

IN THE SUPREME COURT OF THE STATE OF NEVADA

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DIPAK KANTILAL DESAI,)
)
 Appellant,)
)
 vs.)
)
 THE STATE OF NEVADA,)
)
 Respondent.)
 _____)

CASE NO. 64591

APPELLANT’S APPENDIX VOLUME 13

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1 MR. STAUDAHER: Let me rephrase it.

2 THE COURT: Okay.

3 MR. STAUDAHER: Maybe that will be better.

4 BY MR. STAUDAHER:

5 Q And it's in relation to a direct question from
6 counsel on cross-examination, which was patient having pain
7 and the perception of pain when moving around on the table.
8 Do you remember those questions?

9 A I think I do.

10 Q Okay. Where he was talking about a patient kind
11 of twitching and maybe the patient isn't really feeling pain,
12 something to that effect?

13 A Yes, I remember that.

14 Q Now, if a patient was moving around enough -- I
15 mean moving around enough that you had to interrupt your
16 procedure, would that be more than just the twitching kind of
17 thing that counsel was talking about?

18 A Yes.

19 Q If you felt that a patient was writhing around,
20 moving around substantially on a table, would you feel that
21 that was something that maybe needed to be addressed by the
22 anesthesia person?

23 A Yes.

24 Q Would you stop your procedure until that was
25 done? Meaning giving additional propofol or whatever?

1 A Yes.

2 Q Would you actually even direct them to do that?

3 A There was -- there's always communication
4 between the anesthetist -- anesthesiologist and endoscopist so
5 I would -- I would -- I would often say, you know, I'm having
6 a little trouble here, you may have to give some more.

7 Q Would you do the opposite? Have you had
8 situations like that happen?

9 A Yes.

10 Q So you're in the middle of the procedure,
11 patient starts to really move and what do you do?

12 A I will tell -- I will say -- I'll slow down,
13 I'll stop and I'll say I'm having -- I'm having a problem,
14 there's a turn, there's a twist, there's an issue that I'm
15 having trouble negotiating. What I -- the phraseology I would
16 use is I'm having some trouble, I've got a tight turn, there's
17 -- there's something wrong here anatomically, we're going to
18 have to -- you have to give some more.

19 Q You mentioned the colon stretching as --

20 A Yes.

21 Q -- is it -- we've heard the term insufflate at
22 some point, where -- where air is I think introduced --

23 A Yes.

24 Q -- is that something you're familiar with?

25 A Yes.

1 Q Is that what it's called?

2 A Well, there's two things you just mentioned in
3 that question.

4 Q I'm sorry.

5 A One is insufflation, which is the -- which is
6 putting air into the colon so you can see where you're going.
7 The colon is naturally collapsed. So when you put air in you
8 open it up to see where you're going, that's number one. That
9 causes discomfort and bloating. And two is pushing the scope
10 through causes a stretching discomfort on the colon.

11 Q So discomfort -- I mean, I assume every --
12 you've had gas pains yourself at times?

13 A Sure.

14 Q Is that what we're talking about where there's
15 -- there's gas inside the intestine that causes it to distend
16 and that causes pain?

17 A Right. And that gas is actually air that we're
18 putting in.

19 Q You're putting air in?

20 A Yes.

21 Q But it's the same -- it affects the same pain
22 receptors the same way, does it not?

23 A Yes.

24 THE COURT: It's the same idea as if you have a gas
25 pain?

1 THE WITNESS: Yes, it is.

2 THE COURT: The same kind of mechanism, it's
3 inflation?

4 THE WITNESS: The same receptor -- the same receptors
5 are being stimulated.

6 BY MR. STAUDAHER:

7 Q So if you -- and when you withdraw the scope is
8 it -- I mean we've heard that -- that you suck that air out or
9 try to and suck out fluids that you put in as well?

10 A Yes.

11 Q What is the purpose of doing that?

12 A Well, the purpose of sucking out the fluids is
13 to get a better view of what you're looking at. The purpose
14 of sucking out the air is to make it so that when the patient
15 wakes up there's less air to make him uncomfortable.

16 Q Did you try to do that on the cases that you
17 were involved with?

18 A It's a -- it's a natural way, I do a natural
19 reflex for me.

20 Q Now, I want to ask you a couple things and
21 you're -- and when you went back and looked at all these --
22 these various records, did you look at -- for -- you said
23 there were things that you thought happened before -- either
24 -- either occurred before, during or after the procedure
25 itself?

1 A Right.

2 Q In the procedure, what kinds of things did you
3 look at when you were trying to figure that out?

4 A Well, I wasn't looking at any particular aspect
5 of the intra-operative experience. I was looking to see if
6 the distribution of the patients gave me a clue as to where it
7 must have happened. I wasn't looking for a specific behavior
8 in the operating suite that would make me believe, oh, this is
9 how this happened.

10 Q Did you look at the possibility of certain
11 instruments that might have been the source, like a
12 colonoscopy scope, anything like that?

13 A No.

14 Q Did you have an opinion at that time as to --
15 when you were doing this and you talked to the health
16 district, about whether the scopes themselves, for example,
17 could be a source?

18 A I -- I had an opinion and I didn't think that
19 that was the source.

20 Q Why not?

21 A Because I A, I never heard of that happening as
22 a transmission. And B, to my knowledge the scopes were being
23 processed properly.

24 Q They were essentially being cleaned and then
25 reused?

1 A Right.

2 Q Now, you said that you didn't want the health
3 district to do the notification, you wanted to do more
4 investigation, correct?

5 A Yes.

6 Q Now, did -- are you aware at least of the
7 mandate of the health district and the CDC in investigating
8 outbreaks and things like that?

9 A No, I'm not.

10 Q Do you know what the laws are related to what
11 they have to do and what they don't have to do?

12 A No.

13 Q As far as you were concerned though, you felt
14 that -- that you would like to take the opportunity to do more
15 internal investigation yourself?

16 A No. I was -- I was saying that it seemed to me
17 it would -- it would be reasonable to consider doing what I
18 had mentioned before, the test study, the population study,
19 because I didn't think it was reasonable to do the
20 notification that was being presented to us. And I remember
21 saying, even though there's never been a report of a problem
22 before, you still think this is necessary? That's the way I
23 was talking to them.

24 Q And you said that they came in and took all the
25 records and that upset you because you couldn't look at any of

1 the records --

2 A Well, the Federal Bureau of Investigation took
3 all the records.

4 Q Now the -- the billing issue, I want to go back
5 to that for a minute. You said you were unaware on cross,
6 until the post CDC investigation that the anesthesia billing
7 was tied to time.

8 A Right.

9 Q You didn't know beforehand that the amount of
10 time you put down on the record had any effect in maybe what
11 the reimbursement would be?

12 A I did not know that. I did not know that the
13 time was placed in the bottom right until I looked at that
14 form that Vinnie Mione was filling out. And I -- like I told
15 you before, I told everybody, I thought that -- it was just we
16 charged a flat fee for everybody.

17 Q But -- so when you saw the record and you were
18 looking and saw those anesthesia records and they were all the
19 wrong times --

20 A Yes.

21 Q -- you noticed that -- you said that that got
22 your attention at least, right?

23 A Well, you mean when I looked at all those 63
24 records?

25 Q Yes.

1 A Yes.

2 Q And did you actually -- I mean how did that
3 affect you when you saw it?

4 A Well, it affected me profoundly. It just
5 reinforced that the idea that 30 to 31 or more minutes per
6 case was being -- was being placed, it was true.

7 Q Did you actually have a real serious reaction to
8 that when you saw those numbers?

9 A Like a visceral reaction?

10 Q Yeah.

11 A Like sweating, palpitations?

12 Q Yeah.

13 A I don't -- I was -- I had chest pain and
14 shortness of breath.

15 Q Okay. That sounds pretty visceral.

16 A Yes.

17 Q Had you ever told anybody that you were
18 terrified when you saw those records that way?

19 A I -- I remember I said I was terrified when I
20 saw the record that Vinnie was putting down, that time.

21 Q And why did that get you so upset?

22 A Because the implication was that the time was
23 false, that it was being put in ahead of the procedure being
24 finished and it wasn't accurate, and that -- that could be
25 fraudulent.

1 Q So if that was fraudulent, what would that
2 potentially -- I mean what was your concern? Did it really
3 matter if you had a flat rate for all the procedures?

4 A Well, the concern was that if it's fraudulent,
5 that's illegal, against the law, and potentially criminal.

6 Q So you were worried about your own liability
7 potentially?

8 A No, I didn't think --

9 Q Why not?

10 A -- because I didn't do that billing, I didn't
11 put that time down, I didn't -- I didn't ask them to do that,
12 I wasn't informed of that. So I didn't have a fear for myself
13 but I was very concerned about what I just saw.

14 Q You did get a cut of the CRNA billing to a
15 degree, I mean you got a bonus --

16 A Well, we -- we got paid and I did receive
17 bonuses from both of the -- the gastro center account on
18 occasion and I don't even know how many times, maybe once or
19 twice, from the CRNA account. I don't even remember.

20 Q Now, counsel asked you about flat fees for
21 anesthesia and he listed off a couple of them, HPN,
22 PacifiCare, Health Services.

23 A Yes.

24 Q Did you think that those were all flat fee?

25 A I thought -- I thought the fee -- I thought we

1 charged a fee for everybody.

2 Q So every insurance company?

3 A Right, that's what I thought.

4 Q But you knew there was a difference on how

5 PacifiCare patients were handled at least based on that phone

6 call you described with Keith Mathahs -- to Keith Mathahs that

7 Desai intercepted.

8 A Right.

9 Q You know what upbilling is, upcoding?

10 A Upcoding, yes.

11 Q What is that?

12 A Upcoding is charging a higher code for a visit

13 than is substantiated in the note.

14 Q Did you ever do that?

15 A To my knowledge I didn't. I took a course in

16 1997 to learn how to code properly.

17 Q Did you ever note, see Dr. Desai doing that or

18 instructing anybody to do that?

19 A To upcode? No.

20 Q Is that appropriate to upcode?

21 A No.

22 Q Could you get in trouble for doing it, your own

23 personal experience?

24 A You can get in trouble for that, yes.

25 Q Now, you said that you didn't -- at some point

1 -- and this was on cross again, didn't talk to Dr. Desai about
2 modifying the schedule, that you talked -- remember the
3 schedule that counsel asked you about where you -- and I want
4 to make sure I have it right. You had mentioned a couple of
5 different modifications to the schedule. One was you wanted
6 to add another shift in the evening with some additional
7 people --

8 A Right.

9 Q -- and pay them and do all that?

10 A Yes.

11 Q Did that ever happen?

12 A We -- yes, we did. We did that for maybe a
13 month.

14 Q Now, was that your -- your sort of plan to try
15 and do that? Let's stretch this out, have the evening thing,
16 bring this fresh group of people in to pay them, that kind of
17 thing?

18 A That was my idea for -- do that on Tuesdays and
19 Thursdays.

20 Q Did you just implement that yourself?

21 A No, I discussed that with Dr. Desai.

22 Q Okay. So -- because I -- I wrote down and I
23 want to make sure I'm clear on that, that was not something
24 you did on your own?

25 A No. That was an idea I had and I called Dr.

1 Desai about it, talked to him about it, and he said okay let's
2 -- we can give that a try.

3 Q And then that went away. Do you know why it
4 went away?

5 A It just -- I just don't think it was working. I
6 think even the staff that we were paying didn't want to be
7 there that late and it just didn't work out.

8 Q Now, when counsel was asking you about the 21st
9 of September, I wanted to go there. The 21st of September, he
10 was asking you some questions, it sounded like you had
11 independent recollection of that particular day. Do you
12 remember some of those questions?

13 A You have to remind me.

14 Q You go into the facility, you're leaving at one
15 room, you come -- come in contact with Desai, you decide he's
16 going to spell you, that kind of thing --

17 A Right.

18 Q -- you had -- like was there some discussion
19 with Desai that day that you remember?

20 A No, I do have a recollection. I actually
21 remember doing the colonoscopy and removing a polyp on Mr.
22 Rubino. I remember walking across to go into the next room
23 and seeing Dr. Desai already getting ready, getting started on
24 the procedure at hand and then that -- that means he was
25 relieving me and I went to the medical side.

1 Q So you do have an independent memory yourself of
2 that day?

3 A Yes.

4 Q Is that the only memory of that day that you
5 have is just that sort of encounter with Dr. Desai and leaving
6 one room and then leaving the facility?

7 A Then I do remember coming back and doing another
8 procedure. I could -- like I said before, on my way out to
9 the hospital.

10 Q Now, you had mentioned also on cross that you
11 believed, at least back then, you were shown some records that
12 you believed that what was going on with the fact that Mathahs
13 may have been in another room was simply a recording mistake.

14 A Yeah, that's what I thought it was.

15 Q Did you ever see -- you looked at the records,
16 right?

17 A Yes.

18 Q And the patient that we're talking about here,
19 just for the record, the patient we're talking about here
20 would -- Keith Mathahs is down here and Ronald Lakeman's up
21 there. Keith Mathahs is in this room, Ronald Lakeman's in
22 this room, right?

23 A Okay.

24 Q And if we go to the time that's right around the
25 10:00 hour, do you see that -- at least according to this

1 record, which comes from the charts that Keith Mathahs appears
2 to be there.

3 A Right.

4 Q You see that?

5 A Yes.

6 Q So he's in this room, but about 10:00 he's over
7 here in this room according to the record.

8 A According to what you're showing me, that's what
9 appears to have happened.

10 Q And then if go down a little further, you see
11 around the noon hour, which is when you said that there would
12 be lunch breaks typically, you see Keith Mathahs again?

13 A Yes.

14 Q Okay. And you thought that that could be a
15 recording mistake?

16 A I thought so.

17 Q Okay. Do you still think that's the case?

18 A You know, it's hard for me to remember. I would
19 love to see the actual record if you have it?

20 Q I have it.

21 A That's good.

22 Q It's number 95, patient on that list is 18 and I
23 ask you -- actually it's all blacked out so you can't make a
24 mistake.

25 A Okay.

1 Q But on this record, the place where the
2 patient's name is --

3 A Okay.

4 Q -- is going to be all blacked out. Actually,
5 you know what, I think I may have grabbed the wrong one. Is
6 it 18? No, it is -- yes, it's 18. I'm sorry. This is the
7 right one. So look through this if you would.

8 A Okay.

9 Q I've actually tabbed it to a document, which is
10 the anesthesia record. Do you see that? And for -- for
11 counsel this is Bates number PF-0003309.

12 A Okay. Now, I'm looking at this record right now
13 with you.

14 Q Uh-huh.

15 A And I'm looking at the surgeon and the CRNA and
16 there's a signature there.

17 Q Uh-huh.

18 A I can't tell you whose signature that is. Do
19 you know?

20 Q Yeah, Keith Mathahs said that was his signature.

21 A If Keith Mathahs said that then he did this
22 case.

23 Q Okay. So this isn't something where we're
24 looking at a computer record, right? Because we go back up
25 to, back here. We go to the computer record, it might have

1 the actual names of patients down and I'm looking for the --
2 for counsel, Bates number PF-0003262.

3 A Right. I'm looking at that with you --

4 Q Uh-huh.

5 A -- and what's confusing is that on this
6 document, Mr. Lakeman's name appears.

7 Q Mr. Lakeman's name appears on the document on
8 the computer record.

9 A Yes.

10 Q But the anesthesia record for the person who
11 actually did the procedure, the signature is Keith Mathahs if
12 that's -- if that's his signature.

13 A If that's his signature. So again, it's
14 confusing, isn't it?

15 Q Right. So at least according to the physical
16 record, Keith Mathahs was in the room.

17 A Right. Now, I believe -- when I did this
18 analysis I believe that Lakeman was in the room because his
19 name is on the computer record. I didn't recognize signatures
20 admittedly.

21 Q So when you were asked the question about never
22 seeing a patient -- a CRNA going from room to room, other than
23 the lunch break, even on the very day when you're working and
24 you did, gosh, that -- that first period of the day --

25 A I did about 15 procedures.

1 Q Well, let's see. From up here you did down to
2 that point, which is 10 in that room and then from this point
3 down to here, which is 33 to 41 in this room. So you did a
4 bunch of patients that day.

5 A Yes, I did.

6 Q Okay. So even on that particular day you were
7 there actually for another patient or two later on?

8 A Yes.

9 Q So we've got a record of Keith Mathahs going
10 from one room to the other, not on a lunch break, and you
11 didn't see it.

12 A Right.

13 Q So could that have happened other days too?

14 A It's possible.

15 Q The question that -- brought up about the boss
16 issue, and the testimony was not go get the boss but go get my
17 boss. Have you ever been Dr. Desai's boss?

18 A No.

19 Q You asked -- were asked a question about
20 patients being at risk. All of the stuff that we talked
21 about, the bite blocks, the gowns, things like that, things
22 that counsel asked you about --

23 A Yes.

24 Q -- all those things and you said, yeah, it's
25 kind of an embarrassment but not -- didn't think it really

1 compromised patient care.

2 A Correct.

3 Q The other things that you had not known -- I
4 mean, you didn't know before the CDC came in and Keith Mathahs
5 was seen doing things and Ronald Lakeman later admitted to
6 them, about the propofol reuse, correct?

7 A Correct.

8 Q You didn't know about that at the time?

9 A No.

10 Q Do you think that that puts patients potentially
11 at risk?

12 A Do I think what does?

13 Q That type of propofol reuse in the manner it was
14 described?

15 A Yes, it does.

16 Q So if that was going on at the clinic, whether
17 you were aware or not, that would be something that would put
18 patients at risk, fair?

19 A Fair.

20 Q With regard to the other things that came up,
21 stuff on gowns, reuse of -- of syringes. I'm talking about
22 like the big 60 cc syringe so basically a fecal transplant
23 from patient to patient to patient if we use the same -- same
24 one all day long, is that anything that could cause a patient
25 problems potentially?

1 A From my estimation, no. That -- that syringe
2 was just used to push water through the scope and then
3 detached and put down. So it's hard for me to imagine that
4 that's a problem or an infectious problem.

5 Q You don't think that -- that visible fecal
6 material on or around in the basin from one patient, possibly
7 going into the next, could be a -- a problem?

8 A If it -- if -- the way you described it, that
9 could be a problem.

10 Q So if there was fecal material from a scope that
11 wasn't cleaned or from syringe -- big syringe that wasn't
12 thrown away or things like --

13 MR. WRIGHT: I object to this. It assumes facts not
14 in evidence.

15 MR. STAUDAHER: Actually, it doesn't.

16 THE COURT: Well, overruled. He can -- again, ladies
17 and gentlemen of the jury, this happens from time to time and
18 will continue to happen where the lawyers dispute what the
19 evidence is. I may remember incorrectly or not remember at
20 all. So it's your collective recollection of what the
21 evidence was regardless of how the lawyers, you know, ask the
22 question.

23 MR. STAUDAHER: And Your Honor, well, could I get the
24 answer to the question?

25 THE COURT: Yeah. I -- I -- I don't know if you got

1 the answer because I started talking, but I overruled the
2 objection so.

3 MR. STAUDAHER: Thank you, Your Honor.

4 BY MR. STAUDAHER:

5 Q Do you think that things like that could cause
6 at least some concern about patient safety?

7 A Yes.

8 MR. STAUDAHER: Now, Your Honor, we are at the point
9 where I'm done with my primary questions but we have an issue
10 that we --

11 THE COURT: Right, approach.

12 (Off-record bench conference.)

13 BY MR. STAUDAHER:

14 Q Were you aware that there were any complaints
15 filed with the State Board of Medical Examiners against Dr.
16 Desai?

17 A No.

18 Q Were you aware that there were any letters
19 written to Dr. Desai from the State Board of Medical Examiners
20 regarding anything to do with patients?

21 A No.

22 MR. STAUDAHER: Pass the witness, Your Honor.

23 THE COURT: All right. Re-cross. Mr. Santacroce,
24 you would be first.

25 MR. SANTACROCE: I don't think I'm going to be done

1 by five, Your Honor.

2 THE COURT: Well, let's get started.

3 MR. SANTACROCE: Okay.

4 RECROSS-EXAMINATION

5 BY MR. SANTACROCE:

6 Q Doctor, it's kind of late in the day, late in
7 the week so I'll try to be brief.

8 THE COURT: That's -- isn't that 108?

9 MR. SANTACROCE: No, that's 106.

10 MR. STAUDAHER: It's the one I used?

11 THE COURT: 108 was the one you said you used.

12 MR. SANTACROCE: It's 108. I want 106.

13 MR. STAUDAHER: That's 108.

14 THE COURT: You can just give that back to the clerk.
15 Did you find 106?

16 MR. SANTACROCE: He just used it.

17 THE COURT: All right, we've got it.

18 BY MR. SANTACROCE:

19 Q You've been asked about this document ad nauseam
20 but I feel compelled to get a clarification as to where you
21 stand on this. You recognize this document, correct?

22 A Yes.

23 Q And it's your testimony that you were not the
24 attending physician as it's defined in this regulation or
25 policy or procedure for the procedure rooms that you were

1 performing the procedures on; is that correct?

2 A Yes, sir.

3 Q And I believe it was your testimony that you
4 were not supervising any of the CRNAs, you didn't believe that
5 was your function or role; is that correct?

6 A Yes.

7 Q If you were not supervising the CRNAs, who was?

8 A The -- the -- the signators on the Supervisory
9 Agreement.

10 Q And that's your testimony?

11 A Yes.

12 Q Do you remember giving an interview on March
13 3rd, 2010 in this building with Detective Whitely, yourself,
14 Frank Cremen your lawyer, Neil [indiscernible] another lawyer,
15 and Michael Staudaher the district attorney?

16 A Yes.

17 Q Do you remember Mr. Staudaher asking you if the
18 nurse anesthetist, for example, needed -- needs to have a
19 supervising -- somebody to supervise or to be available or to
20 tell untoward events that might occurred and you're not the
21 person, who is the person. Do you recall what your answer
22 was?

23 A No.

24 Q I'm going to show you the interview and ask you
25 to take a look at it and see if it recollects -- refreshes

1 your recollection and, again --

2 MR. STAUDAHER: What page, counsel?

3 MR. SANTACROCE: Page 61.

4 BY MR. SANTACROCE:

5 Q And disregard the highlights. Do you see where
6 I'm referring to?

7 A Yes.

8 Q Would you take a look at that?

9 A Yes.

10 Q Tell me when you're done.

11 A I'm done.

12 Q Do you recall what your answer was?

13 A I see it.

14 Q What was your answer?

15 A The answer to which question?

16 Q Who was the one that was supervising the CRNAs?
17 What was your answer?

18 A Let me see it again. Okay. So may I read this?

19 Q You can read it to yourself.

20 A Okay. Okay. So I see this.

21 Q Okay. What was your answer to that question?

22 A The answer is that if -- if there's an untoward
23 event where somebody needs help because a patient needs a
24 medical person to help and I'm there, I'm that person. But
25 again, I'm saying to everyone, that I'm not the supervising

1 physician for a CRNA because I don't have those skills.

2 Q Sir, I'm not here to argue with you but the
3 question stands for itself. Mr. Staudaher asked you who was
4 going to supervise the nurse anesthetist. If you're not the
5 person, who is the person and your answer was I'm -- I am that
6 person.

7 A I'm the person available to help if there's
8 situation that needs my help.

9 Q So at least in that circumstance it's your
10 testimony you were supervising the CRNAs?

11 A I was not supervising them. We have to define
12 supervision, I wasn't supervising them. My understanding of
13 that question is if -- if a patient needs me, if the CRNA
14 identifies that there's a problem, cardiac problem, any
15 problem, I'm there to help. But I can't -- I'm not -- I can't
16 intubate a patient and I'm not there as a supervising
17 physician.

18 Q So is it -- is it your testimony that you
19 misunderstood the question?

20 A Yes.

21 Q Now, your testimony regarding not having any
22 management responsibilities, it's your position that you had
23 none, correct?

24 A I had no official management position.

25 MR. SANTACROCE: Can you mark this as Lakeman's next?

1 THE COURT: Is this your first one, Mr. Santacroce?

2 MR. SANTACROCE: I don't think so.

3 THE COURT: Yeah, I don't either but I can be
4 mistaken. I thought he had one. I'm pretty sure there was a
5 prior exhibit.

6 BY MR. SANTACROCE:

7 Q I'm going to show you what's been marked as Mr.
8 Lakeman's Exhibit 82 I believe it is. I'll ask you to take a
9 look at that and tell me if you recognize that document.

10 A This is a CRNA Employment Agreement.

11 Q Look at the last page if you would? Is that
12 your signature?

13 A It appears to be my signature.

14 Q Do you have any question as to whether that's
15 your --

16 A No, that looks like my signature.

17 Q You signed the CRNA Employment Agreement on
18 behalf of the clinic; isn't that correct?

19 A It seems I signed this one on behalf of this
20 employee.

21 Q For the clinic?

22 THE COURT: You're not signing on behalf of the nurse
23 anesthetist, right?

24 THE WITNESS: Yes, it appears I've signed that.

25 BY MR. SANTACROCE:

1 Q On behalf of the clinic?

2 A Yes.

3 Q So at least -- and this purports to be --

4 MR. SANTACROCE: I want to move to admit this, Your
5 Honor.

6 MR. STAUDAHER: No objection.

7 THE COURT: All right. What we're right now calling
8 A-1, will be -- I'm sorry, A-2 will be admitted. And Mr.
9 Santacroce, if that's an error, if there already is an A-2
10 then we'll -- I'll correct the error on the record so that the
11 jury knows. And for the record what is A-2 is designated --
12 I'm sorry -- yeah, A-2 is designated CRNA Employment
13 Agreement.

14 (Defendant's Exhibit A2 admitted.)

15 MR. SANTACROCE: Of Linda Rhubarb for the first day
16 of August, 2005.

17 THE COURT: Okay, just in case there's a mistake on
18 the numbering.

19 MR. SANTACROCE: Right.

20 THE COURT: Well, it's 5:00, so obviously we're not
21 going to finish with this witness before we have to take our
22 break. So ladies and gentlemen, we're going to go ahead and
23 take our evening recess at this point. We'll reconvene Monday
24 morning at 9:30. During the evening recess -- oh, do you need
25 to approach on scheduling?

1 MS. WECKERLY: Yes.

2 THE COURT: Okay. Approach on scheduling.

3 (Off-record bench conference.)

4 THE COURT: We're actually starting at 6:30 -- just
5 kidding. We're actually starting at nine a.m., not 9:30, nine
6 a.m. Monday. Before I excuse you for the weekend recess, I
7 must admonish you 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, listen to any reports of or
10 commentaries on this case, any person or subject matter
11 relating to the case by any medium of information. Do not do
12 any independent research by way of the Internet or any other
13 medium. And please do not form or express an opinion on the
14 trial. I don't know if any of you had any questions that you
15 hadn't given to the bailiff already, if you do, you can hand
16 them to him now or wait until Monday. Notepads in your chairs
17 and follow the bailiff through the rear door.

18 (Jury recessed at 4:59 p.m.)

19 THE COURT: You know, scheduling is coordinated with
20 the prosecutors but since you're their witness, you know, we'd
21 like to finish with you tomorrow -- Monday, I'm sorry. I mean
22 it definitely won't go any longer than -- I can't foresee it
23 going any longer than Monday morning for the rest of your --

24 THE WITNESS: Can I come in Monday afternoon because
25 I can't contact these patients?

1 THE COURT: Why don't you go have a seat in the
2 vestibule and then we'll discuss the scheduling because the
3 defense, you know --

4 MR. STAUDAHER: The State doesn't have any problem
5 with that, Your Honor. If that is okay with counsel, I mean,
6 it would mean we would interrupt his cross to do the other
7 doctor.

8 MS. WECKERLY: But that's -- I mean, that's fine with
9 us.

10 MR. STAUDAHER: Which means that I don't know if
11 they've left already but --

12 MS. WECKERLY: Then that would be 9:30 for the jury.

13 MR. STAUDAHER: It will be 9:30 for the jury.

14 THE COURT: Kenny, can you run out and catch them and
15 tell them it's 9:30?

16 THE MARSHAL: No, but I can call them. Most of them
17 are down the elevator.

18 THE COURT: All right. Well, the ones that aren't
19 down you can tell.

20 Okay, Doctor, apparently you can come back Monday
21 afternoon. And what time do we want the doctor back Monday
22 afternoon? How long do we -- is it just the first doctor in
23 the morning at 9:30?

24 MS. WECKERLY: Yes, but counsel's indicated that he
25 would be the morning. So I guess Dr. Carrol can come at 1:30.

1 Well, no Mr. Wright did. So I mean if he -- if -- assuming
2 the other doctor's 9:30 to noon.

3 THE COURT: So what -- okay, let's do it -- let's do
4 it --

5 MR. WRIGHT: We can [indiscernible] if he comes. I
6 don't care if we interrupt.

7 THE COURT: Well, the other guys a doctor too, so.

8 MS. WECKERLY: I think it -- I think part of it is
9 that they're all in practice though and they want to cover
10 their patients because it's Dr. Sharma.

11 THE COURT: All right. So how many -- how -- we're
12 starting at 9:30.

13 MS. WECKERLY: Right.

14 THE COURT: How long do you anticipate direct taking
15 for the next witness?

16 MS. WECKERLY: Not even an hour probably.

17 MR. SANTACROCE: Nothing.

18 THE COURT: Okay. And then about 45 minutes. And
19 Mr. Wright, how long do you anticipate your cross?

20 MR. WRIGHT: This is Vish?

21 MS. WECKERLY: Uh-huh.

22 MR. WRIGHT: I think we'll be done in
23 [indiscernible].

24 THE COURT: Okay. So why don't we have Dr. Carrol
25 back at one?

1 THE WITNESS: Can we make it 1:30, travel time and
2 getting here and parking?

3 THE COURT: All right, 1:30.

4 MR. STAUDAHER: 1:30 is fine.

5 MS. WECKERLY: 1:30 is fine.

6 MR. STAUDAHER: I think it's --

7 THE COURT: That's fine, 1:30. So we'll see you back
8 here at 1:30.

9 THE WITNESS: [indiscernible]

10 THE COURT: I understand. Okay. So that's assuming
11 we finish with Sharma about 12:30.

12 THE WITNESS: Could I get a phone call?

13 THE COURT: That's not up to the Court.

14 MS. WECKERLY: We can let you know --

15 MR. STAUDAHER: What number do you want me to call?

16 THE COURT: Basically, since you're the State's
17 witness, you know, how if they want to call you or whatever.

18 MR. STAUDAHER: If there's any change in that time
19 we'll call you. Okay? Or can you get a text on that as well?

20 THE WITNESS: Text is fine.

21 MR. STAUDAHER: So probably --

22 THE WITNESS: Just give me a heads up so I can plan
23 the day.

24 (Court recessed for the evening at 5:03 p.m.)

25

CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

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TRAN

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 18

MONDAY, MAY 20, 2013

APPEARANCES:

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

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1 LAS VEGAS, NEVADA, MONDAY, MAY 20, 2013, 9:25 A.M.

2 * * * * *

3 (Outside the presence of the jury.)

4 THE COURT: You and I made the same mistake, Mr.
5 Wright, thinking it was 9:00. I just like running around the
6 parking lot.

7 All right. We're missing two members of the jury,
8 but there are a couple of things I can put on the record. We
9 might as well get that done while we're waiting for the
10 jurors. I'm just going to read and make a Court's Exhibit the
11 note from the juror who knew the witness.

12 She writes -- and she would be Juror No. 9, I
13 believe. She writes, Apparently there is someone who is
14 supposed to testify on this case who works with me now, but I
15 went to school with him when I was in the 10th grade. My
16 supervisor informed me that the DA knows, and I just wanted to
17 clarify that I don't talk to this person, just hi and bye and
18 I never knew his last name. The person is Marion Vanderhuff.
19 He also messaged me on Facebook, asking me was this the case I
20 was on. I told him I don't know what he is talking about and
21 just closed the conversation.

22 So I don't know if you want to follow up bringing
23 her into the courtroom. We still do actually need to ask her
24 if the fact that he's a witness would affect her ability to be
25 fair and impartial. So we can do that on a break today.

1 MR. STAUDAHER: Okay.

2 THE COURT: And, Denise, make that a Court's Exhibit.

3 THE CLERK: Yes, Your Honor.

4 THE COURT: The next thing is turning to the motion
5 to admit evidence of other crimes. That -- the issue that was
6 still pending. The Court thinks some of this may be
7 admissible, so we need to have a Petrocelli hearing. I don't
8 know if we want to schedule that for Monday -- next Monday
9 morning, or --

10 THE CLERK: It's a holiday.

11 MS. STANISH: Monday's a holiday.

12 THE COURT: Oh, that's right. So Tuesday morning.

13 MS. WECKERLY: Okay. Whenever -- whenever you want
14 is fine.

15 MR. STAUDAHER: And we have gone off -- or while in
16 anticipation of that for whatever we were going to do and
17 especially what -- because what came up at the last -- or,
18 yeah, last Friday. I went ahead --

19 THE COURT: The issue of the 37 complaints?

20 MR. STAUDAHER: Right, and all that. I went ahead
21 and printed off the -- all of the discovery that we had
22 related to that --

23 THE COURT: Okay.

24 MR. STAUDAHER: -- I let counsel see it today. I
25 know it's not admitted as an exhibit, they haven't agreed to

1 that obviously, but it's at least the record that we're
2 talking about --

3 THE COURT: Okay.

4 MR. STAUDAHER: -- which would be the basis for some
5 of the witnesses --

6 THE COURT: Right.

7 MR. STAUDAHER: -- that would be coming --

8 THE COURT: Right.

9 MR. STAUDAHER: -- in.

10 THE COURT: So why don't we schedule this -- because
11 you're going to need to get these witnesses in here, and I'm
12 assuming one of them is the physician, Dr. Kahn?

13 MS. WECKERLY: Yes.

14 THE COURT: Okay. I'm --

15 MS. WECKERLY: So if we do Monday morning or
16 whatever --

17 THE COURT: Not Monday because that's a --

18 MS. WECKERLY: -- or Tuesday.

19 THE COURT: -- I was thinking Tuesday morning because
20 that kind of gives the jurors a little bit more of a longer
21 holiday for those people who are going out of town or
22 whatever. They won't be too unhappy if we start at -- with
23 the jury, like maybe after lunch or whatever.

24 MS. WECKERLY: Okay.

25 MS. STANISH: Judge? There were --

1 THE COURT: Yes?

2 MS. STANISH: -- a number of prior bad acts the State
3 was trying to admit. Can you tell us which ones will be the
4 focus of this hearing, please?

5 THE COURT: I was thinking the ones that were in the
6 motion, you know, the Lisa Phelps, I was going to hear from
7 her, I mean --

8 MS. WECKERLY: Okay.

9 THE COURT: -- it's a little remote. The Dr. Dhan
10 Kaushal. On the William Lathrop one I'd like to hear what he
11 and the wife have to say. I will just throw it out -- a
12 concern. I know sometimes a perforation can occur absent
13 negligence, so I'm interested in hearing what else she has to
14 say because, again, unless we have a physician to say this was
15 an example of medical negligence, you know, I'm just not sure
16 what that's -- the import of what that's going to be. So just
17 to make you aware of that.

18 MS. WECKERLY: Okay. And I'll -- I'll circulate to
19 defense counsel the witnesses that we are going to bring in
20 for that hearing, so --

21 THE COURT: Okay.

22 MS. WECKERLY: -- they know it ahead of time.

23 THE COURT: I mean, certainly it's suggestive of
24 negligence, but I think, you know, sometimes it can occur
25 absent negligence and --

1 MS. WECKERLY: Sure.

2 THE COURT: -- obviously, I don't know; you know,
3 that's something that you would probably need some medical
4 expertise on --

5 MS. WECKERLY: Okay.

6 THE COURT: -- you know to explain -- you know, if
7 it's a difficult colonoscopy then maybe, you know, that
8 wouldn't be negligence. I would think in a routine, healthy
9 colon where, you know, that would -- but again, that's
10 medical, you know, stuff. That's just my conjecture. So
11 therein lies the problem with that.

12 So that's all the preliminary I had -- yes, Mr.
13 Wright?

14 MR. WRIGHT: Yeah, on the 404B analysis upcoming, if
15 the Court could ask the State to articulate their present
16 theory of the case so that we can apply the 404B factors. As
17 the Court knows, the Court asked the State what is your theory
18 of the case involving propofol? Was a propofol bottle going
19 room to room? Their theory is still unknown to the defense,
20 and it can't be, in my opinion, told from reading the
21 indictment.

22 And so, in order to apply 404B, motive, plan,
23 accident, mistake, and we're dealing with a negligence case,
24 if they could articulate their current and final theory of the
25 case, it would make it better to address.

1 THE COURT: State, do you want to respond? I mean,
2 I'll just say the way I read this, and it's really germane --
3 more -- I don't see that the bad acts are really germane too
4 much against Mr. Lakeman because with Mr. Lakeman it strictly
5 is the issue, was it in the bottle, you know; that's his role.
6 So if it was in a scope or a bite block or something like
7 that, how does that tie into Mr. Lakeman because his role was
8 very focused on anesthesia.

9 But I think the, you know, the -- the theory here is
10 that the -- that was just a manifestation of the overall view
11 of Dr. Desai with respect to patient care and with respect to
12 the operation of the clinic, and that that was just one thing
13 that resulted in a transmission of the virus. I mean, that's
14 how I understand the --

15 MR. WRIGHT: That's fair --

16 THE COURT: -- theory of --

17 MR. WRIGHT: -- Your Honor.

18 THE COURT: -- their theory of the case. And as I
19 said, you know, with Mr. Lakeman, of course, it's very
20 critical to pin that down because Mr. Lakeman's role is
21 limited to the anesthesia. And so whether the bite blocks
22 were dirty and this and that really has nothing -- very little
23 to do with Mr. Lakeman, other than he may have -- I mean,
24 assuming you establish that -- he may have continued to work
25 in a clinic where, you know, these things were -- were going

1 on.

2 But that's kind of how -- how -- that the motive is
3 the motive of speed and financial gain at the expense of
4 patient safety, and I think, like, the first one which is
5 remote in time, is actually one of the best ones. And when I
6 say "first", according to their motion, is the Lisa Phelps --
7 Phelps one, where they didn't want to wait for the anesthesia.
8 I mean, to me that goes directly to the idea of speed and
9 moving the people through, and I think that's kind of one of
10 the more probative ones.

11 As I said, the more recent one, the November 200,6,
12 may or may not be probative of anything because we need some
13 medical context to put that into.

14 Mr. Staudaher?

15 MR. STAUDAHER: Right. And that's exactly right.
16 And of the 37 complaints that the Court referenced, 4 of those
17 specifically were related to that very issue of starting
18 procedures before the anesthesia is on board, speed,
19 roughness, all of those things that we've said are part and
20 parcel to how he did procedures and why he put the patients at
21 risk and why, even after being told, Hey, look, you need to
22 not do this, he continued to do it.

23 So that's -- that's part of the issue. Part of
24 the -- the whole thing with the atmosphere, how things are
25 run, the speed of the patients, going through his motive,

1 his -- his absence of mistake grasping it. This is not just
2 something where he just on one day had a little event take
3 place and -- and by golly, that's a problem. This is a
4 pattern that's been established over a long period of time in
5 the way he treats patients and how he handles them, and the
6 motive is obviously for financial gain and to try and get
7 through as much as he can to make as much money as possible.

8 So with regard to that -- and I don't think -- I
9 know Counsel had mentioned 404B; I don't know if that's the
10 federal rule, but I think it's a 48 analysis of the State law.

11 MR. WRIGHT: Right.

12 THE COURT: Same -- it's the same analysis --

13 MR. WRIGHT: Right. Right.

14 THE COURT: -- I mean --

15 MR. WRIGHT: I --

16 THE COURT: -- Mr. Wright practices a lot in federal
17 court, but it's the same --

18 MR. WRIGHT: I --

19 THE COURT: -- analysis whether you're here or there.

20 MR. WRIGHT: Okay. Well, it does matter on 404B what
21 the State's theory is. I mean, we just can't throw out motive
22 and atmosphere and then say, okay, does this evidence --
23 more probative than not as to motive and atmosphere. We have
24 to focus in at some point on what caused the transmission of
25 the hep C in the case --

1 THE COURT: Well --

2 MR. WRIGHT: -- because it is that that we are here
3 on trial for. And if it was the propofol theory, then Dr.
4 Desai is -- Mr. Lakeman would be the principal and Dr. Desai
5 would be the aider and abettor. If it's something different,
6 different analysis applies. And on each of those we do need a
7 theory of what they are doing.

8 I -- I mean, the evidence is going to be the bite
9 blocks had nothing to do with it. Dirty gowns had nothing to
10 do with it. Cutting chux in half had nothing to do with it.
11 So that atmosphere that comes in because of the way the
12 indictment is written -- I've never heard of 404B evidence
13 coming in to prove motive. Motive is now an element when we
14 apply 404B? Motive?

15 MR. STAUDAHER: Absolutely.

16 MR. WRIGHT: What element --

17 THE COURT: Yeah --

18 MR. WRIGHT: -- what element --

19 THE COURT: -- well, motive --

20 MR. STAUDAHER: Motive and --

21 THE COURT: -- I mean, motive can come in as -- as
22 evidence on a 48A motion that it's evidence of motive.

23 MR. WRIGHT: Well --

24 THE COURT: And, you know, I mean, here's the thing.
25 For them to get -- I -- you know, here --

1 MR. WRIGHT: This is other --

2 THE COURT: -- it's obvious to me, and I'm assuming
3 they're going to tie this up scientifically, but it's obvious
4 that with Mr. Lakeman sitting here -- the only way Mr. Lakeman
5 can be sitting here, in my view, as a defendant on a murder,
6 and I think this was clear from the arguments and the motions
7 and everything like that, and obviously they have to make that
8 clear in front of the jury that the transmission had to occur
9 through the use of the propofol.

10 Now, whether or not you think that's possible,
11 that's for them to prove. But as I understand their theory of
12 transmission -- let's do the Ken Rubino situation -- somehow
13 in administering the propofol to Mr. Rubino there was some,
14 I'll call it backwash -- I don't know the correct term --

15 MR. STAUDAHER: That's probably the --

16 THE COURT: -- and then that went into the propofol
17 bottle, and then, the next person who came they used -- I'm
18 assuming that he would have used initially filled syringes.
19 So she's going to need more than 20cc or whatever was in
20 the -- I mean, you can work this out mathematically, is if
21 it's possible or not or what the odds are. I don't know if
22 anybody in the civil cases did this on the defense side, but
23 you would think Teva would have gone through and figured out
24 how to do this, but I don't know if they did or not.

25 She needs more so they -- he goes back in now with

1 her syringe and gets some. So this is infected in the vial
2 and it goes into her. Now, somehow when you get to the
3 third -- that that would have then had to come out from the
4 newly transmitted. That's how I understood this, but it's
5 obviously going from patient to bottle to patient to bottle to
6 patient to bottle. I mean, that's how I'm understanding this,
7 and I'm assuming they're going to pull this together --

8 MR. STAUDAHER: It's --

9 THE COURT: -- in a more --

10 MR. STAUDAHER: -- it's ultimately --

11 THE COURT: -- scientific --

12 MR. STAUDAHER: -- right.

13 THE COURT: -- way because as I -- you know, as Mr.
14 Staudaher acknowledged the other day, you're not just talking
15 about one bottle it has to go patient to bottle, correct?

16 MR. STAUDAHER: Correct. I mean, you've got a
17 situation where it's unsafe injection practices based on
18 the -- around -- and centered around the propofol use.
19 Syringe to patient, bottle to patient, patient to -- or bottle
20 or syringe to the next patient. How that was done
21 mechanically is not really the most important part --

22 THE COURT: Well, no --

23 MR. STAUDAHER: -- with regard to --

24 THE COURT: -- I think that --

25 MR. STAUDAHER: -- what --

1 THE COURT: -- is the --

2 MR. STAUDAHER: -- well --

3 THE COURT: -- I mean, I think that is --

4 MR. STAUDAHER: -- yes, but there's --

5 THE COURT: -- an important --

6 MR. STAUDAHER: -- there's some --

7 THE COURT: -- part.

8 MR. STAUDAHER: -- issue about what actually
9 transferred. Yes, the bottles get used from patient to
10 patient, but then there's some individuals that said that
11 sometimes the syringe may have been reused. That -- that kind
12 of thing, the reuse of the syringe within the patient, and
13 then the bottles moving from patient to patient is the
14 ultimate theory for the case as far as how the transmission
15 took place.

16 THE COURT: Right. I mean, it's obvious that that's
17 the theory of the case, and, you know -- I mean, I think all
18 of the sort of attendant information is more directly germane
19 to Dr. Desai as to, you know, because Mr. Lakeman would have
20 been -- and Mr. Mathahs would have been, I guess, the agents
21 of transmission, if you will, but the idea being that they
22 were directed to do that because of Dr. Desai's fixation on
23 cost-controlling measures and other things.

24 And so, as I said initially, to me all of that is
25 really more relevant to Dr. Desai than Mr. Lakeman, whose

1 motive I think would be, you know, fairly limited. If he had
2 a motive at all, it's to basically keep his job, keep the
3 peace in his job, you know, not get fired for the buck-twenty
4 or whatever it was he was getting paid each year.

5 So that -- that's how I see it and they -- I think
6 that's what the State, you know -- it's again, it's the motive
7 of Dr. Desai in directing the reuse of the propofol bottles
8 and the -- really the reuse of the syringes. Not from patient
9 to patient because we haven't heard any evidence of that, but
10 the reuse of the syringes from one --

11 MR. STAUDAHER: Within the patient --

12 THE COURT: -- patient --

13 MR. STAUDAHER: -- right.

14 THE COURT: -- to the bottle. And that that's a
15 manifestation of his sort of cost-cutting measures, that
16 that's just one more thing that compromised patient safety. I
17 mean, that's kind of how I'm viewing their motion for other
18 bad acts, that it -- it all goes to the speed, the motivation
19 to treat as many -- I mean, as it's, you know, you have to say
20 it's the greater goal of maximization -- profit maximization.
21 I mean, that's their theory, I think.

22 So they're all here. Do you want to bring them in?

23 THE MARSHAL: Sure.

24 (Pause in proceedings)

25 THE MARSHAL: Are we ready, Judge?

1 THE COURT: Yep.

2 THE MARSHAL: Ladies and gentlemen, please rise for
3 the jury.

4 (Jury entering at 9:41 a.m.)

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

10 And, ladies and gentlemen, you'll recall that when
11 we took our weekend recess on Friday we hadn't finished with
12 the testimony of Dr. Carrol. Because of his scheduling and
13 the scheduling of another physician witness, we're going to
14 interrupt his testimony. We're going to have a different
15 witness today, and then I believe Dr. Carrol will be back this
16 afternoon to resume his testimony. And as I've told you
17 several times, of course, the order in which the testimony
18 comes in is of no import, as you need to keep an open mind
19 until you've heard absolutely everything in this case.

20 So, Mr. Staudaher, the State may call its next
21 witness.

22 MR. STAUDAHER: Thank you, Your Honor. The State
23 calls Vishvinder Sharma.

24 THE COURT: Just right up here please next to me, up
25 those couple of stairs. And then just remain standing, facing

1 one of these two ladies right here, and they'll administer the
2 oath.

3 VISHVINDER SHARMA, STATE'S WITNESS, SWORN

4 THE CLERK: Thank you. Please be seated. And please
5 state and spell your first and last name for the record.

6 THE WITNESS: Vishvinder, V, as in victory,
7 I-S-H-V-I-N-D-E-R, Sharma, S-H-A-R-M-A.

8 THE COURT: All right. Thank you. Mr. Staudaher?

9 MR. STAUDAHER: Thank you.

10 DIRECT EXAMINATION

11 BY MR. STAUDAHER:

12 Q Doctor, what do you do for a living?

13 A I am a gastroenterologist, sir.

14 Q Okay. And how long have you practiced?

15 A I practiced since 1994.

16 Q Can you go back and give us a little bit of your
17 background and training that led you up to become a
18 gastroenterologist?

19 A I was trained in my medicine in India; then I
20 moved to United States where I did fellowship and my residency
21 training at University of Southern California. And after that
22 I came to practice in Las Vegas.

23 Q Okay. So you were -- what time -- or roughly,
24 did you get out to Las Vegas?

25 A 1994.

1 Q So in -- so you've been in Las Vegas continually
2 from '94 to present?

3 A Yes, sir.

4 Q Have you always worked as a gastroenterologist?

5 A Yes, sir.

6 Q What -- where did you work when you first came
7 to town and did that change?

8 A First, when I came to town I started working for
9 an entity called Gastroenterology Center of Nevada in Las
10 Vegas. And I was there with them until 2008.

11 Q Okay. And Gastroenterology Center of Nevada, is
12 that a -- the one associated with Dr. Dipak Desai?

13 A Yes, sir.

14 Q So when you first came into the practice in '94,
15 who else was in -- in that same capacity as a doctor?

16 A Dr. Dipak Desai, Dr. Eladio Carrera, and Dr.
17 Uday Saraiya.

18 Q And did you have one -- one place you worked in
19 town or multiple offices?

20 A I worked only out of one place, but there were
21 multiple offices that the practice had.

22 Q Where was the main office that you worked out
23 of?

24 A The main office that I worked at at that point
25 in time was close to Desert Springs Hospital.

1 Q Was it known as a specific type of -- I mean,
2 was it on a road that typically got called a certain thing?

3 A It was on Flamingo and Burnham.

4 Q Was it eventually known as the Burnham Clinic?

5 A Yes, sir.

6 Q So when you're working at the Burnham Clinic,
7 are you in charge of it?

8 A I wasn't the in-charge person there, so I worked
9 there as one of the physicians of the group.

10 Q So who was in charge -- at the -- of the Burnham
11 Clinic?

12 A Dr. Dipak Desai, sir.

13 Q Now, eventually over time did the practice
14 expand, opening different medical offices as well as some
15 procedural offices?

16 A Yes, sir.

17 Q Can you tell us about that -- how that expansion
18 took place?

19 A Over a period of time there were new offices
20 that were opened, and also some centers for endoscopy that
21 were opened.

22 Q Now, the Centers for Endoscopy, what are those?

23 A These are places where procedures which
24 gastroenterologists do are [inaudible] out.

25 Q Are these like colonoscopies, upper endoscopies,

1 things like that?

2 A Yes, sir.

3 Q And the jury has heard about those, so I'm not
4 going to go into the details -- have you go into the details
5 of those, but how many functional endoscopy-type centers did
6 you have during the time you were working?

7 A Two and then towards the end another one -- a
8 third one, which was next to Spring Valley Hospital on --

9 Q Was that one --

10 A -- Rainbow.

11 Q -- fully functional and running at the time, or
12 not?

13 A It functioned only for two weeks, sir.

14 Q So pretty much -- is it fair to say that you had
15 two functional endoscopy centers during the time period?

16 A Yes, sir.

17 Q Now, the first one that started -- which one was
18 that?

19 A That was on Shadow Lane, sir.

20 Q 700 Shadow Lane?

21 A Yes. sir.

22 Q Did you work out of that facility?

23 A For a short while --

24 Q You say --

25 A -- intermittent.

1 Q -- "short while", how -- how often would you
2 work there?

3 A I worked there maybe -- maybe once in a month or
4 even less than that sometimes. But towards the latter part of
5 the practice, I did go there half day a week.

6 Q And what day, specifically, would you go?

7 A I would go there on Wednesday afternoons.

8 Q So just Wednesday afternoon? You didn't really
9 practice there any other time?

10 A No, sir.

11 Q Where were you the remainder of the time?

12 A Initially, I was in the Burnham office, and then
13 in 2005 I moved over to the office close to Spring Valley
14 Hospital, which was Rainbow and Hacienda.

15 Q So up to 2005 at Burnham and then over to
16 Rainbow?

17 A Yes, sir.

18 Q Did you still throughout that time come and do
19 your one-half day a week at the Shadow Lane --

20 A Yes --

21 Q -- facility?

22 A -- sir.

23 Q Was there any procedural stuff that you did over
24 at the Burnham facility?

25 A I went to the Burnham facility initially from

1 around 2002 to 2004 or '5 and then after that only once to the
2 Burnham facility.

3 Q So did you -- I mean, obviously you performed
4 those kinds of procedures right the endoscopies and
5 colonoscopies?

6 A Yes, sir.

7 Q Did you perform those anyplace else except for
8 this one-half day a week at the --

9 A I did do --

10 Q -- Shadow Lane?

11 A -- them in the hospitals that I worked out of,
12 sir.

13 Q And which hospitals were those?

14 A Those were Spring Valley Hospital and St. Rose
15 Dominican, San Martin Campus, sir.

16 Q Now, as far as the structure is concerned of the
17 organization while you're there, where do you fit into it?

18 A I was one of the --

19 Q Or where did you fit into it, I guess?

20 A -- I was one of the persons who did the
21 procedures over at the Shadow Lane office or Shadow Lane
22 Endoscopy Center.

23 Q Now, the hierarchy of the -- of the clinic --
24 we've -- I'll show you State's 97. Can you see that on your
25 monitor?

1 A I can, sir.

2 Q And does this look familiar to you; not
3 necessarily the page, but the way that the structure was set
4 up in the clinic?

5 A Yes, sir.

6 Q Now, I see below -- I see at the very top
7 there's an individual by the -- it says, managing partner,
8 Dipak Desai. Is that the way it was when you were working
9 there?

10 A Yes, sir.

11 Q What did the managing partner do?

12 A Sir, the managing partner was responsible for
13 managing the practice in terms of deployment of the physicians
14 in terms of assigning physicians their tasks, looking at the
15 productivity of the physicians, managing the other staff,
16 including administrative staff, billing, et cetera.

17 Q Okay. What about supplies, equipment, things
18 along those lines?

19 A Those were also under the charge of management
20 physicians.

21 Q Now, of all those things you listed, was there
22 any time during the practice that you actually ran or were in
23 charge of any aspect of that?

24 A No, sir.

25 Q And I mean, even as something -- as just

1 ordering supplies at the facility that you worked at, things
2 along those lines?

3 A I may have signed off on some invoices, but
4 that's about all.

5 Q Were you able to make any independent decisions
6 about the practice or any of the things you mentioned,
7 scheduling and the like?

8 A No, sir.

9 Q Who was the one who ran all of that?

10 A Dr. Desai, sir.

11 Q Was there anybody else to your knowledge -- and
12 I see that they're -- on this particular exhibit that there's
13 a box that says, Partnership physicians and staff positions;
14 do you see that?

15 A Yes, sir.

16 Q What was your belief or understanding as to the
17 difference between those two?

18 A Staff physicians were the ones who were not
19 partners as yet. They were associates who were on track for
20 partnerships, sir.

21 Q So when you became a -- well, let me back up.
22 Did you become a partner?

23 A I did, sir.

24 Q And when you became a partner, how did that
25 change your sort of authority within the practice?

1 A Authority --

2 Q If it did?

3 A -- changed very little. The income increased
4 because I was getting the partnership distribution then.

5 Q So you would get money from the -- as a
6 partner --

7 A Yes, I was getting --

8 Q -- that you didn't get as a staff physician?

9 A As a staff physician you were getting a salary.

10 Q Now, we have heard the terms bantered around
11 about different other co-managers and operational managers and
12 the like. Are you familiar with those terms?

13 A Yes, sir. Well...

14 Q Can you tell us what -- what kinds of different
15 managers there were and what they did in the practice?

16 A As well as I know, there were operations
17 managers and non-operations managers for the endoscopy
18 centers. There was a managing partner for the
19 gastroenterology center and subsequently later in 2005 or '6
20 or '7 there was an assistant managing partner. So that's how
21 they were.

22 Q Did you ever get one of those names or titles?

23 A I did, sir.

24 Q What was your title?

25 A For the Burnham Center my title was a -- I was

1 the operations manager and --

2 Q So as operations manager -- so now you're -- if
3 I understand correctly, you were originally a staff physician
4 as like an employee, not a partner; is that fair?

5 A That's right.

6 Q And then you became a partner?

7 A Yes, that's right.

8 Q And then, later on in -- in what was the year
9 again that the operations --

10 A I think it's 2002.

11 Q So in 2002 did you become an operations manager?

12 A Because we opened up a new endoscopy center in
13 Burnham location. So I was the operations manager there, sir.

14 Q So as operations manager now, what do you do?

15 A As operations manager, responsibilities are
16 managing the -- the endoscopy center, hiring the employees,
17 purchasing, et cetera. But I never -- it was only a
18 perfunctory; it was merely a name. I never had that
19 responsibility throughout my time there, which was about two
20 years, and then subsequently I moved away. So that was never
21 -- in practice, my responsibility.

22 Q So if I understand you correctly, that the
23 operations manager would normally have those types of
24 responsibilities?

25 A Yes.

1 Q But you were one of those people and is it --
2 did you testify that you did not have any of those
3 responsibilities?

4 A None of those were given to me ever, sir.

5 Q When you say, "given" to you given to you by
6 whom?

7 A By Dr. Desai. When I joined the practice the
8 narrative of the practice had already been established. Dr.
9 Desai was the person who was the steward of the practice, who
10 was leading the practice, and we were quite busy so he took
11 over those responsibilities, even though some of us had names
12 on those forms or contracts.

13 Q And since you've spoken of that, I want to ask
14 you a few things.

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

16 THE COURT: You may.

17 BY MR. STAUDAHER:

18 Q I'm showing you what has been marked as State's
19 160. This is a -- obviously a lot of pages here, but there's
20 certain tab sections I'm just going to go to and just -- as we
21 go through it. First of all, are you familiar with the
22 agreement -- over up here --

23 A Yes.

24 Q -- see the --

25 A Yes, I am.

1 Q -- agreement here? Okay. Have you seen that
2 kind of thing before?

3 A Yes, I have.

4 Q And -- well, I'll show you in a minute, but
5 it -- but if your signature appears on it, is that familiar
6 that you've signed an agreement like that?

7 A Yes.

8 Q Okay. So if we go through this -- I want to ask
9 you a couple of questions. Specifically, as we go through it
10 -- it says here, for example, on -- and this is Bates No. 116,
11 for counsel -- it lists the Gastroenterology Center of Nevada,
12 not one of the endoscopy centers, and it's got your name here
13 and it says that -- and the highlighting on this document is
14 something I put on the document, it is not part of the
15 original record.

16 A I understand.

17 Q Okay? But where it says here 20 percent member
18 -- or 20 percent owner and then it's also got Dr. Desai, Dr.
19 Carrera and Dr. Faris; do you see that?

20 A Yes, sir.

21 Q What did that mean, this 20 percent ownership of
22 that clinic?

23 A So this is the clinic where we saw the patients.
24 At that point in time there were just the five -- four of us,
25 and they were -- we -- I was 20 percent member of the

1 gastroenterology center, after that -- 20 percent owner of the
2 gastroenterology center.

3 Q Okay.

4 MR. STAUDAHER: And I'm going to move for admission
5 of 160 at this point, Your Honor.

6 THE COURT: Any objection?

7 MR. WRIGHT: No.

8 MR. SANTACROCE: No.

9 THE COURT: All right. 160 is admitted.

10 (State's Exhibit 160 admitted.)

11 BY MR. STAUDAHER:

12 Q Okay. Because I want to -- I want to have the
13 jury be able to see as we go through some of these things, the
14 things that you've mentioned.

15 So this is the gastroenterology center and it shows
16 the 20 percent membership -- or ownership that you have; is
17 that right?

18 A That's right.

19 MR. WRIGHT: What's the date of that?

20 MR. STAUDAHER: This -- on this page -- the run date
21 is in 2009, but --

22 BY MR. STAUDAHER:

23 Q -- what was the time period that you were in --

24 A This must --

25 Q -- you were ownership?

1 A -- have been before 1997 because then there were
2 other partners who were inducted into the practice, and then
3 I --

4 Q So prior to -- between '94 and '97?

5 A I might be wrong on the dates, but around that
6 time.

7 Q Okay. And then we go to the license status.
8 Again, on this Gastroenterology Center of Nevada it's got it's
9 business owner, you, as well as Dr. Carrera, Dr. Desai, and a
10 business address. What is the business address there?

11 A This is a business address --

12 Q Lake Mead Boulevard?

13 A -- I'm not too sure as to which business address
14 this is. I do not remember this, though, I have to say that
15 there was a time when I did go to a Lake Mead address, but
16 that should be a different address for a short while, next to
17 St. Rose Delima campus.

18 Q Was it still under the auspices of the
19 Gastroenterology Center?

20 A Yes, it was still under the auspices of
21 Gastroenterology Center.

22 Q Now, if we go forward to Bates 129. At the very
23 top it says, Desert Shadow Endoscopy Center; do you see that?

24 A Yes, sir.

25 Q What was the Desert Shadow Endoscopy Center?

1 A That was the Endoscopy Center which was over at
2 the Burnham location of our office.

3 Q So if we hear Burnham facility or Desert Shadow,
4 are we talking about the same place?

5 A Yes.

6 Q And again, the question I have for you here is
7 that down here -- the highlighted portion under, Officers; do
8 you see that?

9 A Yes, sir.

10 Q It's got doctor -- or -- well, it's got you as
11 being the manager; do you see that?

12 A Yes, sir.

13 Q And then also this Hari Om Limited Partnership
14 as also a manager?

15 A Yes, sir.

16 Q What was Hari Om Limited Partnership?

17 A It was a partnership that had the management
18 contract for the Desert Shadow Endoscopy Center as I
19 understood it to be at that time.

20 Q Now, again, this is -- this is the Desert Shadow
21 Center, and according to these records from the Secretary of
22 State's office it's got you listed as a manager.

23 A Yes, sir.

24 Q Where -- did your role change at this point, or
25 was it still this title but no authority?

1 A It's title but no authority. As a matter of
2 fact, at this point in time I was not even predominantly at
3 that location. I had already moved over to the location which
4 I'll describe next to Spring Valley Hospital.

5 Q Okay. So your name is on the -- this is a -- I
6 think you said before that your name would appear on paperwork
7 sometimes, but you wouldn't really --

8 A I really wasn't given --

9 Q -- end up --

10 A -- any authority or any power to do anything
11 substantive.

12 Q Now, moving to Bates 135. This one says,
13 Spanish Hills Surgery Center. Where was that one at?

14 A This one was on Rainbow and Oquendo, which is in
15 the southwest part of the valley. This was the center which
16 was open only for two weeks before it was shut down.

17 Q Now, again, it's got manager Dr. Desai and
18 manager you; is that right?

19 A Yes.

20 Q Any managerial capacity at that facility at that
21 time?

22 A This center was not open long enough, but since
23 I had moved over to this side of the town it -- I was -- the
24 transition was for me not to be working at the Desert Shadow,
25 and somebody else would be the manager there and I would be

1 the manager at the Spanish Hills.

2 Q Now, on this page it looks like one -- this is a
3 handwritten form from the Nevada Business Registration and I
4 see here one of the individuals is listed as you here, and it
5 says 20 percent. What is -- this says, Gastroenterology
6 Center of Nevada up here; do you see that? Is this the
7 document that was originally done for your -- getting your 20
8 percent or showing that you're a 20-percent owner?

9 A That's right, sir.

10 Q And same thing, we go to the next page, which is
11 Bates 138. It's now got -- has you listed as Vishvinder
12 Sharma, general partner. What was your -- what was a general
13 partner? Just --

14 A A general partner was all the partners except
15 for the managing partner.

16 Q Go forward to the -- it says, Endoscopy Center
17 of Southern Nevada here, and this it says 700 Shadow Lane; do
18 you see that?

19 A That's right, sir.

20 Q Okay. Down here it's got you listed as a -- as
21 a member and an -- a number 6 percent here. What -- what was
22 the difference? Now, we're getting into different
23 percentages; how did that work?

24 A Gastroenterology Center of Nevada is a clinical
25 practice, while the endoscopy centers were ambulatory surgery

1 centers. So in an ambulatory surgery center I only had a
2 6-percent share, compared to the others as has been listed.

3 Q And then the next one says Desert Shadow
4 Endoscopy Center. So this was the other procedural clinic; is
5 that fair?

6 A That's right.

7 Q Okay. Now, this one here, it has you as --
8 listed as a 50-percent partner.

9 A Which is wrong.

10 Q What was it?

11 A It was 14 percent at one time and then 8 percent
12 at the other.

13 Q So this being filled out here was not exactly --
14 it --

15 A Not --

16 Q -- does not represent what you actually had?

17 A Yes.

18 Q Now, let me go back one second so I've got it.
19 The -- are you familiar with this document that's titled --
20 and this is Bates 146, operating agreement for the Endoscopy
21 Center of Southern Nevada --

22 A Yes, --

23 Q -- have you seen that --

24 A -- I am.

25 Q -- before? And it's listed as -- the address is

1 700 Shadow Lane?

2 A Yes, that's right.

3 Q Under Section 6.1 it talks about what here --
4 covenant not to compete and it lists at three years and a
5 25-mile radius. What did this mean to you?

6 A It means that if anybody left the practice, they
7 could not practice as a physician or perform procedures in any
8 kind of an endoscopy center for three years or for a 25-mile
9 radius.

10 Q That would be essentially the entire valley?

11 A That would be, sir.

12 Q If you chose to leave, did you feel you could
13 continue to practice here?

14 A Not within the valley and in an ambulatory
15 surgery center.

16 Q And again, and just -- the next ones just show,
17 I think, your signature that you're actually on this in case
18 there was some question about that. And also, your signature
19 appears here as well.

20 A That's right.

21 Q So as far as your involvement with the clinic,
22 there's a couple of other instances -- things I want to ask
23 you about related to that. Now, they're -- CRNAs you know who
24 -- what those are, correct?

25 A Yes, sir.

1 Q Have you worked with CRNAs in the past?

2 A Yes, sir.

3 Q And as far as the CRNAs, did you have any
4 authority, supervisory role, managing role, anything like that
5 for them?

6 A It's -- CRNAs when they were introduced into our
7 practice, it was a new concept and at that point in time it
8 was thought that -- whenever anybody gives anesthesia, I think
9 impacts on the patients in two ways: One is the sedation part
10 of it, and the other one is the medical part of it. Because
11 sedation is what is desired, but some of the side effects can
12 have medical consequences to that.

13 So when CRNAs were inducted into our practice, it
14 was decided that the anesthesia would be looked at by an
15 anesthesiologist; but if there were any medical questions
16 which the attending physician had, they would come to one of
17 the two of us physicians, which was Dr. Desai and myself.

18 Q So you did have some -- they would come to you?

19 A If the doctors had any medical issues not
20 related to anesthesia because I'm not trained in the art of
21 anesthesia, sir.

22 Q When you say "doctors", what doctors are you
23 talking about?

24 A Their attending physicians who were performing
25 the procedures.

1 Q Okay. I want to make sure I'm clear on that
2 now. So the doctor who actually -- are we talking about an
3 endoscopy sort of case?

4 A Yes.

5 Q So in an endoscopy case there is an attending
6 physician?

7 A Yes, sir.

8 Q And what do you -- you determine the attending
9 physician to mean what?

10 A Attending physician is the physician who is
11 performing the procedure.

12 Q So the attending physician is actually in the
13 room physically?

14 A Yes, sir.

15 Q Was that generally known amongst all the, sort
16 of the doctors within the group?

17 A No, sir.

18 Q So how did you know that, then?

19 A Because I had initially signed this agreement
20 which was in 2002 and my impression was that that's how it
21 was, but it was never put into effect.

22 Q What do you mean "it was never put into effect"?

23 A I was never asked by any CRNA or any physician
24 to opine on any of the cases or discuss any of the cases at
25 any point in time.

1 Q Okay. I'm going to show you a couple of -- a
2 couple of things. The first is -- this is State's 65, and it
3 is Bates No. 468. Now, this one -- I just want to know if
4 you -- if you've seen this before. It does not bear your name
5 on it here -- and let me zoom in on that, I know it's really
6 kind of far out there. It's entitled, Supervising physician
7 agreement, and then the signature blocks are for a Thomas Yee
8 and for Dipak Desai; do you see that?

9 A Yes, sir.

10 Q And there's some handwriting on this as well.
11 And have you ever seen this particular document before?

12 A No, sir, I have not.

13 Q Did you ever even tacitly sign off, initial, on
14 this document at all?

15 A No, not on this document at all.

16 Q Do you know who Thomas Yee is?

17 A Yes, sir.

18 Q Who is he?

19 A Thomas Yee is a local anesthesiologist.

20 Q Now, I'm showing you what has been shown as
21 Bates No. 1 -- or 469. A similar document, this time with no
22 handwriting on it, and this time it has, right here, what
23 appears to be your name and is that your signature?

24 A That's right, sir.

25 Q Now, this is dated back in 2002.

1 A That's right, sir.

2 Q Tell me about this document.

3 A So this is what I was alluding to earlier that
4 when we decided to have CRNAs, this was something which had
5 never been done before; so we had decided that we needed some
6 kind of a second tier of safety and appropriate delivery of
7 anesthesia care which we, as physicians, gastroenterologists,
8 are not trained for. So for the medical aspect of the
9 anesthesia it was the medical physicians, while for the
10 anesthesia aspect of it it was a contract -- all the
11 physicians who had volunteered to help us, which was Dr. Yee.

12 Q Okay. So how did you even get involved in this
13 at all?

14 A This document is dated 2002, and that's when we
15 were thinking of establishing another unit which would be the
16 ambulatory surgery center in the Burnham location, which is
17 the east-side location. There was a whole labyrinth of names
18 and corporations that changed all the way through, so
19 east-side location, and I was going to be a physician who was
20 going to be in that unit at least one-half day a week every
21 day. So that's the reason why I got involved, and that's the
22 reason why I was even given the title of the operations
23 manager of that unit.

24 Q So when you say "we", who were -- who is we when
25 you're first talking --

1 A We would be the practice which would include Dr.
2 Desai, myself, Dr. Carrera and Dr. Carrol and Dr. Faris, and
3 at that time Dr. Mason and Dr. Herrero.

4 Q So that group of individuals of which Dr. Desai
5 was one --

6 A Yes.

7 Q -- talked about using CRNAs?

8 A Yes.

9 Q Now, in the discussions about using CRNAs,
10 you're talk -- you said something about performing anesthesia
11 safely, all that. Can you explain that a little more as to
12 what kind of discussions you had about what you needed or what
13 was going to happen or, you know, what you needed to put in
14 place?

15 A The discussions were scant, but we had decided
16 that we should have somebody who would supervise the
17 anesthesia aspect of it because most of the physicians who
18 were working in those endoscopy centers had no prior
19 experience or had any training in anesthesia whatsoever.

20 Q Okay. Did you?

21 A No, we -- as gastroenterologists do get trained
22 in conscious sedation which is -- as a part of the continuum
23 of sedation is much before deep sedation or general
24 anesthesia, which is what CRNAs are trained to do.

25 Q And the CRNAs were being brought in for not the

1 conscious sedation but one of those others, the deep sedation?

2 A That's right, sir.

3 Q Did you feel comfortable at all dealing with
4 drugs related to deep sedation like propofol?

5 A No, I did not. And that's the reason to have
6 the CRNAs.

7 Q So in the discussions you said that -- did I
8 miss -- and please if I misunderstood what you said -- did you
9 say that you researched or looked into what you needed to do?

10 A No, I didn't personally do any research, but as
11 we talked that out -- whenever we administer anesthesia to any
12 individual there are two aspects of it: One is the sedation
13 which was the responsibility of the CRNA, but that sedation
14 could have [inaudible] medical consequences which would be
15 something the physician in charge would do. And that's the
16 reason why in the State of Nevada you have physicians who have
17 to be supervising CRNAs, while in some other states CRNAs can
18 work on their own -- they don't need a physician supervisor.

19 So the medical aspect of that was to be the
20 responsibility of two of the medical physicians, while the
21 anesthesia -- the art of anesthesia part of it was to be taken
22 care of by the anesthesiologist.

23 Q Now, did you have any -- in any of these
24 discussions you had -- and again, with Dr. Desai present?
25 That's -- those -- not -- I'm not talking about a discussion

1 you had with Dr. Carrera or anybody else by yourself, but just
2 with Dr. Desai present. Were these things raised and
3 discussed?

4 A To a very brief extent but not in-depth.

5 Q Was it clear that you want -- you needed to have
6 somebody beside yourself dealing with the anesthesia part of
7 it?

8 A That was clear, sir.

9 Q And what was the reason again? I know -- I know
10 -- I'm not talking about the fact that you didn't have
11 expertise, but what was the reason of even having somebody in
12 if you could just hire a CRNA?

13 A Because we, as physicians, the medical
14 physicians did not feel comfortable supervising a CRNA for the
15 anesthesia aspect of it --

16 Q Okay.

17 A -- because a CRNA is specially trained in
18 utilization of medicines that are used for anesthesia, deep
19 sedation, airway management, protection of respiratory status
20 or hemodynamics.

21 Q So you enter into this agreement -- and this is
22 Bates No. 469 again -- this agreement -- or at least you've --
23 you sign off on this --

24 A Yes.

25 Q -- correct? Now, did I understand you to say

1 that this never was implemented?

2 A This -- because I was never asked, nobody ever
3 told me -- asked me anything about either the
4 anesthesiologist -- or either the CRNAs or the medical
5 doctors. So it almost was never implemented.

6 Q Did you ever see Dr. Yee in the facility doing
7 any of those things?

8 A No.

9 Q Was there any discussion about -- I mean, you're
10 a general partner, you even have a title of operations
11 manager. Was he ever paid anything?

12 A Was Dr. Yee ever paid anything?

13 Q Yes, did he get a salary? Did he get bonuses?

14 A No, he did not get a salary, sir.

15 Q So he's not paid and to your knowledge this was
16 never implemented?

17 A No, sir.

18 Q Who would have been the one to implement this if
19 it would have happened?

20 A It would have been Dr. Yee and the other
21 physicians who were part of the practice.

22 Q Okay. But not you?

23 A It would have included me too.

24 Q So you would have known?

25 A Yes.

1 Q Now, I'm showing you what's been marked -- or
2 admitted, rather, as State's 102. Now, this is another
3 document that also says, supervising physician agreement; do
4 you see that?

5 A Yes, sir.

6 Q And then, down below here there's a different
7 anesthesia person listed, and we're talking about a different
8 time period now, and you're on that document as well; do you
9 see that?

10 A Yes, sir.

11 Q So we're not talking about Dr. Yee now -- the
12 2002 document that you say never got implemented. Here's a
13 new one. This one has you listed and it has Satish Sharma; do
14 you know him?

15 A Yes, sir.

16 Q And what is -- what kind of physician is he?

17 A He's an anesthesiologist.

18 Q The dates are -- moving forward are about five
19 years later, correct?

20 A That's right, sir.

21 Q What happened related to this? I mean, what was
22 the issue here? Now we're five years down the road. You
23 haven't seen Yee on staff and you haven't -- there's no sort
24 of implementation of that: now, all of a sudden this one comes
25 up.

1 A This one came up because we then were going to
2 open -- and when I say, "we," the Gastroenterology Center
3 physicians -- were then going to open another endoscopy
4 center. And at that point in time it was decided to revisit
5 this issue because we were becoming larger and we needed to
6 have better management, at least of the anesthesia aspects;
7 and Dr. Satish Sharma became a part of it because he, in that
8 ambulatory surgery center, was going to provide
9 pain-management services.

10 Q Okay. So he's going to provide pain-management
11 services, but this is about supervising --

12 A And --

13 Q -- this agreement is about supervising CRNAs?

14 A -- and then he agreed to help us with
15 supervising CRNAs also.

16 Q Did this ever get implemented?

17 A No, sir.

18 Q To your knowledge was he ever paid for any
19 services?

20 A No, sir.

21 Q When this came about, how again did you end up
22 on this document?

23 A Again, because I was going to be the person who
24 will -- would have been the main person in the Spanish Hills
25 Surgery Center.

1 Q At that point back -- up in 2007, did you have
2 any authority or role in the operations of the operating -- of
3 the --

4 A Minimal if it all, sir.

5 Q Say that again. I'm sorry.

6 A I said, minimal if at all.

7 Q When you say, "minimal", what are we talking
8 about?

9 A Almost nothing.

10 Q Now, when this came about, then how did you even
11 know that this needed to be done? I mean, who approached you,
12 wanted you to sign this document?

13 A I don't recall the exact circumstances, but we
14 just thought that it would be better for us if we had somebody
15 who would be actively on the premises, which, unlike Dr.
16 Yee -- Dr. Satish Sharma was going to be.

17 Q Now, it appears as though you and Dr. Sharma --
18 Satish Sharma -- signed this document on the same date; do you
19 see that?

20 A Yes, sir.

21 Q And then, a couple of days later, it looks
22 like -- is that -- are you familiar with Dr. Desai's
23 signature?

24 A Yes, sir.

25 Q Does that look like his signature?

1 A That's right, sir.

2 Q It appears as though he signs it two days later?

3 A Yes, sir.

4 Q Do you know after you sign this what happened to
5 it? I mean, where -- did you deliver it to Dr. Desai? Did
6 you have any discussions with him about this at all?

7 A No, sir.

8 Q Did Dr. Desai ever talk to you about, hey, we
9 need to get one of those -- those agreements for the new
10 center?

11 A I don't recall, sir.

12 Q When this all came about, did you ever talk to
13 Dr. Desai and say, hey, what happened to the other agreement?
14 We didn't -- nothing ever happened with that?

15 A As a matter of fact, sir, I had totally
16 forgotten about the other agreement because it was signed so
17 many years ago, so...

18 Q So during the time -- during this five-year
19 window from the time that first document was signed until this
20 one, CRNAs working in the practice?

21 A Yes.

22 Q Anybody ever deal with you or ask your advice on
23 how to deal with the CRNAs or anything like that?

24 A No, sir.

25 Q Did you ever have any active supervisory role

1 with CRNAs during that time period?

2 A No, sir.

3 Q Did anybody, to your knowledge?

4 A Not that I know of.

5 Q Now, during the time period in question -- and
6 we've had some testimony from other physicians in this case
7 about their belief as to what an attending physician was -- do
8 you know what -- who -- what the governing body was in this
9 particular case? Meaning, in your clinic?

10 A I know what the governing body was, yes.

11 Q Who was -- who were members of the governing
12 body?

13 A I don't recall the names, sir.

14 Q Was Dr. Desai one?

15 A Yes, sir.

16 Q Were you one?

17 A I think so, sir.

18 Q So if a physician came in and thought that the
19 attending physician on the agreements that are listed meant
20 you and Dr. Desai, whoever was on the sort of governing body,
21 would that be accurate?

22 MR. SANTACROCE: I'm going to object. It's leading.

23 THE WITNESS: I didn't understand the question, sir.

24 THE COURT: Well, he -- I don't know if it was
25 leading or not because he didn't finish it, but there may be

1 another problem with the question as phrased, so...

2 BY MR. STAUDAHER:

3 Q Did the governing body act as the attending
4 physician for the CRNAs?

5 A Attending physician by definition would be the
6 person who is doing the procedure. So whether the
7 governing -- I do not know, sir. I don't think so.

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

9 THE COURT: Mm-hmm.

10 MR. STAUDAHER: I do apologize. I should have gotten
11 it [inaudible].

12 THE COURT: That's fine.

13 MR. STAUDAHER: I got it. Thank you.

14 BY MR. STAUDAHER:

15 Q I'm going to show you what has been --

16 MR. STAUDAHER: -- and I do apologize for that.

17 THE COURT: Mm-hmm.

18 BY MR. STAUDAHER:

19 Q -- State's 106. And this was the section --
20 this is apparently the policy of the clinic -- the endoscopy
21 clinic, and I know that this wasn't the one where you
22 primarily were at with Shadow Lane, but did you have a
23 similar-type policy at all the clinics --

24 A Yes, sir.

25 Q -- there at the Burnham Clinic? Now, looking at

1 this where it says -- under Section 9, Anesthesia services,
2 under Section B -- and let me zoom in on that to make it just
3 a little bit more clear -- Adequate supervision of anesthesia
4 services provided by the organization is the responsibility of
5 one or more qualified physicians who are approved and have
6 privileges granted by the governing body.

7 That's what I was referring to --

8 A Okay.

9 Q -- do you see that?

10 A This I understand to be privileges to perform
11 the procedures, and not privileges for anesthesia services.

12 Q Okay. Now, the second part of that is it says,
13 The attending physician will provide on-site and continuous
14 supervision of the certified nurse anesthetist. In your view
15 who was the attending physician?

16 A The person who was performing the procedure.

17 Q Is that consistent with what you believe this
18 policy states?

19 A This policy states exactly that, sir.

20 Q Okay. Now, a contract -- the second portion of
21 that which also is listed as 1 -- so 1/1 -- the second 1, A
22 contracted anesthesiologist with credentials and approved
23 privileges at the organization will provide co-supervision and
24 consultation services to the certified registered nurse
25 anesthetist regarding anesthesiology services. It is agreed

1 the anesthesiologist will be available for phone consultations
2 in addition to on-site -- or on-call premises consultations as
3 necessary; do you see that?

4 A Yes, sir.

5 Q And as we go to C, it says, The contracted
6 anesthesiologist will educate, train, co-supervise the nurse
7 anesthetist as he feels deemed necessary. And in any place
8 here does this look as though the person who is actually in
9 the procedure room -- your words, the attending physician --
10 that that person would -- would be the one really responsible
11 at the time the anesthesiologist -- or the CRNA was giving
12 anesthesia; is that fair?

13 A That's fair.

14 Q Was that generally known by the physicians?

15 A That -- that was generally --

16 MR. WRIGHT: Objection.

17 THE WITNESS: -- known by the physicians.

18 THE COURT: Yeah, he can only say, I mean, what he
19 knew or --

20 BY MR. STAUDAHER:

21 Q Well, if it was at --

22 MR. STAUDAHER: -- I'll -- that's fair. I'll -- I'll
23 --

24 THE COURT: -- or what was --

25 MR. STAUDAHER: -- go back.

1 THE COURT: -- obvious when you were there.

2 BY MR. STAUDAHER:

3 Q I mean, was this ever discussed in a doctor's
4 meeting or whatever so everybody knew about it?

5 A Everybody knows about it, just by training in
6 the field of gastroenterology.

7 Q Okay. Now, reimbursement for CRNAS, did that
8 happen? Did the -- did the organization get reimbursed for
9 CRNA services?

10 A Yes, I think so, sir.

11 Q When you say you "think so," did you ever
12 partake in any of the money that came in for CRNA billing?

13 A Not that -- I was told that this is the CRNA
14 money that has been given to you.

15 Q Who told you that?

16 A I said -- not that I know that it was ever the
17 CRNA money that was given to me as CRNA money which was given.

18 Q Let me --

19 THE COURT: Well, did that go into the profits that
20 were then distributed; or do you know? Don't guess if you
21 don't know.

22 THE WITNESS: No, I do not know that.

23 BY MR. STAUDAHER:

24 Q So if -- just so we're clear on this -- you
25 don't recall ever being -- essentially cut a check for -- from

1 a CRNA account, anything like that?

2 A Yes, I was, sir.

3 Q You were? Okay. So you're aware that there was
4 a CRNA account?

5 A Yes, I was.

6 Q Tell us about that.

7 A The CRNA account was the account which was
8 somewhat separate from our practice because it was termed as
9 something which was outside the field of gastroenterology, and
10 that account was maintained by Dr. Desai only and nobody else
11 had access to that account.

12 Q Now, the regular practice, did it have a
13 different account?

14 A Yes, it had a different account.

15 Q Were there more than one signatory on that
16 account?

17 A Yes, sir.

18 Q Could -- when a check, for example, was cut on
19 the gastroenterology side, did it require more than one
20 signature if it was above a certain amount, say?

21 A Yes, sir.

22 Q The CRNA money, who controlled that completely?

23 A Dr. Desai, sir.

24 Q Was there any other signatory on that account?

25 A I do not know that -- if there was any.

1 Q Did you ever see an accounting or anything?
2 Could you even discuss it with him regarding that CRNA money?

3 A No, sir.

4 Q And did you know if the money that was in that
5 account came from the CRNA billing?

6 A I thought so, sir.

7 Q And why did you think so?

8 A Because the money from the gastroenterology
9 account went to the other accounts, but I would think so.

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

11 THE COURT: Mm-hmm.

12 BY MR. STAUDAHER:

13 Q Now, you had mentioned back -- what year was it
14 that you became co-manager?

15 A Co -- I became the operations manager of the
16 Burnham Center in 2002. Co-manager of the practice in 2006 or
17 2007; I do not recall the exact date.

18 Q So your name changed from -- I mean, I'm talking
19 about your --

20 A Title.

21 Q -- sort of -- title, that's a good word, I'm
22 sorry. Your title changed from operations manager to
23 co-manager, and that was in what year again?

24 A Operations manager was for the Endoscopy Center,
25 which was a totally different entity than Gastroenterology

1 Center, of which I became the co-manager in 2006 ore 2007.

2 Q So the co-manager in 2006-'7 what did he do --
3 or what did you do in that capacity?

4 A Nothing at all.

5 Q Why did your --

6 A My role was --

7 Q -- title --

8 A -- not --

9 Q -- change?

10 A The title changed because of a variety of
11 reasons. I think it was that Dr. Desai wanted to acknowledge
12 the fact that I had worked very hard, I was very diligent, I
13 was working for the practice earnestly, and he felt that maybe
14 I should be given some recognition for that, sir, and that's
15 the reason why the title changed. And I'd been with the
16 practice for quite many years then.

17 Q Did that affect the amount of money that you got
18 at all? I mean, did you get a bonus for that?

19 A I did get a stipend of \$2,000, if I recall
20 correctly, per month.

21 Q So he gave you an additional \$2,000 a month and
22 that new title --

23 A With a new title, yes, sir.

24 Q -- but you didn't do anything different?

25 A No.

1 Q Now, as far as this agreement that's on here --
2 this 102, and I know that this is just one of those, what was
3 your vision of what you were supposed to do as -- it says
4 here, the manage -- I know it says managing partner, but
5 you're not managing -- well, let me go back up to that.

6 2007, it says, "Managing partner"; do you see that?

7 A Yes, sir.

8 Q Now, that's yet a different term than what you
9 used as co-manager --

10 A Or assistant --

11 Q -- operations --

12 A -- manager.

13 Q -- yeah. What is the -- so it's listing you as
14 a managing partner here.

15 A I think that's a mistake, sir.

16 Q Were you a managing partner in any way at any
17 time during this practice?

18 A No, sir.

19 Q So even though it says that, what was your view
20 of how you were to operate under this agreement?

21 A My understanding of this agreement was that this
22 was an -- this was a body which would be utilized as a second
23 tier for any conflicts that arose between the attending
24 physician or the CRNAs for administration of anesthesia to the
25 patients. And Dr. Desai and I were the physicians who were

1 responsible for the medical aspect of it, while the anesthesia
2 was responsible for the anesthesia aspect of it.

3 Q Was there any issue about disputes that might
4 come up that you would somehow mediate those or anything like
5 that?

6 A If they came up, but there never were any
7 disputes whatsoever, or nobody came up to me, at least, that I
8 know of.

9 Q Would you have ever felt comfortable -- I know
10 you said you didn't have much experience in deep sedation,
11 that kind of thing, but would you have ever felt comfortable
12 just reaching around and administering propofol to a patient?

13 A No, sir.

14 Q Would that have been appropriate, ever?

15 A No, it would not have been because I'm not
16 trained in that -- been trained with that medicine.

17 Q Yet you had situations where patients -- well,
18 that you started the procedure before a patient was put under?

19 A No, sir.

20 Q You didn't ever do that?

21 A Not ever.

22 Q If you knew about it -- if you knew the patient
23 wasn't awake, would that be appropriate to do, to move forward
24 without some sort of anesthesia onboard?

25 A No, sir.

1 Q Other end of the operation you get to the --
2 getting near the end or you're -- you're past the halfway
3 point, at least, and a patient is starting to move around --
4 I'm not talking about a little twitch here and there, I'm
5 talking about movement, -- anesthesia person wants to give
6 additional medication, have you ever been in a situation where
7 you countermanded it, that you said don't give it?

8 A I don't think so, sir. I don't recall ever
9 having done that.

10 Q Would that be appropriate in that situation?

11 A In case there were some instability and
12 patient's safety was a consideration, then I would tell the
13 anesthesia not to administer any further sedation.

14 Q Can you explain that? What kind of safety
15 concern would you have with --

16 A A safety concern would be if the patient's blood
17 pressure was too low, or if the patient was not reading well,
18 or if the patient had cardiac dysrhythmias which would further
19 administration of the anesthesia, would then jeopardize the
20 patient's safety, I would tell the anesthesiologist that we
21 should not be giving any more anesthesia.

22 Q To your knowledge, did that ever happen when you
23 gave a -- or did a procedure?

24 A Not -- not there, sir. Not at all.

25 Q Now, clearly if a scope is inside somebody and

1 the patient starts to move around, that might cause a problem,
2 right?

3 A Yes, that's right.

4 Q What would you be concerned about happening to a
5 patient who was moving around with the scope still in them?

6 A Perforation of the intestine causing trauma to
7 the wall of the intestine and leading to bleeding and things
8 like that, sir.

9 Q Would that be a serious problem?

10 A It can be a serious problem.

11 Q Would it require -- could you just take the
12 scope out if that had happened, or would you have to
13 hospitalize someone?

14 A If that happened, that patient would need to be
15 hospitalized.

16 Q So that would have to deal with patient safety;
17 is that fair?

18 A That's right.

19 Q Now, you -- do you recall when the -- this --
20 all this -- and you know why you're here today, correct --

21 A I know.

22 Q -- what happened at the clinic? When that all
23 broke and the Health District got involved and the CDC got
24 involved, were you there?

25 A I was there only on one day when they had

1 interviewed me.

2 Q Were you -- do you recall being present at the
3 clinic when they came and going up to the fourth floor to deal
4 with them?

5 A Yes. When the first phone call came, I was the
6 physician there, and it was probably a Wednesday afternoon;
7 and I spoke to Mr. Labus, and he said that he want to come and
8 visit the unit tomorrow. And that's all -- the extent of my
9 conversation with him.

10 Q Okay. So let's talk about that for a minute.
11 This is a Wednesday because you said you only worked
12 Wednesday's, right?

13 A Yes.

14 Q And only half-day on Wednesday?

15 A That's right.

16 Q So you hear that they have come over, meaning
17 Health District, CDC, whomever?

18 A I heard that they wanted to talk to somebody, to
19 come over to visit the unit for inspection.

20 Q Where did you go meet them and to talk to them
21 about that?

22 A I only took a phone call on the fourth floor
23 where I spoke with them and told them that they can come
24 tomorrow because I was the only physician in that room at that
25 time.

1 Q Okay. So you didn't actually physically talk,
2 like, person-to-person with the --

3 A I don't --

4 Q -- Health District --

5 A -- I don't --

6 Q -- people?

7 A -- think so, sir.

8 Q But it was -- you go up to the fourth floor to
9 take the call?

10 A Yes, because our office manager had gotten the
11 call and she wanted a physician to talk to them.

12 Q So we're talking Wednesday, and you told them
13 that they could come back the next day --

14 A That's right.

15 Q -- to start doing whatever they were going to
16 do?

17 A Yes, sir.

18 Q So that would have been Thursday, Friday,
19 whatever; is that fair?

20 A That's right, sir.

21 Q Do you know if they were there working on the
22 weekends, or did they just work during the workdays that you
23 all were there?

24 A I do not know, sir.

25 Q After that call did you have any further

1 interaction with them?

2 A Only once with the lady from the CDC who
3 interviewed me, sir.

4 Q Dr. Desai -- I want to just touch base with --
5 related to him. Now, you said that he was the guy in charge?

6 A That's right, sir.

7 Q In your interactions with hi,m, can you describe
8 for him -- or -- and I'm talking about whether it's in a
9 doctor's meeting, of which I assume; -- is that right -- you
10 had meeting -- interactions with him there?

11 A That's right, sir.

12 Q Did you have direct interactions with him as all
13 -- at all?

14 A To some extent, yes, sir.

15 Q Following all of this, did you ever go meet with
16 Dr. Desai -- you and Dr. Carrol and Dr. Desai at any time?

17 A Yes, sir.

18 Q What did -- what was that about? when did it
19 happen? where did it happen?

20 A We met with him several times for two or three
21 days after when this whole thing broke out. We were quite
22 distraught because of the fact that we were being besmirched
23 in the community with our -- some things that we had at least
24 done, that we knew of. So we went to Dr. Desai and since that
25 was going to lead to a complete destruction of our practices

1 we requested that he make some kind of an announcement or a
2 release that he's the person who is responsible for the
3 practice and he will defend it or accept the responsibility of
4 what has happened. And it was Dr. Carrol and I who went to
5 see him.

6 Q When you talked to hi,m, what did he say?

7 A He at that time acquiesced to our request and he
8 said that he'll take care of it.

9 Q At any time when you were there, did he say, I'm
10 not the guy in charge, you're the guy, or anything --

11 A Not at --

12 Q -- like that?

13 A -- all, sir. He actually was supportive and he
14 said that, I'll take care of it.

15 Q Was Doctor --

16 THE COURT: Where did that meeting occur?

17 THE WITNESS: It occurred in Dr. Desai's home.

18 THE COURT: All right.

19 BY MR. STAUDAHER:

20 Q And this was -- do you know how long after the
21 announcement?

22 A It would be probably two or three days after
23 because -- or five, six days. I don't recall because some of
24 the time is -- some are surreal in my life, but --

25 MR. WRIGHT: Could he speak up, please?

1 THE WITNESS: It happened about --

2 THE COURT: That's better.

3 THE WITNESS: -- three or four days after.

4 THE COURT: That's much better. Thank you.

5 BY MR. STAUDAHER:

6 Q Along those same lines, the other partners --
7 now, I know you've talked about yourself -- the other
8 partners -- did anybody, Dr. Carrol, Dr. Mason, any of the
9 other partners, did any of them have any say in how the
10 practice really ran?

11 A No, that -- no, sir.

12 Q And it -- you know this because of why?

13 A Because of my general understanding of the
14 practice and how the practice had gone on for the 10 years or
15 12 years of -- 14 years that I was with the practice.

16 Q Is this also from your interactions with Dr.
17 Desai in doctor's meetings indirectly?

18 A That's right.

19 Q As far as Dr. Desai, I mean, was he a
20 controlling person? Describe for us how his philosophy was in
21 the practice?

22 A Dr. Desai is a very frugal person. He's
23 fiscally extremely conservative. He -- he did not like
24 dissension, and yes, he liked to micromanage the practice.

25 Q What about giving up power? Did he ever

1 disseminate power to anybody else?

2 A He disseminated power only in namesake where
3 people were made to feel that they had some engagement or they
4 had some participation in the practice, but not in the real
5 terms.

6 Q Do you recall when he had a -- his stroke?

7 A I do, sir.

8 Q When he was on a trip to India?

9 A I recall that well, sir.

10 Q When he came back, how did that change the
11 practice from your perspective? At least for the time that he
12 was not there?

13 A For the time that he was not there, I was not --
14 the most change happened in the Shadow Lane Endoscopy Center
15 and the practice there; and at that point in time, Cliff was
16 made in charge of -- Dr. Carrol was made in charge of running
17 the unit.

18 Q What about you?

19 A Since I was not there at all, so I was not.

20 Q Were you given any authority at that time to do
21 anything at the clinic -- the Burnham Clinic, for example?

22 A No, not at all because I was not at the Burnham
23 Clinic also. So it was Dr. Mason and Dr. Herrero who were the
24 people.

25 Q What about -- well, then had you moved over to

1 the Rainbow or --

2 A Oh, yeah --

3 Q -- whatever that was?

4 A -- I had moved over to the Rainbow location.

5 Q Were you given any authority over that clinic?

6 A Rainbow location was a very small place, and
7 there was no authority there whatsoever. But all we did was
8 see our patients in the office and that's all.

9 Q Now, subsequent to this all taking place, have
10 you heard about various things like false charting and reuse
11 of medical supplies and things like that?

12 A Yes, I have.

13 Q Had -- did you see any of that going on when you
14 were there?

15 A No, sir.

16 Q Were you aware of any precharting or false
17 charting, anything like that?

18 A No, sir, I wasn't.

19 Q Were you aware of any complaints that may have
20 been -- may have -- Dr. Desai may have had with the State
21 Medical Board?

22 A I was aware of one where -- actually, two. One
23 was where we had an -- we had a partner, Dr. De Fonseca, who
24 inadvertently had been -- claimed to have board certification
25 when he did not have. And then there was another complaint,

1 which included me too, where a physician had alleged that I
2 had missed a cancer.

3 Q So those are the ones you're aware of,
4 primarily?

5 A That's right.

6 Q Were you aware of any kind of discipline or
7 letters or anything like that that Dr. Desai may have received
8 from any complaints?

9 A As a practice, sir, yes, we had, I think for the
10 formal complaint -- the one where we had inadvertently put Dr.
11 De Fonseka as a board-certified physician. We had to pay a
12 fine and maybe there was a public reprimand. I do not recall
13 the exact --

14 THE COURT: What did you do with that doctor once you
15 learned that he wasn't board certified?

16 THE WITNESS: That physician actually had told us
17 that he wasn't board certified, but we had -- because
18 they're -- everybody else in our practice was board certified
19 so when the Yellow Pages advertisement was published, it said
20 all physicians are board certified.

21 THE COURT: Okay. And then --

22 THE WITNESS: But he remained --

23 THE COURT: -- but you were talking about --

24 THE WITNESS: -- with the --

25 THE COURT: -- board certified in the field of

1 gastroenterology?

2 THE WITNESS: That's right.

3 THE COURT: Okay. And then -- so he hadn't done
4 anything wrong --

5 THE WITNESS: No.

6 THE COURT: -- by misrepresenting?

7 THE WITNESS: No, he had not.

8 THE COURT: Okay. I misunderstood your testimony.

9 THE WITNESS: It was an inadvertent error.

10 MR. STAUDAHER: I have nothing further.

11 THE COURT: Let's go ahead and take our break, then,
12 before we move into cross.

13 Ladies and gentlemen, we're just going to take a
14 quick 10-minute break which will put us --

15 MR. WRIGHT: Can we approach the bench a moment?

16 THE COURT: -- I'm sorry?

17 MR. WRIGHT: Can we approach a moment?

18 THE COURT: Sure. Stay there.

19 (Off-record bench conference.)

20 THE COURT: Ladies and gentlemen, we're going to need
21 a little bit longer than a 10-minute break, so it's going to
22 be closer to a 20-minute break.

23 During the break you are reminded that you're not to
24 discuss the case or anything relating to the case with each
25 other or with anyone else. You're not to read, watch, or

1 listen to any reports of or commentaries on the case, person,
2 or subject matter relating to the case. Don't do any
3 independent research; please don't form or express an opinion
4 on the trial.

5 Please place your notepads in your chairs and follow
6 Kenny, the newly shorn Kenny, through the rear door of the
7 courtroom.

8 (Jury recessed at 10:38 a.m.)

9 THE COURT: All right. Quick housekeeping matter. I
10 had said we would set the Petrocelli hearing for Tuesday;
11 however, one of the jurors -- Juror 13, lost a crown last
12 week, and he was able to schedule a -- we told him to schedule
13 it either early in the morning or late in the afternoon. He
14 has scheduled an appointment with his dentist for 8 a.m.
15 Wednesday the 29th, so let's do our hearing Wednesday morning
16 starting at 9 a.m. in here, and that way that will give him
17 however, couple hours, whatever he needs to get his crown
18 done; and we'll do a regular start with the jury on Tuesday.

19 Okay. I just wanted to let you know that in case
20 you're contacting people.

21 MS. WECKERLY: Thank you.

22 MR. WRIGHT: Regular Tuesday, Petrocelli Wednesday
23 morning --

24 THE COURT: Right.

25 MR. WRIGHT: -- and the jury comes in in the

1 afternoon.

2 THE COURT: Right. Because -- and that will take
3 care of the juror who needed to get his crown fixed. And
4 then, just for the record, Mr. Wright requested a longer
5 break. We're taking a 20-minute break and you can use the
6 vestibule -- or whatever you want.

7 MR. WRIGHT: Thank you.

8 (Court recessed at 10:40 a.m., until 11:01 a.m.)

9 (Outside the presence of the jury.)

10 THE COURT: Bring them in. Mr. Wright, will you be
11 going first or --

12 MR. WRIGHT: Yeah, I --

13 THE COURT: -- before Mr. Santacroce?

14 MR. WRIGHT: -- I think so.

15 THE COURT: Is that fine?

16 MR. WRIGHT: Is that good, Rick?

17 MR. SANTACROCE: That's fine.

18 THE COURT: And Carrol is coming when?

19 MR. STAUDAHER: Well --

20 MS. WECKERLY: I -- well, we were going to -- I
21 thought we were going to text him, but -- I mean, he's
22 planning on coming, like, at 1 or 1:30 --

23 THE COURT: Okay.

24 MS. WECKERLY: -- but I think we were going to give
25 him an exact time.

1 THE COURT: Okay. Because I don't know how long this
2 is going to be.

3 MS. WECKERLY: Right. So we'll text him when we, you
4 know --

5 THE COURT: Okay. That's fine.

6 Mr. Wright, what do you think on your cross? I
7 mean, it's up -- I'm not trying to limit you in any way, just,
8 you know?

9 MR. WRIGHT: Maybe an hour and a half.

10 THE COURT: Okay. No, I'm not trying to -- I'm just
11 thinking about important matters like lunch. When we're going
12 to send the jurors to lunch.

13 MR. WRIGHT: I think I'll --

14 THE COURT: Dr. Sharma, you can come back on up to
15 the witness stand and just have a seat there.

16 THE MARSHAL: Ladies and gentlemen, please rise for
17 the presence of the jury.

18 (Jury entering at 11:03 a.m.)

19 THE COURT: All right.

20 THE MARSHAL: Thanks. Everybody, you may be seated.

21 THE COURT: Court is now back in session, and Mr.
22 Wright, you may begin your cross-examination.

23 MR. WRIGHT: Thank you.

24 CROSS-EXAMINATION

25 BY MR. WRIGHT:

1 Q Dr. Sharma, my name's Richard Wright. I
2 represent Dr. Dipak Desai. Now, in preparation for your
3 testimony here today have you reviewed any documents?

4 A Not in any -- any detail.

5 Q Okay. Have you reviewed any documents a little
6 bit?

7 A Yes, I did, just the operating agreement --

8 Q Okay.

9 A -- for the Gastroenterology Center of Nevada.

10 Q Okay. And why did you review that?

11 A I just wanted to refresh my memory as to who
12 were the partners and how -- and when people became partners.

13 Q Okay. And is that the same agreement you looked
14 at here in the courtroom?

15 A I looked at just a part of that. The most of
16 what I looked at was the agreement for the ambulatory surgery
17 center and not the Gastroenterology Center.

18 Q Okay. Did you look at anything else?

19 A Nothing at all.

20 Q Okay. How many times have you been interviewed?

21 A Interviewed by who, sir?

22 Q Our district attorney's office.

23 A District attorney's office once, and then I
24 spoke to them one more time; that's all.

25 Q Okay. When was that? Was that --

1 A It -- I shouldn't say district attorney's
2 office, it was the detective who interviewed me in 2008, maybe
3 May or June, that was once.

4 Q Okay. Would that have been in 2009? Let me
5 show you something. I want to make sure I have the same thing
6 you're talking about.

7 A Yes, this was 2009 year.

8 Q Okay.

9 A That's -- that's the one, yes.

10 Q So is that June 2009 you were interviewed by
11 Detective Whitley?

12 A That's right, sir.

13 Q Okay. And was that the first time you were
14 interviewed?

15 A Yes.

16 Q Okay. And then, since then -- since June 2009
17 any further interviews?

18 A No interviews, sir.

19 Q Okay. Any further meetings?

20 A Just one meeting, sir.

21 Q Okay. Was that to prepare for your testimony?

22 A That's right, sir.

23 Q Okay. And your first meeting June 26, 2009, you
24 were with your lawyer, correct?

25 A That's correct.

1 Q Okay. And was that pursuant to a proffer
2 immunity agreement?

3 A A proffer, but not an immunity.

4 Q Okay. A proffer agreement?

5 A Yes, sir.

6 Q Okay. And do you have a copy of that?

7 A I don't, sir.

8 Q Okay.

9 A But my attorney will have.

10 Q Okay. You -- your attorney has it?

11 A I think so, sir.

12 Q Okay. And what -- what is a proffer agreement?

13 A A proffer agreement, if I understand it
14 correctly, is that I just wanted to give the information, the
15 truthful information, about the practice that I knew of --

16 Q Okay.

17 A -- to the authorities.

18 Q So this was something you initiated because you
19 just wanted to get them the information?

20 A After consultation with my attorney, sir.

21 Q Pardon?

22 A After consultation with my authority.

23 Q Okay. But I wanted to be clear, you initiated
24 this, and this letter shows that you initiated the interview;
25 is that correct?

1 A My attorney and I initiated the interview, but I
2 do not remember what the letter states.

3 Q Okay.

4 MR. WRIGHT: Can we approach the bench a moment?

5 THE COURT: Sure.

6 (Off-record bench conference.)

7 BY MR. WRIGHT:

8 Q I want to go backwards to your medical training,
9 okay? The -- you're from India?

10 A I am.

11 Q Okay. And you went to medical -- medical school
12 in India?

13 A That's correct.

14 Q Okay. Explain what that entails for the jury.

15 A Medical training in India is right after high
16 school because most people get trained in what are called
17 premedical studies in the high school and sometimes two years
18 of college. It entails four and a half years of medical
19 training and then one year of internship training. Four and a
20 half years includes all the basic sciences, surgery, anatomy,
21 physiology; it's the usual training.

22 It's modeled after the British system of training
23 physicians.

24 Q Okay. And so you were -- the -- is it similar
25 to how a U.S. doctor is educated?

1 A I do not know how a --

2 Q Okay.

3 A -- U.S. doctor is educated.

4 Q Okay. Well, by the time you -- you immigrated
5 to the United States, sir?

6 A That's correct.

7 Q Okay. At what age?

8 A I was 27.

9 Q Okay. 27. You were then the equivalent of a
10 medical doctor?

11 A That's correct.

12 Q Okay. And by that time you had had, like, eight
13 years of medical training?

14 A By that time I had had -- well, yeah, five and a
15 half years of medical training and two years of practice --

16 Q Okay.

17 A -- in India.

18 Q Okay. And then when you arrived, immigrated,
19 and then did I understand correct you then did internship and
20 fellowship here in the United States?

21 A Internship, residency and fellowship.

22 Q Okay. Internship, residency, that -- and that
23 was at USC?

24 A My internship initially was in a facility called
25 Coney Island Hospital in New York City.

1 Q Okay.

2 A And then I moved to University of Southern
3 California; that's where I did the residency and fellowship.

4 Q Okay. And then residency and fellowship, and by
5 then you had specialized in gastroenterology?

6 A That's correct.

7 Q Okay. And you're a gastroenterologist?

8 A That's right.

9 Q And your first job as a gastroenterologist would
10 be here in Las Vegas --

11 A That's correct.

12 Q -- working with Dr. Desai?

13 A That's correct.

14 Q Okay. And how did that come about? How did you
15 come to move to Las Vegas and go to work there?

16 A I met Dr. Desai for the first time when I had
17 gone for a conference in a city called Racine, in Wisconsin,
18 and he had invited me to come over. I was in the last year of
19 my fellowship at that time, and he said that, You come over
20 and look at our practices, because I was looking for practices
21 in the southwestern part of United States.

22 Q Okay. So you came over, looked at the practice
23 and -- and at the time the practice consisted of whom --
24 who -- who were the doctors at that time?

25 A At that time there were only three physicians in

1 the practice; Dr. Desai, Dr. Carrera, and Dr. Saraiya.

2 Q Okay. And so you came. Did you talk to them?

3 A I spoke to Dr. Carrera and Dr. Saraiya, yes.

4 Q Okay. And you liked it and said I want to come
5 here?

6 A That's correct.

7 Q Okay. And you understood that that -- you were
8 coming -- you would begin as an employee physician?

9 A That's correct.

10 Q An associate, and if they liked you and you
11 liked them, you would be offered a partnership?

12 A That's correct, sir.

13 Q Okay. And you came in 1990 --

14 A '4.

15 Q -- '4. And after about three years you were
16 invited to become a partner --

17 A That's correct.

18 Q -- correct? And for the first three years you
19 were an employed physician getting a monthly salary --

20 A That's correct.

21 Q -- paycheck and withholding and all of that
22 stuff?

23 A That's correct.

24 Q Okay. And then when you became a partner, your
25 paycheck salary stopped, correct?

1 A That's correct.

2 Q Because then you would be a -- the equivalent of
3 a part-owner of the medical practice and you would get
4 distributions out of the profit, correct?

5 A Yes.

6 Q And you would get the distribution pursuant to
7 the percentage of your ownership?

8 A True.

9 Q And at -- at the time, let's see, when you
10 became a partner, how many people, four?

11 A No, Dr. Frank Faris, who came as -- at the same
12 time as I did, both of us became partners at the same time --

13 Q Okay.

14 A -- so we were five.

15 Q Okay. So at that time there were five of you
16 including Dr. Desai?

17 A Actually, four were partners, Dr. Saraiya was
18 never made a partner.

19 Q Okay. He did not become a partner?

20 A No.

21 Q Okay. Did he leave?

22 A He did.

23 Q Okay. So when there were five -- five of you,
24 you had one partnership share?

25 A No. I -- partnerships were as had been shown in

1 one of the things, I had 20 percent, Dr. Faris had 20 percent,
2 Dr. Carrera had 20 percent, Dr. Desai had 40 percent. So he
3 had twice the number of shares as we did.

4 Q Okay. He -- Dr. Desai had twice as many shares
5 as each individual?

6 A Yes.

7 Q And as the practice grew, more partners came on,
8 right?

9 A That's right.

10 Q And that -- that distribution remained the same
11 among the --

12 A He always had twice.

13 Q -- partners, correct?

14 A Yeah, he always had twice than another
15 individual partner.

16 Q Okay. Not twice the total of the other
17 individuals, but twice what each individual had, correct?

18 A That's right.

19 Q So that if there were nine other partners plus
20 Dr. Desai, meaning -- okay. So if there are 10 partners, then
21 the other partners would all have two -- one-eleventh and Dr.
22 Desai would have two-elevenths.

23 A That's correct.

24 Q Is that fair?

25 A Mm-hmm.

1 Q Okay. And the practice did grow up to, like, I
2 think 11 partners and three physicians at the time of the
3 ending of the business?

4 A That's correct.

5 Q And three employee physicians, I mean. Okay.
6 And towards the end, 2007, okay, at that time describe the
7 offices and the clinics and how the practice in a nutshell
8 operated.

9 A There was a hub office at Shadow Lane.

10 Q Okay.

11 A And there were offices in -- I'm going to call
12 them the Burnham location next to --

13 Q That's --

14 A -- Spring Valley Hospital.

15 Q -- let's -- and we're going medical offices
16 first?

17 A We're doing medical offices.

18 Q Okay.

19 A There was an office next to Spring Valley
20 Hospital on Spring -- Rainbow and Hacienda.

21 Q Okay.

22 A There was office next to Mountain View Hospital.

23 Q Okay.

24 A And I'm not too sure -- there was an office in
25 North Las Vegas too, on McDaniel Street.

1 Q Okay. And at these offices, that would be for
2 the medical practice and consultation involving
3 gastroenterology?

4 A That's correct.

5 Q And also, you all went to all of the hospitals,
6 correct?

7 A Yes. But an individual physician went only to a
8 few.

9 Q Okay. So you would apportion who would go
10 where, correct?

11 A That's correct.

12 Q Okay. Now, aside from those medical offices,
13 when procedures needed to be done like a colonoscopy, those
14 were done at what locations?

15 A They were two locations which were active, and
16 the third one for a very short while --

17 Q Okay.

18 A -- and they were in Shadow Lane and Burnham.
19 And the one next to Spring Valley Hospital was open only for
20 two weeks.

21 Q Okay. And as you explained when you joined the
22 practice, became a partner, you mainly, like in 2002, I think
23 you said, you were at the Burnham Clinic, I'll call it, okay?
24 Center, is that what you call it?

25 A Clinic would be where the medical aspect of the

1 practice would take place --

2 Q Okay.

3 A -- while ambulatory surgery center would be
4 where the procedures took place.

5 Q Okay. So you were at the Burnham Surgery
6 Center?

7 A I was there, yes.

8 Q Okay. And you would -- and then you were going
9 to operate the third facility --

10 A Yes, I was going to --

11 Q -- which was built, like, in 2007, correct? Did
12 you participate in the design and building of it?

13 A Very minimally.

14 Q Okay. But it was a new facility to be opened,
15 and then that's the one that was, like, open two weeks and
16 then everything collapsed; is that correct?

17 A That's correct.

18 Q Okay. Now -- and you also worked at Shadow
19 Lane; Wednesday afternoons would be your procedure day,
20 correct?

21 A That's correct.

22 Q Okay. And so by -- by "procedure day," you
23 would go in and do colonoscopies, upper endoscopies, on
24 Wednesday afternoons was your designated slot; is that
25 correct?

1 A That's right.

2 Q And at that time you would -- you would utilize
3 whatever staff was there and whatever CRNA was there; you were
4 simply the doctor who rotated in and did that Wednesday
5 afternoon?

6 A That's right.

7 Q Okay. And at the clinic when you would go in
8 there, was the clinic -- clinic -- surgery center at Shadow
9 Lane, was it -- was that well-maintained?

10 A Yes, reasonably well, sir.

11 Q Okay. Was it clean?

12 A Yes.

13 Q Okay. Did you -- would -- would you go in there
14 and see feces on the walls or all over the place?

15 A No, sir, never.

16 Q Okay. And that's consistent throughout your
17 practice?

18 A That is consistent throughout my practice.

19 Q Okay. And you were an owner -- well, let me
20 back up a minute. Aside from your interest -- which you were
21 invited to participate in the medical side, the gastro center,
22 correct -- you -- you also became a part-owner of the
23 endoscopy surgery center side; is that correct?

24 A Yes.

25 Q Okay. And did you purchase that interest?

1 A I did, sir.

2 Q Okay. And so we saw a document that was shown
3 to you that showed, like, 6 percent endo center; is that
4 correct?

5 A That's correct.

6 Q Okay. And so that means you were -- you owned 6
7 percent at that time of what? Like, Burnham, Shadow Lane, or
8 both?

9 A They were varying degrees of participation of
10 different physicians. I owned 6 percent of the Shadow Lane.

11 Q Okay. And that -- you maintained ownership of
12 that up until the end?

13 A I did.

14 Q And by "the end," I'm talking about 2008, March,
15 when it all collapsed, correct?

16 A That's correct.

17 Q Okay. And --

18 MR. WRIGHT: Court's indulgence a moment.

19 THE COURT: That's fine.

20 BY MR. WRIGHT:

21 Q Now, when you began your practice here in Las
22 Vegas with Dr. Desai's practice, you at the time were not
23 using CRNAs, and not using anesthesiologists because you were
24 using what kind of sedation?

25 A Conscious sedation.

1 Q Conscious sedation; is that correct?

2 A That's correct.

3 Q Okay. And the conscious sedation is
4 physician-administrated?

5 A That's correct.

6 Q So when we've talked here this morning about the
7 attending -- attending physician, when we use that term we're
8 talking about the doctor performing the colonoscopy in the
9 procedure room, correct?

10 A That's right.

11 Q Okay. And the -- at that time the attending
12 physician doing the procedure, he himself would do conscious
13 sedation?

14 A That's correct.

15 Q Which was basically what?

16 A It was basically administration of two different
17 medicines, though it varied from physician to physician, and
18 those medicines were Meperidine and Versed or Fentanyl and
19 Versed.

20 Q Okay. And as the practice evolved and grew,
21 there came a time when anesthesiologists were used; is that
22 correct?

23 A That's correct.

24 Q Okay. And an anesthesiologist is a physician
25 who does anesthesia services?

1 A That's correct.

2 Q Okay. And then the -- there was a determination
3 made to start utilizing CRNAs, correct?

4 A That's correct.

5 Q And what is a CRNA?

6 A A CRNA is a certified nurse anesthetist, who
7 after their training and nursing, including a bachelor's
8 degree nursing, are trained for two more years in the
9 techniques of anesthesia.

10 Q Okay. So aside from their bachelor's in
11 nursing, they get the equivalent of a two-year master program
12 in anesthesia?

13 A That's correct.

14 Q Okay. Now, you were shown several agreements
15 regarding supervising CRNAs, recall that?

16 A Yes, I do.

17 Q Okay. Now, do I understand that those
18 agreements did not ever play any part or take effect in the
19 practice?

20 A That's correct, sir.

21 Q Okay. The evolution, as I understand it, is
22 that when you started -- you -- I'm talking about not you
23 individually, but you all, the -- the practice, you all
24 decided to go towards CRNAs, correct?

25 A Yes, at some point we decided to make that

1 transition.

2 Q Okay. And it was in the early 2000s?

3 A I don't recall the exact date, but maybe 2002
4 might be the date.

5 Q Okay. And, well, I -- that's the date on one of
6 those agreements, so -- could -- you were -- were you moving
7 towards the utilization of CRNAs before the Shadow Lane Clinic
8 went from a single room to a double room?

9 A I don't remember the exact details.

10 Q Okay. And at the time your practice, or the --
11 once again, I'm talking about the group practice, I'm not
12 saying you made these decisions, but the practice was the
13 first in this -- in Las Vegas to go with the CRNAs; is that
14 right?

15 A That's correct.

16 Q Okay. And was there not a great deal of clarity
17 at the time regarding supervision and how they were to be
18 implemented?

19 A That's correct, sir.

20 Q And do you recall that at the time of the --
21 like, what we call the initial agreement, that 2002 one, it
22 wasn't clear whether nurse anesthetists needed to be
23 supervised by an anesthesiologist or not; is that correct?

24 A That's correct.

25 Q And as the CRNA -- as you started utilizing

1 CRNAs, it became clear what was required under Nevada law,
2 correct?

3 A That's correct.

4 Q And what was required under Nevada law is you
5 didn't need any anesthesiologist, correct?

6 A That's correct.

7 Q What you needed was a -- for lack of a better
8 word, an attending physician who would be responsible during
9 the procedure, correct?

10 A That's correct.

11 Q And that -- and that could be a dentist, doctor,
12 whoever was conducting the procedure, correct?

13 A I know about the doctor. I don't know about the
14 dentist, though.

15 Q Okay. But as far as the doctor goes, the -- a
16 CRNA practices and during the procedure the person responsible
17 for supervision of the procedure and the CRNA, if any issue
18 should arise, is that attending physician, correct?

19 A That's right.

20 Q So as far as -- at any given time when the
21 question should arise who's responsible for supervising CRNAs,
22 you actually have two levels we're talking about. One would
23 be who is responsible for supervising a CRNA when he is
24 practicing his -- a given anesthesia procedure, and the answer
25 to that would be the attending physician who was there

1 responsible, correct?

2 A That's right.

3 Q And then as far as in the practice, who is the
4 boss of CRNAs is a different issue, correct?

5 A That's correct.

6 Q Okay. And so the -- like, you would have been
7 the supervising physician for a given CRNA on every procedure
8 you performed all throughout the periods CRNAs were used?

9 A That's right.

10 Q And as far as who the boss was that hires,
11 fires, disciplines CRNAs, that was not you?

12 A No.

13 Q Correct? I didn't -- did you answer?

14 A I said, no, it was not me.

15 Q Okay. Sorry, I didn't hear you, and I didn't
16 know if you just shook your head because we need to pick it
17 up.

18 THE COURT: Yeah, for the record, everything is
19 recorded so you can't make, you know, gestures; it has to be
20 words.

21 BY MR. WRIGHT:

22 Q The -- and in the practice Dr. Desai was the
23 managing partner, for lack of a better word, correct?

24 A That's right.

25 Q Okay. And he was the one who built this

1 practice from the beginning up until what it became until it
2 collapsed, correct?

3 A That's correct.

4 Q And that -- you understood that was why he kept
5 a higher share, a double share to yours at -- like, in the
6 medical practice, because he was the founder and built it and
7 was proud of it, correct?

8 A I understand -- I accepted it, but didn't
9 understand it.

10 Q Okay. You didn't understand it?

11 A No.

12 Q Okay. Did you ask?

13 A No, I did not because I accepted the way things
14 were. The status quo.

15 Q Okay. And the -- I mean, you were satisfied
16 with the status quo, correct?

17 A I was very satisfied with the status quo.

18 Q Okay. It was a good, well-run practice, and the
19 partners were well-compensated for it?

20 A That's correct.

21 Q And you were proud of the practice?

22 A I was.

23 Q You were on the -- what was the board you were
24 on? I get all these boards mixed up, right at the end.

25 A I was on State Board of Health.

1 Q Okay. And that's an appointed position by the
2 governor?

3 A That's correct.

4 Q Okay. And you -- and that's responsible for
5 various agencies, correct?

6 A That's correct.

7 Q And when all of this happened and CDC -- or
8 Southern Nevada Health District came knocking at the door and
9 there was a hepatitis C outbreak, you voluntarily resigned
10 your position, correct?

11 A I did because I didn't feel the moral authority
12 to be on that board at that time.

13 Q Okay. And you didn't want it to be perceived in
14 any way that you were utilizing your influence in some way in
15 the investigation, correct?

16 A That's right.

17 Q And the -- the hiring/firing of CRNAs -- all
18 employees, what -- who was administratively, managerially,
19 running the practice while the doctors were practicing?

20 A It was Ms. Tonya Rushing under the direction of
21 Dr. Desai.

22 Q Okay. He -- Dr. Desai was above Tonya Rushing,
23 correct?

24 A That's right.

25 Q Okay. And Tonya Rushing was chief operating

1 officer --

2 A That's correct.

3 Q -- is that correct? And she was the main
4 business manager; is that a fair description of the practice?

5 A That's how I understood it, yes.

6 Q Okay. And so like when you were at Burnham 2002
7 up until you moved over to Rainbow, okay, you were the
8 nonoperations manager?

9 A I was the operations manager.

10 Q I'm sorry. I get these mixed up in here. You
11 were the operations manager at Burnham, correct?

12 A Yes, sir.

13 Q Okay. But the day-to-day running of it, if a
14 nurse called in sick or didn't show up, I mean, who -- who
15 would do something? Tonya Rushing?

16 A That's correct.

17 Q Okay. And you were the operations manager at
18 Burnham because you were the highest-ranking person there?

19 A I was the senior-most person there, yes.

20 Q Okay. So if someone -- and at the Burnham
21 Center there were like -- or the Burnham Surgery Center, and
22 the medical officers were there also?

23 A That's right.

24 Q So like how many employees there, like, in 2007?

25 A I wouldn't be able to guess. I don't remember.

1 Q Okay. Well, two?

2 A At least 10.

3 Q Okay. About 10 employees. And so the actual
4 operating of it and the staff and schedules and people coming
5 and going, disciplined, or anything, that's handled by Tonya
6 Rushing?

7 A That's right.

8 Q Okay. And under Tonya, other levels of
9 supervision; is that correct?

10 A That's how I understood it to be.

11 Q Okay. I mean, you -- who is Jeff Krueger?

12 A Jeff Krueger is a nurse who managed the
13 endoscopy center on Shadow Lane --

14 Q Okay.

15 A -- primarily.

16 Q Okay. Did he have anything to do with Burnham?

17 A So I have to track back a little. By the time
18 Jeff Krueger joined our practice, that Burnham Center had
19 another iteration which, was Desert Shadow Endoscopy Center,
20 and I was not there at all at that time.

21 Q Okay. And Katie Maley?

22 A She again -- the only place where I saw her was
23 at the Shadow Lane Center.

24 Q Okay.

25 A I did see her for a short while in the Burnham

1 Center, but then she left our practice --

2 Q Okay.

3 A -- and then came back to join.

4 Q Who was the administrative boss at Burnham?

5 A Tonya Rushing and Dr. Desai.

6 Q Okay. Dr. Desai would be there daily?

7 A He wasn't there daily.

8 Q Okay. Who was there daily?

9 A Nurse-wise it was a nurse called Jan, and I
10 forget her last name now.

11 Q Okay.

12 A Flominski [phonetic] or something.

13 Q Okay. Well, was there anyone other than you --
14 was Tonya Rushing there every day?

15 A Not every day.

16 Q Okay. And so Tonya Rushing wasn't there and Dr.
17 Desai wasn't there, you were there, were -- and you're
18 consulting, you have your medical practice and you're doing
19 procedures, right?

20 A That's right.

21 Q Okay. Well, then was there some office manager
22 there?

23 A Not on the premises. Tonya Rushing did the
24 office management. And even when I was there, I was there
25 only half a day but five days a week because 60-70 percent of

1 my time was spent in the hospitals. There were other
2 physicians who came there and did procedures, who were Dr.
3 Herrero, Dr. Mason, Dr. De Fonseka, and Dr. Sood.

4 Q Okay. Now, when you became -- okay, you were
5 operations manager at Burnham, and then you became a
6 co-manager, correct?

7 A Co-manager of the gastroenterology center, which
8 is the clinic and not the procedure place.

9 Q Okay. Now -- and so when you became co-manager
10 of the center, that -- that was after a partnership meeting,
11 correct?

12 A Co-manager of the gastro center, yes.

13 Q Okay. And there was a partnership meeting,
14 wasn't that in 2006, in which there was a -- all the partners
15 had a meeting and determined a plan of ascension? A plan of
16 who was going to take over when Dr. Desai retired, if he
17 retired; do you recall that?

18 A He -- I do recall that I was told that I would
19 be the assistant practice manager and I would serve at the
20 pleasure of Dr. Desai for a period of two years, and he had
21 the right to remove or appoint another person after that
22 period at any time.

23 Q Okay. Was -- is this the same -- are you
24 talking about the same meeting, the partnership meeting?

25 A I don't recall the exact details, but that is

1 what the assistant practice manager meant.

2 Q Okay. I was asking about the co-manager.

3 Not --

4 A Which is the same thing, I think.

5 Q -- okay. Was there a -- do you recall yourself
6 and Dr. Carrol and you were asked to leave the room and then
7 all of the other partners voted as to who would be the man to
8 replace Dr. Desai and then he was the co-manager. Do you have
9 any recollection what I'm talking about?

10 A Nobody could replace Dr. Desai.

11 Q Pardon?

12 A I said, Dr. Desai, nobody could replace.

13 Q Okay. I --

14 A But he had a plan as to how the practice may be
15 changed if he were to resign or leave; that too at his own
16 will.

17 Q Okay. Yeah, if he were to resign or leave and
18 they -- do you -- what I'm asking you is, do you -- do you
19 recall the partnership meeting where that was discussed and
20 then the partners voted upon it?

21 A I don't recall the details.

22 Q Okay. But do you recall such a meeting
23 occurred?

24 A Yes, I do.

25 Q Okay. And do you recall that you and Dr. Carrol

1 left the room and the others voted and you won?

2 A I recall that, sir.

3 Q Okay. And that's the time when you became
4 co-manager, correct?

5 A That's right.

6 Q And that's the time when you thereafter got
7 additional compensation, correct?

8 A That's right.

9 Q And you got, what, 2,000 for gastro --

10 A Yes.

11 Q -- correct? Per month. Did you get 2,000 for
12 endo?

13 A That 2,000 for the endo was going to be taken
14 away because Dr. Mason had been now planned upon to be the
15 operations manager for Desert Shadow because I was not going
16 to be there.

17 Q Okay. So from -- from that point on -- and do
18 you recall that was about 2006?

19 A 2006-2007, yes.

20 Q Okay. And so you were then co-manager, correct?

21 A That's right.

22 Q And really, your -- what you -- what you did the
23 day before that meeting and what you did after that meeting
24 didn't change that much, correct?

25 A Yes, sir.

1 Q Okay. You were transitioning over to -- to be
2 the responsible person for the new Rainbow Clinic?

3 A That's right.

4 Q And that's where Dr. Yee was going to come and
5 practice and bring pain management; is that correct?

6 A Dr. Satish Sharma.

7 Q I'm sorry. I get them mixed up. Dr. Satish
8 Sharma was going to be there as far as the pain management,
9 and he's an anesthesiologist, correct?

10 A That's correct.

11 Q Okay. When you explained those CRN -- CRNA
12 supervision agreements here today -- okay? When you explained
13 those, I understood you to be saying that aside from the 2002
14 where it was contemplated there needed to be such agreement
15 and then it evolved that it was not put into place, correct;
16 am I right?

17 A That's right.

18 Q Okay. You need to answer audibly.

19 A Okay. That's right.

20 Q Okay. And so that agreement didn't take place
21 because the CRNAs were being supervised by the attending
22 physicians, correct?

23 A You can say it like that, yes.

24 Q Okay. And then I believe you explained that you
25 understood that the agreements were also, in the event of an

1 issue or dispute, if one arose between the attending physician
2 and the CRNA; am I right?

3 A That's right.

4 Q Okay. So were you -- you viewed the agreements
5 as that you would participate as a mediator?

6 A That's right.

7 Q Okay. And as a mediator in the event a certain
8 issue arose, correct?

9 A That's correct.

10 Q Okay. And the issue we're talking about arising
11 would be if in a given procedure the attending physician doing
12 the colonoscopy had an issue with any CRNA working on that
13 procedure, then who would resolve the dispute, right?

14 A That's right.

15 Q Okay. And CRNAs were sort of independent in the
16 practice, correct?

17 A And that's correct.

18 Q Okay. And by sort of, I'm meaning, they were
19 employed by Gastro Center, right?

20 A That's correct.

21 Q But they -- they were above the nurses, right?

22 A I wouldn't be able to say that.

23 Q Well, they have more -- I mean, no nurse was in
24 a position to supervise a CRNA?

25 A That's correct.

1 Q Because they have -- CRNA has more training than
2 the nurses and the charge nurses, correct?

3 A That's correct.

4 Q Okay.

5 A But not above the nurses. They were just
6 different.

7 Q Okay. Fair enough. The -- and I can't remember
8 on the chart where they were floating there, but the -- if
9 -- your understanding of this arrangement on what you would be
10 doing with CRNAs was that, in the event of any dispute you
11 would act as a mediator, and you would act as the mediator
12 independently with an anesthesiologist; is that correct?

13 A That's correct.

14 Q Okay. And you understood that for the entire
15 time CRNAs were being utilized; is that right?

16 A That's right.

17 Q And was there ever any dispute that you were
18 aware of that you were called upon to mediate?

19 A No.

20 Q Okay. So that -- those agreements were not
21 implemented and were not utilized or needed; is that correct?

22 A Not utilized, yes, sir.

23 Q Now, the -- you received payments, you
24 indicated, out of the CRNA account, correct?

25 A That's right.

1 Q Bonuses.

2 A That's right.

3 Q Is that what you understood?

4 A Yes.

5 Q Okay. And the bonuses would come from Dr.

6 Desai?

7 A Dr. Desai would give the bonuses.

8 Q Okay. And the -- you understood the CRNA
9 account to be the account from which the anesthesia --
10 anesthesia services payments went into; is that correct?

11 A That's correct.

12 Q And you -- you have, like, three sources of
13 funds. You have the facilities fees, correct?

14 A That's correct.

15 Q You have the professional fees?

16 A That's correct.

17 Q And then you have the anesthesia fees, correct?

18 A That's right.

19 Q And it's your -- your understanding that for the
20 CRNA, that component went into a CRNA account, correct?

21 A That's right.

22 Q And you understood that you and others got
23 bonuses out of that, correct?

24 A That's correct.

25 Q And you understood that the balance of it went

1 into Gastro Center to be equally -- or proportionally
2 distributed among the partner physicians --

3 A That's right.

4 Q -- is that correct?

5 A That's correct.

6 Q So that aside from the bonuses out of CRNA fund
7 those funds go to gastro center, and then would be distributed
8 like, two-elevenths to Dr. Desai, one-eleventh to Dr. Sharma;
9 is that --

10 A That's correct.

11 Q -- a fair characterization?

12 A That's -- that is.

13 Q Now, I presume there were -- looking at all --
14 looking at all of these agreements that you've looked at, the
15 operating agreement and other documentation, were there
16 lawyers engaged by the clinics or Dr. Desai to your knowledge?

17 A Yes.

18 Q Okay. And who were the lawyers that were
19 around?

20 A Predominantly Mr. Allen C. Sklar.

21 Q Okay. That's S-K-L-A-R?

22 A That's right.

23 Q Okay. And do you know Alan Sklar?

24 A I do know him.

25 Q Okay. And would -- would you ever go and

1 participate in meetings when something was being redrafted,
2 redone, or reconstituted?

3 A Yes, sir.

4 Q And was Dr. Desai -- would you say that he was
5 meticulous about getting legal advice, like from Attorney
6 Sklar, regarding the organization and the business and making
7 sure it was done right?

8 A He was fairly compulsive about it.

9 Q He was?

10 A He was fairly compulsive about it.

11 Q Okay. Compulsive. I'm sorry. I didn't -- and
12 on those -- now, was he compulsive because it was his
13 business, he -- I mean, in your opinion, he had built it up
14 and he wanted to be careful about it?

15 A I could say that, yes.

16 Q You indicated Dr. Desai was frugal, correct?
17 Did you say he was frugal?

18 A I did.

19 Q Okay. And the -- I think you dressed up stingy,
20 correct? Do you know what I mean?

21 A Yes.

22 Q Okay. I mean, when you were introduced
23 previously you said he was stingy, and I guess frugal is a
24 better -- more polite way of putting it, correct?

25 A Is that a question to me? Yes.

1 Q Okay. And what -- he was -- he was peculiar
2 about his not liking waste, correct?

3 A Yes.

4 Q Okay. And he didn't like people -- he didn't
5 like employees sitting around; is that fair?

6 A That's right.

7 Q And yet, he was also generous, correct?

8 A Yes.

9 Q And I -- I think you pointed out when you were
10 interviewed by the police, on the one hand he was cost
11 conscious and did not like waste, and on the other hand he
12 would, like, give \$10,000 to an employee for a funeral,
13 correct?

14 A That's what I had heard.

15 Q Pardon?

16 A I said that's what I had heard.

17 Q Okay. Well -- and did you ever see him -- in
18 his cost cutting or his abhorrence to waste, did you ever see
19 him do anything that you believed were putting patients at
20 risk? Or causing a risk of harm to people?

21 A No.

22 Q You all -- by "you all," I'm talking about the
23 other physicians now that were partners with Dr. Desai. You
24 all didn't complain about his micromanaging and being aware of
25 costs, correct?

1 A At least I did not complain about it.

2 Q Okay. You did not?

3 A No.

4 Q Okay. Are you aware of others that, like,
5 complained?

6 A Not that I know of.

7 Q Okay. Because it's -- he's micromanaging, he's
8 saying don't waste this, don't use that much tape, don't
9 overuse gowns or whatever, and that was just the way he was;
10 is that correct?

11 A Yes.

12 Q And to the extent it -- to the extent it can be
13 characterized as a focus on profit maximization, okay, if
14 that's the way you want to look at it, then that maximized
15 profit that flowed to each and every one of you, correct?

16 A Yes.

17 Q And were -- and were there any partners that
18 complained about that?

19 A Not that I know of.

20 Q I want to ask you about anesthesia during the
21 CRNA propofol period, okay? When you are performing a
22 colonoscopy and you come in, CRNA is in the room -- let's just
23 use a Wednesday afternoon at Shadow Lane, okay? You need to
24 answer out loud.

25 A Yes.

1 Q Okay. The -- at Wednesday afternoon you come
2 in, you would -- there would be a CRNA there, correct?

3 A Yes.

4 Q Okay. And the CRNA, you come into the procedure
5 room, you look at the charts, I -- we call them patient charts
6 -- you would look at a folder there, and most the time that
7 patient has already been seen at the clinic and there's a
8 history and physical in there, correct?

9 A That's correct.

10 Q Okay. And then you look, talk to the patient,
11 make sure what's happening; CRNA induces anesthesia, correct?

12 A That's right.

13 Q And the -- Mr. Staudaher asked you about the
14 patient moving around while under anesthesia, okay? The --
15 tell me about that, what happens in a normal procedure?

16 A In a normal procedure, when I -- after I finish
17 interviewing a patient, the patient is given the anesthesia or
18 deep sedation, both CRNA and I make sure that patient is
19 sedated enough for us to proceed with the procedure because
20 otherwise it would be very unpleasant for the patient, and
21 then we do the procedure.

22 Now, if during -- in the middle of the procedure, as
23 he had asked me, if the patient starts to move around, unless
24 there were some extenuating circumstances that would prevent
25 me from giving them more sedation, I would request the CRNA or

1 the anesthesiologist -- or the anesthesiologist or the CRNA
2 would give more sedation himself.

3 Q Okay. So when --

4 A So it would not even require any instigation
5 from my part.

6 Q -- okay. And what does the moving around mean?
7 Does that mean the patient's waking up?

8 A That's a difficult question to answer, but yes,
9 it does mean that the patient is waking up and maybe
10 experiencing some pain.

11 Q Okay. And so the -- the patient -- I mean,
12 you're doing the -- you're doing a colonoscopy and the patient
13 starts moving around, I mean, does that mean the patient
14 starts to get up or what? I haven't participated in any
15 colonoscopy or witnessed one.

16 A Yeah, that's -- that would be the first sign
17 that the patient is getting up and they are likely to
18 experience the discomfort soon.

19 Q Okay. So like all of a sudden the patient is
20 sitting up?

21 A If that happens that would be a draconian thing
22 to happen, yes.

23 Q Okay. Well, I mean, what is their movement? I
24 mean, does it start moving a -- I --

25 A These patients --

1 Q -- I just don't understand, all of a sudden a
2 patient starts jumping around, they're going to get up or
3 what?

4 A Let me explain this to you. Moving around in
5 that context meant that the patient was either writhing with
6 pain or grimacing or moving their hands around, reaching out
7 for things, some nonpurposeful movements, which to a physician
8 or a nurse or somebody who is trained in the healthcare
9 business would mean that they are experiencing discomfort.

10 Q Okay. But is there movement that takes place
11 that is not grimacing? Or do you just lay there like a lump?

12 A 90 percent of the time you lay there quietly,
13 like a lump.

14 Q Okay.

15 THE COURT: That's if everything is working
16 correctly. I mean, that --

17 THE WITNESS: That is if everything is working --

18 THE COURT: -- meaning, the sedative and the --

19 THE WITNESS: -- the sedative --

20 THE COURT: -- anesthesia --

21 THE WITNESS: -- is working.

22 THE COURT: -- is working correctly.

23 BY MR. WRIGHT:

24 Q Okay. Now, those CRNA supervision agreements
25 that you saw this morning, okay? Do you recall when you were

1 first confronted with them by law enforcement?

2 A I was not confronted with them by law
3 enforcement. I had received a copy of those after 2008 when
4 it happened to our practice that -- and I was told that you
5 may have to face the brunt of the signatures that you put on
6 this paper because I had signed as the supervising physician
7 for the CRNAs.

8 Q Okay. Who told you you may have to face the
9 brunt of this because of that signature?

10 A I do not recall that. There were so many things
11 happening at that time, but I also felt myself that I had
12 signed onto something which may be difficult.

13 MR. STAUDAHER: Your Honor, just a -- can we approach
14 for one moment on this?

15 THE COURT: Sure.

16 (Off-record bench conference.)

17 THE COURT: Just so you know, Doctor, any questions
18 where, maybe something you told your lawyer or your lawyer
19 advised you, you don't have to get into that; that would be a
20 privileged communication. Discussions you had with, you know,
21 law enforcement or something like that, Mr. Wright can
22 certainly ask you about.

23 MR. WRIGHT: Okay.

24 (Pause in proceedings.)

25 THE COURT: Do you need --

1 MR. WRIGHT: Let me mark that.

2 BY MR. WRIGHT:

3 Q I'll show you what's been marked as Proposed
4 Desai F1. Take a moment, read that to yourself. Tell me if
5 you recognize that.

6 A (Witness complied.)

7 Q Do you recognize that?

8 A Yes, I do.

9 Q Does that appear to be the proffer letter for
10 your interview with Detective Whitely?

11 A That is right.

12 Q And do you --

13 MR. WRIGHT: Move the admission of F1.

14 THE COURT: Any objection?

15 MR. STAUDAHER: Well, we've -- the Court was going to
16 reserve on that issue whether --

17 THE COURT: Okay.

18 MR. STAUDAHER: -- it's the same.

19 THE COURT: The last one --

20 MR. STAUDAHER: Yes.

21 THE COURT: -- right. I'll see counsel over there.

22 MR. WRIGHT: I was going to --

23 THE COURT: No, I'll see counsel up here.

24 MR. WRIGHT: -- use it --

25 THE COURT: I understand.

1 (Off-record bench conference.)

2 THE COURT: F1 is admitted. You may publish.

3 (Defendant's Exhibit F1 admitted.)

4 MR. WRIGHT: Thank you.

5 BY MR. WRIGHT:

6 Q Mr. Gentile is your attorney, correct, sir?

7 A That's right.

8 Q And this is a letter to Mr. Gentile from the
9 district attorney regarding you wanting to make a proffer to
10 the State, correct?

11 A That's right.

12 Q Okay. And you understand they're -- that your
13 obligation is you will be truthful and complete, correct?

14 A That's right.

15 Q And you understand that in exchange they will --
16 let me get down there -- I'm looking at the third paragraph --
17 in exchange the State will not use any statement made by you,
18 that's meaning Mr. Gentile, or your client, that's you, Dr.
19 Sharma, or other information provided by you or your client
20 during the proffer against your client in any criminal case.
21 You understood that, correct?

22 A Yes, sir.

23 Q So I -- when I had asked you about did you get
24 immunity for your statement, did you understand that you were
25 immunized because it can't be used against you?

1 MR. STAUDAHER: Actually, Your Honor, that's
2 incorrect. He was not granted immunity in this particular
3 case.

4 THE COURT: Well, there's immunity from prosecution,
5 and then there's immunity for the use of your statement.

6 MR. STAUDAHER: Yes, but as the State -- as the
7 Court's aware, State immunity grants are different than
8 Federal immunity grants.

9 THE COURT: Right.

10 MR. WRIGHT: Objection.

11 THE COURT: Okay.

12 MR. WRIGHT: Objection.

13 THE COURT: Well, he --

14 MR. WRIGHT: Can we approach?

15 THE COURT: -- can -- okay.

16 (Off-record bench conference.)

17 THE COURT: Mr. Wright, just reask your question.
18 State your question.

19 BY MR. WRIGHT:

20 Q You understood that your words couldn't be used
21 against you, correct?

22 A That's right.

23 Q Okay. So that's -- in lawyer's terms, we call
24 that use of --

25 THE COURT: Well, Mr. Wright --

1 MR. WRIGHT: -- we do --

2 THE COURT: -- you don't need to, you know,
3 editorialize --

4 BY MR. WRIGHT:

5 Q Do you under --

6 THE COURT: -- or -- I would say the same thing to,
7 you know, you don't need to make comments or --

8 MR. WRIGHT: Okay.

9 BY MR. WRIGHT:

10 Q Do you --

11 THE COURT: -- explain your questions.

12 BY MR. WRIGHT:

13 Q Do you understand that that means you received
14 use immunity?

15 MR. STAUDAHER: Objection, Your Honor. The -- from
16 the --

17 THE COURT: Well --

18 MR. STAUDAHER: -- same issue.

19 THE COURT: You don't --

20 MR. STAUDAHER: It's an incorrect --

21 THE COURT: -- do you under --

22 MR. STAUDAHER: -- statement of the law in Nevada.

23 THE COURT: I think just to what his understanding
24 was --

25 MR. WRIGHT: I -- I --

1 THE COURT: -- and then --

2 MR. WRIGHT: -- it is a correct statement of the law,
3 Your Honor.

4 THE COURT: That's my understanding. Did you
5 understand that your statements could be used against you in
6 any prosecution that could come up in the future?

7 THE WITNESS: Did I understand that?

8 THE COURT: Or could not, I guess would be the --

9 MR. WRIGHT: Right.

10 THE WITNESS: I did not fully understand this, but my
11 understanding, as was explained to me by my attorney, was that
12 I was only going to cooperate with the DA and that's all.

13 THE COURT: All right. Go on, Mr. Wright.

14 BY MR. WRIGHT:

15 Q Okay. And if --

16 A And that's why I was so emphatic about saying no
17 immunity because that wasn't done.

18 Q Okay.

19 THE COURT: I'm sorry. You were emphatic?

20 THE WITNESS: When he asked me about proffer and
21 immunity and I said proffer yes, but no immunity.

22 BY MR. WRIGHT:

23 Q Okay. So you were just going to cooperate with
24 the DA and be a witness rather than a defendant, correct?

25 A I did not know that I was going to be a

1 defendant at any time.

2 Q Okay. And you don't believe you will be because
3 you're a cooperating witness, correct?

4 A I think the letter stated that if there was
5 anything that came up against me, I could still be the
6 defendant.

7 Q Okay. I missed that part.

8 A Then I must have misunderstood this.

9 Q Who are you presently practicing with?

10 A I'm presently practicing with Dr. Carrera, Dr.
11 Carrol.

12 Q Okay. Dr. Carrol and Dr. Carrera. And the --
13 when did you start your practice with them after the collapse
14 of gastro?

15 A Initially it was in late 2008. It was Dr.
16 Faris, Dr. Carrol, and I; and then Dr. Faris, because of
17 geographic limitations moved away, and Dr. Carrera joined only
18 about a year ago.

19 Q Okay. Were you sued in any of the civil
20 litigation?

21 A Yes, sir.

22 Q Are -- are your cases completed?

23 A That's my understanding, yes.

24 Q Okay. And did you pay money?

25 A My malpractice carrier did pay some money, yes.

1 Q Okay. Did you pay any money?

2 A With my civil lawsuits, no, sir.

3 Q Okay. So you -- you -- you had no judgments,
4 didn't have to pay anything arising from the civil litigation
5 arising from the hepatitis outbreak and the collapse of the
6 business, correct?

7 A I did have to pay something, but not related to
8 litigation whatsoever, and that was the lease -- breach of
9 lease contracts which I paid from my own money, and also some
10 equipment rental that we were not able to fulfill the
11 obligations for.

12 Q Okay.

13 THE COURT: Were you sued by your landlord, or was
14 that just you agreed to do that?

15 THE WITNESS: We were sued by our landlord.

16 THE COURT: Okay.

17 BY MR. WRIGHT:

18 Q Okay.

19 THE COURT: And then in the civil lawsuits your
20 malpractice carrier settled those claims; is that what
21 happened?

22 THE WITNESS: Yes, they did. Yes.

23 THE COURT: Okay. And did you have to approve those
24 settlements?

25 THE WITNESS: No, I have not been given an

1 opportunity to approve those because -- and again, I --

2 THE COURT: Well, did -- you don't have to get into
3 it, but no?

4 THE WITNESS: No.

5 BY MR. WRIGHT:

6 Q Okay.

7 A Except for one.

8 Q Okay. So out of the civil litigation involving
9 the hepatitis outbreak, you didn't pay anything, correct?

10 A No, I did not.

11 Q Okay. And you didn't have to declare bankruptcy
12 or anything else?

13 A No, sir.

14 Q Okay. How about -- never mind.

15 Now, before I got around to this exhibit, the
16 letter, your proffer letter, I was asking you if the -- I
17 think I was asking you about the CRNA agreements and if the
18 police had asked you about your responsibility for the CRNAs
19 because of those agreements --

20 A Yes, they did --

21 Q -- do you recall?

22 A -- ask me.

23 Q Okay.

24 A But that was not the first time I saw that.

25 Q Okay. You had previously seen it?

1 A Yes.

2 Q Okay. And did you know it was Dr. Carrol who
3 sent it to the district attorney saying you were responsible?

4 A I did not know until, I think I saw a letter by
5 Dr. Carrol's attorney saying that Dr. Sharma and other -- who
6 have signed on this are the people who are responsible for
7 CRNAs.

8 Q Okay. And had -- had you -- had you seen that
9 letter from Dr. Carrol's lawyer saying you were responsible
10 for CRNAs prior to your interview with the -- Detective
11 Whitely?

12 A I don't recall that exactly.

13 Q Okay. And that letter -- the letter was shown
14 to you, correct; during the interview by the police
15 department?

16 A Maybe that's when I saw it for the first time.

17 Q Okay. And do you recall that the police --
18 Detective Whitely, I call him the police -- well, he's not
19 here. You know Detective Whitely?

20 A Yes, sir.

21 Q He interviewed you, correct?

22 A That's right.

23 Q Okay. And do you recall that he -- he told you
24 that -- Detective Whitely told -- read to you the letter
25 saying, enclosed are documents which I believe clearly lay

1 responsibility for the supervision of the CRNAs on Dr. Dipak
2 Desai, Vishvinder --

3 MR. STAUDAHER: Is that -- is that an admitted
4 exhibit that we're -- we're reading from? I --

5 THE COURT: Which one is it?

6 MR. STAUDAHER: I don't know which one it is right
7 now.

8 MR. WRIGHT: It's June 9th, I'll -- I'll offer.

9 THE COURT: Okay.

10 MR. WRIGHT: Mark that.

11 THE COURT: Any objection to that letter? That was
12 -- I mean, whether the exhibit is admitted or not, it goes to
13 if he was told that, whether it came from a letter or didn't
14 come from a letter. Mr. Wright can ask him, you know, what he
15 was told prior to his interview, so...

16 So in your interview did the detective read or
17 appear to read from a letter?

18 THE WITNESS: I think he did.

19 THE COURT: Okay.

20 BY MR. WRIGHT:

21 Q Okay. Is this the letter?

22 A Yes, this is the letter.

23 Q And you understood that Dr. Carrol's lawyer was
24 putting the responsibility on you, correct?

25 A That's right.

1 Q And the Detectives asked you -- Detective
2 Whitely asked you if you agreed with Dr. Carroll's position,
3 correct?

4 A That's right.

5 Q And do you recall what you answered?

6 A I recall somewhat that I told them that I had no
7 supervisory position in the endoscopy centers, and Dr. Carrol
8 should know because I was almost never there.

9 Q Do you recall stating, well, I don't agree with
10 that because Dr. Carrol knew that I had no supervisor
11 responsibilities at that time, but I think he did that just to
12 protect himself so that he would not be blamed for the -- for
13 CRNA -- for -- for CRNA had done anything wrong; do you recall
14 that?

15 A I think now I do, sir.

16 Q Okay. And so you told them that you were,
17 number one, being unfairly accused, correct?

18 A Yes.

19 Q And that Dr. Carrol was doing it to protect
20 himself at your expense, correct?

21 A That's right.

22 Q And that was true, correct?

23 A I didn't hear that.

24 Q That was true?

25 A That is true, yes.

1 Q Now, you were at the Shadow Lane Center --
2 Surgery Center on that Wednesday afternoon in early January
3 when the investigation by Southern Nevada Health District and
4 CDC commenced; is that correct?

5 A That's right.

6 Q Okay. And that just happened to be the
7 afternoon that you're assigned there is when it began; is that
8 fair?

9 A That's right.

10 Q And Tonya Rushing called you to come up and
11 talk; is that correct?

12 A That's right.

13 Q And you understood you were talking to Brian
14 Labus?

15 A I think so, sir.

16 Q Okay. And you understood -- they told you there
17 was going to be an investigation, and there's a hepatitis
18 possibly cluster out of your center --

19 A That's right.

20 Q -- is that correct? And you understood that
21 they were coming over; is that correct?

22 A That's right.

23 Q And you understood that, in fact, they did come
24 over and had a several-hour meeting that Wednesday afternoon;
25 is that correct?

1 A I think so, yes.

2 Q Okay. You did not participate any further; is
3 that correct?

4 A That's right.

5 Q Okay. Did you understand that Dr. Carrol did?

6 A Yes, I do.

7 Q Now, when you learned that there was going to be
8 an investigation as to hepatitis C and whether it had been
9 transmitted, originated out of your clinic, were you
10 surprised?

11 A I was shocked.

12 Q Okay. And you were shocked why?

13 A Because that's not the kind of thing that I had
14 thought that, first of all, happens that frequently in
15 endoscopy centers, and -- but the kind of a center that we had
16 which had been inspected by many organizations, that that
17 would happen.

18 Q Okay. And up until that time, had you ever
19 heard of any reports at all about an outbreak like this at an
20 endoscopy center --

21 A No.

22 Q -- at any time anywhere?

23 A No, I had not heard.

24 Q Okay. After January 2008, did you learn through
25 investigation that there had been previous incidents at other

1 places in the United States?

2 A Yes, I did.

3 Q Okay. Did you -- but you had no knowledge of
4 any of those previously?

5 A No, sir.

6 Q Now, did you participate thereafter -- after CDC
7 is there -- and Southern Nevada Health District and Bureau of
8 Licensing and Control and their investigations ongoing, did
9 you participate in meetings with the other partners or Dr.
10 Carrol or Dr. Desai --

11 A I did, sir.

12 Q -- regarding what you all were going to do?

13 A Yes, I did.

14 Q And did you participate in meetings with R&R
15 Partners?

16 A Yes, I did, sir.

17 Q And who did you understand that to be?

18 A R&R Partners is a public-relations firm.

19 Q Okay. And were there discussions about how you
20 all, the business, were going to respond to this, and how you
21 were going to protect the patients?

22 A Yes, there were.

23 Q And were there discussions about how you all
24 were going to pay for the testing?

25 A Yes, sir, there were.

1 Q And for the treatment of the patients?

2 A Yes, there were some discussions about that.

3 Q Before this happened, the investigation
4 commenced January 2008, did you have any knowledge,
5 understanding, belief regarding propofol and its single use or
6 multiple use among patients?

7 A No.

8 Q Okay. You had no knowledge that using a
9 propofol vial between more than one patient was not allowed;
10 is that correct?

11 A That's correct.

12 Q When this investigation was ongoing, were you
13 and your colleagues and Dr. Carrol also attempting to
14 determine what had occurred?

15 A I was not, but Dr. Carrol was making some
16 attempts to find out what had occurred.

17 Q Okay. And did you discuss this with your
18 colleagues?

19 A I personally did not.

20 Q Okay. Did you discuss it with any other
21 colleagues not in your practice?

22 A No, not --

23 Q You discussed it with Dr. Carrol?

24 A Not discussed it in any kind of a detail, but we
25 talked about it a few times.

1 Q Okay. Did -- were you of the opinion that this
2 propofol and the method of administration was the likely cause
3 of this outbreak?

4 A It seemed highly unlikely to me.

5 Q Okay. And that was based upon what?

6 A Based upon the preliminary or fragmented
7 information that I had as to how the patients were infected,
8 how many patients were in between different patients. So it
9 seemed less likely to me, though I had not done a detailed
10 study of that.

11 Q Okay.

12 MR. WRIGHT: Court's indulgence for a moment.

13 THE COURT: That's fine.

14 MR. WRIGHT: I think I've about completed. Oh.

15 BY MR. WRIGHT:

16 Q The CRNAs, part of -- part -- well, I'll ask it
17 this way: Was part of your belief that the use of propofol
18 and the injection practices was not the likely culprit, was
19 part of that opinion based upon your knowledge and opinion of
20 the CRNAs themselves?

21 A Yes.

22 Q Okay. And you worked with and knew the majority
23 of them, correct?

24 A I worked with a few of them, yes.

25 Q Okay. The few that you worked with, what was

1 your opinion of them?

2 A My opinion of them was that they were very
3 experienced people who had had -- done a lot of work and they
4 were people who did good-quality work.

5 Q Okay. You recall stating that they were very
6 well-trained; they were very experienced; they had worked for
7 the military; some of them were Vietnam veterans; they were
8 not the type of people who would succumb to any pressure that
9 may have been landed upon them; they were proud people; and
10 they were people who took pride in what they did? Is that
11 fair?

12 A That's right.

13 MR. WRIGHT: Thank you. I'm completely through with
14 him.

15 THE COURT: May I see counsel at the bench, please.

16 (Off-record bench conference.)

17 THE COURT: I'm sorry. Come back, Ms. Weckerly.

18 MR. WRIGHT: What? Where?

19 MS. WECKERLY: Oh, sorry.

20 (Off-record bench conference.)

21 THE COURT: All right. Ladies and gentlemen, we're
22 going to go ahead and take our lunch break. We'll be in
23 recess for the lunch break until 1:35.

24 During the lunch break you are reminded that you are
25 not to discuss this case or anything relating to the case with

1 each other or with anyone else. Do not read, watch, listen to
2 any reports of or commentaries on the case, person, or subject
3 matter relating to the case, and you are not to form or
4 express an opinion on the trial.

5 Please place your notepads in your chairs. If any
6 of you do have any questions for the witness that are ready,
7 you can just hand them to the bailiff as you exit the
8 courtroom.

9 THE MARSHAL: Ladies and gentlemen, please rise for
10 the jury.

11 (Jury recessed at 12:32 p.m.)

12 THE COURT: And, Doctor, please don't discuss your
13 testimony with any other witnesses during the lunch -- well,
14 really anyone, during the lunch break.

15 (Outside the presence of the jury.)

16 THE COURT: Just to let you know while I remember,
17 Mack -- Juror Mack Brown [phonetic] asked the bailiff again
18 about being excused. I counted his days, and I think his
19 regular days off were Monday and Tuesday. So he filled out
20 the questionnaire on April 4th first, which was a Monday, so
21 he didn't miss work then. April 22nd and 23rd he came back
22 for the voir dire -- individualized voir dire; that was a
23 Monday and Tuesday. So he's only missed six days of work so
24 far, by my count, with the first two weeks of actual testimony
25 time.

1 MR. SANTACROCE: Thank you.

2 CROSS-EXAMINATION

3 BY MR. SANTACROCE:

4 Q Good afternoon, Doctor. I represent Mr.
5 Lakeman, Ron Lakeman. Do you know Mr. Lakeman?

6 A Yes, I do, sir.

7 Q And how long have you known him?

8 A I got to know him when he joined our practice.
9 I don't know the exact year that I first met him.

10 Q So would it be fair to say that you worked with
11 him over a period of several years?

12 A About two or three years, at least.

13 Q And during that two or three years, you
14 performed hundreds of procedures with Mr. Lakeman?

15 A Yes, I did.

16 Q We'll talk more about that in a minute, but I
17 want to understand what you're doing today. You testified
18 that you are in practice with Dr. Carrol and Dr. Carrera; is
19 that correct?

20 A That's correct.

21 Q And the three of you are in a partnership
22 agreement right now --

23 A Yes.

24 Q -- or arrangement?

25 A Yes, we are.

1 Q Is it similar to the partnership [inaudible] you
2 had at the endoscopy center?

3 A Yes, we are equal partners now.

4 Q And you all equally share in profits?

5 A Yes.

6 Q Do you employ CRNAs?

7 A No, we don't.

8 Q Do you perform your procedures at a surgical
9 center?

10 A Yes.

11 Q Other CRNAs that perform the anesthesia for you?

12 A No.

13 Q Who does that, the anesthesiologist?

14 A Anesthesiologist.

15 Q Okay. As a result of this particular case -- or
16 this outbreak of hep C, you didn't lose your license at any
17 time period because of this, did you?

18 A No, I did not.

19 Q And as far as you know, Dr. Carrol didn't
20 either; isn't that correct?

21 A That's correct.

22 Q And Dr. Carrera didn't either; isn't that
23 correct?

24 A He had a temporary restraining order for some
25 time.

1 Q Okay. And is he still practicing today?

2 A Yes, that was reinstated.

3 Q We talked about this proffer letter -- proffer
4 agreement -- that you had, and I don't want to get into, you
5 know, what the legalities of that are, but the fact of the
6 matter is, is that you've never been charged criminally in
7 this case, have you?

8 A No, I have not been.

9 Q And as far as you know Dr. Carrol hasn't been
10 charged criminally; isn't that correct?

11 A That's correct.

12 Q And as far as you know Dr. Carrera hasn't been
13 charged criminally, correct?

14 A That's correct.

15 Q Now, you -- you testified that you didn't
16 believe that you were the supervisors of the CRNAs, correct?

17 A I testified that I was the supervisor, but that
18 was a second-tier level where the medical aspect of the
19 administration of anesthesia was to be discussed with me, not
20 the anesthesia aspects of it.

21 Q Correct. And I believe that you did testify,
22 however, that it was your understanding that in the procedure
23 room, at least, you were the attending physician and as the
24 attending physician you were this supervisor, this CRNA, for
25 at least that period of time; isn't that correct?

1 A That's correct.

2 Q And it was your understanding that -- or I
3 believe you testified that this was -- your understanding of
4 being an attending physician was due to your training and your
5 experience; isn't that correct?

6 A No, I testified that attending physician is the
7 physician who does the procedures, and the procedures and all
8 the certain amount of training, and that's what we were
9 trained for.

10 Q And that's fairly common and understood in your
11 profession?

12 A That is.

13 Q And the term, "attending physician," is known by
14 most doctors that that has the common meaning for that word?

15 A That's how I understand it to be.

16 Q Now, you performed some procedures on July 25th,
17 of 2007, at the Endoscopy Clinic; isn't that correct?

18 A I do not remember that, sir.

19 Q Okay. Well, let me -- let me show you something
20 that's been admitted into evidence. This is State's Exhibit
21 157. Can you see that? Let me try to zoom in a little bit.
22 Tell me when it's clear to you.

23 A I can see it well now.

24 Q And let me know if you can see who the doctor
25 was on these procedures. For example, beginning -- and this

1 is July 25, 2007, beginning at 13 -- does that say 1355 hours?

2 A That does say 1355, yes.

3 Q What time is that?

4 A That's 5 minutes to 2.

5 Q Okay. So you began performing procedures at 5
6 minutes to 2 on July 25th of 2007, correct?

7 A That's right.

8 Q And at that time your first procedure was with
9 patient -- does that say 54?

10 A Or 64.

11 Q 64, I'm sorry. Now, I'm going to represent to
12 you that the State had prepared this document and they have
13 represented that this orange color means that the patient
14 had -- was known to have hep C when they came into the clinic;
15 are you aware of that?

16 A I don't remember.

17 Q Now, if a patient had hep C when they came into
18 the clinic, would you know about that?

19 A Yes, if they are --

20 Q How -- how would you know?

21 A Either by their history or by the reason for
22 referral. Many times we get patients for hepatitis C
23 referrals.

24 Q I'm sorry, I didn't hear the last part of that.

25 THE COURT: Yeah, it was just your -- just be mindful

1 to --

2 THE WITNESS: The --

3 THE COURT: -- speak into --

4 THE WITNESS: -- that would either --

5 THE COURT: -- the microphone.

6 THE WITNESS: -- be by the -- from the history of the
7 patient, or that might be the reason for referral of the
8 patient to our office.

9 BY MR. SANTACROCE:

10 Q Okay. And would you do -- typically do the
11 history of the patient?

12 A Yes.

13 Q When would you do that history of the patient?

14 A It would be done in the clinic, not the surgery
15 center.

16 Q So when you mean the clinic, this would be that
17 you would have a -- a time prior to the procedure time when
18 you would meet with the patient?

19 A Yes.

20 Q And you would take a history?

21 A That's correct.

22 Q And would that history be part of the medical
23 file?

24 A That would be a part of the medical file.

25 Q So if we looked at the medical file, the history

1 would indicate that this Patient 64 had hepatitis when they
2 came in to have the procedure done, correct?

3 A Yes, in most cases.

4 Q And what typically -- what cautions would you
5 take knowing that a person had hep C when they were undergoing
6 a procedure; anything different?

7 A No. We practice universal precautions for all
8 patients.

9 Q So you wouldn't do anything different then?

10 A No, I would not do anything different.

11 Q All right. Would anybody in the clinic do
12 anything different --

13 A I can't --

14 Q -- do you know?

15 A -- comment on that.

16 Q Okay. That's fair enough. Now, you did this
17 procedure at 5 minutes to 2, correct?

18 A That's right.

19 Q And this person had hepatitis C, at least by the
20 representations of the State. And how many procedures did you
21 do after that?

22 A I can count them. 14 procedures.

23 Q 14 procedures. And who was the CRNA on those
24 procedures?

25 A I don't remember.

1 Q Okay. Well, just go over a little column or
2 two, and can you read the name of the CRNA here?

3 A Campbell, McGrady -- Campbell, McGrady, yes.

4 Q No. No, that would be the nurse.

5 A Okay.

6 Q Go over to the CRNA column -- is it on your
7 screen?

8 A No, it's --

9 Q Maybe it's not.

10 A -- not on my screen.

11 Q Oh, okay. How about there?

12 A Yeah, that's -- Mr. Lakeman.

13 Q And Mr. Lakeman did every one of those
14 procedures with you, correct?

15 A That's correct.

16 Q During that 14 that you did, Mr. Mathahs or
17 Linda Hubbard, nobody came over and did another procedure in
18 that room, correct? As far as you know?

19 A As far as I know, yes.

20 Q And I'll represent to you that the lack of color
21 on these patients, or the fact that they're white, the State
22 has indicated that these are not reported hep C patients. In
23 other words, it hasn't been reported that they have hep C. So
24 according to this chart, even though you started with a hep C
25 patient, nobody subsequent to that time has reported having

1 hep C, correct; according to the chart?

2 A As you are telling me, yes.

3 Q Well, let me ask you about the procedures for a
4 physician as far as knowing someone has hep C. If they were a
5 patient of yours, what would be your responsibility if you
6 found out a patient had hep C?

7 A I don't understand the question. Is --

8 Q Well, there's been testimony that a physician
9 has a responsibility to notify the Health Department whenever
10 there's an infectious disease such as hep C. And my question
11 to you, is that your understanding of what your procedure
12 would be if someone had hep C that you found out about?

13 A If I found out about for the first time, yes, a
14 physician has the responsibility to inform the Health District
15 about that patient.

16 Q And it's not only a responsibility, it's an
17 obligation; isn't that correct?

18 A That's correct.

19 Q Which means that it's mandatory?

20 A That's correct.

21 Q Now, there came a time when you were notified by
22 the CDC -- or the CDC paid a visit to the clinic; isn't that
23 correct?

24 A CDC along with Southern Nevada Health District.

25 Q And I believe you testified that you had a

1 conversation with someone from the CDC; is that correct?

2 A Yes, I was interviewed once by a person from
3 CDC.

4 Q Do you know who that was?

5 A I don't recall her name, but she was one of the
6 representatives of CDC.

7 Q And were they asking you about the procedures of
8 the clinic?

9 A No. All she asked me was if I had any
10 infectious diseases.

11 Q You personally?

12 A I personally. And she then had me draw some
13 blood for testing for those.

14 Q Okay. So you gave a blood sample --

15 A I gave a blood sample.

16 Q -- as well as the other employees of the clinic,
17 correct?

18 A That's correct.

19 Q And that was the extent of your conversation
20 with --

21 A That was all --

22 Q -- that person?

23 A -- that she asked me.

24 Q You testified that after you were aware of the
25 outbreak, you were kind of surprised and in shock; isn't that

1 correct?

2 A That's correct.

3 Q I mean, nothing like this had happened in any
4 place that you've worked in the past, correct?

5 A Yes.

6 Q Yes, that's correct?

7 A That's correct.

8 Q And even in this particular case, there was only
9 two days when there was a potential or possible outbreak of
10 hep C, correct?

11 A I think there was another day. Three days when
12 there were clusters.

13 Q Okay. How are you aware of that?

14 A From the newspaper reports.

15 Q Okay. I don't want you to comment on the
16 newspaper reports, okay? I want you only to tell me what you
17 know. Not what the ladies and gentlemen of the press write in
18 the paper, okay? As far as you know?

19 A Even what I know is knowing from someone else
20 telling me. I don't have personal knowledge, nor have I
21 looked at the patient records myself.

22 THE COURT: Okay.

23 BY MR. SANTACROCE:

24 Q Okay. That's fair. You've never been
25 questioned about any other outbreak of hep C, correct? Other

1 than possibly the two days here in question?

2 A Yes, never been questioned about it.

3 Q You did have some strong opinions about the hep
4 C infection and how it could have happened though correct?

5 A I don't understand the question.

6 Q Well, you testified in your Metro interview that
7 you had serious doubts that the infection could have come from
8 the propofol bottles, correct?

9 A That's correct.

10 Q You refer to in your interview, something that's
11 called a heplock room. What is a heplock room?

12 A I must have referred to that as the IV room,
13 which is where the intravenous catheters were inserted in the
14 patients prior to their procedures.

15 Q And you call that the heplock room, which we've
16 often referred to here as the preop room. Would that be
17 synonymous?

18 A That would be similar.

19 Q And in this preop room IVs are started, correct?

20 A That's correct.

21 Q And I believe you testified in your Metro
22 interview that everyone got a saline flush; isn't that
23 correct?

24 A Everybody got a saline flush, yes.

25 Q And that was done in the preop room, correct?

1 A That's correct.

2 Q And then you were asked, what if it was the
3 first patient of the day. And I believe your testimony was
4 that the CRNA would typically start that IV.

5 A Sometimes, I think.

6 Q But you never worked the first patient of the
7 day, correct?

8 A No, I did not.

9 Q So how do you come to that conclusion?

10 A It's just my general impression.

11 Q And you also testified in your interview that
12 you didn't believe that the CRNAs flushed an IV when they
13 started it; isn't that correct?

14 A I don't recall that.

15 Q Okay. I believe you testified that you thought
16 that they went ahead and just introduced the propofol rather
17 than flushed. Does that recall your recollection?

18 A That is true, probably.

19 Q So the saline flushes were started in the, what
20 you referred to as the heplock room -- preop room, correct?

21 A That's correct.

22 Q Everyone got a saline flush, correct?

23 A Yes.

24 Q And I believe it was your opinion that you
25 believe the infection started in the heplock room; isn't that

1 correct?

2 A That's correct.

3 Q Now, I want to talk about some things you
4 observed from Mr. Lakeman. In all of those procedures you did
5 with Mr. Lakeman, you never saw him reuse a needle, did you?

6 A I did not.

7 Q And in all those procedures you did with Mr.
8 Lakeman, you never saw him do anything medically that would
9 jeopardize the safety of a patient, did you?

10 A No, I did not.

11 Q You talked about your compensation from the
12 endoscopy clinic -- you didn't give us a specific amount, but
13 you did tell us you received funds from three different
14 accounts, correct? Or profit distribution?

15 A Yes, that's correct.

16 Q And one of those profit distributions was from
17 the CRNA account, correct?

18 A That was the bonus that was given to me, yes.

19 Q This CRNA account, you were aware was the
20 profits or the moneys received from the CRNA's billing,
21 correct?

22 A That's how I understood it to be.

23 Q And you never saw a distribution from that
24 account actually go to the CRNA, did you?

25 A I don't understand the question.

1 Q Did you ever see any checks or hear any other
2 CRNAs receiving any moneys from that CRNA account?

3 A No, I did not.

4 Q You received a distribution from that account?

5 A As a bonus, yes.

6 Q You knew you didn't perform any anesthesia
7 services, though, correct?

8 A That's correct.

9 Q And you knew the funds were coming from an
10 anesthesia account?

11 A That's correct.

12 Q And you felt that was proper?

13 A It was a bonus given to me by Dr. Desai, who had
14 complete control over that fund. And it was his prerogative
15 to give the bonuses.

16 Q You served as a member of the State Board of
17 Health for a period of time, correct?

18 A That's correct.

19 Q And tell -- tell me what -- you were appointed
20 by the governor?

21 A Yes.

22 Q Which governor appointed you?

23 A Mr. Gibbons.

24 Q And how long did you serve?

25 A I served for about two years.

1 Q Tell me what your duties consisted of on that
2 board, please.

3 A That board managed different aspects of
4 healthcare in the state, which were disbursement of tobacco
5 funds, water, sanitation, tobacco, alcohol, managing the
6 endoscopy and other nursing facilities, et cetera, managing
7 the facilities.

8 Q Were you involved in disciplinary procedures of
9 doctors?

10 A No, not at all.

11 Q So yours was more of an administrative role,
12 correct?

13 A That's correct.

14 Q And you -- I believe you testified that you left
15 the board voluntarily when all of this hep C outbreak
16 occurred, correct?

17 A That's correct.

18 Q Because you didn't want there to be any
19 appearance of impropriety; is that also correct?

20 A That's correct too.

21 Q Now, I want to ask you a few other questions
22 about the procedures themselves. And specifically regarding
23 the CRNAs, you never saw a CRNA leave a procedure room in the
24 middle of a procedure, did you?

25 A Not that I recall, no.

1 Q In fact, that would be highly improper, wouldn't
2 it?

3 A Yes.

4 Q If he's the one who is charged with keeping that
5 patient comfortable and sedated, for him to leave or her to
6 leave in the middle of a procedure would be highly unethical
7 and probably be a violation of some sort of code, wouldn't it?

8 A It would be abandonment --

9 Q And --

10 A -- of the patient.

11 Q -- and you never saw that in your entire time at
12 the clinic, correct?

13 A Not even once.

14 Q And you never saw a CRNA put a patient to sleep
15 before you got into the procedure room; isn't that correct?

16 A That's correct.

17 Q In fact, that would be highly improper, wouldn't
18 it?

19 A Yes.

20 Q The CRNA would wait for your instructions?

21 A Yes.

22 Q And you would direct the CRNA, correct?

23 A I would tell the CRNA to sedate the patient,
24 yes.

25 Q And you never saw Mr. Lakeman sedate one of your

1 patients before you came into the procedure room; isn't that
2 correct?

3 A That's correct.

4 Q Now, the propofol itself -- I believe you
5 testified or -- or gave a statement in your interview that
6 Tonya Rushing and possibly Dr. Desai were responsible for the
7 propofol; is that correct?

8 A That's correct.

9 Q And they would do the ordering of the propofol?

10 A That's correct.

11 Q And they would decide whether it was 20 or 50cc
12 bottles; is that correct?

13 A That's how I understood it, yes.

14 Q And CRNAs to your knowledge never had any
15 input into that whatsoever; isn't that correct?

16 A Not that I know of.

17 Q You mentioned that everyone in the practice was
18 board certified except for Dr. De Fonseca, correct?

19 A That's correct.

20 Q And what does board certified mean?

21 A Board certification is a process that one has to
22 go through after completing their training, which includes an
23 exam and in certain cases an oral interview with some
24 individuals, which then certifies you as a board member of
25 that particular discipline.

1 Q Would it be fair to say that it is a higher
2 standard to attain than just simply being a gastroenterologist
3 M.D.?

4 A Yes, it is.

5 Q And every single one of the doctors at the
6 clinic were board certified; isn't that correct? Except
7 for -- save for Dr. De Fonseca, correct?

8 A That's correct.

9 Q And when you found out he wasn't board certified
10 he still was allowed to practice, but you couldn't advertise
11 as such, correct?

12 A That's correct.

13 Q I have no further questions. Thank you, sir.

14 THE COURT: All right. Thank you. Redirect?

15 REDIRECT EXAMINATION

16 BY MR. STAUDAHER:

17 Q I'm going to start off with a couple of things
18 that Mr. Santacroce went over with you. With -- it had to do
19 with the days of clusters and so forth; do you remember that?

20 A Yes.

21 Q Were you aware that there were any cases that
22 came from your clinic, the Desert Shadow facility, that were
23 linked or possibly linked?

24 A Possibly linked, but not clusters.

25 Q Okay. How many -- how many of those cases were

1 there?

2 A I don't know, but I do know one who was a
3 patient of mine. That's the only one that I know.

4 Q Okay. Did you ever read the Health District
5 report in this case, the final report?

6 A I did, but that was a few years ago.

7 Q In that report you -- you -- I assume that you
8 went through it at least at that time; is that fair?

9 A That's right.

10 Q When you read through that report, did anything
11 surprise you about what you read in that report about mode of
12 transmission? about number of patients? anything like that?

13 A I mean, just the only thing that I found
14 difficult to believe was that -- how it was claimed, at least
15 by the Southern Nevada Health District to have been
16 transmitted. But I had not done any scientific analysis of
17 any of the patients.

18 Q So beside the ones that we're talking about
19 here, the genetically linked ones, were there more at the
20 site -- at the Endoscopy Center of Southern Nevada in that
21 report that were possibly linked?

22 A There were more. That they had reportedly said
23 that they were possibly linked, yes.

24 Q Like, over 100, right?

25 A 115.

1 MR. WRIGHT: Objection. Can we approach the bench?

2 THE COURT: Yeah.

3 (Off-record bench conference.)

4 BY MR. STAUDAHER:

5 Q So getting back to the issue of the Health
6 District report, which you said you read at one point and
7 looked at you saw what the findings were in there, what -- the
8 information that was contained in that report. And without
9 getting into the details of what was in the report, when
10 counsel asked you before about what your opinion was at the
11 time of these events, in consultation with your colleagues and
12 so forth, about where it came, I think you said that you
13 thought it occurred in the heplock room?

14 A That's right.

15 Q Okay. Now, after you read the report and
16 digested all the information that you just said you looked
17 through, did your belief under -- your opinion change at all?

18 A No, it did not. I was not very convinced by
19 that report.

20 Q But you're aware of what the CRNAs themselves
21 said, and what --

22 MR. SANTACROCE: I'm going to object --

23 MR. WRIGHT: Objection.

24 MR. SANTACROCE: -- Your Honor.

25 MR. STAUDAHER: I'm not getting into what was -- I'm

1 not --

2 THE COURT: Well, he's --

3 MR. STAUDAHER: -- getting in it.

4 THE COURT: -- just -- are you aware of the
5 statements and the interviews of the CRNAs?

6 THE WITNESS: Yes, I am aware of the statements of
7 the CRNAs, yes.

8 THE COURT: All right. Go on, Mr. Staudaher.

9 BY MR. STAUDAHER:

10 Q Well, you have -- if you're aware of their
11 statements -- you have already testified on cross-examination
12 that you believe that they were professional and would not
13 succumb to pressure, all of those things, correct?

14 A That's correct.

15 Q And you've been asked the questions, did you
16 ever see them do anything that caused you any kind of
17 heartburn, I don't -- for lack of a better word?

18 A And -- no, I did not see them, but I think that
19 has to be put in the context of how a procedure is done --

20 Q Okay.

21 A -- for me to be able to see anything. Most of
22 these procedures are done in rooms that are quite dark, and
23 when we are doing the procedures, we are focused on the
24 monitor because taking your eyes off the monitor and what --
25 when you're doing the procedure may harm the patient.

1 So for me to say that I didn't see anything doesn't
2 mean that nothing was happening because of the fact that --

3 Q Exactly.

4 A -- it is a dark room.

5 Q So when you read those things and studied that
6 stuff, clearly that was different than what you believed had
7 happened in the clinic when you -- back -- back when this all
8 took place, correct?

9 A Yes.

10 Q Okay. Do you think that those practices that
11 were described match up with what you're talking about, as far
12 as professional treatment of a patient, safety of a patient,
13 all of those kinds of things?

14 A Some of those practices, as they were described,
15 I had to suspend my disbelief to believe them, but yes, they
16 didn't -- if they are true, then they didn't match up with
17 what I had thought was being done in that particular unit.

18 Q Your words, you had to suspend your belief in
19 what?

20 A Disbelief. Because I didn't think that those
21 things were happening in that unit.

22 Q Because you didn't see them?

23 A Because I didn't see them.

24 Q And is that because, as you described, you're in
25 the room and you're focused on the screen and it's dark?

1 A That's right.

2 Q Now, you were asked some questions by myself and
3 by counsel about the anesthesiol -- or the anesthesiologist
4 supervision question. Are you -- you remember those?

5 A Yes, I do.

6 Q The money that was brought in for the CRNAs, I
7 mean, you were aware that there was billings that went out and
8 money collected for their services --

9 A Yeah.

10 Q -- fair?

11 A Yes, sir.

12 Q Now, when the -- when you looked things up and
13 you were working with Dr. Desai and the others to try and
14 formulate a plan for how you would use CRNAs, were you aware
15 that if you had an anesthesiologist supervising that that
16 anesthesiologist would be the one who would get the revenue
17 from the CRNA services?

18 A I was, sir.

19 Q Okay. So when you were asked the question about
20 the three sources of funds -- and I'm talking about after
21 you've used CRNAs -- the three sources of funds coming in, I
22 think you said were the facility charge, the doctor's
23 charge --

24 A Yes.

25 Q -- and the anesthesia charge?

1 A Yes.

2 Q If you had had -- based on your knowledge of the
3 things at that time, if you had had an anesthesiologist
4 supervising those CRNAs, how many of the three funds would you
5 have gotten into the clinic? Would you have gotten the
6 facility charge still?

7 A Yes.

8 Q Would you have gotten the doctor charge?

9 A Yes.

10 Q Would you have gotten the anesthesia charge?

11 A Anesthesia charge would have been billed by the
12 anesthesiologist.

13 Q So you would not have gotten that money?

14 A No, sir.

15 Q And when I say you, I'm talking about the
16 clinic, correct?

17 A That's correct.

18 Q And did you testify that Dr. Desai completely
19 controlled that fund?

20 A Yes, sir.

21 Q Did you have any power, say, whatever in how the
22 funds were distributed?

23 A No, sir.

24 Q Now, counsel -- Mr. Wright, I believe, asked
25 you, well, you know, the money goes into the CRNA fund and it

1 would be distributed two-elevenths for Dr. Desai, one-eleventh
2 for you, one-eleventh -- is that the way it was distributed?

3 A No. That was what was, at least related to me
4 as the money is being utilized, but I had never seen any of
5 the profit loss statements or any expenditures of the CRNA
6 account ever.

7 Q And who told you that that's the way the money
8 was being utilized?

9 A That was told to me by Dr. Desai.

10 THE COURT: Did you and the other partners ever kind
11 of get together and say, hey, I got this much, how much did
12 you get? Or you just took everything on face value?

13 THE WITNESS: We took everything on face value
14 because we trusted --

15 BY MR. STAUDAHER:

16 Q Well, if you saw numbers that showed a markedly
17 different distribution to you, than, say, Dr. Carrera or Dr.
18 Carrol, would that match up with what you believed Dr. Desai
19 told you the way things were distributed?

20 A So this is how it was: For the gastroenterology
21 center, since we had the partnership structure, everybody got
22 whatever was their share in the gastroenterology center. From
23 the endoscopy centers, again, everybody got whatever their
24 share was. But this anesthesia billing fund was something
25 that nobody had any clue as to where that money is going and

1 how is that money being distributed, though we were told that
2 some people will get bonuses from that money and some of that
3 money will flow back into gastroenterology center and be
4 redistributed to everybody.

5 But nobody got any figures whatsoever.

6 Q How much money did you get out of the CRNA fund?

7 A Maybe \$25,000 every four months, five months. A
8 total of 150 -- \$200,000.

9 Q So you got a --

10 A Over a period --

11 Q -- between 150 --

12 A -- of four or five years.

13 Q So over four or five -- but in a single year,
14 say, like 2007, do you recall roughly what you got?

15 A 75 to \$100,000. I don't remember the exact
16 numbers.

17 Q Getting back to the -- what was going on -- some
18 of the questions directly asked of you by counsel. The use of
19 propofol between patients you believed was okay back then; is
20 that right? I mean, a bottle of propofol could be used
21 between patients?

22 A I don't think so, sir. No.

23 Q You don't think so?

24 A No.

25 Q Now, I just want to make sure because on a

1 question that counsel asked you on cross-examination, at least
2 I was writing it down, that you thought, at least at that
3 time, that using a single bottle of propofol on more than one
4 patient was okay. Is that -- is that accurate or not?

5 MR. WRIGHT: That mis -- that misstates the --

6 MR. STAUDAHER: I'm asking if it's accurate. And if
7 so, no.

8 THE COURT: Yeah, he's --

9 THE WITNESS: I -- I --

10 THE COURT: -- he's --

11 THE WITNESS: -- I don't think --

12 THE COURT: -- free to --

13 THE WITNESS: -- so.

14 THE COURT: -- to --

15 THE WITNESS: I didn't think --

16 THE COURT: -- respond.

17 THE WITNESS: -- that that was the right thing to do,
18 no.

19 BY MR. STAUDAHER:

20 Q Did you think that reusing syringes on a bottle
21 of propofol and then using that bottle on another patient was
22 okay back then?

23 A No.

24 Q So today do you think that it's okay to use a
25 single syringe on a bottle of propofol, and then use that

1 bottle on another patient?

2 A No.

3 Q Do you think it's okay to use a bottle of
4 propofol on one patient, regardless of how it's treated, on
5 another patient?

6 A No.

7 MR. WRIGHT: Today.

8 BY MR. STAUDAHER:

9 Q Today. Today, correct?

10 A Yes.

11 Q When I asked you the question about -- before,
12 though, you said the same thing for both --

13 A Yes.

14 Q -- is that correct? Okay. You were asked a
15 question by Mr. Santacroce about patient abandonment; do you
16 remember that?

17 A Yes, I do.

18 Q What would happen if you had a patient -- or a
19 CRNA in a room with you and that person had some sort of
20 emergency? A medical emergency, personal emergency, something
21 which made them not able to continue?

22 MR. SANTACROCE: Objection. Improper hypothetical.
23 Assumes facts not in evidence.

24 THE COURT: State your question again.

25 BY MR. STAUDAHER:

1 Q If you were in a room with a CRNA -- you, you,
2 not anybody else, and that CRNA had some problem which
3 rendered them needing to leave the room, essentially where
4 they had a -- either a bathroom problem or a medical problem,
5 anything like that; are you following me?

6 A Yes.

7 Q Okay. If that occurred and that person had to
8 leave, would you take over the anesthesia?

9 MR. SANTACROCE: Same objection.

10 THE WITNESS: No, I would not.

11 BY MR. STAUDAHER:

12 Q What would --

13 THE COURT: Did that ever happen in your memory?

14 THE WITNESS: No.

15 BY MR. STAUDAHER:

16 Q If that had happened, what would you do in a
17 situation like that?

18 MR. SANTACROCE: Objection.

19 THE WITNESS: I would shut the procedure --

20 MR. SANTACROCE: Improper --

21 THE WITNESS: -- down.

22 MR. SANTACROCE: -- hypothetical. Assumes --

23 THE COURT: Well --

24 MR. SANTACROCE: -- facts in -- not in evidence.

25 THE COURT: -- all right.

1 MR. SANTACROCE: He's already said it never happened.

2 MR. STAUDAHER: I'm just asking what he believe -- he
3 talked about patient abandonment, what he considered patient
4 abandonment, Your Honor.

5 THE COURT: He said he would shut the procedure down.

6 BY MR. STAUDAHER:

7 Q So when you say, "shut the procedure down," what
8 do you mean?

9 A If I was doing the procedure, I would not
10 proceed any further if the CRNA was not there and the patient
11 was getting deep sedation. I'd stop the sedation and stop the
12 procedure.

13 Q Would you just stay with the patient then?

14 A Yes, until the patient recovered.

15 Q Until the patient woke up, essentially?

16 A Yes, but I would not continue with the
17 procedure.

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

19 THE COURT: That's fine.

20 MR. STAUDAHER: Pass the witness, Your Honor.

21 THE COURT: Recross, Mr. Wright?

22 MR. WRIGHT: Yeah.

23 RE CROSS-EXAMINATION

24 BY MR. WRIGHT:

25 Q I had asked you about propofol use before the

1 incident -- before January 2008. I thought you did not know
2 whether propofol vials, 50s or 20s, were single use or even
3 multiple use; is that correct?

4 A Propofol vials I thought were single use, though
5 there were multiple use -- multidose vials during that time,
6 yes.

7 MR. STAUDAHER: Of propofol? Or --

8 THE WITNESS: Propofol was single use.

9 MR. STAUDAHER: Okay.

10 THE COURT: But you're saying -- because that was --

11 THE WITNESS: All them --

12 THE COURT: -- ambiguous, but are you saying that you
13 thought propofol was single use, but you were aware that other
14 drugs came in multiuse vials?

15 THE WITNESS: That's right.

16 MR. WRIGHT: Okay.

17 THE COURT: And those were also drugs that would be
18 injected, but those vials, for various other unrelated drugs
19 could be multiuse?

20 THE WITNESS: That's correct.

21 THE COURT: Okay.

22 BY MR. WRIGHT:

23 Q Did you even know there were 20s and 50s being
24 used?

25 A No, I did not pay attention to that.

1 Q So you didn't even know that the -- the size of
2 the bottle of propofol?

3 A No, I do not know -- I knew from my hospital
4 experience, but not in the endoscopy.

5 Q Okay. So you knew from your hospital experience
6 where?

7 A Because in intensive care unit, also, you use
8 propofol which comes in larger-dose vials, 50 and 100ml vials,
9 which are used for sedating the patient while they are
10 intubated.

11 Q Okay. So in other -- are you talking about
12 hospitals here in Las Vegas?

13 A Hospitals here --

14 Q Your hospital --

15 A -- in Las --

16 Q -- practice here in Las Vegas?

17 A That's right.

18 Q But as far as, like, the -- I call them 20s,
19 what are those, ccs? 20cc bottles of propofol and 50cc
20 bottles. Did you have any knowledge or understanding whether
21 20s were being used or 50s were being used?

22 A No, I don't.

23 Q Okay. Because you didn't even pay attention,
24 correct?

25 A That's correct.

1 Q Because they -- that's why you had the CRNAs
2 doing that, correct?

3 A That's right.

4 Q And as far as, like, purchasing 20s or 50s, did
5 you ever attend a partnership meeting where that was discussed
6 by all of the partners going to 50s rather than 20s?

7 A I don't remember that, sir.

8 Q Okay. Do you have any recollection of some
9 other doctor says there was a meeting where that was
10 discussed?

11 A No, sir.

12 Q And the first time you became aware of the 50s
13 and 20s and the method of injection of propofol was after
14 January 2008 when this became an issue; is that correct?

15 A That's correct.

16 Q Thank you.

17 THE COURT: Mr. Santacroce, any recross?

18 RE CROSS-EXAMINATION

19 BY MR. SANTACROCE:

20 Q You -- you are aware that saline was multiuse
21 though, correct?

22 A That is correct.

23 Q Now, you heard the hypothetical Mr. Staudaher
24 gave you, if a CRNA had an emergency or Santa Claus flew into
25 the room at the time you were giving a procedure, what would

1 you do? The fact of the matter is that that never happened,
2 did it?

3 A Not during my presence.

4 Q He asked you about receiving funds from the CRNA
5 fund. You testified you received about \$75,000 from that fund
6 in 2007, correct?

7 A That's correct.

8 Q How much did you receive from the other two
9 funds in 2007?

10 A I don't remember the other figures well, but
11 from my practice they may have been 600 -- 700,000 and --

12 Q So total, you received over \$1 million from
13 endoscopy center for your various practices in 2007; is that
14 fair?

15 A Not -- not the endoscopy center, but I received
16 -- from the gastroenterology center from my practice, and the
17 majority of that money was from my practice and neither the
18 endoscopy centers or the CRNA accounts.

19 Q Okay. I'm asking you for a total from gastro
20 and --

21 A Yeah, a million dollars.

22 Q Over a million?

23 A Yes.

24 MR. SANTACROCE: Nothing further.

25 THE COURT: Any re-redirect?

1 MR. STAUDAHER: No, Your Honor.

2 THE COURT: Do we have any juror questions for this
3 witness? I see no juror questions. Doctor, thank you for
4 your testimony. Please don't discuss your testimony with
5 anyone else who may be a witness in this case. Thank you.

6 THE WITNESS: Thank you.

7 THE COURT: And you are excused.

8 You may call your next witness, State.

9 MR. STAUDAHER: I think we're recalling Dr. Carrol.

10 MS. WECKERLY: For the cross.

11 THE COURT: Right. And he's here or do we know?

12 MR. STAUDAHER: He -- I believe he's out there.

13 THE COURT: Doctor, come on back up to the witness
14 stand, and the clerk will administer the oath to you again,
15 since it's been a few days.

16 CLIFFORD CARROL, STATE'S WITNESS, SWORN

17 THE CLERK: Thank you. And would you please state
18 and spell your name?

19 THE WITNESS: I'm Clifford Carrol, C-L-I-F-F-O-R-D,
20 C-A-R-R-O-L.

21 THE COURT: All right. Thank you. I believe we're
22 on Mr. Santacroce's cross.

23 MR. SANTACROCE: Thank you, Your Honor.

24 CROSS-EXAMINATION (Continued)

25 BY MR. SANTACROCE:

1 Q Good afternoon, Doctor.

2 A Hello, sir.

3 Q When we had left off on Friday we had talked
4 about the meeting of this provision as you saw it; is that
5 clear to you?

6 A Yes.

7 Q And I believe you testified that you didn't
8 believe that you were the attending physician in the procedure
9 room when the procedure was going on; isn't that correct?

10 A Correct, according to this provision.

11 Q And I asked you about the interview you had
12 given to Metro where they asked you who was the supervisor and
13 you said, quote, I'm the guy -- I'm that guy. And you said
14 you had misunderstood that question; is that correct?

15 A Yes, sir.

16 Q And then we had gotten into just briefly -- and
17 I think where we left off was I was talking to you about the
18 CRNA agreement and your management responsibilities or lack
19 thereof. And you had acknowledged on Exhibit A2 that this
20 was, in fact, your signature; is that correct?

21 A Yes.

22 Q And you signed as a partner; isn't that also
23 correct?

24 A Yes, sir.

25 Q And at least in 2005 of August 1st, when this

1 was executed, you had the authority and the power to bind
2 gastroenterology center to a CRNA employment agreement that
3 had a duration of several years; isn't that correct?

4 A Yes, I was asked to interview Linda Hubbard, and
5 I -- now that you've showed this to me, I did sign this
6 agreement.

7 Q My question was, you had the power and the
8 authority to bind the gastroenterology center to a employment
9 agreement; isn't that correct?

10 A Yes.

11 Q So when you said that you exercised no
12 managerial duties, it was kind of a misnomer; isn't that fair
13 to say?

14 A No, I still believe that's true, sir.

15 Q Okay. So you don't feel that this is a
16 management duty?

17 A No, I was -- I feel that this was something that
18 was assigned to me to do to interview Linda and to help assess
19 her, and I did that.

20 Q I want to talk to you about this agreement. Do
21 you know what third-party payors are?

22 A Yes, sir.

23 Q What are they?

24 A Third-party payors are insurance companies that
25 pay claims when those claims are submitted.

1 Q Okay. And I want to call your attention to a
2 couple provisions in this agreement. Provision 2.4, can you
3 see that?

4 A Yes.

5 Q Well, actually, let's go up to 2.3. Who had the
6 sole and exclusive and final authority of scheduling patients?

7 A According to this, Gastroenterology Center of
8 Nevada.

9 Q And the CRNAs had no authority to schedule
10 patients or what the appointment times were; is that correct?

11 A That's correct.

12 Q I want to call your attention to paragraph 2.4.
13 It says in there that GCN, which is Gastroenterology Center of
14 Nevada, correct?

15 A Yes.

16 Q Has the sole and exclusive and final authority
17 to assign patients to a CRNA, and that the CRNA shall not
18 refuse to see any patient, and then it goes on to say, because
19 of race, color, creed, et cetera, and then it says, the CRNA
20 shall not refuse to see any patients assigned by GCNA -- GCN
21 because of the source of payment for services; isn't that
22 correct?

23 A Yes, sir.

24 Q So basically the CRNAs had to see everybody that
25 was scheduled for them to see, regardless of payment or

1 ethnicity or any other reason whatsoever?

2 A I agree with you.

3 Q Now, going down to the fee scale on paragraph
4 2.5. Again, this is a CRNA contract, correct?

5 A Yes.

6 Q And this says that GCN, Gastroenterology Center
7 of Nevada, shall have the sole, exclusive, and final authority
8 to set professional fees charged by the CRNA and to determine
9 whether and upon what terms a CRNA and GCN shall participate
10 in any programs, contracts, et cetera; isn't that correct?

11 A Yes.

12 Q So the final authority to set fees, collect
13 fees, rested upon whom?

14 A Gastroenterology Center of Nevada.

15 Q Going down to paragraph 2.6. This is contracts
16 with third-party payors. Those are the insurance companies
17 that you identified, correct?

18 A Yes.

19 Q And it says in that paragraph that all contracts
20 with third-party payors or insurance companies belong to whom?

21 A Gastroenterology Center of Nevada.

22 Q And do not belong to whom?

23 A CRNAs.

24 Q So that paragraph basically says that any
25 accounts that the CRNA -- any patients the CRNA works on that

1 are billed through a provider that they're a signatory to
2 belong to Gastroenterology Center of Nevada, correct?

3 A Yes.

4 Q Do you remember giving a deposition in the civil
5 case or cases?

6 A Yes.

7 Q Do you remember being asked several questions
8 about Mr. Lakeman and his practices and procedures in that
9 deposition?

10 A Well, I don't remember specifically, unless you
11 show me them or remind me.

12 Q Okay. Well, we might get to that.

13 A Okay.

14 Q Isn't it true that -- you testified in that
15 deposition that you never saw Mr. Lakeman go from room to room
16 to administer propofol, correct?

17 A That's correct to the best of my recollection,
18 yes. Except during lunch breaks.

19 Q And I believe during, possibly, bathroom breaks?

20 A Again, we went over that last time and --

21 Q Right.

22 A -- it's -- it is unclear to me about bathroom
23 breaks.

24 Q Okay. But that wouldn't be unusual for the
25 CRNAs to change rooms during a lunch break, one to spell the

1 other one, correct?

2 A That's correct.

3 Q What you never saw was one come over when there
4 were two CRNAs on duty, one come from one room to another
5 room, bring a propofol bottle into that room, anesthetize a
6 patient, take that bottle that he brought from room one back
7 over to room one and anesthetize another patient? You never
8 saw that, have you?

9 A I don't -- I've never seen that.

10 Q There came a time when CDC came to visit the
11 clinic, correct?

12 A Yes, sir.

13 Q And I believe you testified as to what your role
14 or lack of a role in that investigation was, correct?

15 A Yes, I did.

16 Q You met with somebody from the CDC?

17 A Well, we met with all of the investigators and
18 one of them was a member of the CDC.

19 Q And what I'm particularly concerned about is
20 after Southern Nevada Health District, CDC informs you that
21 they're going to go public with a notice, you kind of freak
22 out; is that fair to say?

23 A Well, we became very alarmed, yes.

24 Q And you thought it was unfair?

25 A Yes, I did.

1 Q And you made those feelings known to the CDC,
2 correct? Or the Southern Nevada Health District?

3 A Southern Nevada Health District and Bureau of
4 Licensure.

5 Q But before you made your presentations to those
6 authorities, you did some investigation on your own, correct?

7 A Yes.

8 Q And tell me what that investigation consisted
9 of.

10 A I tried to break down the patients, and tried to
11 determine what room a patient had a procedure, and tried to
12 determine where in the lineup an infection occurred, and tried
13 to determine from that if there was any clue as to how it
14 could have happened.

15 Q And you were concerned about specific things.
16 For example, you were concerned that if this patient got
17 hepatitis C from the clinic, how could it jump over one, two,
18 three, four, five other people, and then reappear again?
19 Wasn't that a concern of yours?

20 A Yes, it was, sir.

21 Q And the State asked you, well, you're not an
22 epidemiologist, and you're not, correct?

23 A Correct.

24 Q But you are an expert in hep C, correct?

25 A I am an expert in hepatitis C.

1 Q And you're an expert in the transmission of hep
2 C virus, correct?

3 A Yes.

4 Q And that caused you great concern to know that
5 the virus, as the CDC, Southern Nevada Health District seemed
6 to propose, jumped over five patients, reappeared, jumped over
7 another patient, reappeared, and then didn't reappear again in
8 that room whatsoever, correct?

9 A Yes, sir.

10 Q And it caused you great concern to find out that
11 they had -- "they" being the Health District and CDC -- had
12 suggested that somehow the infection jumped from room one to
13 room two. Didn't that cause you great concern?

14 A Yes, sir.

15 Q And it also caused you great concern to look at
16 room two and say that the infection started, jumped a patient,
17 reappeared, jumped one, two, three, four, five patients --

18 A Excuse me, sir. On my screen I can't see what
19 you're doing.

20 Q Oh, I'm sorry. So you were concerned that it
21 reappeared in room two, jumped a patient, reappeared, jumped
22 one, two, three, four, five patients, reappeared again, and
23 didn't reappear again. Isn't that -- wasn't that a concern
24 for you?

25 A Yes, sir.

1 Q And you took all of this information and data
2 and you went to the CDC -- or met with Southern Nevada Health
3 District and the Bureau of Licensing, correct?

4 A No, I -- I went with this information not to the
5 extent you -- you know, we have it now. I came to the similar
6 conclusions over time, but I went with my initial concerns to
7 Brian Labus alone.

8 Q Okay. And you made a presentation to Mr. Labus,
9 correct?

10 A I did.

11 Q And Mr. Labus essentially, I think you
12 testified, said, well, essentially -- and these are my
13 words -- essentially, we observed a violation and it really
14 doesn't matter other than that. We're going to send out the
15 notice.

16 A Those are nearly his identical words.

17 Q And how did you feel about that?

18 A I felt completely frustrated, exasperated,
19 devastated because I just wasn't being listened to. And I
20 still thought at that time that it was -- something was wrong
21 at -- with the theory.

22 Q With their theory?

23 A Yes, sir.

24 Q And in fact, you discussed that -- their theory
25 with some of your other colleagues, didn't you?

1 A I don't remember. You'll have to remind me.

2 Q Well, did you discuss it with Vish Sharma? Or
3 did he express his concerns to you as well?

4 A Well, I have to say during that time when --
5 once I made this first initial observation that something was
6 wrong and saw the start of these skipping of patients, I -- I
7 may have mentioned it to many people -- many people, and
8 thought that -- I thought right then and there that this was
9 sabotage.

10 Q Well, Dr. Sharma was just on the stand, and he
11 said that he thought it had started in the heplock room or the
12 preop room with saline. Did you share a similar opinion?

13 A Yes, I did.

14 Q I have no further questions. Thank you.

15 A Thank you.

16 THE COURT: All right. Redirect.

17 MR. WRIGHT: Well, I --

18 THE COURT: Oh, I'm sorry.

19 MR. WRIGHT: Can I do a recross?

20 THE COURT: Oh, I'm all --

21 MR. STAUDAHER: Oh, go ahead. I -- I'd forgotten the
22 order too --

23 MR. WRIGHT: Or not?

24 MR. STAUDAHER: -- that's fine. Whatever --

25 MR. WRIGHT: I mean, I think so.

1 THE COURT: It's only been five days.

2 MR. WRIGHT: I know.

3 THE COURT: Or maybe only two and a half days.

4 MR. WRIGHT: Right. He did a --

5 THE COURT: Well, I --

6 MR. WRIGHT: -- I crossed --

7 THE COURT: -- I -- my memory --

8 MR. WRIGHT: -- he did a redirect --

9 THE COURT: -- is -- I believe you --

10 MR. WRIGHT: -- and that was --

11 THE COURT: -- Mr. Wright --

12 MR. WRIGHT: -- okay.

13 THE COURT: -- I believe you.

14 MR. WRIGHT: I'm --

15 THE COURT: My memory may be faulty. Remarkably, I
16 wasn't thinking about this over the weekend.

17 RE CROSS EXAMINATION

18 BY MR. WRIGHT:

19 Q Were you sued civilly?

20 A Regarding this matter?

21 Q Yes.

22 A Yes, sir.

23 Q Okay. Are -- is your civil litigation
24 completed?

25 A As far as --

1 Q And what's your --

2 A -- I know there are no remaining cases.

3 Q Okay. In which you're a defendant. There's a
4 -- yours are closed and there's no remaining case?

5 A That's my understanding.

6 Q Okay. Did you pay anything to anyone?

7 A As a -- a fine or a settlement payment myself?

8 Q Yeah.

9 A No.

10 Q Okay. Did an insurance company pay?

11 A Yes, sir.

12 Q I mean, your malpractice carrier -- is that what
13 you call it?

14 A Yes, sir.

15 Q Okay. And other than that, you didn't have to
16 go into bankruptcy or anything like that?

17 A No.

18 Q I want to go through a couple things you did on
19 redirect and make -- make sure we're all on the same page
20 regarding the patient scheduling reductions. We're talking
21 about October 2007, it would have been after Dr. Desai's first
22 stroke when you took over for an approximately two-week
23 period; recall that?

24 A Yes, sir.

25 Q Okay. That -- that was done purely for the

1 comfort and convenience of the patients and the staff; is that
2 correct?

3 A That's why I did it, yes.

4 Q Okay. And there had been -- do you do patient
5 surve -- exit surveys?

6 A I think that -- yes, we did.

7 Q Okay.

8 A Yes, there was a period that we did those.

9 Q Okay. So like, when patients are leaving, how
10 was your visit? How do you rate us? Those type things?

11 A Yes.

12 Q Okay. And were you aware that there were
13 complaints as to waiting too long?

14 A Yes, I was aware of those.

15 Q And were you aware from employees of the Shadow
16 Lane Clinic that the patients were complaining about waiting
17 too long?

18 A Yes.

19 Q Okay. And that -- that change that you
20 implemented had nothing whatsoever at all to do with any
21 concerns about patient safety or putting patients at risk; is
22 that correct?

23 A Yes, sir.

24 Q And when the schedule was higher than that and
25 then were 64 being scheduled for the double -- both operating

1 rooms for procedures, uppers and lowers, was there any concern
2 at any time on patient safety or patient risks?

3 A No, sir.

4 Q Okay. And you -- you stated that to the
5 Metropolitan Police Department when you were interviewed,
6 correct?

7 A I believe I did.

8 Q Okay. And you stated that in a couple of
9 depositions I have read. Do you recall that you've testified
10 to that --

11 A I have said --

12 Q -- in civil litigation?

13 A -- I have said that before, yes.

14 Q Now, you -- until January 2008 when CDC came
15 knocking at the door, until that time you were not aware that
16 propofol was a single-dose medication, correct?

17 A Yes, sir.

18 Q And until that time of the investigation in
19 January 2008 you were not aware of any hepatitis C outbreaks
20 -- or whatever you call them -- hepatitis C reported cases
21 arising at any endoscopy centers anywhere in the world?

22 A I wasn't personally aware -- interestingly,
23 immediately during the investigation there was an article --

24 Q Okay.

25 A -- about such -- such an event in Brooklyn.

1 Q Okay.

2 A Prior to that, I had never heard of that.

3 Q Okay. And until that New York incident you had
4 never seen or read or been conscious of any such previous
5 outbreak --

6 A That's fair.

7 Q -- is that --

8 A Yes, sir.

9 Q -- okay. Since January 2008 in participation in
10 a great deal of litigation and depositions in civil cases --
11 you've done that, correct?

12 A Yes, sir.

13 Q You have been shown various publications,
14 stories, scholarly papers about incidents previous to January
15 2008, correct?

16 A Yes, sir.

17 Q Okay. And those articles which were gathered
18 together and shown to you after the fact, until then you had
19 never had any awareness whatsoever of them; is that correct?

20 A Correct.

21 Q And you were -- you are a specialist in
22 hepatitis C care; is that correct?

23 A Yes.

24 Q And you read the journals or whatever it is you
25 all read within your specialty, correct?

1 A Yes, I read the journals that come to my house

2 --

3 Q Okay.

4 A -- or on my emails, et cetera.

5 Q Okay. And then any -- and you had never seen
6 any -- anything reported in any of those journals which would,
7 like, give you a heads-up look out for this or that, like
8 propofol use and administration within endoscopy centers; is
9 that fair?

10 A That's fair.

11 Q Now, I want to go to September 21, 2007, okay?
12 The -- as you know, the Southern Nevada Health District, CDC,
13 BLC came in and investigated in January 2008, right?

14 A Yes.

15 Q Okay. They weren't there on September 21st,
16 correct?

17 A Correct.

18 Q You were there?

19 A Yes, sir.

20 Q And at the time this event occurred you started
21 your own independent evaluation or hunt, a search for what had
22 transpired. You started that, literally within three to four
23 months -- September, October, November, Decem -- four months
24 of the event, correct?

25 A Yes.

1 Q And so you knew what had happened on September
2 21st, and you actually have a memory -- you had a memory then
3 and you actually have a memory today of it, correct?

4 A Yes.

5 Q And -- because you were beside yourself --
6 before the publicity avalanche and they were there to recall
7 the patients and everything else, just you as being a
8 physician at this practice and this hepatitis having occurred,
9 a cluster on this date of September 21st, you were
10 independently looking -- hunting -- because you just could not
11 figure out how this could have happened, correct?

12 A That's a fair assessment.

13 Q And you -- you wanted to know because of -- of
14 the irony of you being a hepatitis C lecturer, going to care
15 groups for hep C patients and everything else, this was being,
16 like, laid at your feet, correct?

17 A That's fair.

18 Q And it's true that what one of the patients -- I
19 mean, you treated Mr. Rubino?

20 A Yes.

21 Q And then later, when you came back over in the
22 afternoon, you treated another patient who ultimately ended up
23 with hep C, correct?

24 A Correct.

25 Q And so at the inception on your investigation

1 you weren't aware of that fact that one of the patients who
2 ultimately got hep C you had treated, correct?

3 A That's correct.

4 Q Now, you were able to focus in because you
5 wouldn't get any help from the Health District on identifying
6 patients and things, correct?

7 A Correct.

8 Q And so you -- and I'm talking about the period
9 of time from January 8th -- that happens to be the date they
10 walked in, until the public announcement, which was late in
11 February, okay? Do you -- because it -- do I understand that
12 afterwards you even did a more thorough evaluation?

13 A Yes.

14 Q Okay. But the early incremental evaluation you
15 were taking every patient treated on that day because you knew
16 them from the schedules, correct?

17 A I could gather them from the schedules and, like
18 I said, from information coming in from our own doctors --

19 Q Correct.

20 A -- who were seeing these patients.

21 Q And so you started building something that you
22 called a scaffold, correct?

23 A Yes.

24 Q Okay. And what is -- a scaffold of information?

25 A Yes.

1 Q Okay. And that information, you were looking to
2 chart every single patient's travel that day and chronology
3 through the [inaudible], correct?

4 A Yes.

5 Q And you used certain times from the patient
6 records, correct?

7 A Correct.

8 Q And the time you utilized, if I'm correct, was
9 the computer-generated time of the doctor note; is that right?

10 A I found after doing this process, having never
11 done something like this before, when I first started looking
12 at charts and looking at the patients and where they were
13 fitting and seeing the skips and then seeing the potential
14 that was in separate rooms, I began -- I did make the
15 conclusion -- an observation that I could be more accurate by
16 looking at the computer-generated times on the -- on the
17 doctor's report as a better way to build that scaffold more
18 accurately.

19 Q Okay.

20 A And that's what I started to do.

21 Q Okay.

22 THE COURT: I'm sorry to interrupt you. Let's go
23 ahead and take our break.

24 MR. WRIGHT: Okay.

25 THE COURT: Our eve -- sorry, afternoon recess.

1 Ladies and gentlemen, we're just going to take about
2 10 minutes for our afternoon break, and of course, you are
3 reminded that you are not to discuss the case or anything
4 relating to the case with each other or with anyone else. Do
5 not read, watch, listen to any reports of or commentaries on
6 the case, person, or subject matter relating to the case, and
7 don't do any independent research. Please don't form or
8 express an opinion on the trial.

9 If you would all please place your notepads on your
10 chairs and follow Kenny through the rear door.

11 (Jury recessed at 3:04 p.m.)

12 THE COURT: All right. We can --

13 MR. WRIGHT: How long did you say?

14 THE COURT: -- we're -- we can take a break. And,
15 Doctor, you're free if you need a break.

16 THE WITNESS: I'm good.

17 THE COURT: Or you can sit there, whichever.

18 THE WITNESS: I'm so happy here.

19 MR. WRIGHT: How long?

20 THE COURT: 10.

21 MS. STANISH: 10.

22 (Court recessed at 3:05 p.m. until 3:11 p.m.)

23 (Outside the presence of the jury.)

24 THE COURT: You folks all ready? If the jurors are
25 ready, bring them back in.

1 MS. WECKERLY: I -- you know, we have another client
2 of Ms. Killebrew's. I know you just went to get the jury; can
3 I just --

4 THE COURT: Oh, okay. Well --

5 MS. WECKERLY: -- have them step in?

6 THE COURT: -- sure.

7 MS. WECKERLY: I'm sorry.

8 THE COURT: Would you grab Kenny, then?

9 MS. WECKERLY: Sorry. I'll get her right now.

10 THE COURT: She may be hanging around all day anyway,
11 but --

12 MS. WECKERLY: She -- yeah, but it --

13 THE COURT: -- oh, okay --

14 MS. WECKERLY: -- I just thought --

15 THE COURT: -- because otherwise --

16 MS. WECKERLY: -- like 'cause otherwise --

17 THE COURT: -- we'd have to take --

18 MS. WECKERLY: -- we'd take another --

19 THE COURT: -- a break.

20 MS. WECKERLY: -- yeah.

21 THE COURT: That's fine. Just come on into the well
22 of the courtroom, please.

23 And for the record, we have Ms. Killebrew. And, Ms.
24 Killebrew, your client is?

25 MS. KILLEBREW: Lakota Quannah, Your Honor.

1 THE COURT: All right. And, sir, my understanding is
2 pursuant to the civil litigation that you were involved with,
3 you entered into various settlement agreements; is that
4 correct?

5 MR. QUANAH: Yes.

6 THE COURT: And one of the conditions of those
7 settlement agreements is a confidentiality provision that you
8 not disclose the settlement terms; is that true?

9 MR. QUANAH: Yes.

10 THE COURT: Okay. As obviously you can't enter into
11 a private agreement limiting the rights of the attorneys in a
12 criminal prosecution to question you fully, subject,
13 obviously, to the rules of relevance, so if they ask you a
14 question regarding the terms -- specifically the net amount of
15 the settlement, you are directed that you must answer that
16 question; do you understand?

17 MR. QUANAH: Yeah.

18 THE COURT: Okay. And they've -- I've already told
19 them they can't ask you about your lawyer or how much your
20 lawyer made or how much other plaintiffs may have made; do you
21 understand that?

22 MR. QUANAH: Yes.

23 THE COURT: Okay. Do you have any questions or
24 anything for me?

25 Ms. Killebrew, anything else I need to cover with

1 your client?

2 MS. KILLEBREW: No, Your Honor, just that the client
3 is being ordered by the Court to reveal the net amount of all
4 settlements received in this litigation. Not the global
5 amounts, and --

6 THE COURT: And nothing as far as what you got or --

7 MS. KILLEBREW: Right.

8 THE COURT: -- other lawyers got. All right. Sir,
9 thank --

10 MS. KILLEBREW: Very good.

11 THE COURT: -- you.

12 MS. KILLEBREW: Thank you.

13 THE CLERK: Could we just get the -- your client's
14 name again? You said it really fast.

15 THE COURT: Your spelling?

16 MS. KILLEBREW: I'm sorry. Lakota.

17 THE CLERK: Dakota?

18 MS. KILLEBREW: No.

19 MR. QUANAH: Lakota, with an L.

20 THE CLERK: Lokota?

21 MR. QUANAH: Lakota.

22 MS. KILLEBREW: L-A --

23 THE CLERK: Lakota.

24 MS. KILLEBREW: -- you want to spell it for them?

25 MR. QUANAH: Yes. L-A-K --

1 THE CLERK: Yes.

2 MR. QUANAH: -- O-T-A.

3 THE COURT: Like the Lakota Indians?

4 MR. QUANAH: Yes. And the last name is Q-U-A-N-A-H.

5 THE CLERK: All right. Thank you.

6 MS. KILLEBREW: Thank you.

7 THE COURT: All right. Thank you. And, sir, just
8 relax in the vestibule, conference room area.

9 MS. WECKERLY: Sorry. I should have done that at the
10 beginning of the break. I just had --

11 THE COURT: That's okay.

12 MS. WECKERLY: -- forgotten.

13 (Pause in the proceedings.)

14 THE MARSHAL: Ladies and gentlemen, please rise for
15 the presence of the jury.

16 (Jury entering at 3:18 p.m.)

17 THE MARSHAL: Thank you. Everybody may be seated.

18 THE COURT: All right. Court is now back in session.

19 And, Mr. Wright, you may resume your questioning.

20 BY MR. WRIGHT:

21 Q Okay. Dr. Carrol, I was asking you about your
22 recreation of the chronology of patients and their flow on
23 September 21st, and you indicated that you were utilizing a
24 computer-generated time.

25 A Yes, sir.

1 Q Okay. And what is that time?

2 A Well, it -- the time I was utilizing was when
3 the doctor does the note at the end of the procedure,
4 immediately when the procedure is done, we literally take a
5 step or two to the right, use a mouse to click on the
6 different parts of the note, and generate the note. And as
7 soon as we hit enter or signature, the time that that event
8 occurred is recorded.

9 Q Okay.

10 A So I thought that of the times available to me
11 to really break it down and make sure it was accurate and how
12 they were lined up, that time would be most well-serving to
13 me.

14 Q Okay. And the -- we heard different testimony
15 about length of procedures and things, you know, into the
16 room, out of the room. The ending of the procedure we are
17 talking about is when you have completed your medical
18 procedure, colonoscopy, upper endoscopy, whatever it was you
19 were doing for that patient. As soon as you were -- you were
20 done, you'd go over to the computer and do your note, which is
21 like your little report of what happened, correct?

22 A That's correct.

23 Q Okay. And then that -- you hit it and there's a
24 time on that?

25 A Yes.

1 Q Okay. And of course the CRNA -- I mean, the
2 patient's still in the room?

3 A Yes.

4 Q Okay. CRNA is still monitoring, et cetera?

5 A Yes.

6 Q Okay. Now, using those times -- and -- you did
7 it for all 61, 62, whatever the number of patients were on
8 September 21st?

9 A Yes.

10 Q Okay. And at the -- early on you weren't aware
11 of being able to identify which of the two rooms by -- later
12 on found date computer glitch, right?

13 A Correct.

14 Q Okay. But you were able -- you knew patients
15 were in different rooms?

16 A Yes, I -- I did that at the time by where the
17 CRNAs were.

18 Q Okay. Because you knew there were procedures
19 going on. There were two doctors -- I mean, the doctors
20 changed, but at given times there were two doctors there, two
21 CRNAs there?

22 A Well, just like I told you last week in the --
23 on that day I started off the day alone, but by 10:15ish,
24 there were two doctors --

25 Q Okay.

1 A -- coming to relieve me.

2 Q And the -- and once you -- you put together your
3 own analysis, you had -- you've testified about meeting with
4 Brian Labus, as I follow it, a total of four times, okay?

5 A That's correct.

6 Q Okay. First one would have been when he walked
7 -- walked into the clinic, essentially, on January 9 -- 8th, I
8 think was the Wednesday?

9 A Yes.

10 Q Okay. Second one would have been a -- it -- at
11 a partial exit interview, when they were done with their
12 investigation in about 10 days a meeting with Brian Labus and
13 others where they told you their tentative conclusions, and
14 that's the time when they recommended you ought to write up a
15 protocol for anesthesia, giving of propofol, right?

16 A That's accurate.

17 Q Okay. And then, the third Brian Labus meeting
18 would have been when he called you over to the Health District
19 in early February and they had reached their final
20 determination and told you, We're going to need to notify all
21 patients from March 2004 to the present, correct?

22 A Correct.

23 Q And then your fourth meeting with Brian Labus
24 would have been before the news went public when you went and
25 showed him your own personal findings, which in your belief

1 cast doubt on his method of transmission?

2 A Correct.

3 Q Okay. And you -- you took to Brian Labus your
4 little chart -- you've testified about this?

5 A Yes.

6 Q All that you had determined, correct?

7 A Yes.

8 Q And it was your opinion then that the Southern
9 Nevada Health District couldn't -- belief about how the
10 hepatitis had spread within the clinic, that their theory was
11 wrong, correct?

12 A That's correct. And I believed that it was
13 wrong, or that there was a problem with it, and to please
14 rethink the public announcement and continue to evaluate this
15 situation.

16 Q Okay. And of course, that -- that's when the
17 answer was sorry, Cliff -- I mean, he called you Cliff, right?

18 A Yes.

19 Q It doesn't make any difference because we're not
20 announcing because the hepatitis C was transmitted in this
21 way, we're announcing because we saw unsafe injection
22 practices and that's why we have to do it, correct?

23 A That's correct, with one caveat.

24 Q Okay.

25 A He -- he didn't use the phrase, unsafe injection

1 practices at that little meeting. That was later.

2 Q Right.

3 A It was because he had observed that needle
4 change model.

5 Q Okay. And that -- that needle change was what,
6 hepatitis or not, that the hepatitis outbreak is what got our
7 nose in the door, so to speak, correct?

8 A Correct.

9 Q And what we observed requires this notice
10 whether there had been an outbreak or not?

11 A You're right. And he did say even if there was
12 no transmission it was -- it -- if we had walked in and seen
13 this, it would have been sufficient to make a notification.

14 Q Okay. And did thereafter -- in mid-January you
15 all had a complete OSHA -- I call it OSHA, I'm not sure of the
16 terminology -- a retraining in safety and safe practices for
17 the entire staff; is that correct?

18 A Yes.

19 Q Okay. And that was through Compliance Alliance?

20 A Yes.

21 Q Okay. And so there was a -- because issues have
22 been pointed out by the Southern Nevada Health District?

23 A Yes.

24 Q And so a -- every -- every staff member, nurses,
25 GI techs, CRNAs, doctors?

1 A Yes.

2 Q Okay. All came in, participated in this,
3 correct?

4 A Yes, that's correct.

5 Q And do you recall at that time talking to Linda
6 Hubbard?

7 A Yes, sir.

8 Q Okay. With Dr. Desai?

9 A Yes.

10 Q And what -- relate that conversation.

11 A I said to Dr. Desai, I really have to know if
12 this is what happened with the needles. I have to know. So I
13 said -- I said, let's -- let's talk to Linda. And Dr. Desai
14 and I brought her into the -- one of the little preop rooms,
15 closed the door, and I said to Linda, they're saying that you
16 and the CRNAs changed the needle and that you took it off the
17 syringe and that you put a new one on the syringe and then
18 went back into the propofol to re-administer the medication.
19 Is that what happened? And she said, absolutely not.

20 Q Okay. And what did Dr. Desai say?

21 A He said, We have to fight this.

22 Q Okay. Now, back to -- you had reached through
23 your own investigation, reached the conclusion that the -- the
24 Health District's theory -- you weren't buying it yet?

25 A Right.

1 Q Okay. And thereafter you did a -- a more
2 thorough evaluation. By "thereafter," I mean after you went
3 to Brian Labus and tried to get him to look at alternatives,
4 correct?

5 A Correct.

6 Q And you proposed alternatives -- or alternative
7 methods of transmission to Brian Labus --

8 A Yes.

9 Q -- is that correct? Okay. Because you know
10 from being a hepatitis specialist in transmission that this
11 either happened preop, intra-op, or post-op, correct?

12 A Yes, sir.

13 Q Okay. And that -- that means it either happened
14 in the preop before going into the procedure room?

15 A Yes.

16 Q It occurred during the procedure, which would be
17 intra-op, correct?

18 A Yes, sir.

19 Q Or it occurred after the procedure was
20 completed, post-op?

21 A That's correct.

22 Q Okay. And that's presuming all the hepatitis
23 occurred there on that date, these times, these patients, and
24 from that source patient, had to have happened in one of those
25 three ways, correct?

1 A Yes.

2 Q Okay. And did you suggest that the -- Brian
3 Labus's theory just didn't make sense because of what Mr.
4 Santacroce examined you about, the hopping -- the happy
5 butt -- patients not hepatitis C infected and the -- jumping
6 from room to room?

7 A Yes, sir.

8 Q Okay. And the -- you further investigated that
9 after Brian Labus said, Sorry, Cliff, doesn't make any
10 difference. You continued, correct?

11 A Yes, I did.

12 Q And you remained -- and by then you figured out
13 the computer glitch on the dates so that you were able to
14 identify rooms -- distinguish one room from the other room?

15 A Yes, I was the one who made that -- that
16 observation.

17 Q Okay. And having done that, you became more
18 convinced that the Brian Labus theory was not correct?

19 A Yes.

20 Q Okay. And on the theories you proposed to Brian
21 Labus, did you suggest it may have been what we call a rogue
22 employee?

23 A Yes, I did.

24 Q Okay. And I wanted to be clear about this
25 because presumably Brian Labus will testify about this, you --

1 you didn't have anyone in mind?

2 A No, sir.

3 Q Okay. You were just looking at how could this
4 have happened, and through -- put that out as a plausible
5 alternative that you saw?

6 A That's correct, as a -- hey, man, I've testified
7 I'm not an epidemiologist, but logic dictated that the
8 skipping and the room jump made it so that what was being
9 proposed didn't make sense. And I thought because of the way
10 it was distributed -- I honestly thought -- the most likely
11 explanation was that someone had done this in the post-op
12 area, recovery area, or what I called post-op.

13 Q Okay. And you -- when you more thoroughly
14 investigated it yourself --

15 A Yes, sir.

16 Q -- and your -- you became more sure of -- at
17 least more sure that the Brian Labus theory was not right?

18 A Yes.

19 Q Okay. Did you then try to go back and see Brian
20 Labus again?

21 A I think I tried to make arrangements to see him,
22 but I was -- I was rebuffed.

23 Q Okay. Now, this -- this belief of yours was not
24 only then in 2008, but that remains your belief right here
25 today in this courtroom, correct?

1 A What remains my belief, sir, is I don't know how
2 this happened.

3 Q Okay. And it -- the -- when I say it remains
4 your belief, it -- you do not believe that the method of
5 transmission was what the Health District postulates -- says?

6 A I still have that feeling and belief.

7 Q And because in your reconstruction of the
8 events, you recall treating Kenneth Rubino?

9 A Yes.

10 Q He was your patient?

11 A Yes, sir.

12 Q And he was hep C positive?

13 A Yes.

14 Q And you knew that and we've been through -- just
15 for clarity explain what universal safe -- what's the word --
16 universal safe --

17 A Universal precautions.

18 Q Universal precautions. When did that evolve,
19 like, during HIV?

20 A It evolved in the 1980s when --

21 Q Okay.

22 A -- HIV first became a problem across the
23 country, that certain practices should be universally carried
24 out to prevent blood-borne infections.

25 Q Okay. And so by "universally carried out," it

1 meant treat every single patient as if they may have some
2 unknown transmissible blood-borne disease, right?

3 A Yes.

4 Q And if you treat every patient like they may be
5 HIV or hep C positive, then you will universally be safer?

6 A Yes.

7 Q Okay. And so the -- you recall treating Kenneth
8 Rubino?

9 A Yes.

10 Q Removing polyps?

11 A A single polyp.

12 Q A single polyp. And do you recall -- without
13 the times or, you know, looking at start time, stop time, or
14 anything, you know because you were there and you were
15 treating; you -- you had done this procedure with Kenneth
16 Rubino and you were with CRNA Keith Mathahs on that procedure?

17 A Yes.

18 Q Okay. And you know when you stopped -- when you
19 were done with the procedure, you had completed your
20 colonoscopy, you know that the other procedure for the next
21 patient who was the next patient who became -- the first
22 patient to become hepatitis C infected from Mr. Rubino, right?

23 A Yes.

24 Q You know that that procedure was going on
25 simultaneously, had already began in the next room, correct?

1 A That's my recollection of walking by and seeing
2 things happen as if the procedure was being undertaken.

3 Q Okay. And you -- I mean, because you were going
4 to go over and start the next procedure?

5 A Which I would do until I was relieved.

6 Q And you -- you recall going and seeing Dr. Desai
7 already engaged in the procedure?

8 A That's my recollection, yes.

9 Q Okay. And that means the CRNA is not Keith
10 Mathahs, correct?

11 A That's how I remember it.

12 Q Okay. Because the CRNA is Ronald Lakeman?

13 A Yes.

14 Q And you have no recollection at all of Ronald
15 Lakeman, like, coming in during Mr. Rubino's procedure to
16 borrow a bottle of propofol or something, correct?

17 A I have -- that's correct. I have no
18 recollection of that at all.

19 Q Okay. And if I have read all of your
20 depositions correctly, you in 11 years have never seen a CRNA
21 come in and get a propofol vial to take over to a different
22 room --

23 A That's right.

24 Q -- correct?

25 A Correct.

1 Q You completed -- Mr. Rubino was your last
2 patient for -- of the morning, you -- correct?

3 A Correct.

4 Q You were then -- you had been relieved by Dr.
5 Desai?

6 A Yes.

7 Q And so you went back over to the gastro side to
8 see patients for consultation?

9 A Yes.

10 Q Okay. And do you recall approximately how long
11 you were over there?

12 A I was over there about an hour and forty-five
13 minutes or so, and then I came back around, I believe,
14 again -- it's hard for me to remember all the times -- around
15 12 noonish to help out.

16 Q Okay. And let me back up a minute just to be
17 clear. This is said -- been said over and over, but Mr.
18 Mathahs, in performing the procedure with Mr. Rubino -- Mr.
19 Mathahs, the CRNA, would have never left the room -- what --
20 well, Mr. -- Mr. Rubino's room, correct?

21 A During the procedure?

22 Q Yes.

23 A Correct.

24 Q And when you're done with the procedure and
25 you're stepping to go to the next room, Keith Mathahs is still

1 there with Mr. Rubino?

2 A As I remember it, yes.

3 Q So you come back on the 21st after a couple
4 hours seeing patients, and then you start procedures again?

5 A I came in to do one or two because I was on my
6 way to the hospital for my hospital responsibilities.

7 Q Okay. Now, as -- January/February/March 2008 as
8 you were trying to figure out what happened on September 21st
9 did -- did you discuss with other colleagues in the community
10 the practices involving propofol?

11 A Well, I --

12 Q Do you know?

13 A -- I had many discussions, thoughts --

14 Q Okay.

15 A -- small conversations with many people.

16 Q Okay. Did you become aware that other clinics
17 were using propofol just as you all had as a vial to be used
18 for multiple patients?

19 A I saw those reports coming out in the press as
20 -- as other clinics were being evaluated.

21 Q Okay. You learned that other clinics were doing
22 the same thing?

23 MR. STAUDAHER: Objection, Your Honor.

24 THE COURT: Yeah, sustained.

25 MR. STAUDAHER: What are we talking about? It's --

1 MR. WRIGHT: Okay.

2 BY MR. WRIGHT:

3 Q Did you -- I mean, you were investigating this
4 and trying to figure out what happened, correct?

5 A Yes.

6 Q Okay. And you were aware of reports of other
7 clinics using propofol for --

8 MR. STAUDAHER: Objection. Same -- same objection,
9 Your Honor.

10 THE COURT: Yeah, that's sustained.

11 MR. WRIGHT: Okay. And what was the objection?

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

13 MR. WRIGHT: Okay. No, I didn't hear it. I'm not
14 arguing with you.

15 (Off-record bench conference.)

16 BY MR. WRIGHT:

17 Q Now, I wanted to be clear on the timing of your
18 visit with Dr. Desai at Starbucks, West Charleston, Hualapai?

19 A Yes.

20 Q Okay. And you had -- you had already retained
21 criminal counsel Frank Cremen; is that correct?

22 A Well, this -- this would have been June 2008. I
23 think I had already retained him.

24 Q Okay.

25 A Again, I -- I think so.

1 Q And the -- you're aware that Mr. Cremen at the
2 time was sending letters to the District Attorney's Office?
3 Are you aware?

4 A No.

5 Q Okay. Was it -- was this meeting at Starbucks
6 -- this was in June, you -- did Dr. Desai drive there?

7 A I don't know. I -- when I arrived he was
8 already there.

9 Q Okay. Was it -- this was in June, and this was
10 prior to his second stroke; is that correct?

11 A When was the second stroke? I -- it's hard for
12 me to remember.

13 Q July.

14 A Yes.

15 Q And at that time even if your attorney was
16 sending letters to the District Attorney suggesting various
17 things, you didn't -- you didn't go to that meeting to try to
18 interview Dr. Desai to get information or something --

19 A No.

20 Q -- is that correct?

21 A That's correct.

22 Q Okay. And as a final matter again, did you ever
23 at any time perceive or see Dr. Desai say or do anything at
24 all that put patients at risk?

25 A No.

1 Q And that includes cost cutting, KY jelly, gowns,
2 chux, any of those silly -- his silly ways, none of that ever,
3 in your opinion put patients at risk?

4 A That's correct.

5 Q Thank you.

6 THE COURT: State? Mr. Staudaher?

7 FURTHER REDIRECT EXAMINATION

8 BY MR. STAUDAHER:

9 Q Now, you've got to help me out here a little bit
10 because I -- when Mr. Santacroce cross-examined you and asked
11 you about the Health District report that came out; do you
12 recall that? And the conclusions that the Health District put
13 forward?

14 A Did he ask me about the actual --

15 Q Initially, when -- well, when the conclusions of
16 the CDC and the Health District at the end --

17 A But --

18 Q -- you know what those are, correct?

19 A -- yes.

20 Q Did you not say that you came to similar
21 conclusions over time? It's not what you started with, but
22 that you came to those after time?

23 A What similar conclusions?

24 Q That it was unsafe injection practices that
25 caused the actual outbreak?

1 A I don't believe that. I don't think I've said
2 that. I don't --

3 MR. SANTACROCE: I don't either. How can --

4 THE WITNESS: -- I still -- honestly, standing in
5 front of you right now, I don't know how it happened.

6 BY MR. STAUDAHER:

7 Q Okay. You've done probably, beside the CDC,
8 you've done more research into looking at the actual records
9 and so forth than anybody else --

10 A Yes.

11 Q -- would you agree?

12 A Yes.

13 Q And you actually looked at the records and so
14 forth. You were asked how -- questions about how people could
15 be in the same room at the same time, skipping things, that --

16 A Yes.

17 Q And are you aware that the CDC -- or rather, the
18 Health District wouldn't even release 10 names of each patient
19 per -- or of each -- on each day of patients who were never
20 tested, that we don't know if they're hepatitis C positive or
21 not?

22 MR. SANTACROCE: I'm going to object.

23 MR. WRIGHT: What?

24 MR. SANTACROCE: Assumes facts not in evidence.

25 MR. WRIGHT: Objection.

1 MR. SANTACROCE: Misstates the evidence.

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

3 THE COURT: Well, no, that's -- I'll see --

4 MR. WRIGHT: He's asking him hearsay that --

5 THE COURT: -- okay. Wait a minute. I'll see
6 counsel up here.

7 (Off-record bench conference.)

8 BY MR. STAUDAHER:

9 Q So, Doctor, now I'm going to center on the 21st
10 since that's when -- when you're there working, right?

11 A Yes.

12 Q Now, you're assuming for your analysis and --
13 for what you just testified to about how you don't know how
14 this has happened, part of that was related to the issue of
15 the skips and the patients and things like that, correct?

16 A Correct.

17 Q You're assuming, then, that everybody in white
18 on this whole list for the day -- this is one and -- and by
19 your own statement this is one room, this is the other room,
20 correct?

21 A Correct.

22 Q And when I say "this is" -- I get it up there.
23 This is one room, this is another room. You're assuming that
24 everybody in white is negative; is that correct?

25 A That is correct.

1 Q If you found out that that was not the case,
2 would that change your assumption?

3 A If I found out that my assumption that all those
4 cases in white were actually not negative, were that -- and
5 that several were actually positive, that would be news to me
6 sitting here, right now, and it would -- I'd like to know
7 where they are and reassess again.

8 Q Okay. But it would affect your assumption,
9 correct?

10 A It would affect my analysis of this, yes.

11 Q Now, you had also been asked a question about
12 movement from room to room, patient from room to room. How
13 did it hop from one room to another, that kind of thing --

14 A Yes.

15 Q -- do you remember that? And you said you
16 didn't recall ever that there was a situation where there were
17 two -- two anesthesia people in one room for one patient on --
18 during the same period?

19 A That's correct.

20 Q Okay. 47K, which is --

21 MR. STAUDAHER: -- and actually, I probably should
22 use the redacted part of this. It's 18C.

23 MR. SANTACROCE: Can I just have a reference?

24 MR. STAUDAHER: Well, I'm trying -- I'm -- give me
25 one second. I just want to make sure it's the same patient's

1 chart.

2 BY MR. STAUDAHER:

3 Q I'm showing you --

4 MR. STAUDAHER: -- this is 47 -- 47, it looks like
5 -- is that an R or a K, Madame Clerk?

6 THE CLERK: It's a -- yeah, there -- there's an R.

7 MR. STAUDAHER: Is that an R?

8 THE CLERK: Yeah.

9 MR. STAUDAHER: 47R?

10 THE COURT: Who wrote it?

11 THE CLERK: Not me.

12 MR. STAUDAHER: I believe it's 47K.

13 MR. SANTACROCE: Can I just have a reference as to
14 --

15 THE COURT: And let's just say which --

16 MR. SANTACROCE: -- who that is?

17 THE COURT: -- patient number -- and again, ladies
18 and gentlemen, the records that you'll -- you'll get, to
19 protect the privacy of the patients, have redacted information
20 that's -- which patient number is it?

21 MR. STAUDAHER: It's supposed to be Patient No. 18.

22 This one here. I thought I had the actual --

23 THE CLERK: Did you want the --

24 MR. STAUDAHER: -- redacted copy.

25 THE CLERK: -- redacted?

1 MR. STAUDAHER: Yeah, I think here it is.

2 THE COURT: Okay. So it's Patient No. 18.

3 MR. STAUDAHER: [Inaudible]. Now --

4 THE CLERK: I can get it for you.

5 MR. STAUDAHER: I've got it right here.

6 MR. SANTACROCE: Patient 18?

7 BY MR. STAUDAHER:

8 Q Now, if we go to the anesthesia record for 18
9 for the 21st --

10 THE CLERK: What Bates number?

11 BY MR. STAUDAHER:

12 Q -- we're on Bates No. PF-3309; do you see that?
13 Let me go back out. You see this anesthesia record?

14 A Yes.

15 Q Now, down here do you see that signature here?

16 A I see a signature, yes.

17 Q All right. And I'll represent to you that
18 Ronald Lakeman came -- or, excuse me, Keith Mathahs came and
19 said that was his signature.

20 A Okay.

21 Q And you see the date is the 21st?

22 A Yes.

23 Q And we've got a time here listed at 10:15 to
24 10:47, at least on this anesthesia record, correct?

25 A Correct.

1 Q Now, at the end of the procedure -- or at the
2 end of this procedure file, do you see this actual note that
3 you're talking about that you do, where you're involved with
4 it some way, correct?

5 A Yes.

6 Q And if we go to that second page, you said the
7 times that you were looking at --

8 MR. STAUDAHER: -- and this is Bates No. PF-3263, for
9 the record.

10 BY MR. STAUDAHER:

11 Q Do you see that right in here it's got the --
12 the date -- the not initiated date -- whoops, wrong day. I
13 might have the wrong one here, let me grab the right one.

14 THE CLERK: Mr. Staudaher?

15 MR. STAUDAHER: Yes?

16 THE CLERK: I have the redacted.

17 MR. STAUDAHER: Is that 18C?

18 THE CLERK: Well, it's H19. And I have both of those
19 [inaudible].

20 MR. STAUDAHER: Okay. I just want -- the only reason
21 I'm concerned is I don't want to broadcast the name of the
22 patient if it's [inaudible] out of place.

23 THE CLERK: Right.

24 MR. STAUDAHER: I'll give you the -- what -- the
25 patient's number and make sure we've got the right one.

1 THE COURT: If you use the other one, just make sure
2 that the patient's name is covered up.

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

4 THE COURT: That's fine.

5 MR. STAUDAHER: Okay.

6 BY MR. STAUDAHER:

7 Q So if we're on the Bates -- Bates No. 3259.
8 Now, specifically, I want you to look at who's in the room on
9 this day. Do you see Ronald Lakeman is listed there?

10 A Yes.

11 Q Okay. So Ronald Lakeman on the 21st; do you see
12 that?

13 A Yes.

14 Q And this would be in the room with Dipak Desai.

15 A Yes.

16 Q But if we go to the anesthesia record for that
17 same date, the 21st, it is Keith Mathahs; do you see that?

18 A Yes.

19 Q So on the same day, same procedure, two
20 different CRNAs on the record --

21 A Yes.

22 Q -- do you see that?

23 A Yes.

24 Q Ronald Lakeman is listed in the record that you
25 did that you say you relied upon, and Keith Mathahs is the

1 actual one who did the anesthesia of record for that day?

2 A He's the one who signed it, yes.

3 Q Now, you said you have independent memory of
4 that particular -- right at that transition time, correct?

5 A Yes.

6 Q Explain that to me, if you have independent
7 memory of that, seeing Dr. Desai in one room and you had just
8 left a room with who? Who was the CRNA?

9 A Keith Mathahs.

10 Q So Keith Mathahs is in one room --

11 A Yes.

12 Q -- with you, and you say you have independent
13 memory of walking out and seeing Dr. Desai in another room
14 with a patient you believe was Stacy Hutchinson?

15 A Correct.

16 Q Now, this one here -- what happened -- what
17 happened to the next one because if we look at the record on
18 these particular charts here, and let's go in -- let's go back
19 up to your room, okay? Kenneth Rubino?

20 A Yes.

21 Q Do you see that? Let's go in a little further.
22 Kenneth Rubino, and again, when you went through the
23 records -- when you pored through all these records, did you
24 notice that there was any problem with any of the times on any
25 of the records? Did you notice any irregularities at all on

1 the timing?

2 A No. You mean, other than the anesthesia that we
3 talked about in prior testimony?

4 Q Did you notice the anesthesia being an issue?

5 A Yes, when I went through all the records, I did
6 notice the anesthesia time was an issue.

7 Q Do you recall that if your anesthesia record was
8 such that it was -- I mean, not your anesthesia record, but
9 when you did the procedures in those rooms that the times
10 varied at least for how long you were in them? You did some
11 upper endoscopies, some colonoscopies, correct?

12 A Correct.

13 Q So the times varied?

14 A Yes.

15 Q When you were looking through and you saw the
16 anesthesia files, you said that that shocked you and scared
17 you, you knew what that implied?

18 A Yes.

19 Q When you looked at the rest of the records,
20 meaning the nursing notes about the preop -- assessment time
21 and the post-procedure time and the nurse, you know, all those
22 different times, did you look at those and see if there was
23 any issue with them?

24 A Yes.

25 Q Was there?