh, okay.

2 THE COURT: Okay. So you can share a copy.

3 MS. STANISH: All right, we'll share a copy.

4 THE COURT: Okay. Then that way you can get started
5 because otherwise by the time Denise waits for the elevator --

6 MS. STANISH: I got to do it?

7 THE COURT: All right.

8 (Court recessed at 1:24 p.m. until 1:35 p.m.)

9 (In the presence of the jury.)

10 THE COURT: All right. Court is now back in session
11 and I believe Dr. Herrero is now available?

12 MS. WECKERLY: Yes.

13 THE COURT: So, Kenny. And then, Doctor, just remain
14 standing facing our court clerk, please.

15 CARMELO HERRERO, STATE'S WITNESS, SWORN

16 THE CLERK: Please be seated. And please state and
17 spell your name, please?

18 THE WITNESS: Carmelo, C-a-r-m-e-l-o, last name
19 Herrero, H-e-r-r-e-r-o.

20 THE COURT: All right. Thank you. Ms. Stanish?

21 CROSS-EXAMINATION

22 BY MS. STANISH:

23 Q Good morning, Dr. Herrero.

24 A Afternoon.

25 Q Oh, good afternoon. Welcome back to the

1 Department 21. My name's Margaret Stanish and I represent Dr.
2 Desai. I want to review a number of points in your direct
3 exam and I want to start by focusing on what you saw and what
4 you heard. You know what hearsay is?

5 A Yes.

6 Q I don't want to talk about hearsay, so I want to
7 focus really on what you saw. And I want to talk to you about
8 what you saw in the procedure room at Shadow Lane. All right?

9 A Okay.

10 Q Now, refresh our memory. What days of the week
11 did you typically work there?

12 A None.

13 Q None at all? Did you do any procedures at
14 Shadow Lane?

15 A No.

16 Q All right. And you're -- you were primarily
17 assigned to Burnham; is that correct?

18 A Correct.

19 Q And when did you work in the procedure room
20 there?

21 A My recollection would be probably three times a
22 week, but I'm not -- I can't remember exactly.

23 Q And generally speaking, how many procedures
24 would you do a day?

25 A Depending on whether it's a morning session or

1 an afternoon session. A morning session might consist of 15,
2 18 cases. Afternoon sessions probably 10 to 12.

3 Q And how long is the morning session, how many
4 hours are we talking about?

5 A We typically start at seven and go through
6 11:00.

7 Q And are you going from -- just explain to me how
8 Burnham works. Are you going -- are there normally two
9 doctors working at one time or just one doctor?

10 A Just one doctor at a time.

11 Q And you have two procedure rooms?

12 A Correct.

13 Q And so one -- you would work on patient A and
14 when you were done with patient A you would go to patient B?

15 A Correct.

16 Q Did you normally take time to discuss the
17 procedure with the patient after the procedure was done?

18 A In a good percentage of them the colonoscopy or
19 the endoscopy was perfectly normal. I would relay information
20 to the discharging staff and they will follow-up in the office
21 for a later discussion.

22 Q And why did you do that procedure and not come
23 out and chat with them after they were done with their
24 procedure?

25 A Typically, when we check on the patient

1 afterwards, if the nurses reported they're seeing significant
2 abnormalities on their vital signs or having difficulty waking
3 up from the procedure. But if the patient is waking up
4 without any events, we let the nurse and staff make the
5 decision based on protocol, they can be released home. If the
6 patient has any specific questions or they wake up asking for
7 -- specifically to see the doctor, we will come and see the
8 patient prior to discharge.

9 Q If a patient is in the recovery room and having
10 difficulty, who would respond? Who would help that patient?

11 A It will be a nursing staff assigned to the
12 patient.

13 Q And if it was -- were there ever emergencies
14 where somebody other than a nurse had to respond?

15 A Of course.

16 Q And how often did that happen?

17 A Very rarely.

18 Q Are -- are you aware if that same protocol was
19 used in Shadow Lane?

20 A I would hope so.

21 Q Do you know?

22 A No.

23 Q Was Shadow -- were you aware of what the
24 staffing was in Shadow Lane?

25 A No.

1 Q Did they have nurses in the recovery room?

2 A I would assume so.

3 Q Well, I guess should clarify something with you.

4 Had you ever been to Shadow Lane?

5 A I have.

6 Q Have you seen the procedure area?

7 A Yes, I have.

8 Q And can you estimate -- let me give you a time
9 frame because time frames are important. What time frame did
10 you visit Shadow Lane?

11 A Are you talking about years or time that I spent
12 in the facility?

13 Q Years. When?

14 A So when I first started with the group in 1998,
15 I probably spent the first three years doing my outpatient
16 visits, not procedures, at the Shadow Lane office. So I will
17 -- every once in awhile be asked to come over to the endoscopy
18 facility to actually do cases. I might do two or three, maybe
19 five cases and then continue seeing my patients and then go in
20 to the hospital rotation that I had at the time, which was
21 University Medical Center. So perhaps the first three, three
22 and a half years I had done some cases there.

23 Q And just to be clear because we -- we learned
24 that there's the other side of Shadow Lane, which is just
25 where the doctor visits with the patient a day or so whenever

1 before the procedure, what -- what's that called? It's
2 consultation?

3 A Yeah. Consultation space or the consultation
4 office.

5 Q And so there was a consultation office at Shadow
6 Lane?

7 A Correct.

8 Q And then there's the procedure side?

9 A That's correct.

10 Q Procedure side, what we call the endo, correct?

11 A Correct.

12 Q And you're saying early on you did some
13 colonoscopies at the endo center at Shadow Lane?

14 A That is correct.

15 Q At that time, sir, was it only a one procedure
16 room or --

17 A That is correct.

18 Q All right. And did -- did you visit the Shadow
19 Lane facility at any time when it had the two procedure rooms
20 operating?

21 A Sure, I have.

22 Q Okay. And time frame, when would that have been
23 if you -- if you recall? I don't want to put words in your
24 mouth.

25 A It would be -- it would be sporadic visits, just

1 for business matters. I needed to go see the COO, Tonya
2 Rushing or speak with one of the other physicians, but not to
3 deliver patient care, just a casual business visit.

4 Q And were you there when -- were you in the
5 facility when it was actually operating?

6 A Sure.

7 Q Were you in the procedure room when it -- at
8 Shadow Lane --

9 A Sure.

10 Q -- when it was operating?

11 A Sure.

12 Q And when -- can you give us a time frame? Is it
13 just -- give us a time frame when you actually visit the
14 procedure room or the operating area of the endo center at
15 Shadow Lane?

16 A I don't think that I can give you any specifics,
17 you know. It will be a casual visit and I'll go to see one of
18 the doctors, they tell me he's in room A or B, and I go in the
19 room and exchange with him and walk out.

20 Q Did -- on those visits, did you ever witness
21 anything that was unsafe?

22 A No, ma'am.

23 Q Did you witness feces on the wall?

24 A No.

25 Q Did you witness feces on the gowns of workers?

1 A No.

2 Q Is the presence of feces in a procedure room
3 unusual in your line of work?

4 A No, it's not.

5 Q I always wanted to ask why would a doctor want
6 to be a guy that does colonoscopies.

7 A I get asked all the time.

8 Q How about ears, nose and throat, something above
9 the neck. And educate that -- educate us on that because, you
10 know, frankly for those of us who don't have a lot of
11 experience with colonoscopies or those of us who do, it's
12 unpleasant. When you do a colonoscopy -- we've got the
13 basics. You're basically running a scope up someone's colon
14 and is feces coming out of the person when that occurs?

15 A Sure. Yeah, you would expect the prep to be
16 adequate and it would be sort of like liquid clear feces, but
17 not all patients are prepped equally so there might be some
18 degree of feces coming out.

19 Q And is there also some air or fluid running
20 through the scope?

21 A Yes.

22 Q Okay. Explain that for us, please.

23 A The air or the fluid running through the scope?

24 Q Both. How does that work in layman's terms.

25 A No, we -- right. We do -- we do use air to

1 inflate the intestines so I can -- we can see it. The
2 intestine is typically collapsed, so the air, it keeps it open
3 so you can visualize the entire wall of the intestine. And
4 also, when we're inserting the instrument, we use water to
5 facilitate a scope navigating through the corners and the
6 curves and also to clean whatever feces is left behind.

7 Q And -- and that's interesting. You -- you --
8 are you saying you run air in in order to inflate the colon?

9 A That is correct.

10 Q Kind of a balloon like?

11 A Correct.

12 Q And why is that done?

13 A To be able to visualize the wall of the
14 intestine. You know, the wall of the intestine is not nice
15 and distended all the time, it's typically collapsed.

16 Q When the -- the scope itself, I mean if I hold
17 up my index finger, is it wider or thinner than my index
18 finger?

19 A Probably a little wider.

20 Q Probably a little -- like my thumb?

21 A Abouts.

22 Q And when you are inflating the colon, does that
23 give the scope more room to maneuver through the colon?

24 A Of course.

25 Q Is the scope sharp that it would hurt or damage

1 the -- the colon?

2 A No, it's a blunt instrument.

3 Q Okay. And so you're basically running a camera
4 through the colon looking for what?

5 A Polyps is the main thing that we are looking
6 for.

7 Q And what is a polyp?

8 A It's a -- a small growth, actually it can be any
9 size, but it's a growth within the intestine that is
10 considered pre-cancerous.

11 Q Okay. And approximately, if you can, what is
12 the percentage of your patient load that actually you discover
13 a polyp?

14 A Twenty-five, 30 percent.

15 Q Do you remember interviewing with the detective
16 in this case --

17 A Yes.

18 Q -- Detective Whitely --

19 A Yes.

20 Q -- the guy with the nice haircut? Oh, he's
21 gone. Do you remember telling him it was 20 percent?

22 A Sure.

23 Q The -- and -- I think you've already explained
24 how those get removed but I -- I got go back to the -- the
25 feces subject because there's been a lot of discussion about

1 that. When you're irrigating I guess, is that the correct
2 word --

3 A Sure.

4 Q -- irrigating the colon and running air through
5 it, running the camera through it, does material come out of
6 the person?

7 A. Yes.

8 Q And is it collected on a -- what we call a chux?

9 A Correct.

10 Q And that's a -- kind of a blue plastic like
11 sheet; is that correct?

12 A Yes, it can be blue. It's many colors.

13 Q And those are generally -- did the clinic
14 typically have those in inventory?

15 A Correct.

16 Q And they were about eight feet long?

17 A I can't remember the exact size that they came
18 in.

19 Q Do you -- were they cut in half?

20 A Yes, at times they were cut in half.

21 Q Why?

22 A Well, basically to save on expenses. You don't
23 need the whole eight feet of the chux to collect the area that
24 you're working with, so it's perfectly fine to just cut it in
25 half.

1 Q Is there an issue with the chux if it were kept
2 at eight feet being too cumbersome?

3 MR. STAUDAHER: Objection. Assumes facts not in
4 evidence about the length.

5 THE COURT: Well, rephrase the -- if it was --

6 MS. STANISH: Sure.

7 BY MS. STANISH:

8 Q How -- estimate for us how long the chux is.

9 A I can't remember the exact length. In fact, I'm
10 actually surprised to hear that it's eight feet.

11 Q I don't want to take the time looking for it.
12 Let me ask you, the -- is there some kind of suction that goes
13 on to clean up the -- the gurney where the person is having
14 the procedure done?

15 A To clean up the gurney?

16 Q Yeah. This is a -- let me just -- walk us
17 through the procedure at this point. A runny material is
18 collecting on the -- the gurney?

19 A Correct.

20 Q It's covered with a chux?

21 A Right.

22 Q If -- is it -- if the chux was very -- well, is
23 there any kind of suction to clean up what is being -- what's
24 the word for this, excreted from the person?

25 A So -- no. If there's excessive pooling we will

1 ask for more chux or towels to basically clean up, but there's
2 no suction device outside -- outside the -- the patient.

3 Q All right. And the -- you mentioned the -- the
4 medevac or Medivator rather, the machines used to clean the
5 scopes.

6 A I don't recall mentioning that.

7 Q What are -- what are the machines that are used
8 to clean the scopes?

9 A I think at the time they were called Steris.

10 Q Steris. Is that a brand name?

11 A Yes.

12 Q And when you're saying at the time, what time
13 are you referring to? What year?

14 A The years that I was working at the Burnham
15 facility, probably from 2003 to 2007.

16 Q And do you know what the machines were at the
17 Shadow Lane facility?

18 A Do not recall.

19 Q Do you know if there was a new purchase of those
20 machines for any of the facilities?

21 A Do not recall.

22 Q Did the machine -- do you know if the machines
23 at Shadow Lane operated in a -- similarly to those at the
24 Burnham location?

25 A I do not know.

1 Q Why don't you educate us about the -- the --
2 what did you call the machine?

3 A The Steris.

4 Q Yeah. And you said it was -- is that -- is it
5 kind of like a dishwasher where I -- it gets attached to the
6 wall and water circulates through the machine?

7 A Correct.

8 Q How about instead of me trying to guess, would
9 you tell us how it works?

10 A I'm not -- I'm not going to pretend that I know
11 how the machine works, I'm not a technician.

12 Q Well, if you don't know I don't -- I don't want
13 you to guess.

14 A It's basically -- it's a combination, high
15 pressure, irrigation, chemical irrigation and heat that is
16 used to basically disinfect the scope between procedures.

17 Q And is -- is it correct -- am I correct in
18 understanding that the scopes had various ports and you have
19 to hook those ports up to some tubes in this machine?

20 A That is correct.

21 Q And then so is that the water that's being shot
22 through the tube then --

23 A Yes.

24 Q -- the scopes? And is there a high level
25 disinfectant being used in this machine?

1 A Yes.

2 Q Is that disinfectant somehow being mixed in with
3 the water that's coming in to the machine?

4 A Yes.

5 Q And so would I be right to understand that the
6 machine has, you know, I guess I can only think about watering
7 plants. But you have a chemical, a concentration of a
8 disinfection and it -- a disinfecting fluid that is somehow
9 hooked into the system and it mixes with water?

10 A Correct.

11 Q And -- and then the heat, is it hot water or is
12 there just some heat that's being generated by this machine?

13 A No, it's heat generated by the machine.

14 Q And the -- and how many of those machines did
15 you maintain in Burnham?

16 A I believe I testified there were three at the
17 time but this is five years ago. I can't remember exactly.

18 Q Understood. Why -- why did you have three
19 machines there?

20 A To keep the scopes available through the
21 morning. As we do the procedures the -- the scope might take
22 15, 20 minutes to clean. I can't remember the exact times.
23 So at some point you might actually end up running out of
24 scopes if you continue seeing patients, so you have three
25 machines to keep them clean.

1 Q Did -- if you know, did Shadow Lane have more
2 supplies then Burnham?

3 A I do not know.

4 Q You testified that the -- in your opinion you
5 believe that it was appropriate to reuse the bite blocks by --
6 so long as they were disinfected?

7 A Correct.

8 Q And I -- I don't remember. Did -- did the
9 District Attorney show you the bite block while you were
10 testifying a couple days ago?

11 A I think so.

12 Q Okay. If that -- are you aware that the bite
13 blocks were labeled single use?

14 A Depends on which bite block you're talking
15 about. There's several kinds.

16 Q Okay. And the bite blocks that you used at
17 Burnham, you found -- you thought it was appropriate to
18 disinfect them in the -- in the -- I want to call Medivator --
19 that machine, correct?

20 A Well, no. My recollection was there was more
21 than one bite block available at the Burnham facility and I
22 can't remember when the multi-use ones were discontinued. But
23 we used to have bite blocks, they were reusable and there's a
24 particular company that used to make them. Barred -- Barr
25 Scientific I think is the name of the company. But later on

1 in the facility we started implementing using the one -- the
2 single-use bite blocks that get discarded after every patient.

3 Q Okay. You did not -- you didn't disinfect
4 those?

5 A No.

6 Q Do those have any -- could they be disinfected?

7 A I can't answer that. I don't know if there's
8 something about the chemical properties of the -- of the bite
9 block that would make it not possible to be disinfected.

10 Q So you're not sure?

11 A I'm not sure.

12 Q The -- let me talk about the CRNAs. The -- how
13 would you describe your experience with the CRNAs that were
14 employed at Burnham?

15 A It was a great experience. I used to talk to
16 them all the time and very jovial, very professional type of
17 relationship.

18 Q And do you -- from what you saw, did you see
19 CRNAs doing anything that you thought was unsafe?

20 A No.

21 Q Were the CRNAs -- did you -- if you did see them
22 doing something unsafe, what would you do?

23 A I will actually ask them to stop whatever they
24 were doing, to please justify it and we'll have a conversation
25 about it.

1 Q Do you recall ever having to do that?
2 A No.
3 Q I want to talk to you about KY Jelly.
4 A Okay.
5 Q Is that something that is put on the scope --
6 A Correct.
7 Q -- before it's inserted in the patient? Do some
8 doctors have preferences as to how much KY Jelly to put on the
9 scope?
10 A I wouldn't know.
11 Q You don't know --
12 A No.
13 Q -- you --
14 A I know -- I know how much I want, but I don't
15 know what else -- what everybody else want.
16 Q Okay. Can some doctors want more and -- well,
17 is the K -- if you put too much KY Jelly on a scope what
18 happens?
19 A It will be dripping all over the place, creates
20 a mess.
21 Q And so you want to have a certain amount so that
22 the scope can maneuver easily without causing a mess?
23 A Correct.
24 Q You know, going back to the procedure itself. I
25 think you mentioned that there was a computer that is used

1 during the procedure?

2 A Yes.

3 Q Can you describe for us in more detail what that
4 computer does?

5 A It's basically capturing the images as we go
6 through the procedure, it does it automatically. It's
7 interfaced with the actual machinery, if you will, that's
8 attached to the scope. So once the procedure is -- is -- is
9 complete or I have finished the procedure, those images are
10 waiting for me to be used to generate a report. So then I go
11 into the computer and basically go through menu options to
12 generate a report of my observations.

13 Q And does the -- does this computer somehow log
14 the path of the scope through the colon?

15 A It does not.

16 Q Okay. It just takes pictures along the way?

17 A Correct.

18 Q Sometimes are you not -- what is the very end of
19 this -- have a little anatomy here. What's the very end of
20 the colon called?

21 A The cecum.

22 Q And are there times when you're unable to get to
23 the cecum?

24 A Sure.

25 Q And what would cause that?

1 A A colon that is tortuous or longer than the
2 average, technical problems with the instrument, patient
3 discomfort, number of variables.

4 Q What does tortuous mean? Do you mean like --

5 A Well, it's supposed to be sort of like a
6 semi-straight line, it has a lot of turns and corners and it's
7 difficult to maneuver the instrument through.

8 Q And I -- refresh my memory. I can't recall.
9 You had talked about procedure time and I thought my
10 recollection is it varied from five to 20 minutes; is that
11 correct?

12 A Yes. It depends on the type of procedure that
13 you're doing.

14 Q Right, because we -- is my recollection -- and
15 correct me if I'm wrong, I don't want to draw an objection,
16 the endoscopy down the mouth that would generally take 120
17 seconds?

18 A Yes, it can be very quick.

19 Q And -- and what about colonoscopies had more of
20 a range?

21 A Right.

22 Q And if I'm a young 50 year old coming in for my
23 first screening and I've done all my prep work properly and I
24 have a healthy colon, how long would that colonoscopy
25 typically take for you to do?

1 A Probably less than 10 minutes.

2 Q Is it a fair statement that a more experienced
3 gastrologist is going to do a colonoscopy much faster than
4 somebody who's relatively new?

5 A Absolutely.

6 Q I want you to educate me on something because I
7 -- as I understand your background, you worked -- was it in
8 Pennsylvania?

9 A Yes.

10 Q And were you in a hospital setting?

11 A Uh-huh, yes.

12 Q And what -- what are you currently doing now?
13 What kind of setting are you in now?

14 A Private practice.

15 Q And what kind of setting is it?

16 A I have an in-office, a private office and I
17 provide consultation services in that office and I also see
18 patients at two of the hospitals in Henderson.

19 Q And -- and are you -- I think you mentioned
20 you're working with one other doctor?

21 A Yes.

22 Q Who is that individual?

23 A Albert Mason.

24 Q And was Mr. -- Dr. Mason associated with the
25 Southern Nevada Endo Center?

1 A Yes.

2 Q And you work in the -- you actually do your
3 procedures in a hospital now?

4 A At a hospital and at a surgical center as well.

5 Q All right. I'd like you to educate us a bit on
6 this if you could. Is -- in -- in your years of practice and
7 as I recall, you started in the '90s, has there been an
8 evolution of medicine from more of a hospital setting to
9 ambulatory surgical centers?

10 A Yes.

11 Q And do you know why?

12 A Most -- it's more cost effective.

13 Q And those costs are determined in part by the
14 federal government and their reimbursement programs; is that
15 correct?

16 A Yes.

17 Q Is it also dictated by insurance?

18 A Yes.

19 Q And, of course, hospitals or do you know who
20 else? Anybody else factors into this cost effectiveness?

21 A I will say it's basically the insurances and the
22 federal government.

23 Q And is it encouraged that procedures be done
24 more in an ambulatory surgical center?

25 A Yes.

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Clerk of Supreme Court

DIPAK KANTILAL DESAI,)	CASE NO. 64591
)	
Appellant,)	
)	
vs.)	
)	
THE STATE OF NEVADA,)	
)	
Respondent.)	
_____)	

APPELLANT'S APPENDIX VOLUME 10

FRANNY A. FORSMAN, ESQ.
Nevada Bar No. 000014
P.O. Box 43401
Las Vegas, Nevada 89116
(702) 501-8728

RICHARD A. WRIGHT, ESQ.
Nevada Bar No. 000886
WRIGHT, STANISH & WINCKLER
300 S. Fourth Street, Suite 701
Las Vegas, Nevada 89101

Attorneys for Appellant

STEVEN S. OWENS
Chief Deputy District Attorney
Nevada Bar No. 004352
200 Lewis Avenue
Las Vegas, Nevada 89155
(702) 671-2750
Attorney for Respondent

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1 Q So these scopes were coming in to you like
2 crazy, correct?

3 A Yes, sir.

4 Q One right after another?

5 A Not like super fast, but there would always be
6 like the Medivators would be full and I'd be cleaning another
7 scope and then I'll be -- I'll leave them in the -- in the
8 second bucket full of water and then these would empty and
9 then I'll basically hang them dry and then -- it just -- yeah,
10 it's like a --

11 Q So you were busy is what I'm getting at, huh?

12 A Yes, sir.

13 Q All right. And how many scopes were hanging to
14 dry at any given time?

15 A I couldn't give you the exact number.

16 Q Okay. And did you have any way of knowing what
17 scope came out of what room as -- in the sanitation room?

18 A If the scope came out of the room it was just
19 clean, clean, clean it to sterilization and just hang, put it
20 in the machine and hang it up. I mean it was --

21 Q For someone to come get it and take it to
22 anywhere, you didn't know where it was going? In other words,
23 you didn't know if it was going in room one or two or if it
24 came out of room one or two, did you?

25 A Unless I -- unless I witnessed them take it out

1 but most time I'm cleaning. They put it there --

2 Q Okay.

3 A -- I clean it.

4 Q So you had no mechanism or system to track these
5 scopes. For example, if a scope came out of room number one
6 at 10:00 in the morning, you had no way of knowing that, did
7 you?

8 A On -- me personally -- like I wouldn't know but
9 the computer, it's recorded.

10 Q So the scopes, where they came out of, the
11 number on the scopes is recorded on the computer, that little
12 machine you were talking about that had the TV camera,
13 correct?

14 A Yes, sir.

15 Q And then when a GI tech took a scope off of the
16 rack --

17 A Uh-huh.

18 Q -- it could have ended up in room one or room
19 two, correct?

20 A Yes, sir.

21 Q So conceivably, if a procedure was done in room
22 one at 10:00 in the morning, that scope could have found its
23 way in room two at 12:00 in the afternoon; isn't that correct?

24 A Yes, sir. I mean, if it was cleaned and it was
25 hanging and it was already dried.

1 Q Now, with regard to the bite blocks that you --
2 you saw there, there was no way to determine which room these
3 bite blocks would go back into, was there?

4 A No, there was --

5 Q There's no numbers, markings, computers,
6 nothing, correct?

7 A No, sir.

8 Q You'd clean a bite block, somebody'd come and
9 get it, could take it in room one or two, you'd have no idea.

10 A Correct.

11 Q So this bite block could have been used on a
12 patient at 10:00 in room one and found its way on another
13 patient in room two at 12:00; isn't that correct?

14 A Correct, sir.

15 Q I'm going to show you this chart. It was
16 prepared by the State and it has some times and it has some
17 technicians on here. I'll show the jury in a minute but you
18 see here where it says a place for technicians -- let's mark
19 this chart -- yeah, right here. See this spot here? Do you
20 recognize any of those names?

21 A On which side?

22 Q Right here, technician.

23 A I remember [indiscernible].

24 Q That was a GI tech?

25 A Yes, sir. Other than that, I don't know all the

1 other ones. I don't recall names. I just know
2 [indiscernible].

3 Q You see a variety of names under technician,
4 correct?

5 A Yes, sir.

6 Q You don't see your name, do you?

7 A No, sir.

8 Q So apparently on September 21st of 2007 you were
9 not working in a procedure room, correct?

10 A Yes, sir.

11 Q Yes, sir what?

12 A That I was not working on --

13 Q Okay. Now I'll represent to you, although I
14 don't have a chart for the 27th or the 25th of July rather,
15 your name doesn't appear anywhere on the records that you were
16 a technician in the procedure room on July 25th of 2007.
17 Would you have any reason to dispute that?

18 A I -- no, no, sir.

19 Q So it's fair to say that both on the 25th of
20 July, 2007 and September 21st, 2007, you did not work in any
21 of the procedure rooms at Shadow Lane on those two days,
22 correct?

23 A I believe so, sir.

24 Q Okay.

25 MR. SANTACROCE: Court's indulgence.

1 BY MR. SANTACROCE:

2 Q You have worked with CRNAs in a procedure room,
3 correct? At Shadow Lane specifically I'm talking about.

4 A You mean like work with them? I mean, they're
5 in the room.

6 Q Okay.

7 A I don't touch anything on their side.

8 Q Let's take -- let's take Mr. Lakeman for
9 example, do you know him?

10 A I've worked with him, yes, sir.

11 Q So you were in a procedure room with Mr.
12 Lakeman, although not on the 25th of July, 2007 and not on
13 September 21st, 2007, but in the past you've worked with Mr.
14 Lakeman, correct?

15 A Yes, sir.

16 Q And you have never seen Mr. Lakeman put a
17 patient to sleep before a doctor came in the room, have you?

18 A No, sir.

19 MR. SANTACROCE: I have no further questions. Thank
20 you.

21 THE COURT: Redirect?

22 REDIRECT EXAMINATION

23 BY MR. STAUDAHER:

24 Q Just one. The question you were asked about the
25 different buckets, you know, where the scopes came in, did you

1 have one bucket that the upper endoscopy and the colonoscopy
2 scopes went into for their initial cleaning or did you have
3 two?

4 A They all went in the same bucket for cleaning --
5 for the solution, they're all in the same bucket.

6 Q So scopes are coming out of room one, scopes are
7 coming out of room two, going into one bucket for cleaning --

8 A Yes, sir.

9 Q -- and then those go in the Medivator?

10 A After it goes in the second bucket of clean
11 water and then it goes into the Medivator.

12 Q And then these things right here, these bite
13 blocks, are thrown in the mix as well? So this one bucket
14 gets everything put into it?

15 A Yes, sir.

16 MR. STAUDAHER: Nothing further, Your Honor.

17 THE COURT: All right. I have a couple of juror
18 questions up here. A juror wants to know, on the Medivator,
19 is there a spot to personally clean the bite blocks or do you
20 -- I guess, do you do that first?

21 THE WITNESS: Can you please say it one more time?
22 I'm sorry.

23 THE COURT: The juror question is, on the Medivator,
24 is there a spot to personally clean the bite blocks or do you
25 do that first or how does that work?

1 THE WITNESS: Well, as soon as they -- as soon as we
2 take it off the patient or if I'm in the procedure room and I
3 take it off, I put it into the dirty bucket and that's where
4 they clean it and then they put it into the Medivator.

5 THE COURT: Okay. Now, once the Medivator's running,
6 is that like a sealed thing and it goes through a cycle or is
7 it the kind of thing you open the lid and -- how does that
8 work?

9 THE WITNESS: No. It goes through -- it goes through
10 a cycle. You don't want to open that thing because that thing
11 will spray at you.

12 THE COURT: Okay. And is there like some kind of
13 fluid in the Medivator?

14 THE WITNESS: Yes, ma'am. Yes, Your Honor.

15 THE COURT: Okay. And then that goes to the next
16 question. Do you know how often the Medivator fluid was
17 cleaned or changed?

18 THE WITNESS: I don't recall.

19 THE COURT: Okay. And then a juror would like you to
20 clarify. When washing the scopes by hand, they were scrubbed
21 in solution and then soaked in clean water and then hung to
22 dry or were they soaked in a sanitizing solution after being
23 scrubbed and rinsed and then hung to dry or how did that work
24 again with the scope? Okay. The scope comes out of the room,
25 it's been used, then where does it go -- it goes in the

1 solution?

2 THE WITNESS: It goes in the solution after you scrub
3 it and then you put it basically in the clean water.

4 THE COURT: Okay. And then does it go in the
5 Medivator or anything?

6 THE WITNESS: If the Medivator's broken we would let
7 it soak for 20 minutes and then we would hang it.

8 THE COURT: Okay. And then when you do the
9 scrubbing, is it in the solution when you do the scrubbing of
10 the scope or do you scrub it like in a sink or someplace else
11 and then put it into the solution?

12 THE WITNESS: No, we put it in the tub of the
13 solution.

14 THE COURT: Okay. And you do the scrubbing in the
15 tub?

16 THE WITNESS: Yes, ma'am.

17 THE COURT: Okay. Are you wearing gloves or...

18 THE WITNESS: Yes, ma'am.

19 THE COURT: Okay. And then what do you use to scrub
20 the scope while it's in the tub?

21 THE WITNESS: What do I use?

22 THE COURT: Yeah, like a brush or --

23 THE WITNESS: I had this kind of like a sponge, a
24 blue sponge, that I would clean the outside. I would clean
25 the tube if there was fecal matter -- well, clean it

1 regardless just in case whatnot. And then there was this wire
2 brush and it was -- it's pretty long brush, it basically --
3 you just stick it through the whole hole, you hold the device
4 and you just stick it through one of the ports and eventually
5 at the end you'll see it come out and you just yank it because
6 there's two -- on each end of the -- of the brush, there's two
7 brushes on each end.

8 THE COURT: Okay. And the brush is long enough that
9 it can go all the way through the scope?

10 THE WITNESS: Yes, ma'am -- Your Honor.

11 THE COURT: Okay. All right. Mr. Staudaher, do you
12 have any follow-up to that last series of questions?

13 MR. STAUDAHER: I just have one, Your Honor.

14 BY MR. STAUDAHER:

15 Q Related to the Medivator fluid changeover, you
16 said that you didn't know how often it got changed over,
17 right? We're talking about the fluid in the Medivator, not
18 the solution that all the scopes go into initially.

19 A Right.

20 Q Did that -- does that mean that you personally
21 never changed that solution when you were there?

22 A I never cleaned it.

23 Q So you would just change the solution that
24 became contaminated with all the fecal material. The stuff
25 that was in the Medivator that was doing the cleaning, you

1 would never change?

2 A Correct.

3 THE COURT: Do you know whose job it was to change
4 that solution if, in fact, it was anyone's job?

5 THE WITNESS: I don't recall.

6 BY MR. STAUDAHER:

7 Q And would you work there the whole -- I mean the
8 whole day, your whole shift in that room if that was your job
9 that day to work in the room cleaning?

10 A It would kind of be like, I would be there
11 because after cleaning, if I was on downtime, I'd go into the
12 -- excuse me -- the recovery room and help clean beds.

13 Q But when you're there, if that's your primary
14 job --

15 A That's my primary job.

16 Q -- you're the guy doing it the whole day?

17 A Through my shift, correct.

18 Q Okay. And throughout your shift, if I
19 understand you correctly, you never changed that solution.
20 That would be used for every single scope, bite block,
21 whatever that came through?

22 A Correct.

23 MR. STAUDAHER: Nothing further.

24 THE COURT: Ms. Stanish?

25 MS. STANISH: No, no further questions.

1 THE COURT: Mr. Santacroce?

2 MR. SANTACROCE: Nothing further, Your Honor.

3 THE COURT: Any additional juror questions for this
4 witness? No? All right, sir. Thank you for your testimony.
5 I'm about to excuse you but before I do I must admonish you
6 that you're not to discuss your testimony with anyone else who
7 may be a witness in this case.

8 THE WITNESS: Yes, Your Honor.

9 THE COURT: Thank you, sir, and you're excused. And
10 the State may call its next witness and we do have the court
11 interpreter here now.

12 MS. WECKERLY: Sonia Rivera.

13 THE COURT: Sonia Rivera is the next witness, Kenny.

14 THE MARSHAL: She's coming, Judge.

15 THE COURT: Okay. Would the interpreter like a
16 chair?

17 THE INTERPRETER: Yes, Your Honor.

18 THE COURT: All right. And ma'am, please face this
19 lady right here and she will administer the oath to you.

20 SONIA ORELLANA RIVERA, STATE'S WITNESS, SWORN

21 THE CLERK: Thank you, please be seated. If you
22 could please state and spell your first and last name for the
23 record?

24 THE WITNESS: My name is Sonia Elizabeth Orellana
25 Rivera. And the spelling is S-o-n-i-a, Elizabeth,

1 E-l-i-z-a-b-e-t-h, last name O-r-e-l-l-a-n-a, Rivera
2 R-i-v-e-r-a.

3 THE COURT: All right. Thank you. Ms. Weckerly.

4 DIRECT EXAMINATION

5 BY MS. WECKERLY:

6 Q Ms. Rivera, did you have a procedure done on --
7 at the Endoscopy Center of Southern Nevada on September the
8 21st of 2007?

9 A I was -- I had a colonoscopy done.

10 Q And who was the doctor that referred you to that
11 center?

12 A Dr. Antuna.

13 Q Is Dr. Antuna still your doctor?

14 A Yes, my primary doctor.

15 Q Your primary doctor?

16 A Yes.

17 Q Before you had the colonoscopy, did you see a
18 doctor associated with the -- with the center where you had
19 the procedure?

20 A Dr. Antuna referred me to the doctor name --

21 Q Does Carrera sound familiar?

22 A Yes. Dr. Carrera and he sent me to do the
23 colonoscopy.

24 Q You actually had the colonoscopy on September
25 the 21st, right?

1 A Yes.

2 Q Can you describe what time of day you arrived at
3 the clinic for the colonoscopy?

4 A My appointment was for ten a.m. I arrived like
5 15 minutes before or less.

6 Q When you arrived at the clinic, describe what it
7 looked like in the reception or waiting area.

8 A There were many people, it was clean.

9 Q When you arrived, did you have to check in with
10 the receptionist?

11 A Yeah. I had to deliver the documents, my
12 documents, and then verify that I had the appointment.

13 Q By your documents, was that like your insurance
14 card?

15 A Yes and my ID.

16 Q Your own identification?

17 A Yes, my own ID.

18 Q What type of insurance did you have then?

19 A Culinary.

20 Q Culinary?

21 A Yes.

22 Q Did you -- when you checked in, do you remember
23 if you had to make a co-payment for your procedure?

24 A I didn't do co-payments because I have double
25 Culinary. I cover my husband, my husband covers me.

1 Q So both you and your husband have Culinary
2 insurance independently?

3 A At that time, yes.

4 Q And you both designated each other on each other
5 -- on the insurance?

6 A Right.

7 Q Okay. How long did you wait before someone
8 called you back to the start the process?

9 A It was a little time, no more than half an hour.

10 Q When they first called you back, did you have to
11 change into a gown?

12 A Yes.

13 Q And after you changed into the gown, what did
14 you do with your clothes?

15 A I don't remember really well if there was a
16 place like a little room where one will change, I don't
17 remember really well.

18 Q Okay. After you got into your gown, do you
19 remember where you went next at the clinic?

20 A The building was divided and the place where you
21 will get the documents done, another place where the procedure
22 was going to be done and I was taken to -- and then the
23 recuperation area. And I was taken to the part where the
24 documents are received.

25 Q Was there a point in time when you had an IV or

1 a heplock or some kind of needle put in your arm?

2 A Yes. After I changed I went to that place where
3 I got the IV and they -- and then they got blood.

4 Q They got blood from you there?

5 A Yes.

6 Q Do you remember anything about who the -- who
7 the person was that put your IV in or got the blood, anything
8 like that?

9 A I just remember that it was an old lady, white.

10 Q Okay. How long were you in that part of the
11 clinic before you moved to the next room?

12 A It was a little time, perhaps at most 15
13 minutes.

14 Q Did any doctor come out and talk to you while
15 you were getting that done and getting your IV put in?

16 A No.

17 Q How about anybody besides the nurse, did anyone
18 else come out and talk to you besides the person who was
19 putting your needle in?

20 A Yeah. The young fellow who took me to the
21 procedure room, the person.

22 Q Okay. And that was the person who actually
23 helped you get to the procedure room?

24 A Yeah. The person who helped me also did
25 interpretation for me.

1 Q So that person was obviously a Spanish speaker?

2 A Yeah, he would speak Spanish.

3 Q When you got the procedure room, do you remember
4 who was in the room?

5 A Yes. It was the anesthetist and the doctor who
6 was going to perform the procedure and the person who was
7 interpreting for me.

8 Q Okay. And the person who was interpreting for
9 you is the person who got you out of the IV room and brought
10 you to the procedure room?

11 A Yes.

12 Q Did the anesthesia person, do you remember
13 anything about that person?

14 A Not really.

15 Q Male, female, anything like that?

16 A It was a man.

17 Q Okay. Did the -- did that man ask you any
18 questions about your medical history, allergies to medication,
19 anything like that?

20 A I think that he asked me about allergies, if I
21 was allergic to some medication, and then he explained me how
22 he was going to do the anesthesia, that they were going to put
23 me to sleep.

24 Q Okay. And did the doctor talk to you at all?

25 A It was explained to me that -- what was going to

1 be done, that a tube was going to be inserted in my anus and
2 that's it.

3 Q Okay. And I assume you were put to sleep and
4 didn't remember the -- and you don't remember the procedure?

5 A No, no more.

6 Q Okay. Where -- what was the room you woke up
7 in, what do you first remember about that?

8 A It was just a cubicle. It was just there, just
9 a bed and a young fellow was there when I woke up.

10 Q Was the man who was there, the young man who was
11 there when you woke up, was that anyone you had seen before?

12 A No.

13 Q It wasn't the doctor?

14 A No.

15 Q Was it the anesthesia person?

16 A No.

17 Q Was it the guy who was translating for you that
18 you saw earlier on?

19 A No.

20 Q Okay. Did you ever see the doctor after your
21 procedure that day?

22 A No.

23 Q How about the anesthesia person, did you ever
24 see that person after you -- after your procedure?

25 A No.

1 Q So when you -- when you woke up, was the -- was
2 the man able to speak Spanish with you?

3 A Yes.

4 Q And did he advise you you could get dressed or
5 anything like that?

6 A He told me that if I was feeling well I could go
7 to the place I left my -- my clothing and then I spoke to
8 another person.

9 Q Okay. Were you feeling okay?

10 A Yes.

11 Q And so did you go and get dressed next?

12 A I don't remember really well if I got dressed
13 first and then I spoke to the person or if I spoke to the
14 person first and then I got dressed. I don't really remember.

15 Q Okay. At -- at some point you got dressed,
16 correct?

17 A Yes.

18 Q Okay. And then was there someone else that you
19 talked to before you left?

20 A Yeah. The person who I spoke with after, he
21 told me that the procedure was okay, that I had no polyps or
22 anything.

23 Q And that person, was that the doctor?

24 A No, that was a woman.

25 Q Okay. And so it wasn't the anesthesia person

1 either?

2 A No.

3 Q So that person tells you everything's okay?

4 A He said everything was fine.

5 Q Okay. And you -- and I assume you leave?

6 A Yeah. Then he told me that I could go and to
7 make an appointment with the doctor who had referred me.

8 Q Okay. After this day, did you ever start
9 feeling sick or feeling bad?

10 A I just had -- kept the problem with
11 constipation.

12 Q Okay. Did you ever get a letter from the health
13 district?

14 A Yes, about March of the next year, more or less.

15 Q Okay. March of 2008?

16 A I think so.

17 Q When you got that letter, did you go see your
18 regular doctor, Dr. Antuna?

19 A I had an appointment first with my gynecologist
20 and he told me to go see first my primary doctor.

21 Q And so did you go to your primary doctor?

22 A I went to see my primary doctor and he send me
23 to do blood to discard hepatitis.

24 Q And your primary doctor is Dr. Antuna, right?

25 A Yes.

1 Q So he is the one that sends you for a blood
2 test?

3 A He did blood tests and also the health
4 department.

5 Q Oh, you gave blood at the health department too?

6 A Too, yes, also.

7 Q Who told you your results?

8 A First Dr. Antuna gave me the results and then
9 the health department.

10 Q Okay. And did Dr. -- did the health department
11 discuss what are like risk factors for hepatitis C?

12 A First they asked me the date I had gone to the
13 procedure and they told me that I was a high-risk patient.
14 And then I -- I received an appointment that we were many
15 people to go there and take the blood test.

16 Q Did they say why you were at high risk, was it
17 because of the date?

18 A Not really.

19 Q Okay. You -- but you also got blood work done
20 with Dr. Antuna?

21 A He had done it, Dr. Antuna's.

22 Q And he had -- did he tell you your results about
23 being positive for hepatitis C?

24 A Yes.

25 Q After you received those results, what did you

1 do? Did you see another doctor?

2 A Okay. First, Dr. Antuna said I had to go to the
3 specialist. He referred me to Dr. Haikal. And Dr. Haikal
4 send me to do again, blood, came back again positive.

5 Q Before you had your procedure, had you had your
6 blood tested before?

7 A Yes.

8 Q Did you have any kind of problems before this?

9 A No problem.

10 Q And after your diagnosis you saw Dr. Haikal,
11 who's a specialist?

12 A Yes.

13 Q And are you still seeing Dr. Haikal?

14 A No, no more.

15 Q Have you had any treatment based on being
16 hepatitis C positive?

17 A The doctor, my specialist, says that as of now I
18 still don't need the medicine.

19 Q Do you have to do -- do you have to take
20 precautions at your house because of your diagnosis?

21 A Yes.

22 Q What are those?

23 A Nobody from my family can have any contact with
24 my blood. My husband -- we cannot have free sex. I try the
25 best way to take care of myself the best I can. I don't drink

1 alcohol, I don't do anything that may harm my health.

2 Q And since this -- since this happened, since
3 this procedure, have you felt okay or have you felt different?

4 A Starting with my diet notice everything has been
5 different. The first months were really tough.

6 Q Describe -- describe what happened to you, how
7 do you feel?

8 A I would be depressed a lot, was feeling very
9 tired, my head will ache a lot, I will cry a lot. Everything
10 changed with my family and my job too.

11 Q How did it change at your job?

12 A I started to miss work a lot because I would
13 feel bad, I will not go to work. I have good days and bad
14 days.

15 Q Have -- have the -- the feelings that you just
16 described, did those ever go away or do you still feel like
17 that, depressed and tired?

18 A Still, perhaps more now, but I'm trying to live
19 with that.

20 MS. WECKERLY: May I approach, Your Honor?

21 THE COURT: You may.

22 BY MS. WECKERLY:

23 Q Ms. Rivera, I'm -- I'm showing you what's been
24 marked as State's Proposed Exhibit 62. Do you see that?

25 A Uh-huh.

1 Q Is that yes?

2 A Yes. Excuse me.

3 Q Looking at the first page of this document, can
4 you tell me if you recognize what that is?

5 A That's a receipt that the Culinary will send me.

6 Q And is that the -- the paperwork associated with
7 this procedure that you had on the 21st?

8 A Yes.

9 Q Can I just see that for like one second? Can
10 you see that on your screen, Ms. Rivera?

11 A Yes.

12 Q And at the -- at the top of this document, that
13 was your name and address -- well, that is your name, but,
14 your address back then?

15 A Yes.

16 Q And this is your insurance coverage?

17 A Yes.

18 Q And looking down at the document, I'm going to
19 zoom in, so just hold on one second, please. Right here, does
20 it say that you were billed for anesthesia?

21 A Yes.

22 Q And the -- can you see the amount there?

23 A 560.

24 Q And then there's --

25 A 306.

1 Q Okay. So there's a portion kind of -- it's
2 probably paid by your insurance and then there was a portion
3 being covered by your secondary?

4 A Yes.

5 Q Thank you.

6 MS. WECKERLY: I'll pass the witness, Your Honor.

7 THE COURT: All right. Let's go ahead and take our
8 afternoon recess. We'll take about 10 minutes until 3:40.

9 And ladies and gentlemen, during the afternoon recess
10 I must remind you that you're not to discuss the case or
11 anything relating to the case with each other or with anyone
12 else. You're not to read, watch, listen to any reports of or
13 commentaries on this case, any person or subject matter
14 relating to the case. Do not do any independent research by
15 way of the Internet or any other medium. And please do not
16 form or express an opinion on the trial. If you would all
17 please place your notepads in your chairs and follow the
18 bailiff through the rear door.

19 During the break please don't discuss your testimony
20 with anybody else who may be a witness in the case.

21 (Court recessed at 3:26 p.m. until 3:41 p.m.)

22 (In the presence of the jury.)

23 THE COURT: All right, Court is now back in session.
24 Mr. Wright, you may begin your cross-examination.

25 CROSS-EXAMINATION

1 BY MR. WRIGHT:

2 Q Thank you. Ma'am, my name is Richard Wright.
3 I'm a lawyer, I represent Dr. Desai.

4 When you originally were referred by Dr. Antuna to
5 Dr. Carrera in 2007, that was because you had a stomach
6 problem?

7 A When Dr. Antuna referred me to Dr. Carrera, it's
8 because I suffer from constipation.

9 Q Okay.

10 THE COURT: Mr. Wright, you need to keep your voice
11 up. The jurors are having trouble hearing you.

12 MR. WRIGHT: Okay.

13 BY MR. WRIGHT:

14 Q And your -- your first -- and Dr. Antuna is your
15 primary care doctor as well as your husband's?

16 A Yes.

17 Q Okay. And your first appointment for meeting
18 with Dr. Carrera was before you had the colonoscopy?

19 A Yes.

20 Q And at that time you -- did you meet with Dr.
21 Carrera or an assistant?

22 A No, with Dr. Carrera.

23 Q Okay. And he talked to you at that time?

24 A Yes, I had an appointment with him.

25 Q Okay. And did he ask you questions?

1 A Yes. He asked me about the symptoms that I had
2 because of my constipation problem, I had to go to the
3 emergency room.

4 Q Okay. And he -- he recommended -- Dr. Carrera
5 recommended you go ahead and have the colonoscopy, correct?

6 A First he -- he made some studies and then he
7 said about the colonoscopy.

8 Q Okay. And then Dr. Carrera scheduled the
9 appointment for you for September 21st when you had the
10 colonoscopy?

11 A Well, basically the appointments were given by
12 the assistant of the doctor.

13 Q Okay. And did they give -- and the assistant
14 gave you instructions on what you need to do to prepare
15 yourself for a colonoscopy?

16 A Yes. I was given a bottle with water or
17 medicine -- medication, I don't know. I drank it at night and
18 I stopped eating last meal at six p.m. and then I took the
19 medicine.

20 Q Okay. On the day of the colonoscopy, I'm going
21 to skip your arrival and go to when you went into the room to
22 get the IV and blood work. Okay?

23 A Okay.

24 Q At that time you were in your gown and you --
25 blood was taken from you and you received an IV in your hand?

1 A Yes, blood was taken and they put the IV.
2 Q Okay. And the same older white lady nurse did
3 both, took the blood and put in the IV?
4 A Yes, the same person.
5 Q Okay. And was the -- the blood was taken from
6 your arm?
7 A Yes, the same place they put the IV.
8 Q Okay. Taken out of the IV?
9 A I don't remember.
10 Q Okay. But the -- you -- you do remember that
11 blood was drawn from you?
12 A Yes.
13 Q And a little IV device was inserted into your
14 back of your hand and taped on?
15 A Yes. I do remember that they took blood and
16 then they put an IV.
17 Q Okay. And the -- you go into the procedure room
18 and you -- it's Dr. Carrera who performs your colonoscopy?
19 A No.
20 Q Okay. Who performed your colonoscopy?
21 A That time I didn't know what was the name of the
22 doctor, but I think it's Clifford Carrol.
23 Q Okay. Clifford Carrol sounds familiar?
24 A Yes.
25 Q Okay. And so the -- in the procedure room where

1 you had the colonoscopy, you talked with Dr. Carrol?

2 A Clifford Carrol?

3 Q Yes.

4 A Yes.

5 Q Okay. And the young man who was Spanish
6 speaking interpreted for you?

7 A Yes.

8 Q And you -- the -- you were put to sleep?

9 A Yes.

10 Q Had the procedure?

11 A Yes.

12 Q Okay. And then awoke in what -- what we've been
13 calling the recovery area?

14 A Yes.

15 Q Okay. And you then received -- after you woke
16 up and recovered sufficiently, you talked with another lady
17 who told you the preliminary results?

18 A Right.

19 Q And gave you a follow-up appointment with Dr.
20 Carrera?

21 A She did not give me the appointment. She told
22 me to do it at the place the appointments are made.

23 Q Okay. Did -- did you get a follow-up
24 appointment?

25 A Yes.

1 Q Okay. And that was with Dr. Carrera?
2 A Right.
3 Q And -- and he -- and that was a couple weeks
4 later?
5 A Yes.
6 Q Okay. And Dr. Carrera told you the results and
7 also wrote you a prescription, medication, for the
8 constipation?
9 A Right.
10 Q Okay. Now, the -- thereafter, you received a
11 letter from the health district, correct?
12 A Right.
13 Q Okay. And that comes to your home?
14 A Yes.
15 Q And that letter suggests that you come to the
16 health district and get blood tests done?
17 A No.
18 Q Okay. Tell me --
19 A That letter had a number I had to call to. I
20 called and that's when they told me that I was a -- I was
21 possibly infected with hepatitis C.
22 Q Okay. But do -- would -- do you know what month
23 that would have been approximately?
24 A I think that around March.
25 Q Okay. Of 2008?

1 A Yes, 2008.

2 Q Okay. And when you got the letter from the
3 health district, it had a phone number for you to call?

4 A Right.

5 Q Okay. And you called the health district and
6 spoke to a person?

7 A Right.

8 Q And the health district person told you that you
9 may possibly be infected --

10 A Yes.

11 Q -- and come down and give a blood?

12 A Yes. First he asked many questions --

13 Q Okay.

14 A -- and afterwards he gave me an appointment to
15 go to the health department and have the blood taken.

16 Q Okay. When -- when -- when the fellow with the
17 health district asked you the questions, were those personal
18 questions about your past life? What they call health risk
19 factors?

20 A Right.

21 Q Okay. And so he -- he asked you those
22 questions, you answered him and then he said you need to come
23 down for a test?

24 A Right.

25 Q Okay. And you went down and they took blood

1 samples for a test?

2 A Right.

3 Q Okay. And at the same time or right around this
4 same time you also went back to your doctor, Dr. Antuna?

5 A I went first to Dr. Antuna when I received the
6 letter.

7 Q Okay.

8 A He sent me the blood and he told me to also go
9 to the health department.

10 Q Okay. And so Dr. Antuna took blood samples, the
11 health department did, correct?

12 A Right.

13 Q Okay. And then both of them reported back to you
14 that you tested positive for hepatitis C?

15 A Right. First Dr. Antuna's and then the health
16 department.

17 Q Okay. And -- and then Dr. Antuna referred you
18 to a specialist for treating someone who's infected with
19 hepatitis C, right?

20 A Yes, he sent me to Dr. Haikal.

21 Q Okay. Dr. Osama Haikal here in Las Vegas.

22 A Right.

23 Q Okay. And did Dr. Haikal -- you went to and
24 started seeing monthly or every few months?

25 A At the beginning he will treat me every month.

1 Q Okay. And he would give you blood tests again?
2 A He send me blood tests and then I had a test
3 done on the -- the liver biopsy.
4 Q Okay. And -- okay, all performed by Dr. Osama
5 Haikal?
6 A By Dr. Haikal.
7 Q Okay. And you -- and when you would go in every
8 month or every couple of months, he -- he would tell you the
9 results of the tests regarding various numbers, enzymes and
10 numbers about your condition?
11 A Yeah. He will tell me the -- the changes
12 because basically hepatitis goes up -- it goes up in me and
13 goes down and he will tell me about that.
14 Q Okay. And the -- he also explained to you a
15 diet --
16 A Right.
17 Q -- high fiber diet, various things to do,
18 correct?
19 A Yes. He will tell me that I have to lose weight
20 and --
21 Q Okay.
22 A -- and also to improve my constipation.
23 Q Okay.
24 A That I should not drink alcohol. Things that I
25 try to -- try to keep my health.

1 Q Sounds like good advice for me. And your
2 hepatitis C diagnosis was for your -- not your diagnosis, your
3 infection, the hepatitis C virus you had transacted was
4 treated with your own management of yourself and your diet.

5 A I didn't understand the question.

6 Q Okay, I didn't either. You didn't -- you didn't
7 have to undergo a regimen of -- of medication for the
8 hepatitis C?

9 A Not yet.

10 Q Okay. And the -- when the -- when -- how
11 frequently now do you see Dr. Haikal?

12 A Dr. Haikal doesn't see me anymore. I changed
13 specialists.

14 Q Okay. And who's the new one?

15 A Dr. Fayad.

16 Q Dr. Fayad?

17 A Uh-huh.

18 Q F-a-y-a-d?

19 A I think that's the spelling of his name.

20 Q Okay. And how frequently do you see him?

21 A He checked me every six months but if in the
22 meantime I feel bad I do an appointment and I go see him.

23 Q Okay. Now, because of what happened to you and
24 you contracting hepatitis C, you went and retained some
25 lawyers to -- to bring a lawsuit against those you believed

1 responsible.

2 A Yes.

3 Q Okay. And the -- did -- did -- did the lawyers
4 sue people, bring a lawsuit?

5 A Yes.

6 Q Okay. Do you know who your lawyers sued?

7 A Well, I believe the doctors from the surgical
8 and it's one, one claim.

9 Q Okay. Was -- was there one -- you sued because
10 you had been harmed, correct?

11 A Right.

12 Q Okay. And your husband also sued?

13 A Right.

14 Q Okay. And did -- are your lawsuits over?

15 A Yes.

16 Q Okay. And did you win a -- a settlement or an
17 amount of money because you had been harmed?

18 A Yes.

19 Q Okay. And do you know the total net amount, the
20 amount you and your husband received?

21 A We received 1.9 million, my husband and I.

22 Q Okay. And do you still have any claim, any
23 lawsuit pending?

24 A I think so.

25 Q Okay. Do you know which lawsuit is still

1 pending, who you are suing?

2 A I'm not sure.

3 Q Okay. You leave that up to the lawyers.

4 A Right.

5 MR. WRIGHT: Court's indulgence. One moment.

6 THE COURT: Uh-huh.

7 BY MR. WRIGHT:

8 Q Thank you very much, ma'am.

9 A Okay.

10 THE COURT: Mr. Santacroce, cross?

11 MR. SANTACROCE: Thank you.

12 CROSS-EXAMINATION

13 BY MR. SANTACROCE:

14 Q Good afternoon.

15 A Good afternoon.

16 Q I represent this gentlemen here. Can you stand

17 up, please. Have you ever seen this gentlemen before?

18 A No.

19 Q His name is Ronald Lakeman. You don't know him,

20 do you?

21 A No.

22 Q I'm going to show you State's Exhibit Number 62.

23 This was the statement I believe you testified that you

24 received from Culinary, correct?

25 A Uh-huh.

1 Q Is that a yes?

2 A I don't see the thing.

3 Q Oh, I'm sorry. Does that help?

4 THE COURT: It's on the big screen but not -- maybe
5 that got turned off or something.

6 BY MR. SANTACROCE:

7 Q Is it on?

8 A Yes.

9 THE COURT: Can you see it now?

10 BY MR. SANTACROCE:

11 Q Can you see it?

12 A Uh-huh, yes.

13 Q This is the statement you received from Culinary
14 Union?

15 A Yes.

16 Q And it's for a billing for anesthesia, correct?

17 A Right.

18 Q And you see the name here where the provider was
19 for the anesthesia?

20 A Yes.

21 Q What's the name?

22 A I think it's read K. Matthews or something like
23 that.

24 Q Is it Keith Mathahs?

25 A Keith Mathahs.

1 Q Thank you. But he's the one that provided the
2 anesthesia to you, correct?

3 A Yes.

4 Q And you did receive anesthesia with your
5 procedure, correct?

6 A Yes, I received anesthesia.

7 Q And the person that gave -- drew your blood was
8 not that gentleman there, was it?

9 A No, it was a woman.

10 Q And the person that put in the IV was not Mr.
11 Lakeman, correct?

12 A No, it wasn't him either, it was a woman.

13 Q And the fact is that Mr. Lakeman had nothing to
14 do with your medical treatment at all; isn't that correct?

15 MS. WECKERLY: Objection.

16 THE COURT: Well, if she knows. I mean as far as she
17 knows.

18 THE WITNESS: I don't know if he had something to do.

19 BY MR. SANTACROCE:

20 Q Okay. But as far as you know you don't
21 recognize him, correct?

22 A I didn't know him.

23 Q Okay.

24 MR. SANTACROCE: I have no further questions.

25 THE COURT: Any redirect?

1 MS. WECKERLY: No, Your Honor. Thank you.

2 THE COURT: Any juror questions for this witness?
3 No? No juror questions? Ma'am, thank you for your testimony.
4 Please don't discuss your testimony with anyone else who may
5 be a witness in this case. Thank you and you are excused.

6 THE WITNESS: Okay.

7 THE COURT: All right, the State may call its next
8 witness.

9 MS. WECKERLY: Gwendolyn Martin.

10 THE COURT: Face this lady right there.

11 GWENDOLYN MARTIN, STATE'S WITNESS, SWORN

12 THE CLERK: And if you could, please state and spell
13 your first and last name for the record?

14 THE WITNESS: Gwendolyn G. Martin, G-w-e-n-d-o-l-y-n,
15 G, as in George. Do you want me to spell the middle name?
16 Should I spell my middle name?

17 MS. WECKERLY: You can, sure.

18 THE WITNESS: I'm sorry. Georgiann,
19 G-e-o-r-g-i-a-n-n, Martin, M-a-r-t-i-n.

20 THE COURT: And, ma'am, you have a very soft voice so
21 that right there is the microphone, just try to speak into it
22 so we can make sure all the jurors can hear you.

23 THE WITNESS: Okay.

24 DIRECT EXAMINATION

25 BY MS. WECKERLY:

1 Q Ms. Martin, you had a procedure done at the
2 Endoscopy Center of Southern Nevada on September the 21st of
3 2007?

4 A Yes.

5 Q Did you actually have two procedures done at the
6 center?

7 A Yes, I did.

8 Q And do you recall the dates of each procedure?

9 A October 20th and October 21st, 2007.

10 Q September -- would it be September rather than
11 October?

12 A I'm sorry. September, yes.

13 Q That's okay. So you had one on the 20th and one
14 on the 21st?

15 A Yes.

16 Q And this is at the endoscopy center on Shadow
17 Lane?

18 A Yes.

19 Q And that's in Clark County, Nevada?

20 A Yes.

21 Q Do you remember which procedure you had on the
22 20th and which one you had on the 21st?

23 A I believe I had the colonoscopy on the 20th and
24 the --

25 Q Endoscopy.

1 A -- on the 21st.

2 Q At the time you had those procedures, did you
3 have a family doctor or a referring doctor?

4 A At the time I had a primary doctor.

5 Q Who was that?

6 A Dr. Castleman.

7 Q Stephanie Castleman?

8 A Yes.

9 Q And did Dr. Castleman refer you for those
10 procedures?

11 A Yes, she did.

12 Q Do you remember if you had an appointment at the
13 endoscopy center -- not in the procedure area but in the
14 medical offices before you had each procedure?

15 A Yes, I did.

16 Q And do you recall who that might have been with?

17 A I don't.

18 Q Okay. But you had some appointment before you
19 went in for each procedure?

20 A Yes.

21 Q Now, the -- the two procedures you had -- let me
22 ask it this way. Were both procedures, as you recall, around
23 the same time of day or do you remember how they were
24 scheduled?

25 A One I remember was early morning and the other

1 was mid-morning.

2 Q Okay. And do you remember which is which in
3 that or?

4 A I don't.

5 Q Okay. How about -- how about what the -- the --
6 the waiting room looked like when you arrived on each day, was
7 there any difference between the days?

8 A No.

9 Q How would you describe how it looked?

10 A Too busy for that time of the day I thought, it
11 was very busy.

12 Q Lots of people?

13 A Lots of people.

14 Q And on -- on the days of your procedure, did you
15 go up to a receptionist and check in and that sort of thing?

16 A Yes.

17 Q Was there any difference between the two days in
18 that type of procedure?

19 A No.

20 Q Can you describe to us what happened when you --
21 when you did your check in?

22 A Just went to the front desk to check in. She
23 asked for the co-pay and there was a form that she just kind
24 of filled out and signed off on.

25 Q Did you have to pay a co-payment each day?

1 A Yes.

2 Q And I assume you showed your proof of insurance
3 or your insurance card?

4 A Yes.

5 Q Who -- who was your insurance with at that time?

6 A Pacific Care.

7 Q And so you -- you check in, you pay your co-pay.
8 Did you take a seat and wait after that?

9 A Yes.

10 Q On the -- on the second day, do you recall how
11 long you had to wait before you were sort of called in to
12 start your procedure?

13 A I'm not for sure exactly, maybe 15, 20 minutes.

14 Q Okay. Was that about the same amount time that
15 you had to wait for the first day too?

16 A Yes.

17 Q After they called you back, I assume you changed
18 your clothes into a gown or something like that?

19 A Yes.

20 Q Do you remember what you did with your -- your
21 regular clothing, what you had been wearing?

22 A They were left in the room that you changed
23 into.

24 Q Okay. And after you changed your clothes and
25 got in your gown, where did you go next?

1 A We had sat -- I sat in a room to wait for them
2 to prep me for the procedure.

3 Q And were you in a room by yourself or were there
4 other patients there?

5 A There were other patients there.

6 Q And were you on a gurney or in a chair; do
7 you --

8 A In a chair.

9 Q A chair?

10 A Yes.

11 Q And did someone do something to you?

12 A There was a nurse that prepped my right arm,
13 right hand.

14 Q And did that person put in like an IV or a
15 needle?

16 A They didn't put in a needle, just prepping.

17 Q And what -- what would the prepping have been?

18 A Just the tube with the tape --

19 Q Okay.

20 A -- just placed on your right hand.

21 Q And the person who -- who did that, do you
22 recall male, female, anything about that person?

23 A It was a lady.

24 Q And any other description other than just you
25 know it was a woman?

1 A Yes, that's it.

2 Q And you said that there was no IV put in. Was a
3 needle put in your arm at that point?

4 A No.

5 Q Just prepped?

6 A Yes.

7 Q And -- and that was, I guess, assume cleaning it
8 off?

9 A I'm not sure I understand.

10 Q Well, what did you see her do to your arm?

11 A Well, she put the -- like the tube with the
12 band-aid over -- or the tape over --

13 Q Okay.

14 A -- nothing was put into my skin if that's what
15 you mean.

16 Q Yes, that's what I mean.

17 A No, no.

18 Q What happened after that?

19 A We sat -- I sat and waited for a while for them
20 to call me back into the room.

21 Q While you were in that pre-op area, did anyone
22 come out and talk to you about any allergies to medications or
23 if you'd ever gone under anesthesia before?

24 A No.

25 Q So you just kind of sat there waiting until they

1 called you back?

2 A Yes.

3 Q Some point obviously they do?

4 A Yes.

5 Q Do you remember who was in the room, the next
6 room, the procedure room when you got in there?

7 A Who was in the next room?

8 Q Who was in the procedure room when you got
9 there?

10 A When I got there, there was a lady on the -- on
11 a computer, seemed like some type of a computer or something.
12 She was on -- it was a little dark in the room, it wasn't like
13 a light on.

14 Q Okay. Do you remember the person who gave you
15 anesthesia?

16 A No, I don't.

17 Q You have no recollection of that person at all?

18 A No, I don't.

19 Q Okay. Did anyone talk to you at all about
20 anesthesia before you got it?

21 A I really -- I believe that I wasn't talked to --
22 that no one talked to me that day about it.

23 Q Okay.

24 A Beforehand, the medical center that I went to
25 before where you -- they tell you about the procedure, what

1 would be done.

2 Q You talked about it then in the --

3 A Yes.

4 Q -- weeks before?

5 A Yes.

6 Q But when you go in the procedure room, you have
7 no recollection of any anesthetist asking you to count or
8 asking you about how you tolerate anesthesia?

9 A No.

10 Q Was there a point in time where you don't
11 remember being in the room that you now know you had to have
12 been put under anesthesia?

13 A Yes.

14 Q Okay. What was the next thing you were aware
15 of? Like how did you wake up?

16 A When I woke up I was in the -- like laying in a
17 bed in another room and I remember someone coming in and just
18 asking if I was okay and if I was waking up, it was time to
19 get up, you know, to get dressed.

20 Q Do you remember anything about that person?

21 A I believe it was a man.

22 Q Okay.

23 A Yes.

24 Q And did you ever talk to anyone who identified
25 himself as a doctor?

1 A Inside before the procedure, yes.

2 Q Okay. And who -- do you remember who the doctor
3 was?

4 A One day it was Dr. Carrera and one day it was
5 Dr. Wise.

6 Q Okay. After -- well a doctor identified himself
7 -- one of those two doctors before the -- before your
8 procedure on each day; is that fair?

9 A Yes.

10 Q Did you speak to either doctor when you were in
11 the recovery area on either day?

12 A No.

13 Q Neither Carrera nor Weiss?

14 A No.

15 Q Did anyone on either day come up to you in
16 recovery and said, you know, I was your anesthesiologist, how
17 are you feeling, anything like that?

18 A No.

19 Q It was just this one individual you remember?

20 A Yes.

21 Q After that person sort of spoke to you and asked
22 if you were okay, what did you do next?

23 A I was asked -- I could go in and get dressed.
24 They helped me back into the room, dressing room to get
25 dressed.

1 Q And --

2 A And then told me to go back to the waiting room
3 where my husband would pick me up.

4 Q Okay. Did anyone ever discuss your results with
5 you?

6 A I just remember one of the days, and I'm not for
7 sure which one, one of the nurses did explain to me what they
8 had found.

9 Q But neither doctor?

10 A No.

11 Q Okay. After both of these procedures I assume
12 you go home and go back to your normal life after the
13 procedure dates, correct?

14 A Yes.

15 Q Some time after that did you start not feeling
16 well?

17 A Yes.

18 Q How would -- how would you describe -- well, let
19 me ask you this first. How soon after the procedures did you
20 start not feeling well?

21 A I had the procedure in September, about a week
22 before Halloween.

23 Q Okay. And -- and what -- what did you feel
24 like, what were your symptoms that you experienced?

25 A I had flu like symptoms.

1 Q Flu like?

2 A Yes. Just like -- I just felt real bad, I felt
3 very tired, I noticed my urine was starting to get very dark,
4 I had no appetite to eat so I was losing weight rapidly.
5 Right before I went to the hospital I had jaundice very bad,
6 my husband noticed that, I didn't notice it myself. I was
7 just very sick.

8 Q You just felt very ill?

9 A Yes.

10 Q Now, you mentioned you went to the hospital. Do
11 you recall when that was or how it was that you ended up going
12 to the hospital?

13 A That morning my husband noticed that I was very
14 weak and he told me to take my glasses off so he could see my
15 eyes and he noticed that they were very yellow. I was going
16 to get my hair done. He told me to go on and do that. He
17 drove me and he called my doctor, Dr. Castleman, and explained
18 to her about the urine and how I was feeling and looked and
19 she just told him to take me to emergency.

20 Q Did you do that?

21 A Yes, I did.

22 Q What happened once you got to the emergency room
23 for the hospital?

24 A Well, they just starting asking questions and
25 how I've been feeling and then they started running a lot of

1 tests.

2 Q And in those tests did they take your blood?

3 A Yes.

4 Q And did they tell you the results?

5 A Pretty much did before the evening -- before the
6 evening was over that I had hepatitis C, acute hepatitis C.

7 Q And that wasn't Dr. Castleman, that's whoever
8 was treating you in the emergency room?

9 A Yes.

10 Q When you got that diagnosis did you -- did you
11 understand how you could have contracted it?

12 A I had no idea.

13 Q Had you heard -- I mean, you probably had heard
14 of it, but did you know the risk factors for hepatitis C or
15 anything like that?

16 A I had no idea. I had -- I heard of hepatitis C
17 but I had no idea where or how.

18 Q Okay. So what did you do?

19 A Well, for five days I was in the hospital. I
20 left the hospital and I think shortly after, I can't remember
21 exactly every date that things were happening, but shortly
22 after the health department had called me and they wanted me
23 to come in to talk to them, which I did.

24 Q Did you give them a blood sample?

25 A I ended up having to do some testing, yes,

1 through them as well as -- and then I was -- they scheduled me
2 to come back to discuss -- to have tests run with the CDC when
3 they were coming to town for testing or whatever, they had me
4 to come back for that.

5 Q And you did that as well?

6 A Yes.

7 Q After you were -- you were diagnosed with being
8 positive for hepatitis C, was there a point in time when you
9 saw a specialist on how to cope with this diagnosis?

10 A After I got home I did call my husband's primary
11 doctor and he asked me to come in and I did go in. And he
12 referred me to Dr. Nemec, which was the gastro doctor.

13 Q And gastro doctors are -- are -- specialize in
14 treating people with hepatitis C?

15 A He's a gastro doctor, that's why I was
16 referred --

17 Q Okay.

18 A -- yes, I -- yes.

19 Q Did you undergo treatment with Dr. Nemec as your
20 doctor?

21 A Yes, I did.

22 Q What was the treatment called?

23 A Interferon.

24 Q And how would you describe the -- the treatment
25 that that interferon treatment actually is? What does consist

1 of?

2 A Took five tablets a day, one shot per week for
3 48 weeks.

4 Q And the -- the -- do you need a minute?

5 A I'm okay. I'm good.

6 Q The five tablets that you had to take every
7 day --

8 A Yes.

9 Q -- were those -- do those have to be taken like
10 at certain time periods, every two hours or something like
11 that?

12 A I usually took them in the morning after I had
13 eaten something because I was still working at the time.

14 Q And you had to -- you said you had to get one
15 shot per week?

16 A Yes.

17 Q Did you have to administer that to yourself?

18 A I couldn't do it; my husband did it for me.

19 Q Okay. So your husband --

20 A Yes.

21 Q -- had to learn to do that or did he know how to
22 before?

23 A We went to a class for it.

24 Q Okay. That -- that treatment, when you're --
25 when you're on it, how do you feel?

1 A Make me -- it made you very depressed. I lost
2 weight. It just seemed like all the muscle tone from my body
3 left. There was -- I had lost about 25 pounds. I was very
4 tired. I stayed confused, my memory got very bad.

5 Q So there -- if I'm understanding you, you
6 physically felt bad, but there was also a mental component
7 where you -- your memory wasn't as sharp or you would get
8 easily confused?

9 A Yes.

10 Q I would imagine that was frightening?

11 A Very frightening.

12 Q And that -- did that -- did those side effects
13 persist for the -- the 48 weeks?

14 A Yes, they did.

15 Q At the end of the 48 weeks is it one of those
16 things where you start feeling better or gradually feel better
17 or how would you describe it?

18 A No. You don't feel better after -- even the
19 treatment, it continued on. The weight loss -- I was able
20 eventually to start eating better and gaining some -- most of
21 my weight back. The anxiety part I still have. I still have
22 a lot of anxiety. I never had that before, but the
23 anxiety/depression comes and goes even now, not as severe but
24 it comes and goes.

25 Q The -- do you -- do you have to get blood tests

1 regularly now?

2 A Yes.

3 Q And in those tests, is -- was the interferon --
4 or according to those tests, was that interferon treatment
5 considered successful or how would you describe your current
6 state?

7 A A doctor, the last test that I just had
8 recently, he says I'm doing fine. He says that he doesn't
9 feel that I would have any problem but he -- that's what he
10 says.

11 Q Okay. And obviously this -- you're still
12 concerned?

13 A Well, sure.

14 Q How often do you get tested now with your blood?

15 A About every six months.

16 Q And are there precautions or measures that you
17 have to take in your own household that you didn't have to
18 before?

19 A I'm still very careful in cooking, cutting
20 myself, because those are some of the things I had to be
21 concerned about before.

22 Q So you have to watch for that kind of thing?

23 A Yes.

24 MS. WECKERLY: May I approach the witness, Your
25 Honor?

1 THE COURT: Yes.

2 BY MS. WECKERLY:

3 Q Ms. Martin, I'm first going to show you these
4 photographs which are marked as State's Proposed Exhibits 50
5 through 58 and just look through all those, if you would for
6 me, please, and just let me know when you're done. Okay? Do
7 you recognize those photographs, ma'am?

8 A Yes, I do.

9 Q Are they of you?

10 A Yes, they are.

11 Q And when were they taken?

12 A During the treatment, during the time of my
13 treatment.

14 Q During the interferon treatment?

15 A Yes.

16 MS. WECKERLY: And State moves to admit 50 through
17 58.

18 THE COURT: Any objection?

19 MR. SANTACROCE: No.

20 THE COURT: All right. They'll be admitted.

21 (State's Exhibit 50 through 58 admitted.)

22 BY MS. WECKERLY:

23 Q I'm not going to display all of them but this is
24 -- can you -- is your screen on?

25 A Yes.

1 Q Okay. This is what's been admitted as State's
2 52. Ms. Martin, can you -- this is State's Exhibit 52. Can
3 you describe to the jury what -- obviously, these are your
4 legs, but what -- what the -- what the photograph is
5 depicting?

6 A These are rashes that were on my legs during the
7 time of treatment.

8 Q And did the rashes -- like did they itch or hurt
9 or?

10 A They would itch and the longer I was on
11 treatment the more severe they got as far as irritation. The
12 least bit of anxiety or anything I would just find myself
13 scratching and scratching the rashes.

14 Q And now I'm putting on State's 53, which is
15 lower down your leg, kind of your ankle area. Was -- was it
16 the same type of rash but all over your body?

17 A Yes.

18 Q Did you get it in your upper torso as well?

19 A Not so much on the torso, just the upper arms.

20 Q And this is State's 56. The color is not good
21 on this, but that's depicting the area where you had the rash
22 on your arm area?

23 A Yes.

24 Q How long did the -- did that symptom last
25 through your treatment? Did you have it the whole 48 weeks or

1 did you have it --

2 A I had it the whole 48 weeks. I still have some
3 of the same rashes on my body to this day. I'm still using --
4 going to the dermatologist.

5 Q And is -- is it your understanding that the
6 rashes are -- are anxiety related or is it -- is that an
7 actual, like a side effect from the medication or what's your
8 understanding?

9 A My understanding it's a side effect from the
10 medication.

11 Q From the interferon?

12 A Yes.

13 Q Ma'am, I left this one up there. Now I'm
14 showing you, it's a series of documents. It's marked as
15 State's 61 and I actually just want to ask you if you've seen
16 any of these pages. Have you seen that at all? And if you --
17 if you have, if you haven't -- doesn't look familiar that's
18 fine. This is the first page.

19 A I might have, I'm not for sure.

20 Q Okay. Does that one look familiar?

21 A I'm not sure. I might have seen it -- seen it
22 before. It looks like something I've seen, but I'm not
23 positive.

24 Q Okay. Just bear with me. Looking on this
25 second page, it actually -- it has your name, correct?

1 A Yes.

2 Q And your address at the time?

3 A Yes.

4 Q And your insurance carrier?

5 A Yes.

6 Q And does it indicate a billing for anesthesia on

7 September the 20th of 2007?

8 A Yes.

9 Q And an amount billed?

10 A Yes.

11 Q Is that right?

12 A Uh-huh.

13 Q And this third page looks like it's an

14 explanation of benefits; is that fair?

15 A Yes.

16 Q Saying this belongs to you because that's your

17 name?

18 A Yes.

19 Q And the procedure date again is 9/20, correct?

20 A Yes.

21 Q Moving on to the next series, is that the same

22 kind of pages but this time for September the 21st of 2007?

23 A Yes.

24 Q And does that appear to be your insurance,

25 address and claims number?

1 A Yes, it is.

2 Q Thank you, ma'am.

3 MS. WECKERLY: I'll pass the witness, Your Honor.

4 THE COURT: All right. Cross?

5 MR. WRIGHT: Yes.

6 CROSS-EXAMINATION

7 BY MR. WRIGHT:

8 Q Ma'am, my name's Richard Wright. I'm an
9 attorney and I represent Dr. Desai.

10 A Okay.

11 Q The -- back on your procedures on the 20th and
12 21st of September, 2007, when you went into the procedure
13 room, on both days was it about the same?

14 A Was it about the same?

15 Q Yeah. Both days in the -- I'm just going right
16 to the procedure room --

17 A Okay.

18 Q -- I want to get done by 5:00. At the procedure
19 room, after you had the tube taped onto your hand and you were
20 rolled into the procedure room there was -- in the procedure
21 room, that's where it was dark and there was a monitor, right?

22 A Yes.

23 Q Okay. And on each day there was a CRNA, a nurse
24 anesthetist there?

25 A Yes.

1 Q Okay. And were you put to sleep on each day?
2 A Yes.
3 Q Okay. And how were you put to sleep?
4 A I was told to turn over on my left -- on my left
5 side --
6 Q Uh-huh.
7 A -- and they would give me a shot.
8 Q Okay. And where did they give you the shot?
9 A I believe it was in my right hip.
10 Q Okay. And that -- that was on both days --
11 A Yes.
12 Q -- correct?
13 A Yes.
14 Q And the -- you remember that clearly?
15 A About as clear as I can at this moment, yes.
16 Q Okay. Meaning it's back almost six years --
17 A Yes.
18 Q -- correct? It was a -- a shot into your hip on
19 both days to -- for the anesthesia and nothing was used on
20 your wrist where there was a tube, correct?
21 A To my knowledge, no.
22 Q And after the procedures and you -- into October
23 before Halloween you started getting ill, correct?
24 A Yes.
25 Q And you had not been -- you had been in good

1 health prior to that, correct?

2 A Yes.

3 Q And then you went in to the hospital -- you went
4 -- I think you went -- you called Dr. Castleman. Did you go
5 see her?

6 A No, I didn't see her. I --

7 Q Okay. You called her but then you got worse and
8 worse --

9 A Uh-huh.

10 Q -- and your husband called her and then you went
11 in to the hospital for five days?

12 A Yes.

13 Q Okay. Ultimately ended up with Dr. Frank Nemec?

14 A Nemec.

15 Q As -- as -- yeah, as the specialist --

16 A Yes.

17 Q -- correct?

18 A Yes.

19 Q Is he still treating you?

20 A Yes, he is.

21 Q Okay. And you went with Dr. Frank Nemec, you
22 commenced interferon treatments in 2008; is that correct?

23 A Yes.

24 Q Okay. And the -- you recall that they lasted
25 about through 2008 and you ended in January, 2009?

1 A Somewhere in there, after the --
2 Q Okay.
3 A -- yes.
4 Q And those treatments you were told by Dr. Nemec
5 were successful; is that correct?
6 A Yes.
7 Q And thereafter, you -- you still see him at
8 six-month intervals?
9 A Yes.
10 Q Okay. And as -- as a result of what happened to
11 you, you got lawyers and brought various lawsuits, correct?
12 A Yes.
13 Q Okay. And are those lawsuits completed, done?
14 A No.
15 Q Okay. You -- are any of them done?
16 A Yes.
17 Q Okay. Some are still pending?
18 A Yes.
19 Q Okay. And which -- which lawsuits are still
20 pending?
21 A HMO.
22 Q Okay. And that was -- you looked at the medical
23 billings as an exhibit for Ms. Weckerly. You're suing that
24 company?
25 A The HMO?

1 Q Yes.

2 A Yes.

3 Q I mean, was that Pacific Care or --

4 A Pacific Care.

5 Q Okay. So you're -- you're still suing Pacific

6 Care and that's an open case?

7 A Yes.

8 Q Okay. Anyone else still an open case?

9 A No.

10 Q Okay. Who else did you sue? Generally, I'm not

11 -- I don't care about the names unless you know.

12 A Oh, gosh. I'm trying -- first -- I can't even

13 think of the first part of --

14 Q The clinic, the propofol manufacturer --

15 A Yes, yes --

16 Q -- the propofol manufactures and distributors?

17 A Yes.

18 Q Okay. Anyone else?

19 A No.

20 Q Okay. And did -- were you -- is the lawsuit --

21 that -- the lawsuit against the manufacturers and distributors

22 of the propofol, is that complete?

23 A Yes.

24 Q Okay. And did your husband also sue?

25 A Yes.

1 Q And is he -- also have his lawsuit pending with
2 the HMO?

3 A Yes.

4 Q Okay. And on -- on the lawsuit that's completed
5 you -- you won a settlement?

6 A Yes.

7 Q Okay. And I'd like to know the amount of the
8 settlement that you received, you and your husband together
9 directly, what we call the net amount, leaving out the costs,
10 attorneys and things, just what you got?

11 A 2.1 million.

12 Q Thank you.

13 MR. WRIGHT: No further questions.

14 THE COURT: Mr. Santacroce?

15 MR. SANTACROCE: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. SANTACROCE:

18 Q Ms. Martin, I only have a couple of questions
19 for you. Your medical records for September 21st, 2007
20 indicate that Dr. Eladio Carrera performed the procedure on
21 you; is that correct?

22 A Yes.

23 Q And you're not disputing that he was the one
24 that did that, correct?

25 A No.

1 Q The medical records also indicate that the CRNA,
2 the Certified Registered Nurse Anesthetist, was a Keith
3 Mathahs. You -- you don't have any reason to dispute that, do
4 you?

5 A No, I don't.

6 Q And you give it -- you gave an interview back in
7 May of 2000 -- May 5th of 2008 to Metro; is that correct?

8 A Yes.

9 Q And I believe the interview was with Detective
10 Whitely. Do you remember him?

11 A Yes.

12 Q And in that interview you talked about how Dr.
13 Carrera introduced himself to you, was very polite. Do you
14 remember that?

15 A Yes.

16 Q And he told you to -- I believe you explained
17 that he was going to give you a shot in your hip and you
18 believe that was the shot that was going to put you to sleep;
19 is that correct?

20 A Yes.

21 Q So those events were -- in May of 2008 they were
22 clearer to you at that time, were they not?

23 A Yes.

24 MR. SANTACROCE: I have nothing further.

25 THE COURT: Redirect?

1 MS. WECKERLY: No redirect, Your Honor.

2 THE COURT: Any juror questions for this witness?

3 All right. Ma'am, there being no further questions, before I
4 excuse you I must admonish you not to discuss your testimony
5 with anybody else who may be a witness in this case. Thank
6 you and you are excused at this time.

7 THE WITNESS: Thank you.

8 THE COURT: May I see counsel at the bench?

9 (Off-record bench conference.)

10 THE COURT: All right, ladies and gentlemen. In a
11 moment we're going to take our evening recess. I have good
12 news or bad news, depending on your perspective. We will not
13 be starting until 1:30 tomorrow. Obviously, starting so late
14 we won't be taking a lunch break. So we'll be going through
15 until we finish or until 5:00, whichever comes sooner.

16 MR. STAUDAHER: Oh, Your Honor, may we approach one
17 -- one more time?

18 THE COURT: Sure.

19 MR. STAUDAHER: Thank you.

20 (Off-record bench conference.)

21 THE COURT: All right. Ladies and gentlemen, we are
22 actually going to be starting at 12:30; however, we won't be
23 taking a lunch break. So eat lunch or do whatever you need to
24 do prior to getting here by 12:30. And then again, we'll go
25 through until we finish or 5:00, whichever is sooner.

1 And before I excuse you for the evening recess, I
2 must admonish you again that you're not to discuss the case or
3 anything relating to the case with each other or with anyone
4 else. You're not to read, watch, listen to any reports of or
5 commentaries on this case or 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 If you would all please place your notepads in your
9 chairs and follow the bailiff through the double -- I'm sorry,
10 the rear door. We'll see you back here at 12:30 tomorrow.

11 (Court recessed for the evening at 4:49 p.m.)
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I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

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I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

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