

1 BY MR. STAUDAHER:

2 Q I'm just asking -- I'm just asking if, for a
3 moment, do you see that?

4 A Yes.

5 Q Okay. And as we go down here and we see Keith
6 Mathahs in the other room -- in Ron Lakeman's room --

7 A Mm-hmm.

8 Q -- around the noon hour also.

9 A Mm-hmm.

10 Q Do you see that?

11 A Mm-hmm.

12 Q Does that refresh your memory on whether or not
13 -- if there were two CRNAs working?

14 MR. SANTACROCE: I'm going to object. She said she
15 didn't know. How do you refresh her memory.

16 THE COURT: That's sustained. You can ask her, you
17 know, what -- if she noticed what time they ever typically
18 would take lunch or something like that. I mean, this -- you
19 know, she --

20 MR. STAUDAHER: Fine.

21 BY MR. STAUDAHER:

22 Q Do you --

23 THE COURT: -- she -- she already said she wasn't
24 aware of if there were two if they would relieve each other.
25 The chart speaks for itself, so...

1 MR. STAUDAHER: Right.

2 BY MR. STAUDAHER:

3 Q Do you -- at a lunchtime do you recall if there
4 was ever movement where they cover each other?

5 MR. SANTACROCE: Asked and answered.

6 THE COURT: Yeah, that's sustained.

7 BY MR. STAUDAHER:

8 Q When the move -- did you ever see -- CRNA -- you
9 mentioned that -- when there were three of them, but did you
10 ever see at least CRNAs move from room to room at some point
11 during the day?

12 A Yes.

13 Q Okay.

14 A Yes.

15 Q When they would move from room to room, did you
16 ever see them carrying anything with them?

17 A Months before I left -- I'm not sure when it
18 started -- they used to have these, like, tackle boxes, like,
19 fishing boxes --

20 Q Okay.

21 A -- I'm not sure what was in them, you know, I
22 didn't give the anesthesia, I never looked in them, I don't
23 know, but I do know that they carried those from room to room.

24 Q You actually saw that?

25 A Yes, sir.

1 THE COURT: They, who?

2 THE WITNESS: Excuse me?

3 THE COURT: You said, "they" carried them.

4 THE WITNESS: Oh, the --

5 THE COURT: Which ones did you actually --

6 THE WITNESS: -- the nurse --

7 THE COURT: -- see --

8 THE WITNESS: -- anesthetist.

9 THE COURT: -- all of them had them, or just one or
10 two had them or -- and just what you actually observed
11 yourself.

12 THE WITNESS: Yeah. I believe -- from what I can
13 remember, that they all had them, so...

14 BY MR. STAUDAHER:

15 Q But you did see at least CRNAs carrying an
16 object of -- a container from --

17 A Matter of fact, I can remember they were gray
18 and maroon in color.

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

20 THE COURT: All right. Cross? Who would like to go
21 first? Mr. -- Ms. Stanish?

22 MS. STANISH: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MS. STANISH:

25 Q Good morning, Ms. Martin.

1 A Good morning.

2 Q My name is Margaret Stanish. I represent Dr.
3 Desai. I want to start clarifying a few points beginning with
4 the timing issue --

5 A Yes, ma'am.

6 Q -- and what has been referred to as
7 "precharting."

8 A Okay.

9 Q And it sounds like you use the term precharting
10 for a couple different things.

11 A Yes, ma'am.

12 Q No. 1, the identification information, or what's
13 known as the demographic information for the patient is
14 already on the chart when you receive it, correct?

15 A That's correct.

16 Q And you've referred to that as precharting?

17 A Yes.

18 Q And with respect to the time, and as I
19 understand it -- maybe I should clarify this first. Your
20 primary in the -- you are primarily working in the recovery
21 room during the period of 2002, did you say, to '07?

22 A No, ma'am.

23 Q Oh, I'm sorry. Clarify the times. I might have
24 missed --

25 A From 2002 through 2005, okay? Primarily

1 recovery in the procedure room. From 2005 through 2007,
2 primarily recovery with occasionally being in the procedure
3 room.

4 Q Thank you.

5 A Okay.

6 Q All right. Going back that -- so you actually
7 had experience quite often through the time -- this time frame
8 of putting in the times for the procedure start and end?

9 A Yes, ma'am.

10 Q And as I understand it, the procedure start time
11 came from the EKG strip; is that correct?

12 A Procedure start time?

13 Q Yes.

14 A I can --

15 Q Do you need this --

16 A -- I think, I can't be certain -- you know --

17 Q Well, let me interrupt your thoughts, I'm sorry.

18 A Can you -- can you put up an example and let me
19 look?

20 Q Sure. Well, just to go back to the direct exam,
21 okay?

22 A Okay.

23 Q And you originally told Mr. Staudaher that you
24 used the clock on the wall --

25 A Right.

1 Q -- in the procedure room to do the procedure
2 time, but then, when he put the -- Ms. Aspinwall's chart on
3 display, he showed you the computer printout of times --

4 A Mm-hmm.

5 Q -- and I think I understood you to say, oh,
6 that's the time we used.

7 A That is correct.

8 Q And so do you know what I'm talking about?

9 A Yes.

10 Q Do you need --

11 A Yes.

12 Q -- to see the chart again?

13 A Because, at first I was thinking that we -- you
14 know, it's been a long, long time.

15 Q I -- it sure has.

16 A And -- and at first I was thinking that we used
17 the clock, but then when I did -- did see that it rejarred my
18 memory and we did use that, you know, the -- the vital signs
19 thing. And as far as the EKG time, I don't know about that.

20 Q Well, let -- maybe I'm -- maybe I'm referring to
21 the wrong strip. If you'd give me a moment --

22 A Okay.

23 Q -- I'll try to retrieve that.

24 MR. STAUDAHNER: It's right up there --

25 MS. STANISH: Did you put it back --

1 MR. STAUDAHER: -- Margaret.

2 MS. STANISH: -- Mike?

3 MR. STAUDAHER: Right on the front.

4 MS. STANISH: Oh, thank you.

5 MR. STAUDAHER: On the left-hand side, the middle
6 column are the two areas that I --

7 MS. STANISH: Thanks. May I approach, Your Honor?

8 THE COURT: You may.

9 BY MS. STANISH:

10 Q I think he pointed here.

11 A Yeah, because we went from -- not -- yeah, up --
12 see the row is kind of in time, and that we went from this --

13 Q Well, let me --

14 A -- to this.

15 Q -- if you would, just review that so you know
16 what you're referring to so you can describe it to the jury
17 because you and I are -- you're talking -- pointing to this --

18 A Okay.

19 Q -- and no one knows but me what you're doing.

20 A This is the strip that had the vital signs on
21 it, the heart rate, the blood pressure, the oxygen rate, the
22 time that we started the blood pressure and things, to the
23 time that the blood pressure ended. When we just started the
24 procedure, we would press the button on the monitor; that
25 would just start the blood pressure and all of this being

1 printed out. And then whenever the procedure is stopped and
2 this scope was pulled out, we would stop it and that would
3 give us our end button pressure, oxygen, heart rate.

4 Q Okay. Thank you.

5 A Okay.

6 MS. STANISH: And for the record, the witness was
7 referring to Bates Stamp 3308, when describing the vital
8 strip.

9 THE COURT: Okay.

10 BY MS. STANISH:

11 Q You had said -- whoops. Those are probably now
12 mixed up.

13 MR. STAUDAHER: That's okay. No biggie.

14 BY MS. STANISH:

15 Q Mr. -- and as I understand it, you used that --
16 that time -- and am I right to say that that time accurately
17 reflected the procedure time in your mind?

18 A Yes, [inaudible].

19 Q And -- and from that time that -- because, as I
20 understand it, you were short on time to complete in detail
21 all the various time slots in the chart; you had this formula
22 that you used, correct?

23 A Yes, ma'am.

24 Q And Mr. Staudaher asked you were the times
25 fabricated; do you recall that?

1 A Mm-hmm.

2 Q And what was your response?

3 A My response was that it -- for the most part,
4 the times that we had put on there, that -- that formula we
5 had done since day one, since I had been there.

6 Q Right.

7 A And that that formula was used because of the
8 amount of patients that went through the clinic were massive.
9 They were -- it was a lot. And if, let's just say, if it
10 would have been real time, the number of patients that we did
11 would not have been done. They could not have been.

12 Q Well, let me talk to you about the real time
13 versus your formula.

14 A Okay.

15 Q Do you recall in -- well, would you say that the
16 -- whatever the real time is, it's within one or two minutes
17 of what you actually put in the chart?

18 A Well, according to the chart that Mr. Staudaher
19 just showed me, there was times where they were -- they were
20 off.

21 Q Mm-hmm.

22 A The end time for the last blood pressure was --
23 I'd have to look at it again, but it was, like, at least 10 to
24 15 minutes off from the time that the patient was actually
25 discharged. Do you know what I mean? The time that we wrote

1 down in recovery that the patient was discharged and the time
2 that the patient was actually discharged, it -- it was
3 different.

4 Q Is the dis -- does the discharge time come from
5 the monitors that are set up in the recovery room that when
6 they are disconnected from the monitor, that becomes the time
7 that's inserted in the line discharge; do you recall?

8 A Okay. Say that again.

9 Q Okay.

10 A Okay. One --

11 Q In the --

12 A -- more time.

13 Q -- recovery room --

14 A Mm-hmm.

15 Q -- there's monitors, correct?

16 A Mm-hmm.

17 Q And the person is hooked up to those monitors
18 and vitals are taken, correct?

19 A Yes.

20 Q And how -- how often are those vitals taken?

21 A I think -- I think --

22 Q Okay.

23 A -- and here again, that was a long time ago.

24 Q I hear you.

25 A I think that it was every five minutes, maybe.

1 Q Okay. And how long were patients typically in
2 recovery?

3 A I think that we did -- maybe 40 sets of
4 vitals --

5 Q And so --

6 A -- maybe.

7 Q -- if the vitals intervals were 5 minutes, they
8 would be in there for at least 20 minutes, correct?

9 MR. STAUDAHER: Actually, I think, mathematically, it
10 would be 15, Your Honor, if there were 4.

11 MS. STANISH: But 4 -- 4 times 5, 20.

12 MR. STAUDAHER: No. The first one is the first one,
13 then another one, then another one, another one --

14 MR. SANTACROCE: And I'm going to object to Mr.
15 Staudaher's --

16 MS. STANISH: Well, let me --

17 THE COURT: Well --

18 MR. SANTACROCE: -- testimony.

19 MS. STANISH: -- let me ask --

20 THE COURT: -- she can't --

21 MS. STANISH: -- the witness --

22 THE COURT: -- okay --

23 MS. STANISH: -- but thank you.

24 THE COURT: -- she can -- if it's wrong --

25 MS. STANISH: I'll call you as a witness in our case.

1 THE COURT: -- well, okay.

2 MR. STAUDAHER: Well, I'm just saying the record --

3 THE COURT: Wait. Excuse me.

4 MR. STAUDAHER: -- it misrepresents the record, Your
5 Honor.

6 THE COURT: Ma'am? We're lawyers, so none of us can
7 add or subtract --

8 MS. STANISH: That's true.

9 THE COURT: -- correctly. So if, you know, someone
10 uses a figure and that doesn't sound right to you, don't feel
11 like you -- the -- don't assume that they're correct. So feel
12 free to say that doesn't add up to me or whatever. If -- if
13 Ms. Stanish, you know, she --

14 THE WITNESS: Can I --

15 THE COURT: -- or any other lawyer says, well, is it
16 4 four fives or whatever.

17 THE WITNESS: Can I interject --

18 THE COURT: Sure.

19 THE WITNESS: -- something?

20 THE COURT: Maybe she can explain it for us.

21 THE WITNESS: We wouldn't do a blood pressure
22 immediately when they came out.

23 BY MS. STANISH:

24 Q Mm-hmm.

25 A And then there would be, like, you know, total,

1 like, I don't know, four blood pressures total. So they would
2 get one as soon as they got wheeled out, we hook them up --
3 they would get a blood pressure then.

4 So probably -- probably is speaking -- probably
5 realistically at 15 minutes --

6 Q And if they needed --

7 A -- because --

8 Q -- if they needed to be in the room longer
9 because they were still groggy or something, you would -- you
10 as the recovery nurse -- ensure that they stayed longer?

11 A Yes. Yeah, they stayed. Yes. So, you know,
12 I'm sure that there is charts there that do reflect that, you
13 know, maybe one person had four vitals, one person had five
14 vitals depending on if, you know, they were groggy, or you
15 know, they weren't necessarily ready to be discharged yet.

16 Q I want to go back and talk to you about the --
17 the charting formula that you used, whether it reflected
18 the -- whether it was one or two minutes off from whatever
19 real time would be, okay?

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

21 MR. WRIGHT: You may.

22 BY MS. STANISH:

23 Q I'm going to show you your interview with the
24 Metropolitan Police. Did you happen to review that before you
25 came to court today?

1 A Hey, yeah, this, ma'am.

2 Q Okay. Good.

3 MS. STANISH: And for counsel, I'm going to begin on
4 page 13.

5 MR. STAUDAHER: Mm-hmm.

6 BY MS. STANISH:

7 Q If you would -- and some of this has highlights,
8 but that's just my -- you can read whatever you want --

9 A Okay.

10 Q -- before or after it.

11 A Okie-doke.

12 Q Please take the time to read this -- sorry,
13 wrong page. All right. Well, maybe -- we might as well have
14 you read this because I'm going to have another --

15 A Okay.

16 Q -- question on that.

17 A All right.

18 Q So just take your time, go read through that, if
19 you don't mind.

20 A Okay. Do you want me to start it here?

21 Q The jury can stretch now if they want, Your
22 Honor.

23 A Do you want me to start up here?

24 Q Yeah, that's fine.

25 A Okay. (Witness complying.)

1 THE COURT: We're seeing about the air conditioning
2 because I see it's -- you're getting hot.

3 THE WITNESS: Okay.

4 BY MS. STANISH:

5 Q Now -- okay. Hold on. Let me --

6 A Okay.

7 Q -- just take this and go back.

8 A Okie-doke.

9 Q Now, what you just reviewed was related to the
10 -- choosing the charting formula and comparing it to real
11 time --

12 A Right.

13 Q -- correct?

14 A Right.

15 Q Explain to us -- now that you've read that --

16 A Mm-hmm.

17 Q -- can you explain to us -- respond to the
18 question whether using your formula was a close estimation of
19 real time.

20 A Like I said on certain charts -- on the
21 particular chart that had -- I mean, this [inaudible] showed
22 me it was not; however, that was not a chart that I did.

23 Q Correct.

24 A Okay. You know, I would say that the times
25 weren't far off, but they weren't an exact either.

1 Q You told the police you thought the times were
2 -- may be one or two minutes off from real time?

3 A Mm-hmm.

4 Q I'm sorry?

5 A That's correct, I did; however, at that
6 particular time I don't believe that I was actually looking at
7 a chart when I said that, okay?

8 Q Okay.

9 A So like I said, they weren't -- they weren't
10 exact times, you know; they were fairly close, yes, I'm not
11 going to lie. That -- that is the truth, they were fairly
12 close but they were not exact.

13 Q Right. Right. And, you know, we have these
14 times where you start with the EK -- the vital sign in the
15 procedure room, the start time, right off of the monitor.

16 A Mm-hmm.

17 Q And then you go back five minutes and that
18 reflects what's occurring in the preop room, correct?

19 A No.

20 Q No?

21 A When the procedure ends, we added five minutes
22 to get them from the room to the postop area. Now, the
23 policemen that I spoke with during the [inaudible] had asked
24 me previous to that -- he had said it took you five minutes to
25 get from the -- the procedure room to the post-op area. He

1 said, in other -- it was from like here -- like, the edge of
2 the door in the procedure room to where that gentleman with
3 the green pants. They had said it took you five minutes.
4 Sometimes, sometimes not. But typically that's what -- that's
5 the time that we went with.

6 Now, whether it took five minutes or didn't, that's
7 the time that we used.

8 Q Well, let me ask you about this interval of time
9 from going to the procedure room to recovery room.

10 A Mm-hmm.

11 Q When that's occurring, I mean, when the patient
12 is moved into the recovery room, there are certain things you
13 are doing at that point; is there not?

14 A No.

15 Q You're not hooking him up to the monitors?

16 A No.

17 Q Who hooks him up to the monitors?

18 A We -- when the -- usually it was the --
19 sometimes this -- you'll usually aid the tech sometimes. On
20 occasion the anesthesiologist, whoever was available would
21 roll the patient from the procedure room to the recovery room.
22 When they got to the recovery room -- that's when they would
23 get hooked up.

24 Q All right. All right.

25 A Okay?

1 Q And so it -- there's a period of time from
2 movement from the procedure room into the recovery room and
3 then hooking them up to the monitor?

4 A Yes. Yeah, yes, ma'am.

5 Q All right. Do you recall, Ms. Martin, whether
6 the monitor time was used at all in the recovery room to
7 pinpoint a discharge time?

8 A Let's see. The last time was on the vital
9 signs, you know, the -- the vital signs sheet.

10 Q Right.

11 A But last time it was on there was a time that we
12 would put for discharge.

13 Q And would that time coincide with real time?

14 A Sometimes.

15 Q Would it -- I guess it's hard --

16 A Sometimes.

17 Q -- I guess it's hard because time is relative,
18 isn't it?

19 A Yeah. Yeah, sometimes --

20 Q But, I mean, that time at -- reflects the actual
21 time when they're disconnected from the monitor --

22 A Yes.

23 Q -- right?

24 A Yes, ma'am.

25 Q That's accurate?

1 A Yes.

2 Q And then once they're disconnected from the
3 monitor, what happens to that patient?

4 A One is -- they're disconnected from the monitor,
5 they walked them back, they got dressed, then after they got
6 dressed they went in to see the discharge nurse, they were
7 given their discharge instructions with their family, and then
8 they left.

9 Q So the chart -- the chart overall that you
10 reviewed just on direct, basically shows where the patient is
11 throughout the preop procedure and recovery room, correct? I
12 mean, it kind of tracks them through that using certain
13 milestone times, do you see what I'm saying?

14 A Yes.

15 Q And you're using accurate times from the vital
16 machines in both the procedure room and the recovery room,
17 correct?

18 A The -- the times in the procedure room were
19 accurate with the times on the monitor, okay?

20 THE COURT: You know, this --

21 THE WITNESS: Like in --

22 THE COURT: -- oh, I'm sorry --

23 THE WITNESS: -- excuse me.

24 THE COURT: -- I didn't mean to interrupt you.

25 THE WITNESS: Sorry. Like the times on this

1 particular one was from, what, 10:30 to 10:38, those were the
2 accurate times. That's when the procedure started and
3 stopped, okay?

4 THE COURT: And, Ms. Stanish --

5 MS. STANISH: Yes?

6 THE COURT: -- the jury needs a break.

7 MS. STANISH: -- okay.

8 THE COURT: And it's 12:30 so --

9 MS. STANISH: Fair enough.

10 THE COURT: -- I think we should take our lunch break
11 now.

12 THE WITNESS: Okay.

13 THE COURT: Ladies --

14 MR. STAUDAHER: Are we going to -- she's in -- I
15 think she was in the middle of her answer.

16 THE COURT: No, I thought she was done. Were you
17 done with your answer?

18 THE WITNESS: Not necessarily.

19 THE COURT: Oh, I'm sorry. I didn't mean to
20 interrupt her. She stopped, and so I --

21 THE WITNESS: Okay.

22 THE COURT: -- thought you were done. Finish your
23 answer, and then we'll go to lunch.

24 THE WITNESS: And I forgot where I was --

25 THE COURT: All right. Ms. Stanish, did you -- I

1 apologize. I waited and I thought I -- I interrupted her and
2 then I thought she had finished --

3 THE WITNESS: Oh, I know, I was --

4 THE COURT: -- and I apologize.

5 THE WITNESS: -- I know what I was saying. So those
6 particular times were accurate; however, in the procedure
7 room -- I mean, in the recovery room we did not necessarily go
8 by those times, we went by the formula that we knew. Like I
9 just said, five minutes from the procedure room to the
10 recovery room, do you see the IV in another five minutes,
11 doctor at bedside -- the same in time, you know what I mean,
12 so that was times, did not [inaudible] reflect the times that
13 were on the strip --

14 BY MS. STANISH:

15 Q Correct.

16 A -- does that make sense?

17 Q Yes, the --

18 A Okay.

19 Q -- and I --

20 A Yeah.

21 Q -- we'll pick up, Your Honor, because I --

22 THE COURT: Okay.

23 MS. STANISH: -- we have more to go and I don't want
24 to --

25 THE COURT: Okay.

1 MS. STANISH: -- get confused.

2 THE COURT: And I -- and I didn't mean to interrupt
3 you, I apologize.

4 THE WITNESS: That's okay.

5 THE COURT: I meant to interrupt Ms. Stanish.

6 MS. STANISH: Thank you, Your Honor. Thank you,
7 anytime you want to interrupt me, Your Honor, of course.

8 THE COURT: All right. Ladies and gentlemen, let's
9 go ahead and take our lunch break until 1:30.

10 During the lunch break you are reminded that you are
11 not to discuss the case or anything relating to the case with
12 each other or with anyone else, you're not to read, watch,
13 listen to any reports of or commentaries on the case, person,
14 or subject matter relating to the case, don't do any
15 independent research by way of the Internet or any other
16 medium, and please do not form or express an opinion on the
17 trial.

18 If you'd please place your notepads in your chairs
19 and follow the bailiff through the rear door.

20 (Jury recessed at 12:29 p.m.)

21 THE COURT: All right. Regarding scheduling,
22 unfortunately the witness -- well, witness's husband works
23 what, the graveyard shift?

24 THE WITNESS: He works graveyard.

25 THE COURT: And they had a note for break -- that's

1 why I took the break when I did.

2 Ms. Stanish, how much longer do you anticipate?

3 MS. STANISH: Half-hour.

4 THE COURT: Mr. Santacroce?

5 MR. SANTACROCE: Half-hour.

6 THE COURT: Okay. So it's probably going to be, I'd
7 say about another hour and twenty minutes for your testimony
8 following lunch. I don't know -- I mean, I'd be inclined to
9 say she has to come back after the lunch break, although if --

10 THE WITNESS: Yeah, okay.

11 MS. STANISH: I mean, otherwise, she'd have to come
12 back --

13 THE COURT: Another whole other day.

14 MS. STANISH: -- another day, and that takes even
15 more time.

16 THE COURT: So, I mean, that -- and I'm --

17 THE WITNESS: Okay.

18 THE COURT: -- you know --

19 THE WITNESS: That's fine.

20 THE COURT: -- that would be the only --

21 THE WITNESS: I was unprepared. They told me that it
22 would probably be over about noon, so...

23 THE COURT: Well, unfortunately we didn't -- we had
24 some legal issues, and so we didn't start until 11, so...

25 Any -- you've only been an hour and a half. In any event, you

1 know, I'm sure, you know, they would be fine if you came back
2 another day, but then you have to come back another day, and
3 then you wait around and I can't tell you how long that day
4 would be either.

5 THE WITNESS: Okay.

6 THE COURT: So 1:30. During the lunch break don't
7 discuss your testimony with anyone else.

8 THE WITNESS: Yes, ma'am.

9 THE COURT: All right. Thank you.

10 THE WITNESS: Yes, ma'am.

11 THE COURT: And yes, sir?

12 WITNESS'S HUSBAND: I'm sorry, Your Honor. I'm her
13 husband. I do work nights, and I haven't been to sleep, but I
14 want my wife to go ahead and get --

15 THE COURT: And finish up?

16 WITNESS'S HUSBAND: -- this over with.

17 THE COURT: All right.

18 WITNESS'S HUSBAND: So, I mean, another hour and a
19 half -- push come to shove, I'll go outside and lay out on the
20 bench.

21 THE COURT: And that's fine, yeah.

22 MS. STANISH: What's the issue? Can't we just get
23 her a cab?

24 WITNESS'S HUSBAND: Oh, okay. So --

25 MS. STANISH: Is that the issue? She needs a ride?

1 Let's get her a cab.

2 THE COURT: There's actually a room off to the side
3 there in the vestibule, sir. There's no -- I mean, you lie on
4 the table but that's private, so...

5 WITNESS'S HUSBAND: No. No. No, it's -- I'm good.

6 THE COURT: You know, there's no --

7 MS. STANISH: Okay.

8 THE COURT: -- the chairs are uncomfortable.

9 May I see counsel at the bench, please, before you
10 all leave.

11 THE WITNESS: Can I --

12 THE COURT: And, ma'am, you're excused for the lunch
13 break.

14 (Off-record bench conference.)

15 THE COURT: Okay. Let's go to lunch.

16 (Court recessed at 12:35 p.m. to 1:28 p.m.)

17 (Outside the presence of the jury.)

18 THE COURT: Ask her if that -- fact that he's a
19 witness would, you know --

20 MR. STAUDAHER: And he's out there too.

21 THE COURT: What's his name?

22 MR. STAUDAHER: Marion Vandruff.

23 THE COURT: Vandruff?

24 MR. STAUDAHER: Yes.

25 THE COURT: Miriam?

1 MR. STAUDAHER: Marion.

2 THE COURT: Marion?

3 MR. STAUDAHER: Yeah.

4 THE COURT: Mr. Santacroce, was there a line at the
5 gate at all?

6 MR. SANTACROCE: No.

7 (Off-record colloquy.)

8 THE MARSHAL: Are we ready for the witness?

9 THE COURT: Why don't we do the juror first, Ms.
10 Booker?

11 THE MARSHAL: Okay.

12 THE COURT: Let's bring Ms. Booker in.

13 MR. WRIGHT: My clock is like the procedure room
14 clock.

15 MS. STANISH: Yeah, and my clock -- which, now, when
16 I look at the court, my clock is 1:30 --

17 MR. WRIGHT: Yours is different than mine.

18 MS. STANISH: -- yours is four minutes --

19 THE COURT: I went off the phone --

20 MS. STANISH: -- faster --

21 THE COURT: -- which is accurate. It's not --

22 MS. STANISH: -- this is --

23 THE COURT: -- ma'am, come on in and just have a
24 seat. You can sit in your regular juror seat.

25 First of all, I want to thank you for alerting Kenny

1 to the fact that you had been contacted by a witness in this
2 case, Mr. Marion Vandruff, and I -- I got your note and thank
3 you for that. And you did the appropriate thing by ending the
4 conversation on Facebook. He is going to be a witness today,
5 so I just need to ask you whether or not the fact that he is
6 going to be testifying in this case would cause you to favor
7 one side over the other?

8 JUROR NO. 9: No.

9 THE COURT: Okay. And can you listen to his
10 testimony and keep an open mind and evaluate it just like you
11 would anybody else's testimony?

12 JUROR NO. 9: Yes.

13 THE COURT: Okay.

14 JUROR NO. 9: Like I said, I don't talk to him like
15 that.

16 THE COURT: Okay. Okay. So nothing about that that
17 would cause you to be impartial or favor one side over the
18 other?

19 JUROR NO. 9: No.

20 THE COURT: All right. State, any questions for Ms.
21 Booker?

22 MR. STAUDAHER: No, Your Honor.

23 THE COURT: Defense, any questions?

24 MS. STANISH: Nope.

25 THE COURT: Okay. All right.

1 MR. WRIGHT: And -- and you won't discuss that you
2 know him with any of the other jurors or anything?

3 JUROR NO. 9: No.

4 THE COURT: Okay.

5 MR. WRIGHT: Okay. Right.

6 THE COURT: And, you know, when -- they may say, oh,
7 why did they bring you in there special or whatever, don't
8 talk -- discuss anything that's just transpired with the other
9 jurors. All right. Ma'am, thank you.

10 JUROR NO. 9: Okay.

11 THE COURT: And again, I really think you handled it
12 the correct way, and I appreciate that.

13 JUROR NO. 9: Okay.

14 THE COURT: All right. Thank you. And just follow
15 Kenny. And actually, you don't even need to -- well, we'll
16 have Kenny take you out, but you don't need to walk all the
17 way down the hall --

18 JUROR NO. 9: Oh, okay.

19 THE COURT: -- and then --

20 JUROR NO. 9: He has a march.

21 THE COURT: So we can then bring the jury in and get
22 started. Kenny, bring them in.

23 Ma'am, just come on up here back to the witness
24 stand, please.

25 THE WITNESS: Thank you.

1 THE MARSHAL: Ladies and gentlemen, please rise for
2 the presence of the jury.

3 (Jury entering at 1:35 p.m.)

4 THE MARSHAL: Thank you. Everybody may be seated.

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

9 And, ma'am, of course, you are still under oath.

10 THE WITNESS: Okay.

11 THE COURT: And, Ms. Stanish, you may resume your
12 cross-examination.

13 MS. STANISH: Thank you, Your Honor.

14 May I approach?

15 THE COURT: You may.

16 MS. STANISH: Your Honor, I want to hand the witness
17 State Exhibit 7. And I just added three tabs so that I could
18 direct her to a page without --

19 THE COURT: Okay.

20 MS. STANISH: -- running back and forth. Because I'm
21 afraid I'm going to fall off these stairs.

22 BY MS. STANISH:

23 Q Here you go.

24 A Okay.

25 Q You don't need reading glasses, do you?

1 A No. No. Not yet.

2 Q Your time will come.

3 A Not yet.

4 Q All right. I feel a bit more organized to

5 review these documents with you, and again, I want to focus on

6 the charting time and what I'm going to refer to as real time,

7 okay?

8 A Okie-doke.

9 Q Now, this -- you have Patty Aspinwall's chart in

10 front of you.

11 A Yes.

12 Q And if you would turn to the page that I put a

13 sticky on, marked No. 1. Okay?

14 A Okay.

15 Q This is the preprocedures test -- assessment

16 time of 10:25, correct?

17 A 10:20.

18 Q Does that look like 20 or 25 to you?

19 A 20.

20 Q I might make sure I got you on the right page.

21 A Oh --

22 Q Oh, yeah --

23 A -- okay --

24 Q -- yeah --

25 A -- this time --

1 Q -- yeah --

2 A -- I was looking at that time.

3 Q -- yeah, I'm looking right here.

4 A Okay.

5 Q Got it?

6 A Okay.

7 THE COURT: And it's also on your monitor.

8 THE WITNESS: Okay.

9 BY MS. STANISH:

10 Q Yeah. Now, do you know who fills that time in?

11 A Let's see. That particular time --

12 Q And if I can clarify my question. Is the --
13 would the preproceed -- preop nurse do that or would the nurse
14 in the procedure room do that; if you recall?

15 A Preprocedure -- okay. Hold on. If I -- I think
16 that was done in the preop.

17 Q Okay.

18 A I think.

19 Q All right. And if -- if as we go through these
20 documents something clicks in your mind --

21 A Yes.

22 Q -- just raise your hand --

23 A By all means.

24 Q -- and let me know.

25 A By all means.

1 Q In the preop room the heplock is inserted,
2 correct?

3 A Correct.

4 Q Heplock is needed for anesthesia, correct?

5 A Correct.

6 Q And is it -- were you -- did you work much in
7 the preop room?

8 A No, ma'am.

9 Q Okay. As a nurse -- I mean, when did you get
10 your nursing degree?

11 A In Missouri.

12 Q In what year?

13 A Let's see. 1996.

14 Q And when you went to the -- when you started
15 working at the endoscopy center --

16 A Mm-hmm.

17 Q -- did somebody have to train you on how to put
18 in a heplock?

19 A No, ma'am.

20 Q Why?

21 A Because when -- typically when a nurse goes to
22 school, they learn that during training.

23 Q And I trust that you're -- you know about
24 aseptic technique as far as injection --

25 A That's --

1 Q -- practices?

2 A -- correct. Yes, ma'am.

3 Q And where did you learn that?

4 A In nursing school.

5 Q Oh, by the way, I know I'm -- while I'm on the
6 subject, I'll just stick with it and we'll work our way
7 through preop procedure and recovery room according to the
8 chart, okay?

9 A Okay.

10 Q As an RN --

11 A Mm-mm.

12 Q -- did you -- do you have to take continuing
13 education courses?

14 A Yes, we do.

15 Q And here in -- while you were in Nevada, what --
16 what was that requirement?

17 A That you have 30 CEUs.

18 Q CEUs --

19 A Continuing education units.

20 Q And does 30 units comport with a number of hours
21 or what?

22 A That's every two years you have 30 units that
23 you need to -- 30 hours, basically that you need to complete.

24 Q And where did -- is there like some organization
25 that provides RNs with that training?

1 A There is many different places that you can get
2 those. Sometimes through -- through work. Sometimes through
3 the Internet. There was many different places that you can do
4 that, so...

5 Q And would you have to -- do you have to renew
6 your nursing license every two years?

7 A Yes, ma'am.

8 Q Okay. So am I correct in assuming that every
9 two years you would have to provide the nursing board with
10 proof that you satisfied that minimal 30 hours?

11 A That's correct, ma'am.

12 Q Did you ever do over 30 hours?

13 A Probably.

14 Q So you were overeducated?

15 A Probably, you know.

16 Q Who paid for your continuing education?

17 A There again, that depends. If it's through the
18 employer, sometimes the employer pays for that. Sometimes we
19 as nurses pay for that ourselves. So it just depends.
20 Sometimes there's free continuing education units. It just
21 depends.

22 Q And does the nursing board put on educational
23 programs?

24 A You know, I'm sure that they do. I'm not sure
25 if I've ever taken one through them, but --

1 Q All right.

2 A -- I'm sure they do.

3 Q Fair enough. So back to the chart.

4 A Mm-hmm.

5 Q Preop would involve inserting a heplock, which

6 is something you know how to do from way back, correct?

7 A Correct.

8 Q Now, let me turn to what I think I marked as No.

9 2 on your chart -- or let me -- procedure start time --

10 A Mm-hmm.

11 Q -- is 10:30, correct?

12 A That's correct.

13 Q And if we skip on over to the -- I think it's

14 your last page of that chart --

15 A Mm-hmm.

16 Q -- that comes right off of the vital monitor,

17 correct?

18 A That's correct, ma'am.

19 Q That's the start time of the --

20 A Yes.

21 Q -- what you quote as the procedure time?

22 A That's correct.

23 Q This time is not fabricated, correct?

24 A That time is real time.

25 Q Moving to -- meaning, this time is real time,

1 and what we have back here on the -- where is that document.

2 This time -- that is not fabricated time, correct?

3 A Can I have a page, I don't --

4 Q You know, I -- I have my --

5 A That's on --

6 Q -- did you take those tabs off?

7 A -- okay. That right there. That's the time
8 that you just asked me about.

9 Q Correct.

10 A That time came from this strip.

11 Q And is there anything in nursing that requires
12 you to look at a clock on the wall and use that time?

13 A Well, if you're going by the strips, that should
14 be consistent with a clock which is not -- that's not my
15 responsibility. That is the people who service the equipment.
16 If that's the case, then yes, they should coincide.

17 Q But in real life clocks are different, are they
18 not?

19 A True.

20 Q Well, let's do an experiment.

21 A But are they five minutes off, ten minutes off,
22 two minutes off?

23 Q Correct. Time is relative --

24 A Right.

25 Q -- I suppose. But --

1 A Okay.

2 Q -- but you are consistently using the time off
3 of this monitor, correct, to indicate start time?

4 A In the procedure room, yes, ma'am.

5 Q Correct. And even if it's different from what
6 happens to be on the wall, that time is not fabricated,
7 correct? Do you see what I'm saying?

8 A That time -- whatever time the time was on this
9 particular printout was the time that we used on this sheet.
10 That's what I'm going to say.

11 Q All right. And when we -- and this is where, I
12 think, we left off before the lunch break; I was starting to
13 ask you about discharge time --

14 A Okay.

15 Q -- so if you could turn to what I marked with
16 the tab for you as No. 3.

17 A Okay.

18 Q And this document is what now, the -- is this
19 the recovery room --

20 A The recovery, yes, ma'am.

21 Q And discharge criteria met, time eleven, zero,
22 nine, correct? Do you see that -- where I'm looking?

23 A Okay. Where are you -- okay, right there, yes.

24 Q This time if we flipped to -- if you would flip
25 to the -- the readouts from the various -- the two monitors.

1 A Mm-hmm.

2 Q This little readout on the right --

3 A Mm-hmm.

4 Q -- that's the monitor vitals from the recovery
5 room, correct?

6 A Mm-hmm.

7 Q And if you look right here --

8 A Mm-hmm.

9 Q -- 11:09, what is -- help us interpret this
10 script, what does 11 -- the time of 11:09 mean?

11 A Okay. Can I go through the whole thing?

12 Q Okay. If you think --

13 A Would that help?

14 Q -- it's helpful, sure.

15 A Okay. The post-procedure assessment time was --
16 can you flip it on the screen so the jury --

17 Q Not without my --

18 A -- can see?

19 Q -- glasses. Post-procedure?

20 A Yes.

21 Q Okay.

22 A Up at the top.

23 Q Let me -- hold on, I'm going to zoom out here.
24 All righty.

25 A The post-procedure --

1 Q Now, what's that?

2 THE COURT: Whoops.

3 BY MS. STANISH:

4 Q Hold on a moment.

5 A Whoops.

6 Q Oh, look what you did. Kenny?

7 THE COURT: Well.

8 MS. STANISH: Kenny, we have a problem.

9 THE WITNESS: That's coming out of my check, huh?

10 BY MS. STANISH:

11 Q Yeah.

12 A Okay.

13 Q Nice going.

14 A Now, you know, didn't mean that.

15 THE MARSHAL: It's okay.

16 THE WITNESS: I'm not trying to falsify evidence.

17 THE MARSHAL: I'm trying to get there.

18 MS. STANISH: There you go.

19 THE WITNESS: Can I touch it now?

20 THE COURT: Yes.

21 THE WITNESS: Okay. The post-procedure --

22 MR. STAUDAHNER: Well, before she touches that, Your

23 Honor, I was just going to say --

24 THE COURT: Yeah, there goes the --

25 MR. STAUDAHNER: -- if you move that down, the reason

1 that's happening is because if you touch the top of the
2 screen, it activates that, so --
3 THE WITNESS: Oh, that's why --
4 THE COURT: Oh, okay.
5 MR. STAUDAHER: -- if you move the document --
6 THE WITNESS: -- okay.
7 MR. STAUDAHER: -- down a little bit then --
8 THE COURT: So if you move the exhibit down --
9 MR. STAUDAHER: -- down a little bit --
10 THE COURT: -- Ms. Stanish --
11 MR. STAUDAHER: -- yes, and then she should be able
12 to do it.
13 THE COURT: -- on your thing. So -- yeah --
14 THE WITNESS: Towards you.
15 THE COURT: -- towards you, okay.
16 THE WITNESS: Yeah.
17 MR. STAUDAHER: There.
18 THE COURT: Now, okay. So now you can --
19 THE WITNESS: There we go.
20 THE COURT: -- hopefully see --
21 THE WITNESS: Now, I'm afraid it touched again.
22 THE COURT: -- it, well, you can touch the screen.
23 THE WITNESS: Okay. The post-procedure assessment
24 time 10:50, that was the time that we took the patient from
25 the procedure room out to the recovery room, okay? Generally

1 speaking, that was anywhere from two minutes to five minutes.
2 Then -- and again, this is how we did this from day one that I
3 started. Five minutes from then was the DC heplock time.
4 That was the time that we took out the IV. When we brought
5 them out, we started the vitals, okay?

6 Now, whether or not these vital signs, the times, I
7 don't know if they were accurate. I can't tell you because
8 I'm at --

9 BY MS. STANISH:

10 Q Well, can I --

11 A -- you know.

12 Q -- interrupt you at -- please hold on a moment.

13 A Okay.

14 Q Let's talk about the recovery time vitals, okay?
15 That -- or this monitor tape reflects the vital time --

16 A Mm-hmm.

17 Q -- vital monitoring times?

18 A Right.

19 Q So am I correct in saying that this little tape
20 here --

21 A Mm-hmm.

22 Q -- captures, from a monitor, an accurate time
23 for vitals?

24 A Well, if -- apparently not because if -- flip
25 back, please.

1 Q Okay.

2 A If you look at this time, where it says

3 discharge criteria met, that was the first vital that was

4 taken --

5 Q Nope. Let's --

6 A And then --

7 Q -- let me --

8 A -- wait --

9 Q -- okay.

10 A -- and then it says that the last vital was at

11 10:55.

12 Q Where -- wait --

13 A Okay.

14 Q -- I'm sorry. Point to me where you say 10:55.

15 A On -- on this sheet.

16 Q I'm sorry. Let's talk about this. Is this what

17 you were talking about --

18 A Yes.

19 Q -- 10:55?

20 A Yes.

21 Q 10:55 reflects the first vital sign?

22 A No.

23 Q Take a -- well, take a look at this. Just --

24 10:55, 11:06, 11:09 --

25 A Mm-hmm.

1 Q -- correct?

2 A Mm-hmm. 11:06, and I'm not real sure why it
3 says 11:09 first and then it -- then 11:06 and then 10:55,
4 okay.

5 Q Is it possible that 10:55 --

6 A It must be logged backwards --

7 Q -- exactly.

8 A -- and then it goes up.

9 Q So -- excuse me. I just want to make sure we're
10 all clear on this --

11 A So --

12 Q -- 10:55 reflects the first vital sign?

13 A That is correct, ma'am.

14 Q Then --

15 A And that's when the IV came out.

16 Q And so what's that -- or you're saying --

17 A That if --

18 Q -- oh, here?

19 A Yes.

20 Q Oh, here?

21 A Yes.

22 Q Heplock disconnect time --

23 A 10:55.

24 Q -- 10:55.

25 A Okay.

1 Q And that -- does that time actually match in
2 this instance the physician at bedside?

3 A Yes, we were told that the physician at bedside
4 and the heplock DC time should match.

5 Q Okay.

6 A Okay?

7 Q And why is that? Because there is somebody
8 actually bedside doing something, correct?

9 A They're -- well, my question when I first
10 started there was there is no doctor at the bedside, why am I
11 putting that time in, and the answer to my question was, Well,
12 the doctors are in the rooms behind you; if there's a problem,
13 they can be there within 30 seconds.

14 Q So in case there was an emergency or some kind
15 of problem --

16 A Yes.

17 Q -- with a patient a doctor could respond within
18 seconds?

19 A That's correct, ma'am. Yes.

20 Q All right. And so going back to this document
21 we do -- where we see the discharge criteria met --

22 A Mm-hmm.

23 Q -- being 11:09 --

24 A Mm-hmm.

25 Q -- that's the time -- the last reading on the

1 monitor, correct?

2 A Yes.

3 Q Now, I want to emphasize -- was there anything
4 else you wanted to say? It looks like you're still stuck.

5 A No, ma'am. No.

6 Q Okay. Here's what I want to clarify. Procedure
7 start time 10:30 --

8 A Mm-hmm.

9 Q -- comes from the vital strip that's in the
10 procedure room?

11 A That's correct.

12 Q It is not a fabricated time.

13 A That is the time that -- that was on that strip;
14 that's the time that was placed on that sheet.

15 Q The discharge criteria met is from the vital
16 monitor in the recovery room, correct?

17 A That is correct.

18 Q This is not a fabricated time.

19 A On this particular chart it does not appear to
20 be.

21 Q Okay. And it was your practice, however -- or a
22 clarifying question for you --

23 A Okay.

24 Q -- was it your practice to, in recovery room --

25 A Mm-hmm.

1 Q -- to take the last monitor reading and insert
2 it here on the line that says, discharge criteria met?

3 A From what I can remember, yes.

4 Q All right. And what does it mean -- educate us
5 -- what does it mean to have the discharge criteria met?

6 A That means that the vital signs are done, the
7 vital signs are stable -- the patient's -- has woken up. Now,
8 some of the patients that -- that left, you know, were still a
9 little groggy, okay? That's -- you know, whenever you have
10 anesthesia -- I don't know, I don't give anesthesia, but it's
11 my understanding that, you know, you may still be a little --
12 a little groggy, but still coherent enough to get out.

13 We asked when people got discharged to have a person
14 with them to get the discharge instructions, so that they
15 understood those.

16 Q Okay. Thank you.

17 A Okay?

18 Q I understand.

19 A Okay.

20 Q Now, just -- so we have two times, procedure
21 start time and discharge criteria time that come from these
22 two monitors --

23 A Okay.

24 Q -- and then, if I'm understanding your
25 testimony, you use the formula to fill in things like

1 physician at bedside and heplock out, and --

2 A That is correct.

3 Q -- post-assessment time, correct?

4 A Post-procedure assessment, yes.

5 Q Procedure start time 10:30.

6 A Mm-hmm.

7 Q Discharge time 11:09. How much -- how many
8 minutes is that?

9 A Let's see. That's about -- about 39 minutes.

10 Q The -- I think I've had enough of time and
11 charts.

12 I want to move to this photograph that was discussed
13 with you on direct exam.

14 A Mm-hmm.

15 Q And Mr. Staudaher asked you a question as to
16 whether the head of the patient -- well, the foot of the bed
17 is pointing -- is up against the wall or close to the wall.

18 A That's correct.

19 Q And the head of the bed is closer to the
20 opposite wall where the entryways are to the procedure rooms,
21 correct?

22 A That's correct.

23 Q And I -- he asked you was this done so that
24 these patients could just be rolled right in and rolled right
25 out; something like that?

1 A And as I stated, at that point, you know, it
2 depends on which procedure they were going to have. If it was
3 an EGD, then we would roll it right in because the head would
4 go in the room first. If it was a colonoscopy, we would have
5 to turn the bed around and put feet in first.

6 Q And so that it -- the beds weren't positioned
7 like this in order to hurry people in and out of that
8 procedure room?

9 A I have no idea.

10 Q Well, you're here, you're the -- recovery nurse,
11 correct?

12 A Mm-hmm.

13 Q And you typically stand near these trays that
14 are near --

15 A That --

16 Q -- by the beds --

17 A -- yes --

18 Q -- correct?

19 A -- ma'am.

20 Q And is it easier for you to monitor the patients
21 with their heads in -- closer to your tray?

22 A Yeah. I mean, it was easier for us to -- to
23 monitor their respirations and to actually see them.

24 Q Correct. Because here we have a picture with
25 all the curtains drawn, right?

1 A Right.

2 Q Or, I mean, they're all open. But in an active
3 procedure room, these curtains are all going to be drawn.

4 A That's correct.

5 Q So by having the head of the bed closer to you,
6 you can --

7 A Yes.

8 Q -- more efficiently and safely do your job; is
9 that correct?

10 A Because we monitored basically two patients at a
11 time. Because there were two of us in recovery. So yes,
12 because if the curtain is pulled, we wouldn't have been able
13 to see them.

14 Q And --

15 A So --

16 Q -- thank you.

17 A -- yes.

18 Q And there's two of you in the recovery room
19 monitoring --

20 A Yes, ma'am.

21 Q -- the patients. Is the other person an RN as
22 well?

23 A Yes. Yes.

24 Q And additionally, are there any other medical
25 staff assisting in the recovery room?

1 A No.

2 Q And the -- do people get put into this room for
3 a short period before they are moved into the procedure room?

4 A Yes, ma'am.

5 Q So you may have a bed -- a gurney that's
6 properly positioned so that the gurney could be guided into
7 the room with the patient in the proper direction?

8 A I believe, from what I can remember, that most
9 of the gurneys were faced the same way. So like I said, if it
10 was an EGD, we'd pull them in head first; colonoscopy, flip
11 them around feet first.

12 Q Right. Okay.

13 A So --

14 Q It makes sense. And regarding your
15 understanding of -- well, let me ask you something, by the
16 way.

17 A Mm-hmm.

18 Q I understand you used a formula for certain
19 entries like physician bedside --

20 A Yes.

21 Q -- the insert -- the disconnect of the heplock.
22 If something occurred like an emergency or something, and the
23 person had to be in the recovery room longer and somehow the
24 times didn't match up -- well, I guess I withdraw that --
25 because you have -- I'm confusing myself.

1 If there was anything -- physician bedside.
2 A Mm-hmm.
3 Q That is the -- that's put in there at the same
4 time the heplock is disconnected -- or at least according to
5 this --
6 A Correct.
7 Q -- this --
8 A Yes.
9 Q -- this chart.
10 A Yes.
11 Q And in the event of an emergency a doctor is
12 steps away --
13 A Okay.
14 Q -- correct? Is it correct? The doctor is in
15 the procedure room?
16 A Mm-hmm.
17 Q And as -- I think you said they could get there
18 in a matter of seconds?
19 A Mm-hmm.
20 Q And -- are -- have you --
21 A Now, unless -- unless there was a break in cases
22 and there was no doctor in those rooms and the doctor is on
23 the other side doing office, which they simultaneously did --
24 Q Mm-hmm.
25 A -- okay? Then no.

1 Q The -- you know, is -- where is -- where is the
2 -- there's a door between the office where the doctors do
3 their consulting and the procedure area; is that correct?

4 A Yes, ma'am.

5 Q Do -- can you tell us where that door is?

6 A That door -- okay, that's a procedure room,
7 that's a scope room, this is the third procedure room. If you
8 go between this wall and then procedure room, it's right
9 there. Does that make sense?

10 Q I can't really -- I want to describe this for
11 the record. You're saying the --

12 A Okay. This is a procedure room right there.

13 Q You know, I got to get up and see because I
14 can't --

15 A Okay.

16 Q -- see that thing.

17 A Okay. It's hard to see. Okay. That's a
18 procedure room.

19 Q Right.

20 A That is a scope-cleaning room.

21 Q Right.

22 A Right here is another procedure -- on the other
23 side of that procedure room and this door there was a hallway,
24 and it was right there.

25 Q Okay. So if a doctor was needed --

1 A Mm-hmm.

2 Q -- they would be not that far away, correct?

3 A They'd be next door --

4 Q How --

5 A -- yes.

6 Q -- long would it take for a doctor to run from

7 their office to the procedure room?

8 A It -- well, it depends on if they were in with

9 the patient or were in their office -- two minutes maybe.

10 Q Two minutes? How far is the office from that

11 hallway?

12 A Well, the office is -- the -- the doctors office

13 building was actually a bit longer than this procedure area,

14 and it was on the other side, okay? So -- and if I can

15 remember -- I think it was like a horseshoe-type thing.

16 Anyway, so Dr. Desai's office was straight back to the right,

17 but the other doctor's -- they were up further.

18 Q Okay.

19 A And then the procedure rooms were scattered

20 throughout.

21 Q And the -- is it -- could a doctor get to that

22 procedure room in less than two minutes if they were located?

23 A Okay. And there again, like I said, depending

24 on where the doctor was, okay? If Dr. Desai was in his

25 office, let's just say, and I wanted to go get him. It may

1 only take a minute. But if Dr. Desai was in a room and I
2 didn't know which room that he was in, could be two to three
3 minutes.

4 Q Am I correct in assuming that because of your
5 description as to how busy this clinic was --

6 A Mm-hmm.

7 Q -- that there is always a certified CRNA
8 available to assist somebody in the recovery room and/or a
9 medical doctor?

10 A Generally speaking, the nurse anesthetists were
11 available, yes.

12 Q And they would be steps away from the
13 recovery --

14 A Yes --

15 Q -- room?

16 A -- ma'am.

17 Q You -- you worked closely with the CRNAs?

18 A "Closely" meaning?

19 Q You work with them every day?

20 A I saw them every day. Did I work directly with
21 them in a room? No.

22 Q Based on your observations of the CRNAs, did you
23 judge them to be professional?

24 A When I saw the CRNAs, yes.

25 Q Now, I want to move to the topic of Dr. Desai

1 and the -- and his -- and his work in the procedure room.

2 Well, first, let me generalize. Do you recall when you were
3 working in the procedure rooms, did some of the doctors do a
4 rectal exam with their finger --

5 A Yes.

6 Q -- before --

7 A Yes, ma'am.

8 Q -- okay, let me finish the question because I --
9 I understand your answer, but I want the question --

10 A Okay.

11 Q -- to be on the record. Did the doctors
12 normally conduct a rectum exam with their finger?

13 A Yes.

14 Q Was that all the doctors, or -- or what?

15 A I'm trying to think. I mean, I can remember
16 that being done.

17 Q It was done routinely, right?

18 A It should have been.

19 Q Pardon me?

20 A It should have been, yes.

21 Q And Dr. Desai gave rectum exams with his finger,
22 did he not?

23 A I did see Dr. Desai do a rectal exam with his
24 finger --

25 Q Okay.

1 A An hour and eleven.

2 Q Now, in your experience, were these
3 procedures, and I think on this chart the first two I read
4 were endoscopies and the third was a colonoscopy. Were these
5 procedures lasting an hour?

6 A Not the procedure itself, no.

7 Q So those doctor note times, I mean, is it
8 fair, are reflecting the procedure time?

9 A These times were taken off the computer?

10 Q Yes.

11 A There is some overlap. Let me see those.

12 Q Sure. It's the --

13 A Procedure start time --

14 Q -- start time and end -- report end time.

15 A I would have to suspect the computer was off.

16 Q Well, could I just ask, an hour, is that a
17 typical time for the procedures that you were doing at the
18 clinic?

19 A No.

20 Q So these times, at least on this date, aren't
21 tracking what as the likely time of the procedure, is that
22 fair?

23 A I would say they're inaccurate in terms of
24 telling you the time that the doctor took to do the actual
25 procedure.

1 Q Okay. Thank you.

2 MS. WECKERLY: I'll --

3 THE COURT: Anything else?

4 MS. WECKERLY: No.

5 THE COURT: Okay. Recross? Mr. Wright, any
6 recross?

7 MR. WRIGHT: No.

8 THE COURT: Mr. Santacroce, any recross?

9 RECROSS-EXAMINATION

10 BY MR. SANTACROCE:

11 Q You were asked if you ever saw Lynette
12 Campbell or any other pre-op nurse not use aseptic techniques,
13 and your answer was you never saw that; correct?

14 A I did not observe that. That is correct.

15 Q The fact of the matter is you were hardly ever
16 in the pre-op area, were you?

17 A That is true, too.

18 Q How many times did you watch Lynette Campbell
19 give a -- insert a heplock and flush with saline?

20 A I don't have an answer for that. I may have
21 seen it a time or two, but I don't really have a specific
22 recollection of that.

23 Q A time or two. Is that your answer?

24 A I don't have a specific recollection of that.

25 Q So how -- well, I'm not going to get into

1 that. As to these times that you were just shown, what are
2 these times?

3 A It's a very complicated chart.

4 Q Tell me about it.

5 A Well, I'm told that these are computer times
6 here, so I know what those mean.

7 Q Okay. I just want you to focus in on what Ms.
8 Weckerly just asked you about those times. We're not going to
9 go through the whole chart.

10 A 7:01 to 8:15, 7:23 to 8:32, 7:39 to 8:50, 7:55
11 to 9:20.

12 Q Okay. You don't have to read all the numbers.
13 I just want your understanding of what those times are.

14 A Those are procedure start and procedure end
15 times.

16 Q And reported through what mechanism?

17 A I couldn't tell you exactly, but if that was
18 the computer reading, that's where they came from.

19 Q Okay. So for those times to be inaccurate,
20 are you telling me that the computer was wrong?

21 A I don't know if it was or wasn't, Mr.
22 Santacrose.

23 Q Well, you just testified that they had to be
24 wrong.

25 A Yeah, I would -- I would think so as a

1 thinking person, but I'm not an IT person.

2 Q And you have no evidence to suggest that they
3 were wrong, do you?

4 A I think it looks kind of funny that they
5 overlap so much, at least based on this column here, the
6 procedure time, minutes from the report.

7 Q Okay. So how would you explain the computer
8 being off like that?

9 A I'd have to call my IT guy.

10 Q Okay. You talked with Ms. Weckerly about this
11 -- the billings and the CRNA billings, I believe. Do you
12 remember giving testimony to the Grand Jury? Do you remember
13 that?

14 A Yes, I do.

15 Q They asked you if you believe that the CRNAs
16 received any of those funds from the CRNA account.

17 A Received any what, sir?

18 Q Funds from the CRNA account.

19 A They may have asked me that.

20 Q Okay. And I believe specifically you said you
21 weren't aware of that.

22 A I'm not aware of them having received any
23 funds directly from the CRNA account. That is correct.

24 MR. SANTACROCE: That's all I have. Thank you.

25 THE COURT: Ms. Weckerly?

1 MS. WECKERLY: Nothing else. Thank you.

2 THE COURT: We have some juror questions up here.

3 THE WITNESS: Sure.

4 THE COURT: Are there any other juror questions?

5 All right.

6 A juror wants to know was the reduction of your
7 partnership share in the medical practice from 10 percent to
8 6.4 percent in 2006 voluntary on your part, or was it a
9 surprise to you?

10 THE WITNESS: It was a surprise to me.

11 THE COURT: Had you asked for a reduction in your
12 hours?

13 THE WITNESS: I had not.

14 THE COURT: Okay. Was the redemption of your share
15 of the procedure practice voluntary on your part?

16 THE WITNESS: It was involuntary.

17 THE COURT: Okay. When the redemption took place,
18 were you given money for the shares that you had had?

19 THE WITNESS: Yes, by a predetermined formula.

20 THE COURT: Okay. And were you told or do you know
21 why your shares were redeemed?

22 THE WITNESS: I was never given a specific answer.

23 THE COURT: All right. Besides the packaging, how
24 can you determine if the bite blocks are single-use only or
25 multi-use?

1 THE WITNESS: As we touched upon, it depends on the
2 thickness of the plastic and some of the characteristics of
3 it. Little flanges will be found on the side of disposable
4 bite blocks for holding an elastic band that keeps them in
5 place. Generally the non -- generally the reusable ones will
6 just be a hard plastic without the flanges on them. They will
7 be a different color, different thickness of the plastic.

8 THE COURT: Okay. So you can tell by looking at a
9 bite block, even if it's out of its packaging, whether it
10 would be single-use or multi-use?

11 THE WITNESS: Yeah, I would think so. Yes.

12 THE COURT: Okay. And the pipe -- I'm sorry, the
13 PPE used by the staff in the procedure is required by what?

14 THE WITNESS: What is PP?

15 THE COURT: It's the initials.

16 MR. STAUDAHER: Is that the bite block?

17 THE COURT: I'm sorry? Oh, personal protective
18 equipment.

19 THE WITNESS: Yes. I'm sorry. State the question
20 again.

21 THE COURT: All right. The personal protective
22 equipment used by the staff in the procedure room, is that
23 required, and required -- if so, required by who or what
24 entity?

25 THE WITNESS: It is -- it is generally medical

1 practice. I mean, there's aseptic technique, which, of
2 course, means you don't reuse any medical device that has
3 invaded body tissues. Personal protective gear has nothing to
4 do with that. It means I'm trying to protect myself against
5 an infection. So that when I'm doing a procedure, I wear
6 equipment that provides a barrier between me and the patient.

7 And my practice is I -- I will wear a gown, such as
8 a surgical gown in the hospital or in the ASC where I worked
9 with -- at endo center. I would wear a coat, and then a
10 plastic protective apron. I would wear a mask depending on
11 whether I had these on or not. I would wear a shield, or
12 sometimes because of just the difficulty of seeing through the
13 shield with glasses on I would take the shield off. As far as
14 hands, of course, gloves. So that's personal protective gear.

15 THE COURT: And so you're saying that that's more
16 designed to protect the physician or the healthcare worker
17 than to protect the patient?

18 THE WITNESS: That is absolutely correct.

19 THE COURT: Okay. And then on the personal
20 protective equipment that was disposable, was that supposed to
21 be changed between patients according to the manufacturer, or
22 could you keep that on as long as, you know --

23 THE WITNESS: My understanding is that anything
24 that's visibly soiled should be changed.

25 THE COURT: Okay. Is that your understanding based

1 on what?

2 THE WITNESS: Based on what I've seen in the
3 literature, based on standard medical practice. The reality
4 of it is I generally change all the time.

5 THE COURT: Uh-huh. And is that just your own
6 personal --

7 THE WITNESS: That's my personal preference.

8 THE COURT: Okay. Does the State, Ms. Weckerly,
9 have any follow up based on any of those questions?

10 MS. WECKERLY: No, Your Honor.

11 THE COURT: All right. Mr. Wright, do you have any
12 follow up?

13 MR. WRIGHT: No.

14 THE COURT: Mr. Santacroce, do you have any follow
15 up?

16 MR. SANTACROCE: No.

17 THE COURT: Does the jury have any additional
18 questions before we excuse this witness?

19 All right. Doctor, thank you for your testimony.
20 Please don't discuss your testimony with anyone else who may
21 be called as a witness in this matter.

22 THE WITNESS: Okay. Certainly.

23 THE COURT: Thank you and you are excused at this
24 time.

25 THE WITNESS: Thank you.

1 THE COURT: All right. Ladies and gentlemen, Dr.
2 Carrera was our only witness for today, so we'll go ahead and
3 take a slightly earlier recess. We'll be reconvening tomorrow
4 morning at 10:30.

5 Before I excuse you for the evening recess, I must
6 remind you that you're not to read, watch, or listen to any
7 reports of or commentaries on the case, person, or subject
8 matter relating the case. Do not do any independent research
9 by way of the internet or any other medium, and please do not
10 form or express an opinion on the case. If you all please --
11 and I don't know if I said the first part. Don't discuss the
12 case or anything relating to the case with each other or with
13 anyone else. Notepads in your chairs and follow the bailiff
14 through the rear door.

15 (Jury recessed at 4:39 p.m.)

16 THE COURT: Have you guys been taking everything
17 each day? Because we're doing the criminal calendar in here
18 tomorrow. So you can leave things, but just kind of put them
19 off to the side.

20 (Court recessed for the evening at 4:40 p.m.)
21
22
23
24
25

CERTIFICATION

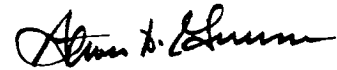
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I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

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CLERK OF THE COURT

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 21

THURSDAY, MAY 23, 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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003824

I N D E X

WITNESSES FOR THE STATE:

MAGDALINE MARTIN

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1 LAS VEGAS, NEVADA, THURSDAY, MAY 23, 2013, 10:43 A.M.

2 * * * * *

3 (Outside the presence of the jury.)

4 MS. WECKERLY: I think Mr. Staudaher is just in the
5 rest room, but --

6 THE COURT: All right.

7 MS. WECKERLY: -- but our witness is here, so as soon
8 as he gets back.

9 MR. WRIGHT: I want to raise that limine I have
10 for --

11 THE COURT: All right. Sherrie, can you shut the
12 door? Do we need to wait for Mr. Staudaher, Ms. Weckerly?

13 MS. WECKERLY: He just went down the hall.

14 THE COURT: Well, Ms. -- I mean, not for the witness,
15 for Mr. Wright's motion?

16 MS. WECKERLY: Oh, is it just an oral motion
17 that's --

18 MR. WRIGHT: Yes.

19 MS. WECKERLY: That's fine.

20 THE COURT: All right. Go ahead.

21 MR. WRIGHT: No, I -- I --

22 THE COURT: We're not going to wait for Mr.
23 Staudaher, so you -- I'm sorry --

24 MR. WRIGHT: Okay. Well --

25 THE COURT: -- maybe we misunderstood each other.

1 Did you just say you wanted to make an oral motion in limine?
2 MR. WRIGHT: In the nature of it. I'm just --
3 THE COURT: Okay.
4 MR. WRIGHT: -- concerned that things don't come out
5 as they have been coming out.
6 THE COURT: Okay. Whose witness is up next?
7 MS. WECKERLY: Who is it or whose witness?
8 THE COURT: Whose -- is it you or Mr. Staudaher?
9 MS. WECKERLY: Mr. Staudaher.
10 THE COURT: All right. Then we need to wait for --
11 MR. WRIGHT: Right.
12 THE COURT: -- Mr. Staudaher.
13 MR. WRIGHT: That's what --
14 THE COURT: Thank you.
15 MR. WRIGHT: -- that's what --
16 THE COURT: I --
17 MR. WRIGHT: -- yeah. We did miscommunicate.
18 THE COURT: -- we --
19 MR. WRIGHT: I said, yes, I want to wait.
20 THE COURT: Oh, okay. We were totally
21 miscommunicating.
22 MS. WECKERLY: Well, who do you think it is? It's
23 Maggie Murphy.
24 MR. WRIGHT: Well, no, this --
25 MS. STANISH: Yeah, that's what Mike told us.

1 Maggie's up first?

2 MS. WECKERLY: Yeah.

3 MS. STANISH: Yeah.

4 (Pause in the proceedings.)

5 THE COURT: Yeah, we're waiting on Mr. Staudaher, and
6 then Mr. Wright has a motion, so...

7 (Off-record colloquy.)

8 THE COURT: Okay. Mr. Staudaher, Mr. Wright wanted
9 to make an oral motion in limine.

10 MR. WRIGHT: Right.

11 THE COURT: We're on the record.

12 MR. WRIGHT: Yeah, I -- I'm -- because of what
13 occurred yesterday I just want to be certain of no
14 reoccurrence into Defense camp or accusations that the Defense
15 or Defense lawyers or someone instructed witnesses or shredded
16 evidence or did something to obstruct justice. If anything
17 like that's going to come up, I mean, we need to hear about it
18 ahead of time and raise it with the Court.

19 I raise this because in the interviews by the police
20 department, not grand jury, but in the interviews there was a
21 constant theme of have you talked -- is there a joint defense,
22 have you been told not to talk to us, have you been told what
23 to say, and at times they even used my name, other lawyers'
24 names, as suggesting -- now, this is just during the
25 investigative stages -- suggesting some type of cover-up. And

1 to my knowledge they're -- I haven't seen anything like that,
2 and I don't think there is any evidence of any such thing, but
3 it's questioned about and so witnesses have talked about it.

4 And I -- I want the Court to know -- I mean, there
5 were accusations of shredding or obstruction or something, and
6 the true chronology of this -- and I'll give the Court -- I'll
7 get the Court the dates from my records because before a
8 search warrant was ever executed in this case I spoke with the
9 District Attorney David Roger and told him of the volume of
10 records and that they were patient records and current patient
11 records and they all needed to be available to patients, and I
12 set up a procedure for grand jury subpoena compliance with
13 whatever records were wanted. And he directed me to two
14 district attorneys. This is prior to March 10th execution of
15 search warrants.

16 And he -- he said, yes, we will, et cetera, and
17 then, out of the blue, search warrant executed and everything
18 taken. And when I spoke to him about it, he told me they had
19 evidence of shredding -- shredding records and obstruction. I
20 didn't pursue it; obviously the search had occurred. And so
21 there were -- and I have never seen -- even though he told me
22 they had evidence of the shredding and obstruction, I have
23 through all the evidence never seen what he was talking about.
24 And with -- when he explained to me why they had to do the
25 searches.

1 And I waited and waited for the search warrant
2 affidavit to become unsealed because it was sealed at the
3 time, expecting to see in there the evidence that supported
4 this accusation, and there was none in there and I haven't
5 seen it. But based upon that, there was a lot of questioning
6 of witnesses -- most of them, in fact. Has anyone told you --
7 if a witness comes up with an explanation well, I think it's
8 the saline. They say, Who told you that? Who have you met
9 with? Who did you talk with before you came her? As if there
10 was some orchestrated plot going on.

11 And I'm concerned about any of that coming in here
12 to this courtroom, especially now that the jury knows I'm the
13 lawyer that was involved in the thing. And so I -- I just
14 wanted --

15 THE COURT: Okay.

16 MR. WRIGHT: -- extra, additional caution put out --

17 THE COURT: Mr. Staudaher, do you want to respond to
18 that?

19 MR. STAUDAHER: Sure. And it's --

20 THE COURT: I mean, obviously, you can't ask any
21 questions that would -- you know, if Mr. Wright directed Dr.
22 Desai to do something, you can't try to use it as a way to
23 show Dr. Desai's knowledge of guilt, okay? No. 1.

24 And No. 2, we all know this but I specialize, I
25 think, in stating the obvious. You can't ask a question that

1 could somehow elicit a response that would cast aspersions on
2 Mr. Wright or Ms., you know, Ms. Stanish, that, oh, how could
3 they have, you know, directed this or that.

4 I don't -- I'm not saying you would do that, but
5 we'd just be mindful not to ask a question that could somehow,
6 you know, create an answer or elicit an answer that would
7 somehow suggest Mr. Wright and Ms. Stanish had done anything
8 wrong as criminal Defense attorneys in this case.

9 So I don't know if there's any questions you were
10 planning on asking that could call for an answer or that might
11 reflect -- I mean, I'm, you know, at a little bit of a loss
12 because I don't know what could come out --

13 MR. STAUDAHER: Sure.

14 THE COURT: -- with this witness. I don't know what
15 questions Mr. Wright is afraid you might ask. So, you know, I
16 kind of can't really rule don't ask this question or don't ask
17 that question because I don't really know where this might
18 come up. I mean, I can say generally, you know, don't --
19 don't ask for information that would be -- I mean, obviously,
20 clearly we know if documents were shredded we know that Mr.
21 Wright and Ms. Stanish did not tell Dr. Desai, hey, get in
22 there and shred these documents.

23 So if there was some shredding going on, I think we
24 can all assume that that was not directed by counsel. You
25 know, other things may have been directed by counsel, but I

1 don't really know what -- where that could be going.

2 MR. STAUDAHER: Well, first of all, if there is a
3 witness that comes up where there's any of those issues that
4 we think might come up, we will certainly raise it to the
5 Court as, hey, this is a potential witness where this might
6 come out; either by direct questioning or through
7 cross-examination, they might inadvertently say something
8 about it.

9 As far as the shredding is concerned, I mean, in
10 the -- and I would at some point in the future, not today, I
11 would like to address at least some of the chronology of what
12 went on as far as some of the things that have been raised
13 already in this Court. But I know that, for example, the
14 press conference -- the police were not involved in this case
15 at all but for a couple of days before the press conference,
16 and it was in relation to at least the concern that there
17 might be some of that shredding going on.

18 I don't know that there's any evidence that that
19 was -- I don't intend in any of the witnesses today to get
20 into anything regarding shredding of documents or anything
21 along --

22 THE COURT: Okay. Is any of this --

23 MR. STAUDAHER: -- those lines.

24 THE COURT: -- going to be an issue with any of the
25 upcoming witnesses --

1 MR. STAUDAHER: No, not today.

2 THE COURT: -- for today? Let's get --

3 MR. STAUDAHER: The only issue --

4 THE COURT: -- started then today --

5 MR. STAUDAHER: -- the only issue that might come up
6 with a witness today, potentially, is this very -- actually
7 it's not this witness, it's Marion Vandruff. In his police
8 interview -- and it's page 32 of his police interview, which
9 counsel has -- he was actually asked a question regarding --
10 or there was some discussion about the civil cases -- the
11 class action that was going on -- nothing criminal, but he
12 said in his statement to the police that he was contacted by
13 one of Desai's lawyers. Not Margaret Stanish, not Richard
14 Wright, nobody was named --

15 THE COURT: A civil lawyer.

16 MR. STAUDAHER: -- but it was related to the civil
17 context, and was basically told -- and I'll just read it for
18 the Court, And you were pretty much -- they -- they were
19 pretty much telling us, you know, that we don't have to -- you
20 know, if any attorneys call us -- and I think they're talking
21 about the civil attorneys -- representing the patients, you
22 don't have to talk to them.

23 That's the extent of what could possibly come up
24 through this --

25 THE COURT: Yeah, I don't know that --

1 MR. STAUDAHER: -- this witness.

2 THE COURT: -- that would be relevant because first

3 of all, what lawyer are we talking about? Were his insurance

4 malpractice lawyers -- are they involved at this point? I'm

5 assuming right away his malpractice --

6 MR. STAUDAHER: They --

7 MS. STANISH: His --

8 THE COURT: -- carrier --

9 MS. STANISH: -- there were --

10 THE COURT: -- was notified.

11 MS. STANISH: -- there were attorneys involved right

12 away to --

13 THE COURT: Well, I mean --

14 MS. STANISH: -- with --

15 THE COURT: -- we've got corporate counsel --

16 MS. STANISH: -- oh, yeah.

17 THE COURT: -- we've got criminal Defense counsel

18 which is all privately paid for, and then at some point in

19 time you're going to have insurance Defense counsel. Did that

20 ever occur?

21 MS. STANISH: Oh, yeah, they were --

22 MR. WRIGHT: Oh, yeah, before --

23 MS. STANISH: -- on board --

24 THE COURT: Right. That's what I'm saying.

25 MS. STANISH: -- quickly.

1 MR. WRIGHT: -- before us.

2 THE COURT: So I don't know who these lawyers are,
3 but I don't think it's fair, regardless of who the lawyer is,
4 to somehow use that as -- against Dr. Desai, but --

5 MR. STAUDAHER: And, Your Honor, I don't actually
6 intend to ask any questions --

7 THE COURT: Yeah, that shouldn't --

8 MR. STAUDAHER: -- in that regard. If only --

9 THE COURT: -- I wouldn't even go there because,
10 again, what -- first of all, we don't even know. It could
11 have been the malpractice carrier's lawyer, the insurance
12 Defense lawyer that Dr. Desai doesn't even get involved in who
13 they hire. They hire whoever they want, typically.
14 Typically.

15 MR. STAUDAHER: Well, in that passage she's talking
16 about attorneys for the -- for the patients. So that wouldn't
17 be --

18 THE COURT: No. No, the --

19 MR. STAUDAHER: -- Dr. Desai's --

20 THE COURT: -- lawyer that told her, hey, you don't
21 have to talk to them.

22 MR. STAUDAHER: Oh, yes.

23 THE COURT: I mean, that could have been the
24 malpractice carrier's lawyer. I don't know who that was. But
25 even if it was Mr. Wright or Ms. Stanish, I don't even know

1 what the relevance would be that you were told you don't have
2 to talk to them because it's a lawyer, and I -- what I'm
3 saying is, particularly if it was insurance defense. They get
4 their direction from the insurer.

5 So to -- to take something they may have said to
6 somehow put it on Dr. Desai is really tangential.

7 MR. STAUDAHER: Well, it said --

8 THE COURT: And typically --

9 MR. STAUDAHER: -- the only reason --

10 THE COURT: -- a lawyer is going to --

11 MR. STAUDAHER: -- I raise that is because --

12 THE COURT: -- do what a lawyer --

13 MR. STAUDAHER: -- it would be --

14 THE COURT: -- is going to do. They may not be, you
15 know, I -- I don't --

16 THE MARSHAL: Ladies and gentlemen, please --

17 MR. STAUDAHER: I don't intend to go there --

18 THE COURT: Okay.

19 MR. STAUDAHER: -- with this --

20 THE COURT: Don't.

21 MR. STAUDAHER: -- with this witness --

22 THE COURT: Don't.

23 MR. STAUDAHER: -- for sure.

24 THE COURT: All right. Bring them in. We'll get
25 started and --

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

3 (Jury entering at 10:58 a.m.)

4 THE MARSHAL: Thanks, everybody. You may be seated.

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 the State may call its next witness.

11 MR. STAUDAHER: State calls -- it's Maggie Martin.
12 She had been known as Maggie Murphy at one time.

13 THE COURT: Okay.

14 THE MARSHAL: Just have a seat right there, ma'am.
15 You'll follow me up to the stand.

16 THE COURT: Ma'am, just come on up here please, right
17 up by me. Follow the bailiff.

18 THE MARSHAL: Go ahead and step right up there for
19 me. Stay here, remain standing, raise your right hand, and
20 face our clerk to the left.

21 MAGDALINE MARTIN, STATE'S WITNESS, SWORN

22 THE WITNESS: Yes.

23 THE CLERK: Please be seated. And would you please
24 state and spell your name.

25 THE WITNESS: It's Magdaline Martin,

1 M-A-G-D-A-L-I-N-E, Martin, M-A-R-T-I-N.

2 THE COURT: All right. Thank you.

3 Mr. Staudaher?

4 DIRECT EXAMINATION

5 BY MR. STAUDAHER:

6 Q Ms. Martin -- and you were also known by the
7 name Murphy before --

8 A That's --

9 Q -- is that --

10 A -- correct.

11 Q -- correct? So you are Maggie Murphy, now
12 Maggie Martin?

13 A Correct. Yes.

14 Q Before I get into your testimony, I want to go
15 through a couple of things, and I would ask you to take that
16 microphone and slide it over to you as close as you can
17 possibly get it because your voice is very soft --

18 A Okay.

19 Q -- is that right?

20 A That's correct.

21 Q You are speaking today -- it seems like you're
22 having some difficulty. Do you have a condition called
23 dysphonia?

24 A Yes.

25 Q And does that -- is that in any way dealing with

1 your mental capacities --

2 A No.

3 Q -- or is it just your --

4 A No, sir.

5 Q -- ability to speak?

6 A That's correct.

7 Q Just the ability to speak?

8 A Just the speaking.

9 Q Okay. Now, it's going to be very important
10 because you have this condition -- and I'll try my very best
11 to get my -- or let you finish your answer before I ask a
12 question, but because this is being recorded and because the
13 jury needs to hear what you have to say --

14 A Yes.

15 Q -- you've got to let me finish my question, and
16 then I'll try to let you finish your answer, okay? And we'll
17 take it as slowly as we need to go to make sure you can get
18 out what you need to say, all right?

19 A Thank you.

20 Q Okay. I'm going to take you back in time a
21 little bit to 2007 and before. Did you work at a place called
22 The Endoscopy Center of Southern Nevada?

23 A Yes.

24 Q And what did you do there? What was your job?

25 A Primarily in the recovery room.

1 Q Okay. So the recovery room?

2 A Mm-hmm.

3 Q And also because of your speech difficulty I may

4 repeat what I believe you said --

5 A That's fine.

6 Q -- just to make sure it's accurate, okay?

7 A That's fine.

8 Q If I get it wrong, please let me know, okay?

9 A Thanks.

10 Q Beside the recovery area, did you work anywhere

11 else in the facility?

12 A I occasionally worked in the procedure room to

13 -- to cover for lunches, breaks, things like that.

14 Q So the procedure room to cover for lunches and

15 breaks?

16 A Mm-hmm.

17 Q Did you work in what was termed the preop area?

18 A Not usually, no.

19 Q Did you work in what was termed the discharge

20 area?

21 A No.

22 Q So the two primary areas are procedure rooms and

23 recovery?

24 A Correct.

25 Q When did you start working at the facility, if

1 you can recall?

2 A 2002.

3 Q Until?

4 A 2007.

5 Q Do you remember when you stopped working? What
6 time -- what -- what month, if at all?

7 A September 14th --

8 Q So you remember that date --

9 A -- 2000 -- yes --

10 Q -- I'm sorry.

11 A -- 2007.

12 Q So you specifically remember September 14th?

13 A Mm-hmm.

14 Q Is there a reason why you remember that?

15 A I got another job at that time.

16 Q Okay. And what was the -- beside working in the
17 recovery area and so forth that you said --

18 A Mm-hmm.

19 Q -- what was your -- what were you as far as your
20 profession at the time? I mean, were you a -- a GI tech, a
21 nurse, a doctor --

22 A No.

23 Q -- what were you?

24 A Nurse.

25 Q Nurse?

1 A Nurse.

2 Q An RN or an LPN?

3 A RN.

4 Q What kinds of things did you do in the
5 recovery-room area?

6 A We monitored vitals, made sure that the patients
7 were ready for discharge. Basically just monitored them so
8 that they could be discharged.

9 Q So monitored patients so they could be
10 discharged?

11 A Yes.

12 Q Now, in the procedure room --

13 A Mm-hmm.

14 Q -- when you relieved or did lunches or
15 whatever --

16 A Mm-hmm.

17 Q -- what kinds of things did you do in that room?

18 A We did the paperwork, the -- which consisted of
19 the time that the procedure started, stopped, general notes
20 about the patient.

21 Q So you were the record keeper in that room
22 essentially?

23 A So to speak, yes.

24 Q Did you fill out the charts and so forth and
25 fill out the paperwork?

1 A We only filled out one sheet, and like I said,
2 that had the start times, end times, if the patient tolerated
3 the procedure.

4 Q Did you also fill out any paperwork when you
5 worked in the recovery-room area?

6 A Yes. Yes.

7 Q So you've did paperwork in both areas?

8 A Correct.

9 Q Now, let's talk about that for a moment -- the
10 paperwork. Was there anything that you did in relation to the
11 actual times of where they -- first of all, were the times
12 that you put down and information you put down on the record,
13 whether it be in the recovery room or the procedure room, were
14 they accurate recordings?

15 A The times in the procedure room were accurate.
16 The times in the recovery room we did a formula, so to speak,
17 and that formula was when they came from the procedure room we
18 had [inaudible] five minutes to that time. That was the time
19 that they brought the patient to the recovery, then the times
20 that we DCd the IV and the times that the doctor was at the
21 bedside, those would match; and then the time that they got
22 discharged would pretty much be with the time on the vitals
23 machine that they were discharged.

24 Q During the time you worked there, procedure room
25 or recovery, did you ever have anybody bring you or did you

1 work with charts that it had been pre -- prefilled out --

2 A Yes.

3 Q -- precharted?

4 A Yes.

5 Q What kinds of things would be precharted when
6 they brought the charts to you?

7 A The names and dates were for the people, the --
8 can I see a chart?

9 Q Yeah, I can -- I -- you know, we can -- would
10 that be better to walk through them?

11 A Could we?

12 Q Sure. I'm going to show -- and for the record,
13 this is Exhibit 7 -- and this is the record for Patty
14 Aspinwall -- and I'm going to try not to [inaudible].

15 Okay. Now, I'm going to show you what's been marked
16 as Bates No. 3302, and ask you, first of all, do you know what
17 this is? Have you seen this kind of a record before?

18 A Okay. That's the [inaudible] sheet.

19 Q Was this something that you dealt with? Did you
20 fill out anything --

21 A No.

22 Q -- on this sheet?

23 A No.

24 Q Now, before we go on, because you talked about
25 the times, I want to note a couple things on this before we go

1 forward to the others, okay?

2 A Mm-hmm.

3 Q On the anesthesia record do you see up here

4 where it says 10:30 --

5 A Mm-hmm.

6 Q -- to 11:00?

7 A Mm-hmm.

8 Q And down here on the 21st of September it says

9 10:30 to 10 -- to 11:01. A 31-minute window. Do you see

10 that?

11 A Correct.

12 Q Now, as we go through this, I just want you to

13 know if you need to mark or point out something, we'd like you

14 to do that. You can just take your fingernail and draw on

15 this screen. Circle something, underline it.

16 A Okay.

17 Q And if you need to clear it because you made a

18 mistake or I ask you to, you just tap it down there in the

19 corner and --

20 A Okay.

21 Q -- it will go away. Okay?

22 A Okay.

23 Q So anyway, the -- the time here 10:30 to 11 --

24 11:01, correct?

25 A Mm-hmm.

1 Q Now, if we move forward to one of the records,
2 and I can -- I can zoom in/zoom out if you need to, but do you
3 recognize that kind of a record?

4 A Yes.

5 Q What kind of a record are we looking at there?

6 A That's the recovery.

7 Q The recovery record?

8 A Yes.

9 MR. SANTACROCE: Do you have a --

10 BY MR. STAUDAHER:

11 Q What does that mean?

12 MR. SANTACROCE: -- do you have a Bates Stamp on
13 that?

14 MR. STAUDAHER: Oh, I'm sorry. It is 3305.

15 THE WITNESS: That's the paperwork that came to us
16 when the patients were in recovery.

17 BY MR. STAUDAHER:

18 Q Okay. Now, on this there are some times listed
19 up here.

20 A Mm-hmm.

21 Q One says preprocedure assessment time; do you
22 see that?

23 A I do, yes.

24 Q And it's got a time listed.

25 A Yes.

1 Q And then there are some things down here as
2 well?

3 A Yes.

4 Q Okay. Now, moving forward to the next record
5 which says, endoscopy procedure nursing record. Does that
6 look familiar to you as something that you would have at some
7 point filled -- not this one, I know this isn't yours.

8 A Yes. Yes.

9 Q But would this have been something that you
10 would have filled out potentially?

11 A Yes.

12 Q Okay. Now, on here there's a place called,
13 procedure start time; do you see that?

14 A Mm-hmm.

15 Q And it's got a time down there of 10:30; do you
16 see that?

17 A Correct.

18 Q And then the procedure end time is 10 --

19 A 48.

20 Q -- it looks like 48?

21 A Yes.

22 Q Is that -- would you fill out any portion of
23 this record when it would come to you?

24 A No. No.

25 Q So this would be filled out beforehand, or --

1 A That would be done in the room.

2 Q Okay.

3 A In the procedure room.

4 Q So what I want to do for the moment is to move

5 you into the procedure room, okay?

6 A Okay.

7 Q So you're in the procedure room; would you be

8 filling out anything on this paper?

9 A On -- let's see. We would fill out the --

10 Q Okay. Go ahead and --

11 A -- procedure --

12 Q -- mark it for us.

13 A -- this. We would fill out this. Okay. We

14 would fill out this. And then, of course, this, the time --

15 that time. The preprocedure diagnosis that was precharted.

16 The post-procedure diagnosis was charted by us in the room.

17 Specimens was charted by us in the room. Scope was charted by

18 us.

19 Q So the -- so the scope number too?

20 A Yes.

21 Q Is that the number that is off the endoscopy

22 scope?

23 A Yes.

24 Q So you would chart that in the room to match

25 up --

1 A Yes.

2 Q -- with the scope that was --

3 A Yes.

4 Q -- being used? Okay. So the times and a lot of

5 the information on this record, you would fill out?

6 A Yes.

7 Q Would any of that ever be filled out before, you

8 know, a chart was brought to you with some of this information

9 already filled out on it?

10 A Say it again?

11 Q Did you ever have situations where you would be

12 brought a chart already before you were the one to fill it out

13 where there would be portions of this filled out before you

14 got it?

15 A No, I had -- on this sheet, no.

16 Q Okay.

17 A No.

18 Q Will you go ahead and clear that for me?

19 A Okay.

20 Q All right. So again, I want to look at these

21 two times. This -- this procedure start time and procedure

22 end time, where would you get those start and end times from?

23 A When they started the procedure and then when

24 they ended it from the clock --

25 Q Okay. Would you use any kind of --

1 A -- in the room.

2 Q -- would you use the clock in the wall, or would
3 there be a strip or a time on a strip or anything like that
4 that you would use?

5 A I think we used the one on the wall.

6 Q Okay. In this particular instance -- I'm going
7 to show you Bates No. 3308, and I've turned it on its side.
8 Do you see the times that are listed here?

9 A Yes.

10 Q And on this one it has -- starts at -- goes
11 upward as far as ascending order, correct?

12 A Mm-hmm.

13 Q It goes from 10:30 to 10:48?

14 A Mm-hmm.

15 Q On this record does that appear to match with
16 the Bates No. 3306 --

17 A It does.

18 Q -- 10:30 to 10:48?

19 A Yeah.

20 Q Did you --

21 A You know, well, wait a minute. We did use these
22 times on here.

23 Q Oh, you did? So you used this --

24 A We did --

25 Q -- start time?

1 A -- sorry.

2 Q It's okay.

3 A We did.

4 Q If at -- if at any time we go through there --
5 this, if I -- if there's something that would refresh your
6 memory, you can let me know and I'll try to provide it for
7 you --

8 A Okay.

9 Q -- okay? So go ahead and -- and clear that, if
10 you would. Now, again, we're still in the room. Now, I'm
11 going to move to the next page because it -- I think it deals
12 with something you mentioned about the adding in times and so
13 forth, okay? So the next page here -- do you see this one
14 listed?

15 A Yes.

16 Q And up here in the right-hand corner -- or
17 left-hand corner it says, post-procedure assessment time.

18 A Mm-hmm. And --

19 Q Would this record be used -- would you use your
20 formula for filling out any portion of this record?

21 A Yes.

22 Q Now, the last time on the Bates No. 3306 is
23 10:48; do you see that?

24 A Mm-hmm.

25 Q The preprocedure assessment time appears to be

1 two minutes later at 10:50?

2 A That's correct.

3 Q Was that part of the formula that you would add
4 two minutes or something along those lines to get to this
5 time?

6 A You know, it's been a long time. It was
7 something like that, two minutes, five minutes?

8 Q Okay.

9 A Okay.

10 Q And from this time here of 12 -- it says 10:50,
11 you mentioned a remove -- or do you see a heplock time? Do
12 you see that here?

13 A Five minutes from that, yes.

14 Q Okay. So five minutes from this time up here to
15 get to this time?

16 A Yes.

17 Q And you -- did you say something about the
18 physician at bedside time?

19 A That matched the heplock discharge time.

20 Q So that would be 10:55 in this case, and if we
21 go down to the area where there's supposed to be a physician
22 at bedside, it also says 10:55?

23 A It matches.

24 Q In your experience working there from between
25 2002 and 2007, was the physician at bedside very often?

1 A Where the beds were the rooms were in back, like
2 directly in back of us.

3 Q Okay.

4 A I mean, were they physically there? No. But if
5 there was a problem, we could call them and they would be
6 there.

7 Q Okay. But this time here, did that reflect a
8 doctor standing at the bedside?

9 A No.

10 Q Okay. Now, from this time here, what would
11 there -- what would your formulas do? Would there be another
12 time that would come up later on from the physician at bedside
13 to say when they were discharged, anything like that?

14 A I don't know.

15 Q Did you add any more time to this particular
16 time to get to the next time?

17 A The -- let's see. I think that this chart's
18 time matched the time that was on the -- the vital-sign list
19 tape. So whatever the one last time that the last vital sign
20 was taken, that matched the discharge time.

21 Q Okay. In this instance, do you see the -- the
22 discharge time is listed as 30 minutes later?

23 A Yeah.

24 Q At 10:25; do you see that?

25 A Mm-hmm.

1 Q The tape that you referred to, was that a tape
2 that was done in the recovery room?

3 A Yes.

4 Q And on this record -- do you see the last time
5 on the recovery room tape is 11:09?

6 A Mm-hmm.

7 Q Do you see that?

8 A Okay.

9 Q On this particular day -- so you can look at
10 this -- this column here, see where it's talking about
11 physician at bedside and time to discharge time; do you see
12 that?

13 A Right.

14 Q Do you see the times listed in this column?

15 A Yeah.

16 Q What are they all? What's the number?

17 A Is that 30 [inaudible]?

18 THE COURT RECORDER: I'm not picking her up.

19 MR. STAUDAHNER: Oh.

20 THE WITNESS: Oh, 30 minutes.

21 THE COURT RECORDER: Thanks.

22 BY MR. STAUDAHNER:

23 Q So they all appear to be 30 minutes
24 predominantly; is that correct?

25 A Yep.

1 Q Now, the formula that you used, where did you
2 get that formula from?

3 A You know, that formula we used for -- from the
4 time that I started there until the time that I left.

5 Q Oh, okay.

6 A So it would -- that's the way that we were
7 trained.

8 Q So you were trained that way from the beginning?

9 A From the beginning. From --

10 Q Did you remember --

11 A -- day one.

12 Q -- who trained you initially?

13 A That was Betty Hamer [phonetic].

14 Q That is personnel within the office?

15 A Yes.

16 Q Okay.

17 A That's correct.

18 Q Is it fair to say that based on what you -- we
19 just showed you and you went through that those times on that
20 record have no basis in reality? They weren't the actual
21 times?

22 A Correct.

23 Q Had you ever worked at a -- anyplace as a nurse
24 before you went -- worked at the endoscopy center?

25 A Yes. Yes, sir.

1 Q Did you work as a nurse after you went to the --

2 A Yes --

3 Q -- endoscopy center?

4 A -- sir.

5 Q Did you ever have a situation where you just
6 went by some formula to put information in the chart?

7 A No.

8 Q Before or after?

9 A No.

10 Q When they told you to do this, did that cause
11 you some concern, or did you want to know why, or what was the
12 issue?

13 A That particular -- that particular one that we
14 looked at was pretty much off -- from what I can remember,
15 they were a little bit closer to the times; however, we did so
16 many cases that it would have been impossible to do -- to do
17 real time.

18 Q What do you mean it would -- would have been
19 impossible to do real time? Because of the number of cases?

20 A Because the number of cases. We did 65 cases
21 per day, sometimes upwards -- was to wear on us.

22 Q So is it -- did I understand you correctly that
23 because of the number of patients rolling through, that you
24 didn't have time to put down the accurate times on the record?

25 A Yeah.

1 Q Is that why the formula was used?

2 A Yes, sir.

3 Q With regard to the volume, let's talk about that

4 for a moment. You said you never worked out in the

5 preprocedure area where the patients come into the facility

6 and sign in; is that right?

7 A No, that -- that was typically LPNs that did

8 that.

9 Q Okay. So when you dealt with the patients, it

10 was mainly in that area where they recovered?

11 A Mm-hmm.

12 Q I'm going to show you what has been admitted as

13 State's 118. That photograph, do you see that?

14 A Yes.

15 Q And if I move this over a little bit to the

16 right, and you look at the left-hand side of the picture --

17 A Mm-hmm.

18 Q -- do you see these doorways --

19 A Yes.

20 Q -- along here?

21 A Yes.

22 Q Do you know what those doorways are to?

23 A The first doorway -- this one --

24 Q Okay. Go ahead and just circle it or mark it

25 for us.

1 A -- was a procedure room. That second doorway --
2 no, this one, was the scope-cleaning room.

3 Q Okay.

4 A And the third doorway back here, that was
5 another procedure room.

6 Q So procedure room, scope room, procedure room?

7 A And then this room was the preop room, and then
8 the discharge room was on this side.

9 Q The -- the side that's -- where the camera is --

10 A Yes.

11 Q -- is standing? Okay.

12 A Yes.

13 Q So basically off camera directly behind the
14 person --

15 A Right.

16 Q -- taking the picture?

17 A Correct.

18 Q Now, in that picture -- can you clear that for
19 us again?

20 A Mm-hmm.

21 Q I'm going to slide this over just a little bit.
22 Do you see those beds how they're lined up?

23 A Yes.

24 Q Does it appear as though the head of the bed is
25 toward the middle part of the room?

1 A The head of the bed was -- it's towards us, yes.

2 Q Okay.

3 A Because it's --

4 Q So did that mean --

5 A -- the head.

6 Q -- the foot of the bed is -- is over on this
7 side of the bed?

8 A That's correct.

9 Q Is that the way that you -- you did things?
10 That you had the beds positioned in that way?

11 A Yes.

12 Q Was there a reason for the way that the --
13 having the people feet first versus head first?

14 A We stood here and here, okay? The people were
15 positioned that way. I assumed this so that we could, you
16 know, watch their breathing, things like that.

17 Q Did it have anything to do with being able to
18 move them in and out of those rooms more rapidly?

19 A Let me think. Because -- when they went in the
20 rooms they went in feet first.

21 Q Well, let me show you one of the rooms. This is
22 122. Let me zoom out. And if you can clear that for us
23 again.

24 A Mm-hmm.

25 Q And I'll represent to you that this is taken

1 from the doorway area toward end of the room. Do you see the
2 position --

3 A Right.

4 Q -- of the bed there?

5 A Yes.

6 Q Do you see this pillow here at the end of the
7 bed?

8 A Now, if they were going to have an EGD done,
9 they would go in head first.

10 Q Right.

11 A If they were going to have a colonoscopy done,
12 they would go in feet first.

13 Q Okay. When the patients came out -- I'm going
14 back to -- well, actually, let -- I want to go to 119. That
15 also has the same orientation of the bed, of the feet toward
16 the wall and the head toward the middle of the room?

17 A Yes.

18 Q When they came out of the recovery room, is that
19 the way they went in and were --

20 A Yes.

21 Q -- basically lined up?

22 A Yes.

23 Q Where was the suction equipment and things like
24 that located?

25 A Back here.

1 Q So on the wall over here?

2 A Yes.

3 Q Do you know if the -- if the tubing reached

4 around from that point to the front of the bed, or did the

5 beds have to be turned around to use suction?

6 A No, we would have an extension tubing for those.

7 Q Would you have to hook that up?

8 A Yes.

9 Q Okay. So if there was a problem, you'd have to

10 hook up an extension tubing or turn the bed around or

11 something?

12 A Right. Correct.

13 Q Did that happen very often that there were

14 problems?

15 A No.

16 Q Go ahead and clear that, if you would. Now, the

17 whole -- you talked about the speed of the procedures that

18 were -- or not the speed, but the -- the health -- how many

19 patients were moving through.

20 A The turnover. Mm-hmm.

21 Q Did you consider that to be high?

22 A Yes. Yes.

23 Q Did you consider it to be too high?

24 A Yes.

25 Q Did it tax you and the other staff, the speed

1 and turnover of those patients on a day-to-day basis?

2 A It did.

3 Q Was it something that you ever complained about
4 to anybody?

5 A We did. We complained to -- to Jeff Krueger,
6 who was the manager. We -- to the office manager. We
7 complained to Tonya Rushing, who was the -- I can't -- the
8 administrator, so to speak. We had said something to Dr.
9 Desai.

10 Q Now, you just pointed to somebody in court. Do
11 you see Dr. Desai in court?

12 A Yes.

13 Q Can you point to him and describe something that
14 he's wearing for the record please?

15 A Dr. Desai is sitting right there. He has a blue
16 shirt on -- dark blue suit.

17 MR. STAUDAHER: Will the record reflect the identity,
18 Your Honor?

19 THE COURT: It will.

20 BY MR. STAUDAHER:

21 Q So when you talked to Dr. Desai about that,
22 complained to him, what was his response?

23 A Really we weren't given a response.

24 Q He didn't say anything?

25 A No.

1 Q Was this something that you did more than once
2 to him?

3 A Yes. Yes.

4 Q A lot of times?

5 A Quite a few.

6 Q And every time you brought it up to him, he
7 didn't respond at all?

8 A No. And we brought it up during staff meetings
9 to Jeff and to Tonya and the numbers -- the procedure numbers
10 would go down for a little bit, and then they would gradually
11 just come back up. So --

12 Q Did you ever hear Dr. Desai yelling at the staff
13 about speed issues? about not going fast enough? anything like
14 that?

15 A Yes.

16 Q Was that a regular thing?

17 A Yes.

18 Q When he was in the facility was there -- was
19 there a difference in the atmosphere how the staff acted or
20 how you acted when he was there versus when he wasn't there?

21 A Yes, you know, when -- when Dr. Desai was there
22 things went -- went a lot more quickly than they did while the
23 other doctors were there. The -- the procedures were done in
24 a more quick manner than they were -- like, Desai went and Dr.
25 Carrera or Dr. Carroll were there -- Dr. Sharma.

1 Q During the time that you were there -- and I'm
2 talking about the -- just -- at this point just the sheer
3 numbers of patients and the speed at which the procedures are
4 done, all of those kinds of things, did you ever have concern
5 that there was any -- there was any potential problem that
6 might occur with a patient?

7 A We did.

8 Q Did you voice those concerns?

9 A We did. We addressed those at staff meetings.
10 We addressed those that, you know, we never had thought to
11 this magnitude, but we had thought that maybe there may be
12 perforations, things like that, because the procedures were
13 done very quickly.

14 Q So if I understand you correctly, you said that
15 you had concerns over patient safety, essentially?

16 A Yes.

17 Q And that you voiced those concerns?

18 A Yes.

19 Q Did you ever voice those directly to Dr. Desai?

20 A Yes.

21 Q What was his response when that happened?

22 A Nothing. Nothing really.

23 Q Whenever you voiced concerns to him, whether it
24 was patient safety or speed or volume or whatever it was, did
25 he ever respond at all?

1 A No.

2 Q Would he just look at you?

3 A Usually. Usually. And, you know, like I said,
4 we -- we staff members had no idea that something to this --
5 this magnitude was going to happen. We thought that it would
6 be, like I said -- like -- like a perforation or something
7 like that to where the procedures were done so quickly that,
8 you know, maybe -- you know, maybe the scope might perforate
9 the colon, you know. That's what we thought.

10 Q Well, along those lines -- I mean, you say you
11 didn't expect this --

12 A No.

13 Q -- meaning the -- are you talking about the
14 infections that occurred?

15 A I'm talking about the infections, yes.

16 Q So is it fair to say, then, that you knew
17 something would happen or thought something would happen, but
18 not this particular thing?

19 A And that -- that's correct. And that is why we
20 complained about the number of the cases that we were doing.

21 Q Did you feel that doing things like the -- not
22 even having enough time to put down the right time off -- off
23 a clock, that if you didn't have enough time to do that, that
24 there was --

25 A That was a concern.

1 Q There were other issues like that?

2 A Yes.

3 Q You spoke of the different doctors and how
4 quickly they did procedures. In comparison with Dr. Desai,
5 were the other doctors faster, slower, or the same?

6 A Say that again and rephrase.

7 Q That -- how did Dr. Desai compare to the other
8 doctors in the speed --

9 A Okay.

10 Q -- of the procedures that he did?

11 A Dr. Desai was quickest.

12 Q And when you say quick, we -- the -- we
13 understand the two main procedures were upper endoscopies and
14 colonoscopies; is that correct?

15 A Correct. Correct.

16 Q Upper endoscopies, how long would it take him to
17 do one of those?

18 A Two, three minutes.

19 Q What about a colonoscopy?

20 A Five minutes, maybe.

21 Q So when these records are showing that the
22 patient's in the room for 30 minutes or so, was that
23 happening?

24 MR. SANTACROCE: I'm going to object to foundation.

25 Which -- her knowledge is to which patient? I mean, this is a

1 blanket statement.

2 THE COURT: State your question again.

3 BY MR. STAUDAHER:

4 Q With regard to -- you said -- I showed you that
5 anesthesia record --

6 A Mm-hmm.

7 Q -- do you remember that?

8 A Mm-hmm.

9 Q 30-minute window?

10 A Mm-hmm.

11 Q I showed you that chart also, and I --

12 A Mm-hmm.

13 Q -- I can come back and show you this chart
14 again, and for the actual day of the 21st.

15 MR. STAUDAHER: And, you know what, Your Honor? I'm
16 just going to -- I'm going to put it up here so -- with the
17 other one, so it's a little easier for --

18 THE COURT: Okay. The -- the small --

19 MR. STAUDAHER: -- the jury.

20 THE COURT: -- version?

21 MR. STAUDAHER: The smaller version.

22 THE COURT: Okay. And that's Exhibit --

23 MR. STAUDAHER: This is Exhibit 156.

24 THE COURT: All right.

25 MR. STAUDAHER: Okay.

1 BY MR. STAUDAHER:

2 Q Now, I'm just going to slide this over to the
3 calculated time on the anesthesia records.

4 MR. SANTACROCE: I'm going to object, Your Honor.

5 BY MR. STAUDAHER:

6 Q The same one I showed you up there.

7 THE COURT: Well, let -- let him ask the question.

8 MR. SANTACROCE: Okay.

9 THE COURT: I mean, so far he's just directing her to
10 what he wants her to look at. I'm not sure what the question
11 is going to be, so...

12 BY MR. STAUDAHER:

13 Q This is -- this -- and I'll represent to you
14 that this chart comes from a single day, the 21st, which was
15 one of the records that I showed you just a moment ago of the
16 [inaudible], okay?

17 A Okay.

18 Q You see this column here where it's got the
19 anesthesia times for these patients?

20 A Yes.

21 Q And can you actually see those?

22 A Mm-hmm. Yes.

23 Q If I go all the way down, you see they are
24 predominantly greater than 30 minutes, all of them.

25 A Yes.

1 Q And there's a total of 63 patients on that day?

2 A Mm-hmm.

3 Q Oh. Does that even comport with reality of what
4 you saw in the rooms?

5 MR. SANTACROCE: I'm going to object, Your Honor.
6 This is a September 21st, 2007, report. She testified she
7 wasn't employed at that time there.

8 THE COURT: Okay. Well, is -- the question is --
9 okay, I think the question is, is this day -- these times --
10 is that representative or is that consistent with what you
11 observed on other days? Was that your question?

12 MR. STAUDAHER: Essentially, yeah.

13 THE COURT: Yeah.

14 THE WITNESS: Okay. So I'm asking you to make me
15 sure that I've got it straight.

16 BY MR. STAUDAHER:

17 Q Okay.

18 A Are you asking me if the number of patients that
19 was done on this day was -- was the norm for a -- for a day?

20 Q Well, let's talk about that first. Well, we're
21 looking at about 63 patients on this date. Was that about the
22 norm of what you would experience?

23 A That was about the norm, yes, sir.

24 Q Okay. Were those patients -- individual
25 patients -- the ones you know about because you're in -- both

1 in a recovery and a procedure room, right?

2 A Yes.

3 Q Was -- were those patients in those procedure
4 rooms for 30-plus minutes each?

5 A No.

6 Q A lot -- were they for a lot more than that or a
7 lot less than that?

8 A For the most part, it lasts less than that. 10
9 minutes, maybe 15.

10 Q That's about the time that it would take for a
11 patient in those rooms?

12 A Yes, sir.

13 Q I'm going to ask you about a time when -- was
14 there ever any kind of celebration, dinner, anything like that
15 for hitting a certain number of patients in a month?

16 A Yes. Yes.

17 Q Can you tell us about that?

18 A I can't remember what year it was, but we --
19 let's see, we had done a thousand patients in a month and
20 there was a dinner, and that was given for us because we had
21 done so many patients.

22 Q So us -- I mean, was that -- is that fair that
23 you were having the dinner because you had hit that number?

24 A Yes. Yes.

25 Q I want to talk to you also about a couple of

1 things in the procedure room. Let's talk -- let's go back to
2 there for a minute. Was there any issue with regard to
3 supplies? Not using supplies or reusing supplies? Anything
4 like that in the clinic?

5 A We -- the supplies that we used -- it was told
6 to us from, you know, Dr. Desai, Tonya, even Jeff, that the
7 supplies -- this needed to be not wasted, that we needed to be
8 for a goal with the supplies. Some of the things that we did,
9 we cut chux in half to save money. The techs were instructed
10 not to use too much KY, tad bit; if they would use more than
11 that, they got in trouble.

12 You know, that -- those were the things that I knew
13 about. We -- we weren't -- we -- they didn't have blankets
14 for the patients. If we did give a patient a sheet to cover
15 up with, we -- we were reprimanded for that.

16 Q Well, let's talk about the sheets for a minute.
17 You said no blankets? Why no blankets?

18 A We didn't have any.

19 Q Okay. The sheets? Now, you've got a patient --
20 when would you give a patient a sheet? Why would you even do
21 that?

22 A If they were cold. When they were --

23 Q So you've got a --

24 A -- on the gurney --

25 Q -- cold patient -- I'm sorry.

1 A They were laying on the gurney and they were
2 cold.

3 Q So you've got a cold patient, and the only thing
4 you have is a sheet to put over them?

5 A Correct.

6 Q And if you put a sheet over them, what -- you
7 said you got reprimanded?

8 A Yes. Yes, sir.

9 Q Was there ever situations where nurses would
10 just do it anyway and put sheets on the patients?

11 A Yeah, we did it quite a few times, and --

12 Q Was there any precaution you had to take if Dr.
13 Desai was around and you were using sheets in that manner?

14 A We would take the sheet off of the patient
15 before we wheeled them into the room.

16 Q Why did you do that?

17 A Because we would get reprimanded if the sheet
18 was on the patient because he would say that that costs money.

19 Q So you would physically take the sheet off
20 before Dr. Desai would see that you had --

21 A Yes.

22 Q -- used one?

23 A Yes.

24 Q Did you ever see Dr. Desai take sheets off of
25 patients themselves like that? If he saw a sheet being

1 used --

2 A Yeah.

3 Q -- and he just grabbed one off of the patient?

4 A Yeah.

5 Q What would he do with the sheet?

6 A Put it under the bed.

7 Q For reuse on another patient?

8 A For us -- yeah, for us to reuse.

9 Q So he'd just take the sheet off of a -- off of a
10 patient, fold it up or whatever, and put it under the bed --

11 A Put it under --

12 Q -- for reuse on --

13 A -- the bed.

14 Q -- another patient?

15 A Yes, sir.

16 Q And then yell at you because you'd used a sheet?

17 A Yes, sir.

18 Q Now, with regard to other items -- you mentioned
19 the KY Jelly, you mentioned these chux; are these those on one
20 side they're -- they're absorbent and on the other side
21 they're nonabsorbent?

22 A Exactly. They're blue.

23 Q About how big were they?

24 A Probably -- probably about that big.

25 Q Were they square?

1 A Probably that big and about that wide, maybe.

2 Q So --

3 THE COURT: So she's indicating --

4 BY MR. STAUDAHER:

5 Q -- for the record --

6 A Yes.

7 Q -- and I'm going to do that right now. For the
8 record, is that -- we're talking about -- about this far
9 apart?

10 A About that, yes.

11 Q And for the record, does that appear to be about
12 3 feet? Or two-and-a-half feet; something like that?

13 A Yes. Yes.

14 Q And were they square or were they narrower than
15 they were long?

16 A Square.

17 Q Okay. So about two and a half to three feet --

18 A About three by --

19 Q -- by two and a half --

20 A -- three --

21 Q About three by three?

22 A -- ish.

23 Q Okay. So not -- did you ever see a chux that
24 was eight feet long?

25 A No.

1 Q Six feet long?

2 A No. They're pretty much just standard --

3 Q So you -- and you said that you cut those in

4 half --

5 A -- size.

6 Q -- to save money?

7 A Yes.

8 Q What about things like four by fours? Do you

9 know what those are? The little gauze --

10 A Yes. Yes.

11 Q -- things?

12 A Of course.

13 Q Any issue with using too many of those?

14 A We didn't use those -- the nurses. The techs

15 did, you know.

16 Q Were you ever in a room where Dr. Desai yelled

17 at somebody for using too many of those? Not you but somebody

18 else?

19 A That went on with the KY Jelly --

20 Q So both --

21 A -- yeah.

22 Q -- items?

23 A Yes.

24 Q The KY Jelly and --

25 A Yes.

1 Q -- the four by fours?

2 A Yes.

3 Q What about tape? Any issue with regard to tape?

4 A No.

5 Q Using --

6 A No.

7 Q -- you know what I'm talking about? For like
8 the IVs and things like that?

9 A Yeah, none that I recall.

10 Q Okay. What about alcohol pads? Anything along
11 those lines?

12 A Not that I recall.

13 Q Now, the propofol -- do you know what that is?

14 A Mm-hmm.

15 Q What is it used for?

16 A Propofol is -- it's what they used to put people
17 to sleep. It's an anesthetic.

18 Q Was it used in the clinic?

19 A It was.

20 Q Did you see it used in the clinic?

21 A Yes.

22 Q With regard to that, did you ever hear Dr. Desai
23 telling the CRNAs anything about the use of the propofol?

24 Restricting its use, anything like that? Don't use too much?

25 A The only thing that I ever heard was on certain

1 occasions people would start waking -- wake up, and he was
2 like, come on, I want this done. Don't give them any more.

3 Q So when you say they were waking up, what were
4 they doing? Were they just twitching a little bit or were
5 they moving?

6 A They were moaning and, you know, mmm, mmm, you
7 know.

8 Q Were they moving around?

9 A Yes.

10 Q Okay. When they were doing that, was the
11 anesthetist trying to give them more propofol when Dr. Desai
12 would yell at them?

13 A At times, yes.

14 Q Would -- did that happen on -- what kind of
15 frequency are we talking about that that kind of thing would
16 happen?

17 A You know, like I just said, the last couple
18 years that I was there primarily I was in recovery. So not so
19 much in the procedure room; but when I was in the procedure
20 room, like -- I like to say I was in there five to six times a
21 week, maybe.

22 Q You were in there five or six times a week? Or
23 you --

24 A Well, I'm just giving it in general as
25 [inaudible]. If I was maybe -- I don't know, maybe three,

1 four times a day.

2 Q So three or four times --

3 A At least.

4 Q -- a day that would happen?

5 A Yes.

6 Q And the limited times you were in the room?

7 A Yes.

8 Q Now, what about the other side of it where a
9 procedure is going to start, and, you know, they would give
10 anesthesia before a procedure, right?

11 A Right.

12 Q And then the procedure would go on; is that the
13 way I understand it?

14 A That's correct.

15 Q Would there ever be situations that you
16 witnessed where Dr. Desai specifically would start procedures
17 or before anesthesia was given?

18 A Yes. Yes.

19 Q What kind of frequency are we talking about
20 there? Same thing or less or more?

21 A You know, maybe a little less. I mean, for the
22 most part, the anesthesiologist pretty much made sure that the
23 people were sleeping. But when we were doing these -- these
24 mass amounts of patients and we were really bringing them in,
25 bringing them out, bringing them in, bringing them out, then

1 there may have been times -- not may have been, there were --
2 there were times that the patient wasn't quite asleep yet and
3 the procedure would start.

4 Q And would this -- do you see this with any other
5 doctor beside Dr. Desai?

6 A No.

7 Q And again, the frequency -- I know that you
8 weren't in there a whole lot, but in the times you were there
9 in a typical week, how many times would that happen, roughly?

10 A A couple -- well, two, three, maybe.

11 Q Now, did you ever hear Dr. Desai bragging about
12 how fast he could do procedures; anything like that?

13 A Yes.

14 Q Did -- was that more than once? Was that
15 something he would do?

16 A Quite often.

17 Q Would it be fair to -- did you ever hear Desai
18 talk about wanting to do more procedures? As many as he could
19 do; that kind of thing?

20 A Well, you -- see, that's what happened. We --
21 we were doing about 45 procedures a day, and then in probably
22 2007, beginning of the year 2006, maybe -- maybe -- they had
23 just started increasing the number of patients at that time.
24 So I'm not sure what you want -- what -- what --

25 Q What question I'm asking?

1 A -- what's the question, yeah.

2 Q Did Desai ever express, in any way, that he
3 wanted to do more patients all of the time, essentially?

4 A Well, yeah --

5 Q Or tried to do. I mean, I know that physically
6 is --

7 A -- I mean --

8 Q -- what you're describing happened, but did he
9 ever say that? That he wanted to do more patients?

10 A You know, as far as the internal workings of the
11 endoscopy center, we didn't really have much to do with that.
12 That would have been discussed in the doctor's meetings, the
13 anesthesiologist -- Tonya, they -- they didn't want
14 [inaudible] privy to that type of information.

15 Q As far as the total patient load, though, that
16 you're talking about, that when it was high like you're
17 describing --

18 A Mm-hmm.

19 Q -- do you know what the term double and triple
20 booked, things like that --

21 A Yes.

22 Q -- means?

23 A Yes.

24 Q Was anything like that going on in the clinic?

25 A It was.

1 Q And describe for us what that means as far as
2 your experience in the clinic goes.

3 A Double and triple booking is when you book
4 someone for, like, a 9:00 appointment, and then you book two
5 more people for that same time to be done at that time. So --

6 Q So that's what you're talking about?

7 A So that means that at 9:00 instead of having one
8 patient to have colonoscopy, or EGD, you have three patients
9 that are scheduled for a procedure at that same particular
10 time.

11 Q So would that be triple booking, then, if there
12 were three?

13 A That would be triple, yes.

14 Q And did that happen in the clinic?

15 A At least double, sometimes triple, yes.

16 Q Now, speaking of that, in part of what you did
17 did you ever go out and get patients or call patients back to
18 have their procedures done? Did you ever go out to the -- to
19 the waiting room to see if it was crowded or not crowded, that
20 kind of thing?

21 A We did. We went out there and --

22 Q What was it like?

23 A It was standing room only most of the time. And
24 when we did call patients back -- on numerous occasions we
25 would call patients back and when we finally call them back

1 everybody else would stand up and clap and be like, yay, you
2 know, and --

3 Q You're telling me that the people out in the --
4 are we talking about the nurses?

5 A No, we're talking about the people in the
6 waiting room would just stand up and clap when --

7 Q Because somebody was going back?

8 A Because somebody was coming back because they
9 had waited for so long.

10 Q Do you know where -- you've mentioned that area
11 on that -- and this is -- let's go back to -- I know it's kind
12 of difficult to see, but on Exhibit 118, the room right in
13 here that's between the two procedure rooms --

14 A Yes.

15 Q -- that was, you said -- what was that room?

16 A The scope-cleaning room.

17 Q Did you ever go in there?

18 A Yes.

19 Q Did you ever see scopes hanging up at the
20 beginning of the day?

21 A Yes.

22 Q Did you -- those chux that we talked about,
23 those nonabsorbent on one side, absorbent on the other side --

24 A Right.

25 Q -- did you see those underneath the scopes?

1 A Yes, sir. That's where we put them. That's why
2 we cut those -- we'd put those under the scopes because at
3 night they would wash the scopes, you know, for the next day.
4 Well, I mean, they'd wash them, like, throughout the day, but
5 then at night they'd clean the scopes and then they'd hang
6 those up there, and then the chux would catch the excess
7 water, things like that, from the scope.

8 Q Did you ever see any stuff underneath the scopes
9 when you came in?

10 A I saw feces on occasion that had dripped from
11 the scopes, and I personally went in and told the tech that
12 why is water shooting in the scopes at that time. You need to
13 wash that. You need to resanitize it because it's -- there is
14 feces that's dripping -- or that had dripped. It was dry.

15 Q I want to ask one last area. The -- back in the
16 procedure rooms --

17 A Mm-hmm.

18 Q -- when you're in the procedure room, did you
19 pay attention to much -- to what the CRNA was doing, the
20 anesthesia person was doing? How they were putting people to
21 sleep? What they were using?

22 A Not -- not really. Where we were -- we were in
23 the back of the room by the door, and do you have a -- that
24 picture?

25 Q State's 122? Do I need to go back out?

1 A Do you have the --

2 Q The other direction?

3 A No, that's good. The doctor stood here, okay?

4 Q Okay.

5 A This was the monitor that they -- that they
6 looked at when they were doing the procedure. The tech stood
7 beside them. The nurse anesthetist stood on this side of the
8 bed. The bed was more in the middle. And then the door was
9 back here --

10 Q Where the picture has been taken from?

11 A From the doorway.

12 Q Okay.

13 A Okay? The door was back here and we were back
14 by the door on a -- over the bed table, and that's where we
15 stood.

16 Q Okay.

17 A Okay.

18 Q So when you're back --

19 A Now, I do have to say that on occasion we would
20 come up and help -- help the -- well, tech, give pressure when
21 it was needed.

22 Q Okay.

23 A And we would have to go, like, around the bed
24 and help them.

25 Q Will you clear that screen for me, please?

1 A Sure.

2 Q I'm going to show you 124 -- State's 124 --

3 A Mm-hmm.

4 Q -- which is from the bed looking back into the
5 room the opposite direction of -- and I'm -- I'll flip between
6 them so you can see them. So 122 --

7 A Mm-hmm.

8 Q -- do you see a railing of the bed here?

9 A Yes.

10 Q And then the next one will be from a perspective
11 of the camera shooting this direction --

12 A Okay.

13 Q -- okay?

14 A Okay.

15 Q Do you see that?

16 A Yes.

17 Q You mentioned that you would be sitting
18 somewhere in that area; is that right?

19 A No.

20 Q Oh, no?

21 A We would be sitting -- the door was -- do you
22 see where the trash can is?

23 Q Mm-hmm.

24 A At least I did. The door, yeah, is over here.
25 This particular table we would put off over there --

1 Q So that's where you would sit?

2 A -- because right here it would have been in the
3 way because the doctor and then the tech stood there.

4 Q Okay. When you were in the room -- did you ever
5 see the CRNAs administering propofol to the patients?

6 A On occasion.

7 Q Did you ever see a CRNA reusing a single syringe
8 on the same patient --

9 A Yes.

10 Q -- when you got a bottle of propofol and -- I
11 just want to make sure you know what I'm talking about -- a
12 bottle of propofol with a syringe, goes in, draws it up, goes
13 into the patient, maybe even changes the needle, goes back
14 into the propofol again. Did you ever see that --

15 A Yes.

16 Q -- happen?

17 A Yes, sir.

18 Q So you saw that occur?

19 A Yes.

20 Q Did you ever see any open bottles of propofol go
21 from one patient to another?

22 A Not that I can recall.

23 Q That's fine. Now, speaking of one patient to
24 another, did you ever see the CRNAs moving from one room to
25 another for any reason during the day?

1 A Generally they -- now, this was right before I
2 left -- they would call in a -- a third CNA to relieve for
3 lunches, okay? But occasionally -- and I think that for the
4 most part they tried to keep their same rooms.

5 Q Okay.

6 A But that didn't always happen. There were times
7 that they switched rooms, like, if -- like, let's say Ron was
8 in one room, Linda was in another room, and Vinny came in and
9 Vinny was kind of relieved for lunch. Maybe Vinny relieved
10 Linda and Linda came back and got relieved for Ron, but she
11 would go to Ron's room and then Ron would go to lunch, and
12 then -- and we'd -- and we would just switch rooms; do you
13 know what I mean?

14 Q Okay. So there was at --

15 A So --

16 Q -- least movement around lunchtime --

17 A Yes.

18 Q -- from room to --

19 A Yes.

20 Q -- room?

21 A Yes.

22 Q What about when there was just two CRNAs and
23 they needed to relieve for lunch, for example? Would you see
24 something along those lines?

25 A You know, quite honestly, I don't know if --

1 when there was only two CNAs if they took lunch. I'm not
2 sure.

3 Q Going back for a moment to State's 156. Do you
4 see this?

5 A Mm-hmm.

6 Q And, let's see, is that the correct way? Let's
7 start off on the -- on the top part here. And we're going to
8 move to the line that has CRNA in it --

9 A Okay.

10 Q -- do you see that? In this particular case,
11 it's Keith Mathahs.

12 A Keith. Okay.

13 Q All the way down the line until we get here.

14 A Mm-hmm.

15 Q And it's around the noon hour?

16 A Mm-hmm.

17 Q You see his name, at least, appears in this room
18 around here.

19 A So --

20 Q Do you see that?

21 A -- what it looks like to me is --

22 MR. SANTACROCE: I'm going to object, Your Honor.
23 He's asked --

24 THE COURT: Yeah, that's sustained. That's
25 sustained.

1 Q Okay. And it -- it -- it's -- until then you
2 were not aware of any particular policy about use of propofol,
3 multi or single; correct?

4 A Yes, that would be correct.

5 Q Okay. And you -- you thought nothing of it;
6 correct? You didn't even think there needed to be such a
7 policy in place until this investigation happened; correct?

8 A I didn't think the CRNAs needed to be
9 instructed on aseptic technique because it's something that
10 should have been a standard part of their training.

11 Q Okay. Because -- and I think you put it at
12 point in your statements that I don't need to tell the CRNAs
13 how to propofol, and they don't need to tell me how to snare.

14 A Yes, that's correct.

15 Q Okay. And so you -- you weren't aware of any
16 non-aseptic techniques taking place before the investigation.

17 A That is correct.

18 Q And you weren't aware of any improper use of
19 propofol; correct?

20 A That is correct.

21 Q You -- you're aware that with propofol there
22 are -- there were multi-use vials; correct?

23 A I understand that at one time there were.

24 Q Okay. And the -- with multi-use vials, they
25 can be used on more than one patient and --

1 A Any multi-use vial can be used on more than
2 one patient as long as aseptic technique is adhered to.

3 Q Okay. And aseptic technique when we're
4 talking about multi-use vials would be not reusing a needle
5 and syringe that had been used on a patient --

6 A Correct.

7 Q -- to reenter the vial, or, of course, on any
8 other patient --

9 A Correct.

10 Q -- right? And even if multi-dosing, what I
11 call multi-dosing, using propofol for more than one patient,
12 it would be fine if new needle, new syringe is used each time
13 you're entering the vial.

14 A If you have a multi-dose vial and you are
15 following aseptic technique, that is certainly acceptable.

16 Q Okay. And what I just -- the example I gave
17 is aseptic technique; correct?

18 A Yes, you did.

19 Q And you were not aware, just to reiterate, of
20 any non-aseptic technique that was taking place?

21 A That is correct.

22 Q Now, did you understand the -- the issue on
23 multi-using of propofol had to do with its shelf life, what I
24 call its shelf life? I don't know what you guys call it.

25 A I suppose propofol, just like any other

1 medication, has an expiration date.

2 Q Okay. What do you call it on the -- I have so
3 long to use it once I open it, the first time I puncture the
4 rubber seal? It then has a life that --

5 A I don't know that phrase specifically.

6 Q Okay. But --

7 A But I understand your concept.

8 Q Okay. And that was an issue with propofol
9 multi-use vials is your understanding?

10 A Yes, because that permitted bacterial
11 overgrowth after X amount of time.

12 Q Okay.

13 A And I don't know the parameter and I don't
14 know the proper phrase, either.

15 Q Okay. Do you know there was an amount of time
16 -- do you know if there was an amount of time like the first
17 time if I open propofol and take the sealed cap off --

18 A Uh-huh.

19 Q -- and then I enter the rubber bladder, do you
20 know how long it is then good to continue to use?

21 A As I've just stated, I don't know the
22 parameter. I don't know the time.

23 Q Okay. You testified on direct examination
24 this morning about your generating your notes on the computer
25 program after you've completed a procedure.

1 A That is correct.

2 Q Okay. And then dropped down or typed in, but
3 you complete your note on the procedure and then you sign it
4 by hitting the --

5 A The electronic signature, yes.

6 Q Okay. And then that puts a date and time?

7 A Yes, that's date and time stamped.

8 Q Okay. Then you were asked a question that I
9 didn't quite follow about do those times synchronize or
10 coincide with anything else in the practice. I think that's
11 what you were asked.

12 A I believe I was asked something like that,
13 yes.

14 Q Okay.

15 A And the question, then, it timekeeping. And
16 people's watches, clocks on the wall, what have you, other
17 monitors, I don't know that they were synchronized.

18 Q Okay.

19 A From reviewing the records, I know that there
20 was a date that was wrong in one of the procedure rooms.

21 Q Okay. You're talking about that August 21st
22 date rather than showing September 21st?

23 A Yes, the month was incorrect.

24 Q Okay. But you -- you stated that the monitors
25 and computers in the -- I think in the different procedure

1 rooms weren't synchronized.

2 A I don't know if they were or they were not. I
3 do not have that information.

4 Q Okay. Why would you have it?

5 A I'm sorry?

6 Q Why would you have know the answer to that?

7 A Why wouldn't I have known the answer to --

8 Q No, why would you.

9 A Please restate your question more
10 specifically.

11 Q Did you discuss this subject with someone?

12 A No.

13 Q Okay But -- no, the subject of synchronized
14 times on the computers and monitors.

15 A I was asked by Mr. Staudaher this morning if
16 the times were synchronized, and I said I don't know. I don't
17 know that they were or weren't.

18 Q Okay. This morning, not -- not in court.

19 A Correct.

20 Q Okay. This was the meeting beforehand?

21 A Yeah, but I don't know if the times were
22 synchronized or not.

23 Q Okay.

24 A It's that simple.

25 Q Well, why does that matter?

1 A Well, it matters when you start to put
2 together a reconstruction of events for anything that happened
3 at any time and any location that you're interested in putting
4 together.

5 Q Okay. Well, what time problem is there? Do
6 you have any ideas or some problem with times in this case?

7 A I don't know that I can reliably answer that
8 question for you. Although, I will say this, that it's
9 important a timeline be constructed as accurately as possible.

10 Q Okay. And would you say those doctor
11 generated signature times are an accurate way to ladder the
12 procedures?

13 A What does ladder mean?

14 Q Ladder. I'm sorry. Ladder, put them in order
15 up the ladder.

16 A Oh, ladder. You mean as far -- well, let's
17 just --

18 Q Well, it takes out --

19 A I'll tell you, this -- this -- this is your
20 watch, and it may be five minutes off. And you say you
21 started something at 8:00 a.m., but it was actually 8:05, and
22 then you ended and you started something again at 9:00 a.m.,
23 but it's really 9:05. You know, the point is that you can
24 order one case after another in appropriate fashion because
25 you're using the same timekeeping device. So I would say from

1 that perspective, yes, it's accurate.

2 Q Okay.

3 A Would you know the exact times? Not if the
4 watch was wrong.

5 Q All right. But if -- but if you're using the
6 same clock throughout the day, even if it's wrong, the times
7 and in between would be correct; right?

8 A Oh, you mean the length of time?

9 Q Right.

10 A Well, if the computer was actually accurately
11 keeping time, yes. I'm not a computer guru, so --

12 Q Okay.

13 A Sorry. I would say the answer is probably
14 yes.

15 MR. WRIGHT: Almost done, Your Honor.

16 THE COURT: All right.

17 BY MR. WRIGHT:

18 Q Oh, your famous press conference where you had
19 to give the statement that R&R and others wrote. Tell us what
20 the statement was.

21 A It had something to do with recognition of the
22 fact an event had occurred. It had something to do with
23 hiring experts to investigate this. And it had something to
24 do with trying to assure that nothing like this would ever
25 happen again, and it had something to do with reestablishing

1 the community's faith in the facility. And it had something
2 to do with not being able to answer additional questions based
3 on legal advice.

4 Q Okay. So was there -- I mean, there was quite
5 a build up here in the courtroom as to the evolution of how
6 you had to go to this press conference and read this
7 statement. Was there anything in that statement you disagreed
8 with?

9 A The statement itself was merely stating a
10 commitment to looking into this and to taking safeguards as
11 might be appropriate so --

12 Q Do you --

13 A -- that something --

14 Q Excuse me.

15 A -- like this could not happen again.

16 Q Okay. And you agreed wholeheartedly with the
17 position taken by the center, your partners, and yourself;
18 correct?

19 A I can't -- I don't have the statement in front
20 of me so I can't read every line, and it wasn't something I
21 authored. However, taking measures to safeguard the community
22 I agree with. There's nothing wrong with that. In fact, it's
23 laudable. It's something that should be the case.

24 Q Patient in recovery room is still the CRNA's
25 responsibility even though he may be working on a new patient;

1 correct?

2 A I would say yes, the responsibility of the
3 CRNA and of the nurse that's in the recovery room.

4 Q All right. Or -- or an anesthesiologist.

5 A Yes, and that frequently happens in the
6 hospitals. The anesthesiologist will be called back if --

7 Q Okay.

8 A -- there's any concern in the recovery room.

9 Q An anesthesiologist may be responsible for a
10 given patient he is tending to, plus one in the recovery room;
11 correct?

12 A Yes, I think that would be a fair statement.

13 Q The September 21, 2007, I want to be clear on
14 something. You realize from the events of that day that Mr.
15 Meana, that's what we call the source patient, was --

16 MS. WECKERLY: That's incorrect.

17 THE COURT: Yeah, you misstated.

18 MR. WRIGHT: That was misstated?

19 THE COURT: You said Mr. Meana. You mean Mr.
20 Rubino.

21 MS. WECKERLY: Rubino.

22 THE WITNESS: That's correct.

23 THE COURT: Or -- or the other source patient.

24 MR. WRIGHT: No, no, that's the one.

25 THE COURT: Okay.

1 THE WITNESS: Rubino.

2 BY MR. WRIGHT:

3 Q Rubino, early in the day, procedure done early
4 in the day; correct?

5 A Yes.

6 Q Known hepatitis C positive patient; correct?

7 A My understanding is yes.

8 Q Okay. And -- and that was perfectly proper,
9 ethical, exactly the way it's done; correct?

10 A The way what is done, sir?

11 Q There has been suggestions we've heard of like
12 you should take hep C patients at the end of the day.

13 A I think that's -- that is a suggestion that
14 was borne in a bygone era before hepatitis C was well
15 understood. At the times of these events and certainly at
16 present, it doesn't make any differences because if the
17 equipment is properly sterilized it kills the virus, so that's
18 not an issue.

19 Q Okay. Back -- back in the day if there was a
20 hep C patient --

21 A Uh-huh.

22 Q -- he got his own yellow scope.

23 A Yes.

24 Q Okay. I mean, that was before back in the
25 day; right?

1 A Well, probably talking in the early 1980s,
2 perhaps.

3 Q Okay. And how long a procedure takes for an
4 upper, what we call the uppers in here --

5 A Uh-huh.

6 Q -- is there any guideline or time on that?

7 A Not that I'm aware of.

8 Q Okay. And for the lowers, the colonoscopies,
9 you -- you've indicated about 20 minutes.

10 A A six minute withdrawal time is the standard
11 guideline --

12 Q Okay.

13 A -- that's adhered to most often.

14 Q And that's a hotly debated topic within the --

15 A Yes, it is.

16 Q -- gastroenterologist --

17 A Yes.

18 Q -- circle?

19 A There's some -- there's some reports and
20 literature of lesser times, others say it's irrelevant,
21 depends on the experience of the endoscopist.

22 Q Okay. That non-compete clause, what I call
23 the non-compete provision in the partnership agreement, is
24 that a Las Vegas kind of thing?

25 A I can't tell you if it exists in other

1 communities or not. I would expect that it does to some
2 extent. How prevalent it is through the medical community in
3 this country, I don't know, but it's not uncommon in Las Vegas
4 in my opinion because I've heard it in other practices where
5 there were issues with a non-compete clause.

6 Q Okay. Thank you, sir.

7 THE COURT: All right. Ladies and gentlemen, let's
8 go ahead and take our break until 3:35.

9 And during the break you're reminded not to discuss
10 the case or anything relating to the case with each other or
11 with anyone else. You're not to read, watch, listen to any
12 reports of or commentaries on the case, person, or subject
13 matter relating to the case. And please don't form or express
14 an opinion on the trial. Notepads in your chairs, and please
15 follow the bailiff through the rear door.

16 (Jury recessed at 3:22 p.m.)

17 THE COURT: And, Doctor, once again --

18 THE WITNESS: Do I give this back to you?

19 THE COURT: -- during the brief break, don't discuss
20 your testimony with anybody else.

21 (Court recessed at 3:22 p.m., until 3:38 p.m.)

22 (Inside the presence of the jury.)

23 THE COURT: All right. Court is now back in
24 session.

25 And, Mr. Santacroce, are you ready to begin your

1 cross-examination?

2 MR. SANTACROCE: Yes, Your Honor. Thank you.

3 THE COURT: All right.

4 CROSS-EXAMINATION

5 BY MR. SANTACROCE:

6 Q Good afternoon, Doctor.

7 A Good afternoon, sir.

8 Q My name is Rick Santacroce. I represent Mr.
9 Lakeman. I'm going to ask you some questions this afternoon
10 about my recollection of your testimony. If my recollection
11 is different than yours, please stop me and tell me what your
12 recollection is. Okay? I don't intend to get into a battle
13 of the words with you today. Okay?

14 A Okay.

15 Q You're currently in practice with Dr. Carol
16 and Dr. Vish Sharma; is that correct?

17 A Yes, that is correct.

18 Q And how long have you been in practice with
19 them?

20 A Since December 2011.

21 Q Okay. And you formed a partnership with them?

22 A Yes.

23 Q You are fully licensed to practice medicine?

24 A Absolutely.

25 Q And are you board certified?

1 A Yes, I am.

2 Q Is Dr. Carrol board certified?

3 A Yes, he is.

4 Q And Dr. Vish Sharma?

5 A Yes, he is.

6 Q Now, you testified that there was a period of
7 time when your license was suspended for about a year and a
8 half; is that correct?

9 A April 2008 to July 2009. It wasn't suspended,
10 I was enjoined from practicing medicine by a restraining
11 order.

12 Q And that injunction was issued by whom?

13 A The State Board of Medical Examiners.

14 Q So you still had a license, you were just
15 enjoined from practicing for that period?

16 A That is correct.

17 Q And I believe that the basis for that
18 injunction had nothing to do with negligent treatment of
19 patients; is that correct?

20 A I'm not exactly sure on all the details, but
21 this is my understanding to you is that the injunction was in
22 place while they investigated, and it had to do with the
23 treatment of patients at the Endoscopy Center of Southern
24 Nevada.

25 Q Okay. Didn't you give testimony and an

1 interview or in front of the Grand Jury where you said that
2 the Board was enjoining you because you didn't exercise your
3 management authority in a proper way?

4 A That is a matter of public record, and what it
5 says is that -- and let me try to think about the wording more
6 precisely. The -- and I should have been -- I should have --
7 that I shouldn't associate with a facility where I didn't have
8 an appropriate level of control over policies and procedures
9 that affected patient care. That's pretty close to what their
10 wording was. It's public record, though. You can see it on
11 their website.

12 Q No, I just want your understanding of it.

13 A Oh.

14 Q And so what they were saying basically was
15 that if you didn't have that authority to exercise or didn't
16 exercise that authority, you should have either left or
17 exercised the authority; correct?

18 A My assumption from what the outcome of their
19 investigation and sanctions was that I should have a position
20 where I had more control over policies and procedures. So I
21 think we're saying the same thing in that respect.

22 Q I think so. And basically you're familiar
23 with the concept of the captain of the ship doctrine; correct?

24 A it's applicable in some states, yes.

25 Q In theory what is that doctrine?

1 A In theory it is that the doctor who is in a
2 procedure room is responsible for any and everything that goes
3 on in that procedure room. I don't know that that's a Nevada
4 situation, though.

5 Q Well, I'll represent to you that other doctors
6 that worked at the clinic have used that term and felt that
7 they were captain of the ship. Is it your testimony that you
8 didn't believe you were the captain of the ship?

9 A I was just stating that it's applicable in
10 some states. I don't know if it is Nevada or not. I don't
11 think it is, but --

12 Q Okay. I want to get your feeling as to what
13 you believed when you walked into that procedure room. Who
14 was in charge?

15 A I believe that there are multiple individuals
16 in charge, each are responsible for their area of expertise,
17 their area of treatment. And I do believe that there are
18 times when something may happen that the physician of record,
19 in sense of let's just say a surgeon or an operating
20 physician, may not be aware of everything that's going on in a
21 room. Of course, you understand how that would be --

22 Q Yes.

23 A -- humanly not possible.

24 Q Well, you're not saying that the GI tech in
25 the room had any kind of control or authority over you, are

1 you?

2 A I'm not saying they had control or authority
3 over me, no.

4 Q And you're not saying that the nurse in the
5 room had any kind of control or authority over you, are you?

6 A The nurse?

7 Q Yeah.

8 A No, I'm not saying that.

9 Q In fact, those individuals acted upon your
10 direction, isn't that true?

11 A That's not necessarily true. It's a
12 cooperative effort.

13 Q Okay. Well, you relate an experience where
14 you were in a procedure room with Mr. Lakeman and you believed
15 that a patient was coming out of anesthesia.

16 A Yes, I did.

17 Q And you directed Mr. Lakeman to re-induce
18 propofol into that patient, didn't you?

19 A That's not entirely true. I asked him if it
20 was safe to administer more. And he said yes, and I said,
21 well, let's please do that. And, you know, he was cooperating
22 with me in caring for the patient.

23 Q And didn't you relate that the conversation
24 went something like Mr. Lakeman said that Dr. Desai didn't
25 want us to use more than 20 ccs of propofol on a patient?

1 A Yes, that's absolutely true.

2 Q And didn't you say I don't care what Dr. Desai
3 said?

4 A That's true.

5 Q And based on that directive --

6 A He could still have said no.

7 Q He didn't, though, did he?

8 A He didn't. But I look at that as being more
9 of a cooperative effort and both of us working for the welfare
10 of the patient.

11 Q I want to talk to you about the events that
12 occurred on September 21st of 2007. Look on your monitor
13 there. I want to show you State's Exhibit 156.

14 A That's pretty small.

15 Q Yeah. Let me see if I can zoom in.

16 A That's good there.

17 Q Okay. I'm going to move over to this big TV
18 because I can't see anything on there, either. You can look
19 over there. If you can read it, that's fine. I'm just going
20 to turn my back to you a little bit, and I apologize for that.
21 Do you see the orange stripe across there?

22 A Yes, at the top.

23 Q Yeah. I guess I'm going to have to move that
24 over a little bit because we don't have the patient name.
25 Tell me when you can see the patient name.

1 A I see it now.

2 Q Okay. The orange stripe across the top there,
3 that was Kenneth Rubino, I believe; correct?

4 A Yes, correct.

5 Q And if you move over a couple of columns, you
6 can see the doctor that performed that procedure on Kenneth
7 Rubino, who was that?

8 A Clifford Carrol.

9 Q Okay. Then there was another procedure on
10 Patient 55C. Do you see that?

11 A Yes, I do.

12 Q Okay. Now, I want you to drop down to Gloria
13 Orellana. Do you see that?

14 A Yes, I do.

15 Q And who was the doctor on that?

16 A Clifford Carrol.

17 Q The next patient, Patient No. 20, you're the
18 doctor on that patient; correct?

19 A No. 19 would be the next patient.

20 Q Yeah, No. 19. I'm referring -- there's a
21 difference. It's No. 19 in the order the patients was seen, I
22 believe, and then next to it is actually the patient number
23 because we have redacted their names for privacy concerns. So
24 your 19 is fine. Look across there. Who is the -- who is the
25 doctor?

1 A Me.

2 Q And the next one down is Gwendolyn Martin. Do
3 you see that?

4 A Yes, I do.

5 Q She became infected that day.

6 A Yes.

7 Q And who was the treating doctor on that
8 procedure?

9 A I was.

10 Q You were?

11 A Yes.

12 Q Okay. Have you ever been charged or indicted
13 for any kind of crimes relating to Ms. Martin?

14 A No, I have not.

15 Q Okay. Let's keep going down. You then did --
16 the next one you did was Patient 35, which would be No. 22 on
17 your left-hand column; correct?

18 A Yes.

19 Q And then the next one down, you did that one
20 also; correct?

21 A Yes, that's what it says.

22 Q And then you did Patient 57C; correct?

23 A That's No. 24?

24 Q Yes.

25 A That's what it states.

1 Q And you've never been charged or indicted for
2 that patient, have you?

3 A No, I have not.

4 Q I'm going to have to move this chart down a
5 little bit more. Going down to the next green stripe that's
6 Stacy Hutchinson, do you see that?

7 A It's cut off here, but would that be 18?

8 Q Patient 42.

9 A Oh, down here, 42. Stacy Hutchinson, yes.

10 Q And the doctor that performed that procedure
11 was who?

12 A Dr. Desai.

13 Q Dropping down to No. 44, Patty Aspinwall. Who
14 did that?

15 A I did that procedure.

16 Q And you've never been indicted or charged for
17 anything relating to Patty Aspinwall?

18 A That is correct.

19 Q And No. 60, Carole Grueskin.

20 A Yes.

21 Q You did that procedure, as well?

22 A That is correct.

23 Q And you've never been charged or indicted for
24 the care of Ms. Grueskin; correct?

25 A That is correct.

1 Q Now, we've talked about the CRNA fund, and I
2 believe that you told us that you received \$25,000 from that
3 fund; is that correct?

4 A Yes, that is correct.

5 Q And there were also two other funds that you
6 received funds from; is that correct?

7 A Yes, Gastroenterology Center of Nevada, which
8 is the general medical practice, and Endoscopy Center of
9 Southern Nevada.

10 Q I'm going to show you what's State's Exhibit
11 158. This purports to be a financial analysis for year 2007.
12 Do you see your name on that?

13 A Does it say Exhibit 10 at the top?

14 Q Point to where you're referring to.

15 A Oh, I --

16 Q You can mark the screen. You can -- with your
17 fingernail.

18 A Is that what you're looking at, Exhibit 10?

19 Q I don't see that on mine.

20 MS. WECKERLY: It's on the -- oh, you're referring
21 to different numbers. In the document it says Exhibit 10, but
22 the exhibit is actually marked for our proceeding with a
23 different sticker.

24 MR. SANTACROCE: Okay.

25 MR. STAUDAHER: And it has a Bates number on the

1 bottom.

2 MR. SANTACROCE: Let's -- let's go by the Bates
3 number. That would probably be better.

4 BY MR. SANTACROCE:

5 Q Do you see that big number 000769?

6 A Yes, I do.

7 Q Okay. This purports to be a financial
8 analysis for year 2007. Do you see your name on there?

9 A Yes, I do.

10 Q And it shows that you receive \$25,000 from the
11 CRNA account from Wells Fargo; correct?

12 A Yes, it does.

13 Q And that's the check you were referring to
14 earlier where you said you held it for a period of time.

15 A Yes, I did.

16 Q Did you hold it for a period of time because
17 you were going through marital difficulties, or was there some
18 other reason?

19 A I just didn't know what to do with it, so I
20 had to ask my accountant what do I do with this.

21 Q Okay. All right. And your accountant said
22 deposit it and --

23 A Yeah, put it in the --

24 Q -- we'll just --

25 A -- business account, my personal professional

1 corporation, and then we'll make distributions and pay taxes,
2 which is what happened.

3 Q Okay. The other two accounts are the next
4 block over, and it purports to -- that you received
5 \$1,378,010.64, is that accurate?

6 A Yeah, as I stated to you about 1.4 million,
7 and that's about 1.4 million.

8 Q Okay. So you received about 1.4 million --

9 A Yes.

10 Q -- in the year 2007 from all of those
11 entities?

12 A Correct.

13 Q The CRNA fund, those -- that -- those funds
14 were derived from the anesthesia billings; correct?

15 A To the best of my understanding, yes.

16 Q And I believe you -- when you gave your
17 interview to Metro, you said that those funds would either be
18 distributed from that account, or put back into the gastro
19 general fund to be distributed to the partners, is that fair?

20 A That is to the best of my understanding.
21 Correct.

22 Q You mentioned some of the other doctors that
23 worked at the clinic and I think there was about 10 or 12 of
24 them.

25 A There was a significant number, yes.

1 Q Okay. So you, Carrol, Desai, Vish Sharma, Dr.
2 Mason.

3 A Albert Mason, Carmelo Herrero.

4 Q Okay. Let's stop and let's talk about each of
5 those. Dr. Mason, is he practicing today, do you know?

6 A Yes, he is.

7 Q And to the best of your knowledge he was never
8 suspended or disciplined or anything; correct?

9 A That is correct.

10 Q And Dr. Herrero, Carmelo Herrero?

11 A Yes, he is practicing.

12 Q And keep going. Nayyar?

13 A Yes, he is practicing.

14 Q Wahid?

15 A He is practicing.

16 Q Who else?

17 A Banker, practicing. Snehal Desai, practicing.
18 Mukherjee, practicing. Nicolae Weisz, practicing.

19 Q Is that it?

20 A Well, I'm trying to think if I missed
21 everyone.

22 Q Well, I'm not going to hold you to every
23 single one of them. To the best of your recollection --

24 A Yeah, everybody is working.

25 Q And each of those individuals performed

1 procedures at the clinic; correct?

2 A Not at --

3 MS. WECKERLY: I would object as to vagueness.

4 Which clinic is --

5 BY MR. SANTACROCE:

6 Q Shadow Lane.

7 A That's not correct.

8 Q Okay. Well, tell me what's correct. Who
9 performed procedures at Shadow?

10 A Dr. Desai, Dr. Carrol, me, Dr. Wahid, Dr.
11 Mukherjee, occasionally Dr. Faris.

12 Q We didn't mention him. Is he still
13 practicing?

14 A Yes, he is. Occasionally Dr. Nayyar, I
15 believe.

16 Q Okay. And would it be fair to say that each
17 one of those doctors perform their procedures however they
18 deem fit and safe and that the times vary from doctor to
19 doctor as the procedure time?

20 A You're asking two questions. The first, would
21 I say everybody performed procedures as they deemed safe and
22 fit? Yes. Would I say that procedure times varied? I would
23 say yes.

24 Q Okay. So it would have been yes to both of
25 them?

1 A Yes.

2 Q Okay. Your procedure times, I believe you
3 testified, averaged about 20 minutes for the lower, 10 minutes
4 for the upper; right?

5 A Something in that ballpark, but that sounds
6 about right.

7 Q I remember reading somewhere, I'm not sure if
8 it was Grand Jury or Metro, that sometimes your procedures
9 would take 30 minutes or 45 minutes.

10 A Yeah, sometimes they were more -- they took
11 longer.

12 Q And was your testimony that the patients in
13 the recovery room after the procedure were the responsibility
14 of the CRNAs basically?

15 A Well, it's everybody's responsibility, really.
16 You've got a recovery room nurse, you've got a CRNA, you've
17 got a physician.

18 Q Okay.

19 A Yes.

20 Q Let's talk about the pre-op area for a minute.
21 I believe you testified that the pre-op area is where the
22 saline -- the heplock and saline flushes occurred; correct?

23 A Yes.

24 Q And every -- as far as you know, all or most
25 of everybody received a heplock; correct?

1 A You mean some of them didn't have a heplock

2 or ---

3 Q I'm asking you did they all have a heplock?

4 A As far as I know, yes.

5 Q Okay. And that's how the propofol was induced
6 into their body; right?

7 A Right, through the intravenous --

8 Q Through the heplock?

9 A Through the heplock or saline lock.

10 Q And those heplocks would all be flushed with
11 saline; correct?

12 A As far as I know, yes.

13 Q And the reason I'm asking you about this is
14 because there came a time when the CDC and the Southern Nevada
15 Health District report came out or at least you guys, meaning
16 you doctors, were alerted to the fact that they believe that
17 the infection was transmitted through propofol; correct?

18 A Yes.

19 Q And there came a time when you doubted that
20 theory.

21 A Yes.

22 Q And there came a time when Dr. Carrol doubted
23 that theory.

24 A Yes.

25 Q And you shared your opinions with Dr. Carrol,

1 and he with you; correct?

2 A Yes.

3 Q In fact, you challenged Detective Whitely and
4 Mr. Staudaher in your interview regarding the transmission of
5 the disease through propofol, didn't you?

6 A I may have. I'd have to look at the
7 transcript.

8 Q Okay. Well, we can look at that if you'd like
9 to, but let me see if I can just refresh your recollection.
10 Do you remember them saying to you we have evidence of
11 propofol going from room to room?

12 A I think there was a suggestion to that effect,
13 but I don't know what direct evidence, if any, existed.
14 But --

15 Q Exactly my point. I'm not saying that they
16 had evidence to that fact, but they told you they did;
17 correct?

18 A I don't recall that specifically, but they may
19 have. I just don't recall that specifically.

20 Q Okay. Look at your police interview, page 69,
21 70, and 71. If you'd --

22 A Thank you for that.

23 Q -- take a minute to read that, please.

24 A 69 you say?

25 Q Yeah, 69, 70, and 71.

1 A Mr. Staudaher says there is some evidence on
2 the charts of CRNAs transferring from one room to another that
3 I see.

4 Q Okay. Keep reading to yourself.

5 A Okay.

6 Q Does that refresh your recollection?

7 A Yes.

8 Q And isn't it true that you challenged their
9 theory that the propofol was the mechanism for transmission?
10 And when I say challenge, I don't mean that you guys had a
11 fight or yelled, but you had a different theory.

12 A I said I don't have all the detail you guys
13 have. I further stated there were two timelines occurring
14 simultaneously or near simultaneously and thinking about it,
15 well, the CRNAs were not changing rooms, and they were not
16 passing a bottle of propofol back and forth. To my knowledge,
17 that did not occur.

18 Q Okay.

19 A I'm acknowledging that there may be
20 information I don't know. But did I observe that? No.

21 Q You didn't observe any of that; correct?

22 A That is correct.

23 Q And I believe you said that there had to be a
24 common intersection was your word; isn't that true?

25 A Yes, and I still believe that, only I don't

1 know where the common intersection is now.

2 Q Well, you had an opinion at that time, didn't
3 you?

4 A That is an opinion, not a fact, sir.

5 Q Okay. What was your opinion at that time?

6 A My opinion at that time was that it probably
7 happened with the saline.

8 Q With the saline? And where does the saline
9 get administered?

10 A In the pre-operative area.

11 Q And who were the common intersections that you
12 talked about in your testimony?

13 A Can you be more specific?

14 Q Well, I'll show you. I'll be very specific.
15 See this chart?

16 A Yes, I do.

17 Q You see the top, the people that were infected
18 on top? That would have been in Room 1. Do you see that?

19 A These. Okay.

20 Q And do you see the bottom Room 2, people that
21 were infected in Room 2?

22 A Yes.

23 Q And do you see Jeff Krueger and Lynette
24 Campbell in the middle?

25 A Yes, I do.

1 Q You had an opinion back then that the common
2 intersection was Jeff Krueger and Lynette Campbell, didn't
3 you?

4 A I thought that was a possibility.

5 Q And, in fact, the reason you believed that was
6 because Lynette Campbell had administered most of the
7 heplocks, save for two that Jeff Krueger administered. But I
8 believe you said that saline was reused in the pre-op room;
9 isn't that correct?

10 A My understanding is they had a multi-use vial
11 of saline in the pre-op room.

12 Q And if Jeff Krueger started some saline, it
13 was not inconceivable that Lynette Campbell would have picked
14 up that saline and reused it; isn't that correct?

15 A That's not inconceivable. That is correct.

16 Q And you had some very nice things to say about
17 Lynette Campbell. You thought she was a very nice girl; isn't
18 that correct?

19 A Yes, that was my opinion.

20 Q But you also said she was very inexperienced;
21 isn't that correct?

22 A She was a brand new nurse.

23 Q Now, you were present when the CDC and the
24 Southern Nevada Health District came to the clinic; correct?

25 A I was questioned by the CDC investigator.

1 Q Who -- what was their name?

2 A It was a lady.

3 Q Do you recall the name?

4 A No, I don't recall names.

5 Q Was that -- was that interview tape recorded?

6 A Not to my knowledge.

7 Q Well, did that lady write notes?

8 A It was just about personal lifestyle and
9 things of that nature. And that's privileged information, so
10 I don't know that she kept much of a record. I can't answer
11 for her.

12 Q No, I just want you to answer what you
13 observed. I'm not --

14 A I don't remember.

15 Q Okay. Where was the interview done?

16 A At the Gastroenterology Center office.

17 Q And the only thing she asked you about was
18 your personalize stuff?

19 A Correct.

20 Q Did you have occasion to watch the CDC and the
21 Southern Nevada Health District do their inspection at the
22 clinic?

23 A No, I did not that I recall. What were those
24 dates, do you recall specifically?

25 Q I think it was January 8th or 10th, but I

1 might be mistaken. So I don't want to say for sure, but it
2 was in January.

3 A Okay.

4 Q Okay. But that date is relevant for another
5 question I have, and that is if you testified that there was a
6 meeting between the doctors around that time; isn't that
7 correct?

8 A Yes, there was.

9 Q And what was the sum and substance of that
10 meeting?

11 A Well, some of the investigation was touched
12 upon, and Dr. Desai reviewed aseptic technique.

13 Q And were there new policies and procedures put
14 into place as a result of the Southern Nevada Health District
15 and CDC?

16 A There was a document that appeared in the --
17 what do you call the manual, the policies and procedures
18 manual at some point, but I don't know who authored it exactly
19 and I don't know who -- when it was placed there.

20 Q And what was the subject of that?

21 A Propofol.

22 Q In fact, it was about -- it went about to
23 delineate the procedures on how to use propofol; isn't that
24 correct?

25 A That is correct.

1 Q And that was written by Cliff Carrol?

2 A I don't know.

3 Q Okay. But prior to January 2008, there were
4 no written policies and procedures on how to administer
5 propofol, were there?

6 A Not that I'm aware of.

7 Q You talked about a meeting where the CRNAs
8 were in attendance, but that wasn't really a meeting per se.
9 It was more like continuing medical education.

10 A Yes, advanced cardiac life support.

11 Q And there was nothing discussed in that
12 meeting about policies and procedures of the clinic, were
13 there?

14 A No, it had to do with ACLS.

15 Q And that was some kind of cardiac training?

16 A Yes, basically it's advanced CPR, if you will.

17 Q Okay. You never attended a meeting with the
18 doctors and the CRNAs; isn't that correct?

19 A I can't say yes or no to that. I don't have
20 any specific recollection of the meeting where most of the
21 meetings, if not all of them, were just doctors and the
22 physicians assistants. I should throw that in, also.

23 Q But let's not confuse that. They weren't the
24 CRNAs.

25 A Correct.

1 (Pause in the proceedings.)

2 BY MR. SANTACROCE:

3 Q Mr. Wright asked you a couple of questions
4 about back in the day talking about known patients that come
5 into the clinic with hep C.

6 A Uh-huh.

7 Q And there were certain policies and procedures
8 in place at that time regarding those patients; correct?

9 A Yes, I remember that from my training at
10 County Hospital in Phoenix.

11 Q And one of the things you mentioned was that
12 there was a specific scope.

13 A Well, they called it the yellow scope and it
14 was to be used for hepatitis patients.

15 Q And the reason that you did that was for the
16 possibility of cross contamination; isn't that correct?

17 A Right. That was before it was common
18 knowledge that the solutions would kill the hepatitis C virus,
19 eradicate it.

20 Q And the theory at least was that if you had
21 used the scope on a known hep C patient, the possibility was
22 you could -- if you reuse that scope on another patient, you
23 could transfer hep C; correct?

24 A I assume that was the thinking and that was
25 the reason for it.

1 Q Okay. Let's jump now to the present day. You
2 don't have yellow scopes anymore; correct?

3 A That's correct. No one does.

4 Q You use the same scopes on everybody?

5 A Correct.

6 Q And those scopes, you presume when you use
7 them, are clean and sterile.

8 A Yes, I do.

9 Q And you do that because you want to be sure
10 that you're not contaminating other patients; correct?

11 A Of course. Yes.

12 Q And so you're relying basically on those
13 individuals that clean the scopes to assure that they're safe
14 and sanitary.

15 A Yes, that is correct.

16 Q Did you ever view the cleaning room?

17 A Yes, I did.

18 Q Did you view the cleaning procedures?

19 A No, I didn't stand there and review the whole
20 thing. I know they have their protocols to follow.

21 Q Okay.

22 A And they had automated machines that did the
23 cleaning.

24 Q and did you know that those machines required
25 certain solutions?

1 A They requires solution, yes.

2 Q And that those solutions are required to be
3 changed?

4 A That would make sense.

5 Q You never observed any of that process;
6 correct?

7 A I -- no, I didn't stand there and watch them
8 sterilize scopes if that's your question.

9 Q Sir, I'm not condemning you for doing it or
10 not doing it. I just want to know if you saw it. So don't be
11 so defensive. Okay?

12 A No, I didn't see that.

13 Q Okay. That's all I need to know. I believe
14 your testimony was that you didn't know if -- what size vials
15 the CRNAs were using for propofol; is that correct?

16 A That is correct.

17 Q 20s or 50s, that was the choice; right?

18 A As far as I know, yes.

19 Q Do you know how much would be administered to
20 a patient, any given patient over the duration of the
21 procedure?

22 A I believe we were told by the nurse how many
23 milligrams had been administered, and that was entered into
24 the report. But I don't recall that specifically.

25 Q So you don't know if 150 milliliters or 200

1 were the average?

2 A I don't know what the average is. From my
3 experience it takes about 100 to 200 milligrams, not
4 milliliters.

5 Q Oh, sorry.

6 A So 10 to 20 milliliters --

7 Q Okay, milligrams.

8 A -- to sedate a patient generally, yes.

9 Q You talked about some of the other equipment,
10 specifically forceps. You said that they could be reusable or
11 disposable?

12 A Yes.

13 Q And which ones did you have?

14 A Disposable.

15 Q Who would dispose of those?

16 A The technicians.

17 Q So when you were done you'd give it to the
18 technician?

19 A Uh-huh. Yeah, they cleaned up after the
20 procedures.

21 Q Do you know what training the technicians had
22 to become a GI tech?

23 A I don't know exactly. I know there were some
24 experienced technicians working there at one time, and I know
25 there were some new individuals that were brought on. They

1 may have had on the job training. I don't know exactly. They
2 weren't -- I wasn't doing the hiring or the credentialing, so
3 I can't tell you exactly.

4 Q Okay. So you went into a room and there was a
5 GI tech there basically?

6 A Correct.

7 Q You didn't request one, one wasn't assigned to
8 you, they were just in the room when you got to the procedure
9 room?

10 A Well, of course there has to be a technician
11 there. But did I request anybody specifically? No.

12 Q The snares you said were single-use?

13 A Uh-huh.

14 Q And the bite blocks were reusable?

15 A The bit blocks were -- come in two varieties,
16 as I mentioned, single-use and reusable.

17 Q Well, I believe you testified that yours were
18 reusable.

19 A I testified we had both.

20 Q Okay. Would you know if you were using one
21 that had been used prior or if you were using a new one?

22 A They're slightly different in the thickness of
23 the plastic. The reusable ones for the most part are flesh
24 colored and thicker plastic. The reusable ones tend to be
25 either green or clear or purple, and are a thinner caliber, a

1 thinner thickness of the plastic.

2 Q Would the reusable ones be in a sterilized
3 package when you got them?

4 A No, they were -- I'm sorry. State that again.

5 Q Would the reusable ones be in a sterilized
6 package --

7 A Not that I recall.

8 Q -- when you got them?

9 A Not that I recall.

10 Q You need to let me finish my question and then
11 you can have all the time you want. Okay?

12 A Okay.

13 Q Were they in a sterilized package when you got
14 them, the reusable bite blocks?

15 A I don't recall that specifically.

16 Q The -- the single-use ones were in a -- were
17 in a sterile packaging?

18 A If they were brand new, they were in a sterile
19 package. If they were not brand new, they were not.

20 Q Well, if they were single-use, you would
21 expect them to be in a package, wouldn't you?

22 A If they were brand new, yes.

23 Q Tell me about Tonya Rushing. What -- what did
24 she do at the clinic?

25 A She was the manager. She oversaw the billing

1 in the sense of processing submissions that were given to her
2 by the various healthcare professionals. She oversaw
3 scheduling secretaries, manning the front desk, things of that
4 nature.

5 Q Would you give her billings for your services?

6 A Yes.

7 Q So you would submit to her a billing statement
8 and give it to her?

9 A I wouldn't hand it to her directly. They were
10 turned in at the front desk if it was a medical business, at
11 the nurse's desk if it were the surgical business. And
12 somehow or other they would be transferred eventually to her
13 department.

14 Q And it was her function then to take those
15 bills, submit them to healthcare providers for payment;
16 correct?

17 A Submit them to third-party payers, being
18 insurance agents or -- or -- rather insurance companies or
19 governmental agencies for payment, not healthcare providers.

20 Q I'm sorry. I misspoke. That's what I meant,
21 the third-party payers.

22 A Okay.

23 Q So she would submit those to the third-party
24 payers; correct?

25 A That is, yeah, my understanding.

1 Q And then they would pay, not you specifically,
2 but Gastroenterology Center?

3 A Exactly right.

4 Q So you wouldn't have received any checks from
5 third-party payers directly, it would all go to the clinic?

6 A They would go to the clinic. That's not to
7 say that an odd check may not have come in with a specific
8 doctor's name on it, but it would have gone to the clinic.
9 The doctor's didn't get those.

10 Q I'm not talking about the exception to the
11 rule. I'm talking about the rule and what was common
12 practice.

13 A Well, I'm not -- I wasn't in the billing
14 department, but I suspect it went to Gastroenterology Center,
15 yeah.

16 Q Well, you -- you didn't go to your mailbox
17 every -- at 4:00 in the afternoon and get a pile of checks
18 made out to --

19 A I've got --

20 Q -- Eladio Carrera?

21 A -- a pile of bills in my mailbox.

22 Q Okay. But my point is you didn't get a
23 package of checks every day in the mail --

24 A No.

25 Q -- with your name on it --

1 A They went to the --

2 Q -- from Blue Cross Blue Shield?

3 A -- Gastroenterology Center of Nevada.

4 MR. SANTACROCE: Court's indulgence.

5 THE COURT: Uh-huh.

6 MR. SANTACROCE: I'm almost done.

7 That's all I have. Thank you.

8 THE COURT: All right. Thank you, Mr. Santacroce.

9 Redirect, Ms. Weckerly.

10 REDIRECT EXAMINATION

11 BY MS. WECKERLY:

12 Q Dr. Carrera, Mr. Santacroce asked about
13 paperwork that you would submit to Tonya Rushing.

14 A Yes.

15 Q Was it known that she was the person that
16 processed paperwork to eventually get sent to insurance
17 companies?

18 A She oversaw a group of secretaries, billing
19 specialists, that processed the paperwork and they would do a
20 lot of the legwork. She more or less oversaw the operation
21 from that perspective.

22 Q But when stuff was submitted to sort of her
23 area or her department, was it understood that that was going
24 to go to an insurance company or someone for payment?

25 A Yeah, or to the patient if it were a co-pay or

1 an uninsured patient, for example, or -- yes.

2 Q And would you sever send like your own
3 personal documentation to her regarding a procedures?

4 A I would turn in my procedure codes. I did a
5 procedure, I would check off or mark off whatever the level of
6 the visit was, if it were a medical visit or whatever the
7 procedure was if it were a procedure. And I would submit that
8 face sheet, as it -- or superbill, there's various words for
9 it, but that's all I would do. I would submit it.

10 Q On the paperwork that you submitted, was it
11 important for you to be accurate in your submittals?

12 A Absolutely.

13 Q Mr. Santacroce asked you about if you were
14 present when the -- the CDC came. Do you recall if your own
15 blood was drawn in the process of the CDC investigation?

16 A Yes, they did draw blood on me.

17 Q And was -- I mean, was that to sort of
18 eliminate --

19 A I think they were looking to see if there was
20 anyone in the -- working in the clinic that would have been a
21 carrier of any -- of any blood borne illness, any infection --
22 infectious agent.

23 Q And there was questions on cross-examination
24 about back in the day and using a particular scope on people
25 that were known to be hepatitis C positive.

1 A Uh-huh.

2 Q I believe you said that was in the -- the
3 '80s?

4 A Yeah, that isn't a practice that would be
5 relevant today, nor was it at the time of these events.

6 Q Okay. And my question is, though, is there a
7 distinction in your mind between that practice and using a
8 particular scope versus aseptic technique. I mean, did that
9 -- the scope was related to the scope being a possible
10 transmitter for the disease; correct?

11 A Yes, that's correct.

12 Q And I think you said that everybody has since
13 learned that there's certain solutions or detergents that can
14 kill, I guess, the --

15 A Right. The sterilizing solutions.

16 Q In your -- in your medical experience, how
17 long has aseptic technique been around?

18 A As long as I've been involved in the medical
19 field.

20 Q You were asked about your interview with the
21 Las Vegas Metropolitan Police Department and sort of
22 hypotheses you might have had about --

23 A Uh-huh.

24 Q -- what might have caused the outbreak. Do
25 you recall being asked about that on cross?

1 A Yes, I do.

2 Q At that time that you were interviewed, did
3 you have any knowledge about what -- what supplies or the
4 number of syringes that had been ordered by the clinic in a
5 particular year?

6 A No, I did not.

7 Q How about the number of vials of propofol that
8 were used by the clinic?

9 A No, I did not.

10 Q In terms of saline being a potential source of
11 the outbreak, if a source patient didn't get a saline flush, I
12 mean, how would that affect the theory?

13 A That would make me -- that would make me
14 question whether saline was the vector or the agent that
15 caused these infections.

16 Q At the time that you were speaking with the
17 detectives or even -- I mean, I don't know if you'll -- what
18 your extent of your knowledge is now, but did you feel that
19 you had all the information in terms --

20 A No, I did not, and I made that clear when I
21 stated that you guys might have information that I do not
22 have.

23 Q I want to talk specifically about Lynette
24 Campbell.

25 A Uh-huh.

1 Q Did you ever observe her to be violating
2 aseptic technique?

3 A No, I did not.

4 Q Did you ever observe any nurse in the pre-op
5 area to be violating aseptic technique?

6 A No, I did not.

7 Q Do you know whether or not Lynette Campbell
8 was supervised or watched by a more senior nurse when she
9 started at the clinic?

10 A Theoretically, yes. There was a charge nurse,
11 Jeff Krueger, and of course based on the charts Mr. Santacrocce
12 so kindly provided, we know that they would have been there at
13 the same time. So there was a charge nurse, and theoretically
14 that person is supervising the other nurses.

15 Q Now, you were asked by Mr. Wright on
16 cross-examination about those physician's notes that you --
17 that are sort of -- they might be initiated by a tech at the
18 beginning of the procedure --

19 A Yes.

20 Q -- but they're electronically, I guess, sent
21 or concluded by the doctor?

22 A The documentation is electronically -- a form
23 is filled in via computer electronically, and the
24 electronically signed.

25 Q And there is a computer in each procedure

1 room; correct?

2 A Yes, that's correct.

3 Q One of the computers you've learned had a date
4 of August, and one had a date of September on September the
5 21st; correct?

6 A Yes, the date stamp was incorrect on one of
7 them.

8 Q Okay. So fair to say those two computers
9 aren't synchronized?

10 A Absolutely fair to say that.

11 Q Okay. And I think you said, though, that the
12 doctor's notes could be an accurate indication of the --

13 A I would say they're generally accurate. You
14 know, it depends on the computer, of course, but --

15 Q Sure.

16 A -- but, yeah, I'd say they're generally
17 accurate.

18 Q And the --

19 MS. WECKERLY: Is this, Ms. Clerk, is this chart
20 marked -- this is the one from July --

21 MR. STAUDAHER: The small version isn't.

22 THE CLERK: I have a small version, so --

23 THE COURT: What's the number of the small --

24 MS. WECKERLY: The number -- I just want the
25 record --

1 THE COURT: Right, of the small version.

2 THE CLERK: Is it this one?

3 MS. WECKERLY: I'm sorry. I'll just grab it and
4 look.

5 BY MS. WECKERLY:

6 Q This would be the large version of what's been
7 admitted as State's Exhibit 157. And I'll represent that this
8 is charting from July the 25th of 2007. And I just want you
9 to look at the right side of the chart. And there's a column
10 here for report start time and report end time. And at the
11 top of the chart it says report start time, which would be the
12 physician report that, you know, maybe started by a tech or a
13 nurse. And it says 7:01.

14 MR. SANTACROCE: I'm going to object. This is
15 outside the scope of cross-examination.

16 MS. WECKERLY: It was during --

17 THE COURT: No, I -- it's overruled.

18 BY MS. WECKERLY:

19 Q And right here on report end time it says
20 8:15. And so the total time would be what?

21 A An hour and 14 minutes.

22 Q Okay. And the next one, what's the time on
23 that?

24 A And hour and nine minutes.

25 Q And the next one?

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Clerk of Supreme Court

DIPAK KANTILAL DESAI,)	CASE NO. 64591
)	
Appellant,)	
)	
vs.)	
)	
THE STATE OF NEVADA,)	
)	
Respondent.)	
_____)	

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1 the past, I always assume is somewhat similar to the
2 impression that the jury is left with because I am hearing
3 about this meeting and all of this for the first time.

4 And, you know, I think the import of the statement
5 wouldn't have been to show, oh, he's layered up, but to show
6 kind of a sense of callousness on the part of Dr. Desai, which
7 goes hand in hand with their theory of the case, which is Dr.
8 Desai really didn't care about patient safety and patient
9 comfort, and that his, you know, modus operandi was to operate
10 the clinic in the fastest and cheapest way possible because
11 client -- again, patient comfort was -- was a secondary
12 concern.

13 And so I think that the callousness, if the
14 statement was made, that shows a callousness to his patients.
15 And that's how I would have interpreted the statement, and I
16 think that that callousness, again, would be consistent with
17 their theory of the case.

18 MS. STANISH: Judge, I'm sorry to belabor this, but
19 aside from the implication of consciousness of guilt, the
20 other concern that I have is to the extent that the State
21 intends to talk about acts on the part of Dr. Desai that
22 occurred in the aftermath of the CDC, to somehow suggest
23 concealment or other kinds of evidence of guilt, we're now
24 thrown into the pot with that. Do you see what I'm saying?

25 THE COURT: Right. I mean, once -- once Dr. Desai

1 obtained representation of Mr. Wright and Ms. Stanish, and
2 even to the extent corporate counsel would have advised them
3 prior, you can't use those things as evidence of Dr. Desai's
4 guilt or knowledge of guilt.

5 Because I'm assuming once Mr. Wright and Ms. Stanish
6 came onboard, and as I said, it may have even occurred prior
7 to that with corporate counsel, that they would have advised
8 him, hey, you know, make them -- you know, don't -- don't talk
9 to the -- obviously you can't -- you can't comment on that in
10 any case. But is that what you're saying, you don't want --

11 MR. WRIGHT: Right.

12 THE COURT: -- that he was uncooperative in the
13 investigation and things like that?

14 MR. WRIGHT: Right. And it would --

15 THE COURT: Which could also -- you know, like I
16 said, obviously you can never get into he didn't want to be
17 interviewed or he didn't do this or he didn't do that.

18 MR. WRIGHT: Well, it was also left laying out
19 there, because the -- the State brought out that -- I can't
20 remember if it was Herrero, Sharma, whoever, whoever went to
21 his house and he was sitting in the library and he said, yeah,
22 I will -- I will make a statement. And then, did they make
23 it? No. And, of course, we know the reason it wasn't and the
24 State knows the reason it wasn't. That was --

25 MR. STAUDAHER: Actually --

1 MR. WRIGHT: -- because on advice --
2 MR. STAUDAHER: -- we don't know.
3 MR. WRIGHT: -- of counsel.
4 THE COURT: Oh, I didn't know.
5 MR. STAUDAHER: I don't know. We don't know what
6 you told him or didn't tell him. We know -- the only thing
7 about that issue is that we --
8 MR. WRIGHT: No, no.
9 MR. STAUDAHER: -- have two people.
10 MR. WRIGHT: The witness himself.
11 MR. STAUDAHER: Which one?
12 MR. WRIGHT: You didn't elicit --
13 MR. STAUDAHER: Which witness are we talking about?
14 MS. WECKERLY: Carrol.
15 MR. STAUDAHER: Carrol?
16 MR. WRIGHT: Carrol.
17 MR. STAUDAHER: Carrol said that he went -- there
18 was no -- it was Carrol and he and Sharma that were there at
19 the -- at this --
20 MR. WRIGHT: Right.
21 MR. STAUDAHER: -- meeting at his house.
22 MR. WRIGHT: And Dr. Desai promised he would say
23 something; right?
24 MR. STAUDAHER: Yes, he did.
25 MR. WRIGHT: And then you brought out he didn't.

1 MR. STAUDAHER: Yes, I believe that's correct.

2 MR. WRIGHT: Right. And Carrol, in his statement,
3 in his statements, not on the witness stand, in his statements
4 he said he didn't -- Dr. Carrol says Dr. Desai explained that
5 he didn't because his lawyer told him he couldn't say anything
6 further. I couldn't even clear it up and I let it slide. But
7 they brought out he promised he'd say something, and then he
8 didn't do it. And I knew the reason he didn't do it, and the
9 State knew the reason he didn't do it because it was --

10 MR. STAUDAHER: Actually, no.

11 MR. WRIGHT: -- in Carrol's statement.

12 MR. STAUDAHER: There was no -- there was no --
13 nothing elicited in my memory and in this courtroom that any
14 of those individuals said anything about the reason that he
15 didn't come forward was because he had hired counsel and that
16 was at the --

17 MR. WRIGHT: I agree --

18 MR. STAUDAHER: -- advice of counsel.

19 THE COURT: No --

20 MR. WRIGHT: -- it doesn't come forward.

21 THE COURT: -- because they don't know. The
22 implication, to be fair to Mr. Wright, is the implication is
23 he kind of -- I mean, here was my impression. He weaseled
24 out. He wants to get --

25 MR. WRIGHT: Right.

1 THE COURT: -- as far away from this thing as
2 possible and I wasn't left with the -- you know, I mean, no
3 one is going to know why that is, but that was the
4 implication.

5 MR. STAUDAHER: Your Honor, the only extent of the
6 argument that it --

7 THE COURT: And I don't really --

8 MR. STAUDAHER: -- would be is not --

9 THE COURT: -- know how relevant that is anyway,
10 whether or not he wanted to give a statement or didn't want to
11 give a statement. I don't know how -- I don't know really --

12 MR. STAUDAHER: The only --

13 THE COURT: -- how relevant --

14 MR. STAUDAHER: -- issue --

15 THE COURT: -- that whole thing is anyway --

16 MR. STAUDAHER: The only issue there -- I'm sorry.

17 THE COURT: -- you know, as to how he was conducting
18 the clinic and disregard for patient safety. I mean, there's
19 other reasons he may not have wanted to give a statement --

20 MR. STAUDAHER: That's not the issue.

21 THE COURT: -- you know, relating to Dr. Carrera may
22 have, you know, ethnic reasons and -- and prejudice in the
23 community that I see by reading some of the commentators on
24 the RJ. And I think, you know, there could have been other
25 valid reasons why he didn't want to be the face on this, that

1 he wanted Dr. Carrera to be the face on this that don't go to
2 anything. But that hasn't come out and that's my own
3 supposition. But I guess what's the relevancy that then he
4 didn't want to do the statement?

5 MR. STAUDAHER: No, this wasn't about the statement.
6 This was about the meeting that Sharma and Carrol --

7 THE COURT: Right.

8 MR. STAUDAHER: -- and he had --

9 THE COURT: That he said --

10 MR. STAUDAHER: -- at the house.

11 THE COURT: -- he would make a statement coming
12 forward --

13 MR. WRIGHT: Right.

14 MR. STAUDAHER: Yes. That --

15 THE COURT: -- and saying --

16 MR. STAUDAHER: -- wasn't the issue.

17 THE COURT: -- hey, it was all me, I ran the clinic
18 and you guys had nothing to do with it, I was the sole
19 manager, and blah blah blah --

20 MR. STAUDAHER: That's the issue.

21 THE COURT: -- and then he never made the statement.

22 MR. STAUDAHER: The only issue for that to --

23 THE COURT: Is that he --

24 MR. STAUDAHER: -- come forward is that he was --

25 THE COURT: -- acknowledged he was the sole manager?

1 MR. STAUDAHER: Yes, exactly.

2 MR. WRIGHT: Oh, right. I mean, like there's not
3 enough evidence in here that he's the manager. I know what
4 was happening. They go right up, he makes the promise, and
5 then I cannot bring out on cross the reason for it.

6 MR. STAUDAHER: What, that he said he was going to
7 be the sole manager, or that he --

8 MR. WRIGHT: No, that he --

9 MR. STAUDAHER: -- was going to make a statement?

10 MR. WRIGHT: -- didn't do what he said based upon
11 advice of counsel. And you knew that.

12 MR. STAUDAHER: No.

13 MR. WRIGHT: Because that was the --

14 MR. STAUDAHER: That's not the purpose --

15 MR. WRIGHT: -- explanation that --

16 MR. STAUDAHER: -- of bringing it forward.

17 THE COURT: There was another purpose that they
18 pointed out, which was he acknowledges he's the manager. He
19 didn't say at that meeting, hey, wait a minute, Sharma, you
20 were the guy directing the CRNAs, or, wait a minute, Carrol,
21 after my stroke you knew you took over the clinic. Why are
22 you asking me to do this?

23 So, I mean, if that's how they're going to argue it,
24 that's a valid reason for the evidence. Like I said, you
25 know, okay, now they've explained it. That makes -- that

1 makes sense. That's a valid reason to introduce the evidence.
2 The fact that it's cumulative or that we've heard abundant
3 evidence that he's the manager, that doesn't mean they can't
4 introduce -- you know, they've got the burden of proof here,
5 you know.

6 I mean, they're going to introduce everything that
7 they can to bolster their theory. I mean, it's pretty obvious
8 that that's their plan here. And, again, they have the burden
9 of proving this thing. So, you know, whatever evidence they
10 have, as long as it's, you know, relevant, now I understand
11 the relevance beyond, you know, he's kind of weaseling out and
12 trying to --

13 MR. WRIGHT: But he didn't weasel, and that's the
14 inference they brought out.

15 THE COURT: Well, that's one inference, but they're
16 not going to argue that. They're going to argue that he's
17 acknowledging that he's the manager at the meeting. And like
18 I said, he didn't say, hey, Sharma, you know, you're running
19 these clinics just as much as I am, or, hey, Carrol, this --
20 you know, what are you trying to front me out on this thing?
21 You know, you're the guy that knew those needles were dirty
22 or --

23 MR. WRIGHT: Does anyone in here really think the
24 defense in this case is going to be he wasn't managing and
25 running the clinics? Give me a break. You're telling me that

1 isn't cumulative to bring out he acknowledged he's the
2 manager?

3 THE COURT: I said it was --

4 MR. WRIGHT: In order to -- the purpose in brining
5 it out -- we'll get a transcript of it. I knew what the
6 purpose was when they were doing it, and I knew why I couldn't
7 say a word about it. They brought out, yeah, he promised, he
8 was sitting there, he was in his t-shirt, I was in tears, I'm
9 almost suicidal, you've got to do something to help stop the
10 bleeding, and he promised he would do it. And then did he do
11 it? No, he didn't do it.

12 And, of course, we knew what the answer was because
13 Dr. Carrol had told them in his Metro statement that when they
14 questioned him about it he said my lawyer wouldn't let me do
15 it. That's -- that's improper. And it goes on top of what's
16 now happening. We're supposed -- I hear, oh, Mr. Wright,
17 you're opening the door, you're leaving adverse inferences
18 with the jury or something when I don't even see that I've
19 done it, to tell you the truth. And then I see the State do
20 it and it's, oh, the jury is not going to catch it.

21 THE COURT: Well, okay, first of all, I agreed with
22 you it was cumulative. But, b) in all fairness to the State,
23 the suggestion has been made, and I can't recall exactly how
24 the suggestion was made, maybe partially at opening, partially
25 through the questioning. And I'm left -- look, I'm saying

1 what are the impressions that I'm left with.

2 And I think if I'm left with these impressions, some
3 of the jurors, at least some of them, are probably left with
4 similar impressions. I don't think my thinking is so out in
5 left field that if I'm left with an impression it's not likely
6 at least some of the jurors are going to be left with the
7 impression.

8 So my impression, yes, I agree with you. I got the
9 impression that part of the reason for the testimony was, or
10 what I'm thinking is, yeah, that Desai, he weaseled out of it.
11 He didn't want to be the front man on this thing, and he is
12 trying to get these other doctors to share in the blame. I
13 got that. I agree with you.

14 But by the same token, through questioning, I'm also
15 sitting here left with the impression that, well, wait a
16 minute, why is this just Dr. Desai is the guy sitting here on
17 trial criminally when all of these other doctors who were
18 working there, who should have known what was going on, who
19 are the captains of the ship in those procedure rooms, why are
20 they all practicing? Why haven't they been disciplined? Why
21 are they going about their merry way treating patients in this
22 community? And that's another impression that's been left out
23 there.

24 So to the extent the State has to address that
25 impression, and I think you -- you know, you're making that

1 impression, too. And you even argued it, I think, or stated
2 it in your opening statement. You know, you're going to see
3 doctor after doctor come in here that were part of this
4 clinic, that were partners, that are doing procedures with Ron
5 Lakeman and are doing procedures with Keith Mathahs, and, you
6 know, they're the captain of the ship in those rooms, and yet
7 they're in here, they're in here testifying and they're
8 working in this community and they're partnering up with each
9 other and they're treating patients in this community, with
10 the exception of Dr. Carrera, with not a blip, really, to them
11 in their career. So what's up here? And I think that, again,
12 you said that in opening.

13 MR. WRIGHT: I don't think I did.

14 THE COURT: And so I think that they're allowed to
15 -- I'm left with that impression. Again, where -- where I got
16 it, I don't know. But I think that they're allowed to sort of
17 try to explain the impression of this sort of idea of
18 fundamental unfairness that you're -- that may be out there,
19 that it was a rush to judgment and, you know, then the civil
20 lawyers get on board and this thing just cascaded and
21 snowballed.

22 And if the practices were so bad -- I mean, doctors
23 have an ethical duty. If they're aware of medical negligence
24 and unsafe practices, they're duty is probably to report, and
25 b) not to continue working there. I mean -- and so you're

1 creating that -- that impression. Why aren't these doctors --
2 why weren't they punished? I mean, they're, you know, oh,
3 well, I didn't know, you know, Dr. Desai is so scary and, you
4 know, I didn't want to move. Although, not a single doctor
5 has ever said, notwithstanding the fact the State is pointing
6 to this no --

7 MR. SANTACROCE: Non-compete clause.

8 THE COURT: -- non-compete clause. Not a single
9 doctor came in here and said, boy, I was scared to death. I
10 didn't -- I couldn't leave the practice. It's all dirty,
11 there's fecal material everywhere, blah blah blah. So, I
12 mean, you know, you're creating that impression.

13 Why are these doctors not being held accountable?
14 Because if it was that bad, then their duty was a) to stop
15 working there notwithstanding any non-compete clause, just
16 like a lawyer. You can't say, oh, I had a non-compete clause
17 and I knew my -- my law firm was doing all these unethical
18 things and stealing from clients and everything else, but,
19 hey, you know, I was scared to leave the community.

20 I mean, that's not a good defense for -- for
21 misconduct if, in fact, it occurred on the part of a
22 physician. So you're leaving that impression out there with
23 the jury. And so I think the State is well within their
24 rights to keep hammering home, hey, he was a leader, it's all
25 him, and to explain, I think, an impression that's -- that's

1 out there as to, again, you know, why -- why are these
2 doctors, if it was so bad, why are they allowed to keep
3 practicing?

4 And I didn't ask the question because, you know, I
5 try not to interject myself beyond when I'm trying to clear up
6 something based on an objection or a juror question, are these
7 guys still all board certified? I kind of want to know that,
8 too. In any event, I think the impression is out there. I
9 think the defense has elicited that impression. And to sum
10 up, I think the State is entitled to refute that with
11 cumulative evidence. So that's my --

12 MR. SANTACROCE: Just for the record --

13 THE COURT: -- opinion there, and that's how I see
14 it.

15 MR. SANTACROCE: Just for the record, that was my
16 opening, and that's my theory.

17 THE COURT: Okay.

18 MR. SANTACROCE: And I don't want them --

19 THE COURT: I'm sorry.

20 MR. SANTACROCE: -- to mischaracterize --

21 THE COURT: I remembered it came in in openings. I
22 misspoke as to who it was.

23 MR. SANTACROCE: Okay.

24 THE COURT: But regardless of who is eliciting the
25 testimony, the impression, again, is out there that, you know,

1 these guys -- you know, they're the captain of the ship,
2 again, in those rooms. And somebody, I don't remember who,
3 asked the captain of the ship question. I think it was Ms.
4 Stanish.

5 MS. STANISH: No, it --

6 THE COURT: But that's --

7 MS. STANISH: -- wasn't me.

8 THE COURT: -- the impression.

9 MR. SANTACROCE: It was me.

10 THE COURT: Oh, okay. Well, it's you, then.

11 MR. SANTACROCE: And you're going to get more of it
12 today.

13 THE COURT: But, again, you know, where was their
14 duty? And I think that goes -- it ties all in with
15 everybody's defense, this sort of rush to judgment, civil
16 lawyers getting involved, on and on and on, the State gets to
17 refute all of that regardless of how cumulative the evidence
18 is. So I don't think the State has done anything wrong in
19 that regard.

20 And for the record, they're allowed to keep doing it
21 because it keeps coming up with physician after physician.
22 Each new impression, hey, here's another guy; they're still
23 practicing. Oh, here's another person; they're still
24 practicing. So the State gets to keep refuting that and keep
25 building their theory of the case.

1 And, you know, just to tell the State, in my view
2 you're allowed to keep doing that. So that's where we are.

3 MR. SANTACROCE: The time -- you need more time,
4 don't you, Your Honor?

5 THE COURT: Well --

6 MR. SANTACROCE: When do we come back?

7 THE COURT: It was whatever, but, you know, come
8 back. If you need a little more time, then just be late.

9 (Court recessed at 12:44 p.m., until 1:51 p.m.)

10 (In the presence of the jury.)

11 THE COURT: All right. Court is now back in
12 session.

13 Doctor, obviously, you're still under oath.

14 And, Mr. Wright, are you ready to proceed with your
15 cross-examination?

16 MR. WRIGHT: Yes, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. WRIGHT:

19 Q Good afternoon, Dr. Carrera.

20 A Good afternoon.

21 Q In preparation for your testimony, have you
22 reviewed anything?

23 A I reviewed some materials, the Grand Jury
24 testimony, my statement to the police, various times I've
25 looked at other things.

1 Q Okay. So you were interviewed by the
2 police --

3 A Yes.

4 Q -- and you have that transcript, and you
5 testified before the Grand Jury and you have --

6 A Yes, I did.

7 Q -- that transcript. And other than that, have
8 you reviewed anything?

9 A I've reviewed some of the corporate documents.

10 THE COURT: Can you hear him?

11 MR. WRIGHT: Can you hear me?

12 JUROR: Now we can.

13 THE COURT: And then just, Doctor, be mindful of the
14 microphone --

15 THE WITNESS: Oh, okay.

16 THE COURT: -- so we can make sure --

17 BY MR. WRIGHT:

18 Q Other than the -- what corporate documents
19 have you reviewed?

20 A Like some of the contracts and things that
21 existed.

22 Q Okay. Would that be like your participation,
23 the partnership agreement, endoscopy, etcetera --

24 A Yes, it's --

25 Q -- agreement?

1 A -- been awhile since I've looked at those,
2 but, yes.

3 Q Okay. Have you looked at anything else?

4 A No.

5 Q Okay. And in preparation have you met with
6 anyone?

7 A My attorney.

8 Q Tom Pitaro?

9 A Yeah.

10 Q Okay. Anyone else?

11 A No.

12 Q Okay. You didn't meet with the prosecutors
13 this morning?

14 A Well, yes. Briefly, yeah.

15 Q Okay. So you did meet with them this morning?

16 A Uh-huh.

17 Q Okay. Did you meet with them prior to that?

18 A I met with them once prior, yes.

19 Q Okay. Once prior to your testimony here?

20 A Yes.

21 Q Okay. Who did you meet with?

22 A Mr. Staudaher.

23 Q Okay.

24 A And Detective Whitely.

25 Q Okay. And so that's within the past couple

1 weeks?

2 A Maybe three weeks or so.

3 Q Okay. And before that did you meet with them
4 before you went to the Grand Jury?

5 A I met with police, it was an interview they
6 conducted, and Mr. Pitaro and I met briefly with Scott
7 Mitchell on one occasion.

8 Q Okay. And that's a Deputy District Attorney;
9 correct?

10 A Right.

11 Q Okay. Now, when you arrived in Las Vegas in
12 nineteen eighty-- what?

13 A 1985.

14 Q 1985.

15 A Yes.

16 Q You went into practice with -- or you went to
17 work for Dr. Sobol?

18 A Yes, Physician's Medical Center.

19 Q Okay. And Frank Nemec was there?

20 A Yes, he was.

21 Q He's a gastroenterologist?

22 A Yes, he is.

23 Q Okay. And if I followed, Frank Nemec went to
24 work with Dr. Desai?

25 A Yes, that is correct.

1 Q And then Frank Nemec asked about you wanting
2 to come over to join that practice?

3 A Yes, that is correct.

4 Q And you went, met Dr. Desai?

5 A Yes, that is correct.

6 Q Okay. And you joined the practice initially
7 as an employee physician?

8 A Yes, that is correct.

9 Q And then became a partner in 19 --

10 A About 1990.

11 Q Okay. And thereafter you went through the
12 progression of the other partners joining; correct?

13 A Yes.

14 Q Some came, some left?

15 A Yes.

16 Q Okay. And as I calculate it, you're the
17 oldest partner, not by age, but years in the group, other than
18 Dr. Desai?

19 A In terms of seniority that would be correct.

20 Q Okay. And you would -- like, what, 20
21 years --

22 A Something like that.

23 Q -- until the closing --

24 A Yeah.

25 Q -- of the clinics? And were you -- you

1 testified about a non-compete clause --

2 A Yes, that --

3 Q -- in the agreements.

4 A -- is correct.

5 Q Were there times you wanted to leave and that
6 non-compete clause was like keeping you there?

7 A There was one time in, I believe, 2005 and --
8 '05 or '06, and I met with Alan Sklar at the time and it had
9 to do when there was changes occurring in the partnership as
10 it was structured to my situation.

11 Q Okay. The -- and you elected to stay in the
12 partnership?

13 A Yes, I did.

14 Q And the changes that took place, if I followed
15 you, you at one point had 10 percent in the gastro medical
16 side --

17 A Yes.

18 Q -- correct? And then in the -- the Shadow
19 Lane Endoscopy Center you had an ownership interest?

20 A Yes.

21 Q Okay. And the distinguishing between the two,
22 first with your partnership interest in the medical practice,
23 that you didn't buy; correct?

24 A I don't understand your question.

25 Q You didn't have to pay for that. You were

1 made a partner and acquired a percentage interest.

2 A In what?

3 Q In the gastro side.

4 A In the gastro side? I don't recall exactly.

5 I know that on one or both entities a capital contribution was
6 required, and I believe it was on both.

7 Q Okay. You -- you believe you bought an
8 interest in the gastro side?

9 A I don't recall exactly, but I believe a
10 capital contribution was required.

11 Q Okay. And you had 10 percent, and it changed
12 like in 2006 to 6.4 percent?

13 A Yes.

14 Q Okay. And at that time -- and did it change
15 for someone else at the same time?

16 A I don't understand your question.

17 Q Dr. Mason, do you recall him taking a reduced
18 share of the partnership?

19 A I have no knowledge of that.

20 Q No knowledge of that?

21 A Yeah, that not that I recall.

22 Q Okay. For you, you were looking towards
23 working less; correct?

24 A Yes.

25 Q Okay. You had been doing night calls for a

1 number of years and no longer wanted to do that; correct?

2 A That's not exactly right. I --

3 Q Okay. Well, state it --

4 A -- welcomed the idea of working less, but I
5 wasn't entirely in favor of doing away with call altogether,
6 but that was what Dr. Desai apparently wanted.

7 Q Okay. So you didn't want any reduction?

8 A I would have welcomed some reduction, but not
9 to the extent that occurred.

10 Q Okay. You wanted some reduction --

11 A Uh-huh.

12 Q -- correct?

13 A Yes.

14 Q And you understood that the reduction in
15 compensation -- or in your ownership portion of the gastro
16 center reflected your reduction in responsibilities and work;
17 is that correct?

18 A I wouldn't characterize it as
19 responsibilities, because of course we're always responsible.
20 But in terms of the amount of work that had to be done, yes,
21 if that's what you mean.

22 Q Okay. Because there -- it's kind of tough
23 managing like 15 competing physicians, would you agree with
24 that?

25 A I haven't had that experience personally, but

1 if you're asking me to speculate I would say that might be the
2 case.

3 Q Okay. Well, certain -- I mean, one physician
4 may work harder and pull a greater load than another
5 physician; right?

6 A Yes.

7 Q And that can cause dissention or
8 dissatisfaction by the persons who are working harder;
9 correct?

10 A Possibly.

11 Q Okay. Possibly?

12 A Yes.

13 Q Anything like that ever discussed at any of
14 these meetings?

15 A It was brought up by Dr. Desai.

16 Q Okay. Brought up those who were not doing
17 their fair share, for lack of a better word?

18 A He was always comparing productivity figures
19 between one physician -- from one physician to another.

20 Q For what purpose?

21 A I think he meant to perhaps lessen the
22 standing within the group of those that perhaps were not doing
23 as much work as others.

24 Q Okay. He -- wouldn't -- weren't there
25 statements printed out like monthly and quarterly showing the

1 participation of the partners and what they contributed to the
2 success of the business and the patients and the billings and
3 all of that like any other partnership?

4 A Yes.

5 Q Okay. So those were printed out and
6 disseminated; correct?

7 A Yes.

8 Q Correct?

9 A Yes. The answer is yes.

10 Q Oh, I'm sorry. I didn't hear it. I don't --
11 I wasn't -- I truly didn't hear you. The -- and so those are
12 showing the profits, losses, contributions, like of gastro
13 center and the contribution of each physician partner;
14 correct?

15 A Yes.

16 Q And those would be discussed at the
17 partnership meetings by Dr. Desai; correct?

18 A Yes.

19 Q Okay. And is that what you are talking about
20 when he would point out who was not as productive as others?

21 A That's what he based it on.

22 Q Okay. And those figures were accurate;
23 correct?

24 A I don't know that they were.

25 Q Okay. Do you think someone was fudging the

1 figures?

2 A I don't know that definitely, but I do know
3 there was some sort of different accounting system for the
4 treatment of HMO patients such that they weren't figured into
5 the mix as on the same basis as other patients were.

6 Q Okay. Did you point that out?

7 A Yes, I did.

8 Q Okay. So you were pointing out that if the
9 figures showed you weren't quite as productive as someone
10 else, another physician, you were pointing out that the
11 figures fail to take into consideration HMO work that's being
12 done; right?

13 A I didn't point it out specifically. It was
14 stated to me by Dr. Desai that there was some formula for
15 determining how HMO -- how HMO patients were figured into the
16 mix was determined. So I don't know exactly how those figures
17 were determined.

18 Q Okay. But those were discussed at the
19 partnership meetings; correct?

20 A Yes, they were.

21 Q Okay. Anything not discussed?

22 A If it wasn't discussed, I'm not aware of it.

23 Q Okay. And was it -- was there an inner
24 circle?

25 A Yes, there was.

1 Q Okay. And were you in it?
2 A No.
3 Q Okay. Who was the inner circle?
4 A Other doctors.
5 Q Okay. Who were the other doctors that were in
6 the inner circle?
7 A To the best of my recollection, Dr. Mason, Dr.
8 Sharma, Dr. Nayyar, Dr. Carrol.
9 Q Okay. And you were excluded. You were in the
10 outer circle?
11 A Yes.
12 Q Okay. Did that create resentment?
13 A No.
14 Q Okay. You were happy with that?
15 A I was neutral about it.
16 Q Okay. But inner circle is your word; correct?
17 A It's a common word in the English language.
18 Q Okay. Well, I'm using the word I got out of
19 your testimony --
20 A Oh, okay.
21 Q -- and statement to the police.
22 A Well, yes, I said that.
23 Q Okay. And describing it.
24 A Yeah.
25 Q Okay. And the -- what -- what was the inner

1 circle?

2 A Well, you're asking my perspective as an
3 outsider.

4 Q Yes, I am.

5 A My perspective was that these were individual
6 -- a smaller group of doctors that would discuss relevant
7 issues, or issues relevant to the practice before or even if
8 they were presented to the group as a whole. I don't know
9 what exactly the reason for that was, other than maybe it was
10 meant to facilitate running the business.

11 Q Okay. Those -- those individuals that were on
12 it were involved in running the business; correct?

13 A I would say they were advisors. I wouldn't
14 say they were managers.

15 Q Okay. Well, they were great -- greater input
16 than you, is that fair?

17 A I would assume so, yes.

18 Q Okay. Well, Dr. Carrol, what was he?

19 A He is a treating physician and a partner.

20 Q And?

21 A Could you be more specific?

22 Q A non-operating -- what -- what did you --

23 A At the Endoscopy --

24 Q What did you call him --

25 A At the Endoscopy Center --

1 Q -- at the Grand Jury?

2 A -- of Southern Nevada, he was the
3 non-operations manager.

4 Q Okay. And you -- you believed he was given
5 that position because of what?

6 A I believe he was given that position in order
7 to give him a title because he was a bit ambitious and I
8 believe he was also told, and I believe the corporate
9 documents state that, at a certain time the non-operations
10 manager becomes the operations manager and takes over that
11 role.

12 Q Okay. Dr. Carrol is a bit ambitious?

13 A Yes.

14 Q Okay. And he -- he was going to ascend to
15 operations manager. Is that the way you understood it?

16 A That was my understanding, yes.

17 Q Okay. You understood there was -- there may
18 be a retirement of Dr. Desai on the horizon?

19 A Everyone eventually retires, I suppose, so
20 yes.

21 Q True. But that was a topic of discussion and
22 meetings; correct?

23 A There was a plan of succession in place that
24 was put in at some point. And the heirs apparent, if you
25 will, would have been Dr. Sharma and Dr. Carrol.

1 Q Okay. The heirs apparent were some that had
2 been there less time than you; correct?

3 A That is correct.

4 Q Did that cause you any concern?

5 A It did not.

6 Q It did not. Okay. And so the heirs apparent
7 were in the inner circle; right?

8 A Yes.

9 Q Okay. So we have Sharma, Carrol, Mason?

10 A Yes.

11 Q Okay. And -- and Mr. -- Dr. Sharma was
12 co-manager; correct?

13 A That may have been a title he held. I don't
14 remember the exact wording.

15 Q And Dr. Mason, what -- what was he? Did he
16 have some responsibility at Burnham or anywhere?

17 A I was outside that structure, so I don't know
18 what the situation was at Burnham. And I assume you're
19 talking about the Endoscopy Center at Burnham?

20 Q Yes, sir. We just called it Burnham here.

21 A That's quite all right. And they would better
22 be answered -- they can better answer that question than I can
23 because it was their interest and not mine.

24 Q Okay. And did -- do you dislike Dr. Desai?

25 A I'm neutral towards him.

1 Q Neutral?

2 A Yes.

3 Q Okay. Now, regarding -- who are you presently
4 practicing with?

5 A Dr. Sharma and Dr. Carrol.

6 Q Were you sued civilly as a result of what we
7 call the hepatitis outbreak?

8 A Of course I was. Everybody was.

9 Q But the jury needs to know the answer.

10 A The answer is yes.

11 Q Okay.

12 A Every doctor was sued.

13 Q Okay. And are your lawsuits over?

14 A As far as I know, yes.

15 Q Okay. Did you pay any money to anyplace?

16 A There were some awards, but those were sealed
17 by court order so I'm not going to comment on them.

18 THE COURT: All right. Did you personally pay money
19 out of your pocket?

20 THE WITNESS: No, I did not.

21 THE COURT: Okay. So to your knowledge your
22 malpractice carrier would have paid out money in settlement?
23 Is that what happened?

24 THE WITNESS: Yes.

25 THE COURT: And pursuant to those settlements, as is

1 fairly pretty standard, you and your malpractice carriers
2 entered into what's called a confidentiality agreement?

3 THE WITNESS: I don't know the details of everything
4 because it wasn't disclosed to even me, but I know there's a
5 confidentiality agreement --

6 THE COURT: Okay.

7 THE WITNESS: -- in place.

8 THE COURT: Did you have to sign, just yourself, any
9 of the settlement agreements, or was that handled by your
10 attorney or --

11 THE WITNESS: To the best of my recollection it was
12 handled by my attorney.

13 THE COURT: Okay. To the extent you have the
14 information, you know, you can't limit the rights of
15 cross-examination in a criminal trial by virtue of a private
16 agreement.

17 THE WITNESS: Right.

18 THE COURT: So you are ordered to answer to the
19 extent that you know anything concerning your contribution or
20 the contribution of your -- of your carrier, just as it
21 pertains to you.

22 BY MR. WRIGHT:

23 Q If I understand where we are, you paid
24 nothing; correct?

25 A That is correct.

1 Q Okay. And the -- the cases are concluded --
2 A That is --
3 Q -- to your knowledge?
4 A -- correct.
5 Q Okay. And you didn't go into bankruptcy or
6 anything?
7 A No, I did not.
8 Q Okay. And you, if I follow all of these
9 charts and my understanding of the evidence, you performed the
10 procedure on three individuals on September 21st who
11 contracted hepatitis C.
12 A That is correct.
13 Q Okay. And which three were those?
14 A I'd have to -- Aspinwall was one, Grueskin --
15 I may not be entirely correct on the names. And can you tell
16 me who the other one was? There was three.
17 Q You don't even know?
18 A It's not that I don't know, it's that I'm just
19 drawing a blank right now. But if you give me time, I'll
20 remember.
21 Q I'll give you time.
22 A I'm drawing a blank right now.
23 Q Okay.
24 A I'm sorry. Grueskin was the name of one.
25 Q If you think of it, blurt it out.

1 A Okay. There was one other, I'm just -- I'm
2 not remember it right now.

3 Q Okay. Now, I want to go into your ownership
4 interests of Endo Center and Gastro Center.

5 A Okay.

6 Q Okay. Because you've testified that you also
7 owned an interest in Burnham, but that it was redeemed by Dr.
8 Sharma.

9 A Yes, that is correct.

10 Q Okay. I am taking from that that when you
11 acquired your interest in Burnham, you must have acquired some
12 of Dr. Sharma's interest.

13 A That would not be correct.

14 Q Okay. How did Dr. Sharma redeem your
15 interest?

16 A By check.

17 Q Okay. So he -- he paid -- he bought you out?

18 A He sent me a letter and a check, and it was
19 bought out by the entity itself, to the best of my
20 recollection. It wasn't him personally.

21 Q Okay. Who was the check from?

22 A I believe it was from the Endoscopy Center of
23 Nevada II.

24 Q Okay.

25 A The Burnham facility as you refer to.

1 Q Okay. So the -- the -- your ownership
2 interest in Burnham was redeemed?

3 A Yes, that is correct.

4 Q You were paid for it?

5 A Yes, that is correct.

6 Q Okay. And then so the only ownership interest
7 we have going up into 2008 would be your 6.4 percent in the
8 gastro center, which we call the medical practice.

9 A Okay.

10 Q Is that right?

11 A Yes.

12 Q And then you said 13 one hundred tenths of the
13 Endoscopy Center at Shadow Lane.

14 A Yes, that's correct.

15 Q Okay. Because there were 110 ownership units
16 or shares, whatever you call it --

17 A Yes.

18 Q -- and you owned 13 of them.

19 A Correct.

20 Q And you had at some point purchased those by a
21 capital contribution?

22 A Yes.

23 Q And the -- what did Dr. Desai own to your
24 knowledge?

25 A To the best of my recollection about

1 two-thirds of the total. I don't know exactly.

2 Q Okay. So we'll just call it 66 percent of
3 endo center at Shadow Lane.

4 A If that's what you calculate it to be, I
5 suppose.

6 Q Well, that's two-thirds the way I calculate
7 it.

8 A Well, yeah, 60 percent maybe. I'm not --

9 Q Okay.

10 A I can't give you an exact number. I'm sorry.

11 Q Okay. And -- and plus -- and Dr. Desai owned
12 that amount of the -- let's just call it two-thirds. He owned
13 two-thirds of the endoscopy clinic at Shadow Lane; correct?

14 A He owned what he owned, you know, and I'm not
15 going to tell you the exact figure because I don't recall, but
16 it was about 60 percent to the best of my recollection.

17 Q Okay.

18 A You're asking the same question twice; right?
19 You asked about --

20 THE COURT: That's what lawyers do.

21 BY MR. WRIGHT:

22 Q I'm sneaking around.

23 A Oh, okay.

24 Q No, I did ask the same question. It was a
25 predicate to moving on. But the --

1 A How do you move on by doing the same thing --

2 THE COURT: All right. Let's --

3 THE WITNESS: -- over and over again?

4 THE COURT: Okay. Well ---

5 MR. WRIGHT: Okay.

6 THE WITNESS: Okay.

7 THE COURT: Mr. Wright, ask your question.

8 BY MR. WRIGHT:

9 Q The -- his -- Dr. Desai's ownership interest
10 in gastro center and in endoscopy clinic at Shadow Lane was
11 known; correct?

12 A It was known, yes.

13 Q Right. I mean, all of the partners knew it;
14 correct?

15 A I would think they would have some knowledge
16 of it.

17 Q Right. I mean, there were partners in the
18 endoscopy clinic; correct?

19 A Yes.

20 Q Okay. And you know it and they know it;
21 correct?

22 A I knew the exact figures at one time, but I no
23 longer do.

24 Q Okay. That -- that's all I'm establishing.
25 You knew it and it wasn't secret; correct?

1 A No, it was not secret.

2 Q Okay. And you knew the ownership in the

3 gastro side?

4 A Yes, I did.

5 Q Okay. And so the -- what did you make in 2007

6 from the gastro side?

7 A \$800,000 more or less.

8 Q Okay. 800,000, approximately?

9 A Yes.

10 Q And that was your share of 6.4 percent;

11 correct?

12 A Yes.

13 Q Okay. And Dr. Desai, if I understand

14 correctly, owned 20 percent of the doctor side gastro center;

15 right?

16 A Approximately, yes.

17 Q Okay. And so he would have received --

18 A About three times that, I suspect.

19 Q Yeah, like 2. --

20 A But I don't know exactly.

21 Q -- 2.5 million; right? Approximately.

22 A Approximately.

23 Q You got 800 and you got 6.4.

24 A I understand the math, sir.

25 Q Okay. And then what did he own -- I mean, he

1 was the -- I'm not going to ask you the same question again.
2 Owning two-thirds of endoscopy center, what would he get in
3 2007?

4 A I'd have to ask him. I --

5 Q What did you get?

6 A 600,000.

7 Q Okay. So you got 600,000. You got 1.4
8 million; right?

9 A Yes.

10 Q Okay. And so he got -- if you got 600,000 for
11 13 one hundred tenths, what is that? About 8 percent?

12 A I need a calculator for that.

13 Q Okay.

14 A Well, yeah.

15 Q Okay. And -- and Dr. Desai owned 66 percent?

16 A 60, 66, I don't --

17 Q Approximately.

18 A -- recall the exact figure. So let's just,
19 for argument, say 60.

20 Q Okay.

21 A You know, five, six times. Is that where
22 you're going? I don't know.

23 Q Okay. All right. That's where I'm going.
24 What would that be if he owns like 6 times what you do? Six
25 times six, 36. He gets --

1 A 3.6 million.

2 Q Okay. Does that make sense?

3 A Does it make sense?

4 Q Yeah.

5 A Yes.

6 Q He's the owner; correct?

7 A Yes.

8 Q That's what he owns and that's what he gets

9 and it was known; correct?

10 A I'm not sure how to answer your question. I

11 don't have the books, I didn't look at them, but, yes, that

12 would make sense.

13 Q Okay. Well, do you remember when you were

14 interviewed by the Metro police?

15 A Yes.

16 Q Okay. And do you remember when they told you

17 what he made and you told them you were absolutely shocked?

18 A Yes, I was.

19 Q Okay. And you were absolutely shocked and

20 thought something must be wrong with the books? Remember?

21 A I don't know that I went to that extent, but I

22 remember the figure they quoted and I thought that was, wow,

23 rather impressive.

24 Q Okay. What did they quote?

25 A \$7 million.

1 Q Okay. And you -- you thought it should have
2 been like 2.2?

3 A I don't recall saying that.

4 Q You don't recall saying that?

5 A Well, what are we talking about here? Out of
6 the gastro center?

7 Q I'm -- I'm --

8 A If he had made three times what I did, or four
9 times, then it would have been about \$3 million.

10 Q Out of the gastro center?

11 A Yeah.

12 Q Okay.

13 A And I hope I'm getting the math right.

14 Q Right. If you add up what he gets out of the
15 gastro center and the endo center, it comes to about \$7
16 million; correct?

17 A Yes.

18 Q Okay. Well, what -- why did -- why did you
19 tell Metro that you were shocked at that --

20 A Because I hadn't thought about it and I didn't
21 know that the numbers were that big.

22 Q Okay. Did you suggest he must be embezzling?

23 A I don't know that you can take speculation and
24 make it a fact or anything, but, you know, it's an impressive
25 number. That's all I will say.

1 Q Did you suggest he was embezzling?

2 A I don't know that he was embezzling. I know
3 there were many fees that were paid to him for management fees
4 and things of that nature.

5 Q Did you suggest --

6 A I used that word, yes.

7 Q Okay.

8 A But I used it as a theoretical possibility. I
9 didn't state it as fact.

10 Q Because you were there to do what?

11 A I don't understand your question.

12 Q The purpose of the interview, when you were
13 there with the Metropolitan Police Department, your objective
14 was to do what?

15 A To cooperate with them.

16 Q By doing what?

17 A Provide them with information that I might
18 know.

19 Q In exchange for what?

20 A I went in with no preconceived notion.

21 Q How about letting you go?

22 A That happened afterwards. It had nothing to
23 do with my going in to talk to them.

24 Q Do you recall the immunity letter you signed?

25 A Yes, I do.

1 Q Do you think your interview with the
2 Metropolitan Police Department had nothing to do with you
3 making a proffer; correct?

4 A There were things that were happening between
5 attorneys and the police, and I didn't fully understand
6 everything that was happening. Was there a proffer made at
7 some point? I'm sure there was. But I don't know the time
8 table on that.

9 Q What's a proffer?

10 A A proffer is an offer that's put forward.

11 Q Okay. An offer of what put forward?

12 A Well, in this case it was to cooperate with
13 the investigation.

14 Q Okay. An offer to show the State what you can
15 do for them in exchange --

16 A Absolutely not.

17 Q That's not the proffer?

18 A No. Just to tell them the truth.

19 Q Okay. You didn't go in there to show them
20 what you could do for the State; correct?

21 A That's correct.

22 MR. WRIGHT: May I approach the witness, Your Honor?

23 THE COURT: You may.

24 BY MR. WRIGHT:

25 Q Look at Proposed I-1, please. Read it to

1 yourself.

2 A I'm sorry. What is it that you are --

3 Q Recognize it?

4 A The letter? Yes, I do.

5 Q Okay. Do you recognize that to be an unsigned
6 copy of your ultimately signed proffer agreement?

7 A Do you have the signed one so I can compare
8 the two?

9 MR. WRIGHT: Mr. Pitaro, do you have it?

10 MR. PITARO: Not with me.

11 THE COURT: He didn't bring it.

12 Well, you can take a moment there, Doctor, to read
13 through it.

14 MR. WRIGHT: It's the only copy the State has.

15 THE COURT: And read it quietly to yourself and let
16 us know if that appears to be the same letter as what was the
17 signed one that you're more familiar with.

18 BY MR. WRIGHT:

19 Q I'm going to show a copy to your lawyer
20 just --

21 A Sure.

22 Q -- to give you --

23 A Okay. Fine.

24 MR. PITARO: What -- what -- I don't [inaudible].

25 MR. WRIGHT: I don't want him to think I'm tricking

1 him, Your Honor.

2 THE COURT: All right. The State can verify. Is it
3 the same letter as the signed letter that Mr. Wright would
4 have?

5 MR. STAUDAHER: I -- it's the letter --

6 THE COURT: And, Mr. Staudaher --

7 MR. STAUDAHER: -- that we have in our --

8 THE COURT: -- you can --

9 MR. STAUDAHER: This predated my -- my involvement.

10 THE COURT: Okay. This was when Mr. Mitchell was
11 the prosecutor --

12 MR. STAUDAHER: Yes. I can't make that --

13 THE COURT: -- is that correct?

14 MR. STAUDAHER: -- representation.

15 THE COURT: So you obviously would have gotten
16 everything that Mr. Mitchell had in his file?

17 MR. STAUDAHER: I believe it is, but I cannot say
18 for sure.

19 THE COURT: Okay. I understand.

20 MR. PITARO: I'll read it. I just hadn't looked at
21 it before coming here.

22 BY MR. WRIGHT:

23 Q Does that appear to be the letter?

24 A I can't answer that definitively, but it looks
25 similar to, if not the letter itself.

1 MR. WRIGHT: Is that good enough to make it
2 admissible, Your Honor?

3 THE COURT: And, Mr. Staudaher, that was the sole
4 letter in the file --

5 MR. STAUDAHER: That's correct --

6 THE COURT: -- that you received --

7 MR. STAUDAHER: -- Your Honor.

8 THE COURT: -- from the former prosecutor, Mr.
9 Mitchell?

10 MR. STAUDAHER: It actually came off the computer,
11 Your Honor.

12 THE COURT: No, that's okay. I mean, I'm just --
13 Mr. Pitaro, does that appear to be the same letter?

14 MR. PITARO: Judge, it appears to be the standard
15 proffer letter.

16 THE COURT: All right. Well --

17 MS. WECKERLY: We don't have any --

18 MR. STAUDAHER: We don't have --

19 MS. WECKERLY: -- objection to admitting it.

20 MR. STAUDAHER: Right.

21 THE COURT: Yeah, I mean, he's seeking to admit it.
22 I think it's probably the same letter. I'm -- I'm satisfied
23 that it's very likely the exact same letter.

24 So were you moving to admit that, Mr. Wright?

25 MR. WRIGHT: Yes. Yes, Your Honor.

1 THE COURT: And that has been marked as which
2 exhibit for the record?

3 THE CLERK: I-1.

4 THE COURT: That is Exhibit Defense I-1, so I-1 is
5 admitted.

6 (Defendant's Exhibit I-1 admitted.)

7 BY MR. WRIGHT:

8 Q This is -- this is the agreement that predated
9 your going in to speak with Metropolitan Police Department;
10 correct?

11 A What was the date that I went to speak to the
12 police? I don't recall exactly. Do you have that?

13 Q February 17, 2010.

14 A And this was dated -- so, yes, then it would
15 have predated it.

16 Q And this sets down the terms and conditions of
17 your upcoming interview; correct?

18 A I suppose it does.

19 Q Okay. And what does it obligate you to do?

20 A Complete and truthful information.

21 Q Okay. And now what does the State promise you
22 if you will come in and talk?

23 A What does it promise me?

24 Q Yes. Third paragraph.

25 A Third paragraph. Not use any statement made

1 by you or your client -- this is actually addressed to my
2 attorney -- or other information against your client in any
3 criminal case, except for cross-examination or impeachment
4 purposes should your client ever testify contrary to the
5 information he provides during the proffer.

6 Q Or?

7 A Or in the prosecution for perjury wherein the
8 information may be used to prove that your client testified
9 untruthfully or contrary to the information provided in the
10 proffer.

11 Q Okay. You understood you could go in, talk to
12 the Detective Whitely. Is that who was there?

13 A Uh-huh. Yes.

14 Q And who else was there, anyone?

15 A I believe --

16 Q Your lawyer.

17 A Yes, and Mr. Staudaher, I believe, was there,
18 or maybe Mr. Mitchell.

19 Q Okay.

20 A Let me tell you who was there.

21 Q Okay.

22 A Mr. Pitaro, Ms. Hueth, Mr. Staudaher, Mr.
23 Mitchell, and Detective Whitely.

24 Q Okay. And you would answer their questions;
25 correct?

1 A Yes.

2 Q And what you told them couldn't be used
3 against you; correct?

4 A That's my understanding, yes.

5 Q Okay. Except the State could use it --

6 A Uh-huh.

7 Q --- against you and prosecute you for perjury
8 if you ever changed your story; correct?

9 A That's my understanding, yes.

10 Q Okay. So did they call this a lock-in clause?

11 A I don't know what that is.

12 Q Lock you into your testimony.

13 MS. WECKERLY: I'm going to object. That calls --

14 THE COURT: Yeah, that --

15 MS. WECKERLY: -- for a legal conclusion.

16 THE COURT: -- that's sustained as to what --

17 BY MR. WRIGHT:

18 Q But that -- that was your understanding.

19 Okay. So -- and then --

20 MS. WECKERLY: No. That mis --

21 THE COURT: He never --

22 MS. WECKERLY: There was no answer --

23 THE COURT: He never answered.

24 MS. WECKERLY: -- so I move to strike that.

25 THE COURT: Sustained. What the --

1 MR. WRIGHT: When I mean lock-in, I meant his prior
2 answer was his understanding.

3 THE COURT: He doesn't know what the prosecutors may
4 or may not have called it.

5 BY MR. WRIGHT:

6 Q You didn't hear it called that at that
7 meeting; correct?

8 A No.

9 Q Okay. What did you hear it called?

10 A I just remember answering lots of questions.

11 Q Okay. And it was during this session when you
12 accused Dr. Desai, who you're neutral about, of embezzling;
13 correct?

14 MS. WECKERLY: Objection. I think that misstates
15 his testimony of what he said about the -- whether he actually
16 accused him or whether he was --

17 THE COURT: Well, he's --

18 MS. WECKERLY: -- saying it was possible.

19 THE COURT: That's overruled. I mean, if he
20 disagrees with the characterization of his statement to the
21 police, the witness can -- can answer accordingly.

22 THE WITNESS: Could you point --

23 BY MR. WRIGHT:

24 Q Suggested.

25 A Could you point that out to me so I can

1 refresh my memory from this?

2 Q Well, you can take your time and look at it.

3 A It's a very long document.

4 Q Did you suggest he engaged in embezzlement?

5 Do you remember? I think around 60.

6 A Okay. Thank you.

7 Q Around.

8 MS. WECKERLY: It's on page 62, about a third to
9 halfway down.

10 THE WITNESS: I said it makes you wonder. I didn't
11 state that as an accusation, just as a thought.

12 BY MR. WRIGHT:

13 Q Oh, okay. Just as a thought it makes you
14 wonder if he's embezzling; right?

15 A I don't know that it refers -- I think this is
16 about the CRNA billings, and I just said, quote, Which, you
17 know, makes you wonder if he was embezzling money. I mean,
18 because theoretically that should have gone into gastro
19 center. That's because I didn't have any information on the
20 CRNA account. So this is just thinking aloud. It wasn't
21 making a specific accusation in answer to your question.

22 Q Okay. So you were just thinking aloud --

23 A Yes, sir.

24 Q -- wondering if he's embezzling; right?

25 A Well, there was a fund there, a pool of funds

1 that I just didn't know what was happening with. I didn't.

2 And it was outside the normal business structure, the entity.

3 Q And did you determine what happened with that
4 pool of funds?

5 A No, I have no way of knowing.

6 Q You have no way of knowing?

7 A No.

8 Q Okay. All of the books and records were
9 seized, you're aware of that, by the police department on
10 March 10, 2008?

11 A I know they seized records, yes.

12 Q Okay. And so did you tell them I think there
13 must be embezzlement in that account?

14 A I said what I said.

15 Q Right. And so did they come back to you and
16 discuss any further?

17 A Not at all.

18 Q Okay. And while you were suggesting things,
19 did you suggest he also bribes people?

20 A No, I did not.

21 Q You didn't?

22 A No. I stated that he made loans to physicians
23 at times.

24 Q And were those repaid?

25 A I don't know what exactly happened. I know

1 one I don't think was repaid.

2 Q Okay. So you were just -- this was just part
3 of you telling the truth and showing them what you could do
4 for them; correct?

5 A I don't understand your question.

6 Q Well, you went in there, the State wants to
7 discover what your client has to say and what he is willing to
8 do for the State. I'm reading from your proffer letter --

9 A Uh-huh.

10 Q -- right? And so you were showing them what
11 you were willing to do for the State; right?

12 A I was discussing observations that I had made
13 and thoughts that I had.

14 Q Okay.

15 A It wasn't anything I can do this for you or I
16 can't do that. It wasn't anything like that.

17 Q Okay. It was just you suggesting that -- I
18 mean, I think the word bribe was used, wasn't it? You've
19 re-read the thing. Weren't you suggesting it was bribery.

20 A You'll have to show me where, sir.

21 Q Well, you tell me what you accused him of.

22 A I didn't say the word bribery, I don't
23 believe, but let me look.

24 Q Do you remember?

25 MS. WECKERLY: Is there a page reference?

1 BY MR. WRIGHT:

2 Q I think around way in the back. 90. 90.

3 A Page 90?

4 Q Around 90.

5 MR. STAUDAHER: The bottom of 91 there's a --

6 THE WITNESS: Okay. So we were talking about loans
7 to physicians, and I said -- and this isn't stated as fact,
8 this is an opinion -- I'll bet he made loans expecting they
9 would never be paid back. The police --

10 BY MR. WRIGHT:

11 Q That's -- RW is Detective Whitely.

12 A Right.

13 Q Okay. I'm just --

14 A I refer to him as the police, but Mr. Whitely
15 said, Right. Kind of bribes type thing? And I said, Yeah, for
16 business. That was still speculation. That's not stating a
17 fact. And then he asks, Any loans to public officials or
18 anything like that? And I said, No, not that I'm aware of.

19 Q Okay. And you identified the -- the
20 individuals. I'm not going to state their names because this
21 is a public proceeding, but you pointed out one, two, three
22 individuals who you suspected had been bribed; correct?

23 A I didn't say that. I said that they had had
24 loans made to them.

25 Q Okay. In what context?

1 A I wasn't there when the loans were made.
2 Q In what context were you telling the police
3 about this?
4 A During the police interrogation.
5 Q Right. Suggesting what?
6 A Suggesting that loans had been made to
7 individuals.
8 Q That were what?
9 A Money passed from one person to another.
10 Q That were what?
11 A Could you be more specific?
12 Q Bribes.
13 THE COURT: Who are these individuals?
14 THE WITNESS: Other doctors.
15 MR. WRIGHT: I wasn't asking the individuals.
16 THE COURT: Oh, I'm sorry.
17 MR. WRIGHT: I don't want to say the individuals.
18 THE COURT: I'm sorry. I mean category of
19 individuals.
20 MR. WRIGHT: You were --
21 THE COURT: Because I'm sitting up here dying to
22 know, but --
23 MR. WRIGHT: Well, I don't think it's fair.
24 THE COURT: I understand. I was jesting. Move on,
25 Mr. Wright.

1 MR. WRIGHT: Okay.

2 BY MR. WRIGHT:

3 Q You were -- they weren't just -- the police
4 didn't say, hey, while we've got you in here, do you know of
5 anyone that Dr. Desai ever loaned money to? It didn't come up
6 like that, did it?

7 A No, it didn't come up like that.

8 Q Okay. It came up where they're saying if you
9 could think of anything we'd be interested in, we're certainly
10 happy to hear it; right?

11 A Yes.

12 Q Okay. And then you say, oh, yeah, let me
13 share this with you. That's a quote; right?

14 A Yes, that's correct.

15 Q Okay. And you were sharing an accusation
16 of --

17 A An observation, not an accusation, sir.

18 Q -- of what? Good deeds?

19 A Perhaps they were good deeds.

20 Q Okay. What --

21 A I can't tell you what the ultimate disposition
22 of those was.

23 Q You were suggesting these individuals and Dr.
24 Desai engaged in bribery; correct?

25 A No. I'm telling you that loans were made and

1 I don't know what the ultimate disposition of those was.

2 Q You said, I'll bet he made loans expecting
3 they would never be paid back. Detective Whitely says, Right.
4 Kind of bribes type thing? You say, Yeah, for business. Right?

5 MS. WECKERLY: I'm going to object to the
6 characterization. I don't know if Mr. Wright is acting or,
7 you know, what's going on.

8 THE COURT: Well, I was --

9 BY MR. WRIGHT:

10 Q You said, Yeah, for business. Right?

11 A You said that, not me.

12 THE COURT: I'm seeing a whole new dimension to Mr.
13 Wright's array of talents here.

14 BY MR. WRIGHT:

15 Q You agree that you were insinuating
16 wrongdoing.

17 A There were loans, and I don't know what the
18 ultimate disposition of those was, and you'd have to ask the
19 parties involved on that. But were they something that
20 facilitated business? Possibly.

21 Q Well, presumably you disclosed all of that to
22 the police department; right? Everything you said --

23 A It's right in paper. It's --

24 Q They -- they had -- you're aware that a search
25 warrant was executed upon the businesses; correct?

1 A No, I am not.

2 Q Don't you remember on March 10th was --

3 A Which business?

4 Q The endo center --

5 A Oh, yes.

6 Q -- the gastro center.

7 A That, of course.

8 Q When everything, every medical record, every

9 computer, everything there was gobbled up by --

10 A Yes, it was.

11 Q -- Detective Whitely and the FBI; right?

12 A Yes.

13 Q And they've had it to this day; right?

14 A I don't know if they have them or not. I

15 suppose they do.

16 Q Okay. Did you ever go ask them, I'd like to

17 see the CRNA account or like to see the books of records?

18 A No, I did not ask them.

19 Q Because?

20 A Because I did not ask them. I didn't think

21 about it.

22 Q CRNA account, your understanding of that was

23 that was the account in which the CRNA, the anesthesia

24 component --

25 A Uh-huh.

1 Q -- of the practice --
2 A Yes.
3 Q -- fees went; correct?
4 A That was my belief, yes.
5 Q Okay. And that you have the facility fees,
6 the professional fees, and the anesthesia fees were the
7 ingredients of the profit for the group, practice, whatever
8 you call it; correct?
9 A Those were the three sources of income, yes.
10 Q Okay. And the -- you understood that the
11 anesthesia component went into what you've called the CRNA
12 account?
13 A I didn't call it the CRNA account. That's
14 what it said it was called.
15 Q Okay. Well, you got a check out of it; right?
16 A Yes, it said CRNA account on it.
17 Q Okay. And that was a bonus; correct?
18 A Correct.
19 Q And you understood other physicians got
20 bonuses from it; correct?
21 A Yes, I understood that.
22 Q Okay. And you understood that the balance of
23 it went into the gastro center account for distribution to the
24 partners according to the ownership; correct?
25 A At least some of it went. I don't have those

1 details.

2 Q Okay. But that's what you understood and
3 believed; correct?

4 A I understood that bonuses were paid out and
5 that some of the monies went to gastro center. Perhaps all of
6 the balance. I don't know.

7 Q Okay. Why do you think it didn't?

8 A I'm not going to say I knew one way or the
9 other. I just don't know.

10 Q Okay. So you aren't insinuating anything. To
11 your knowledge the anesthesia funds went either to bonuses or
12 to the gastro center to be distributed, pay salaries, wages,
13 and distribution to the partners; correct, sir?

14 A Restate, please.

15 Q To your knowledge, that's where that money
16 went.

17 A I know that it went to bonuses and to gastro
18 center.

19 Q Okay.

20 A That part --

21 Q Where did it -- and where would it then go
22 from gastro center?

23 A From gastro center to pay overhead and to pay
24 salaries and to pay distributions to -- to partners.

25 Q Okay. Any impropriety in that?

1 A Not that I see.

2 Q Okay. I thought there was some suggestion
3 when you told about surreptitiously hearing about an account
4 of something you were suggesting some type of wrongdoing.

5 A I am suggesting that I didn't really have
6 knowledge of the books and I found it odd that there was a
7 separate account. That's all I was suggesting.

8 Q Okay. Bit blocks.

9 A Uh-huh. Yes.

10 Q They -- they're reusable, say reusable on the
11 package, and then there are some that say multi-use. What's
12 the opposite of reusable?

13 A Disposable.

14 Q Disposable.

15 A Yes.

16 Q Okay. Reusables and then disposables.

17 A Yes.

18 Q Okay. Both were used at times; correct?

19 A Yes.

20 Q Okay. And at the clinic there was a time when
21 the disposables were used more than once; correct?

22 A Yes.

23 Q And you were aware of that?

24 A Yes.

25 Q Okay. And that -- those were cleaned,

1 processed, sanitized, sterilizes, whatever you call it --

2 A Yes, as far --

3 Q -- the same as --

4 A -- I know.

5 Q -- the scope; correct?

6 A Right.

7 Q Okay. And that is all approved and lawful to
8 your knowledge; correct?

9 A My understanding of FDA rules is that if a
10 medical device does not invade body tissues, even if it is
11 stated for one time use, it may be sterilized and reused.
12 That would certainly be applicable to bite blocks. It would
13 not be applicable to other devices, of course.

14 Q Okay. Bite blocks, okay.

15 A They don't invade body tissue.

16 Q Okay. And it didn't -- but that -- but that
17 was just another one of those needless or silly things to save
18 money in your judgment?

19 A It could be seen as a money saving measure, I
20 suspect. Yes.

21 Q Okay. Did you see it as a money saving
22 measure?

23 A I think it probably was.

24 Q Okay. And you were aware Dr. Desai was
25 running the place; correct?

1 A Yes.

2 Q And he was frugal?

3 A Yes.

4 Q And really disliked waste?

5 A Yes.

6 Q And really didn't like employees standing
7 around, sitting around, or lollygagging.

8 A How do you mean by lollygagging?

9 Q I don't know. I used to say that when I stood
10 around and wasn't doing anything.

11 A He liked people to be productive as possible,
12 yes.

13 Q Okay. And that was just his nature; correct?

14 A I would assume so, yes.

15 Q Okay. And so you'd put bite blocks in that
16 category? I mean, that just sounds -- bad question. Would --
17 would you view -- what do bite blocks cost?

18 A I don't know.

19 Q Okay. Not expensive, I presume?

20 A Probably not.

21 Q Okay. But the -- you -- you can clean them,
22 sanitize them, run them through the Medivator, and use them
23 again. And that would give the Medivator operator and
24 employee something to do and it would save you some money if
25 you're the owner, fair?

1 A I can't comment on that if that was the
2 motivation. You'd have to ask Dr. Desai that. I don't know
3 the answer to that. Is that the motivation?

4 Q You don't know? I don't get to answer the
5 questions.

6 A Are you trying to -- well, my choices were,
7 yes, that was the motivation, no, it wasn't the motivation, or
8 I don't know. And the answer is I don't know.

9 Q Okay. The -- like we've heard testimony in
10 the courtroom about chux.

11 A Yes.

12 Q C-H-U-X.

13 A Yes.

14 Q Okay. Chux is the -- explain it.

15 A It's a pad.

16 Q Okay. That goes on the gurney?

17 A On the gurney, yes.

18 Q Okay. So when you're doing the procedure, if
19 it's a sloppy procedure, the slop goes on the chux?

20 A Yes.

21 Q And the chux gets tossed?

22 A Again?

23 Q Tossed, thrown away.

24 A Oh, tossed. Thrown away, yes.

25 Q Okay. And it -- we've heard testimony in here

1 about cutting chux in half.

2 A Yes, that occurred.

3 Q Okay. Chux are long? You cut them the long
4 way or the short way? What would you call a chux, six feet by
5 four feet, eight feet by three feet?

6 A I don't know the exact dimensions, but --

7 Q Approximately.

8 A Maybe four by four, perhaps. I don't know the
9 exact dimension.

10 Q Okay. Were chux cut in half?

11 A Yes, they were.

12 Q Okay. Do you know why they were cut in half?

13 A I asked and I was given a reason.

14 Q And what's the reason?

15 A Well, I asked one of the tech --

16 MS. WECKERLY: Objection unless it's from --

17 THE COURT: Well, yeah, what's -- what's the
18 foundation?

19 BY MR. WRIGHT:

20 Q Who did you ask?

21 A I asked and I got two answers. One was --
22 technicians. One, they fit -- one was Dr. Desai wants us to
23 do it that way, the other was they're cut in half so they fit
24 better in the armchairs, the La-Z-Boy type chairs, recliners
25 that the patients sit in --

1 Q Okay.

2 A -- prior to coming back to the --

3 Q Okay.

4 A -- to the lab.

5 Q Okay. Like in the -- what we hear of called

6 the pre-op area where you --

7 A Pre-op area.

8 Q -- sit down like to get the heplock put in --

9 A Yes.

10 Q -- or something? Okay. So they fit better in

11 the La-Z-Boys?

12 A Yeah, in the recliners.

13 Q Okay. And you -- you have -- you know what a

14 chux costs?

15 A I do not know.

16 Q Okay. But in -- in your experience you have

17 seen that chux don't fit and the same thing is done elsewhere;

18 correct?

19 A I've seen problems with them in the hospital

20 when they're on a gurney.

21 Q And what do they do there, fold them in half?

22 A They're just so big in size that they tend to

23 get -- the scope tends to get tangled up in them.

24 Q Okay.

25 A So you have to be pushing them away and down

1 and away from the instrument.

2 Q Okay. So like in other ASCs and hospitals, do
3 they fold them in half?

4 A I don't know if they fold them in half or they
5 just put them on there the way they are. I suspect sometimes
6 they do fold them, perhaps.

7 Q I thought I had learned that from you. Let me
8 check. Page 82.

9 A Page 82. Okay. This is referring to chux.
10 Why are you guys doing this? Dr. Desai wants us to do it. I
11 asked Tonya why they cut chux in half. She says, well, I'm
12 told they fit better in the armchairs which is what I've just
13 told you. And this is me, And they fit better on the gurneys,
14 which is true. Okay. I did say you have to fold a chux in
15 half to get it to fit on the gurney.

16 Q Okay. And they do that at other places I
17 think I read.

18 A They fold them, I suppose, not cut them. But,
19 yeah, they're a bit bulky, cumbersome. I'll grant you that.

20 Q Now, if I understand your testimony, you never
21 paid attention to CRNAs and propofol and syringes; right?

22 A I did on one occasion.

23 Q Okay. After 2008?

24 A After the BLS or ---

25 Q All right. Let me restate it. After the CDC

1 -- after the investigation?

2 A After the investigation, yes.

3 Q Okay. But before the investigation, in all of
4 your years there, you had never paid any attention whatsoever
5 to the size of the propofol vials or what the CRNAs were doing
6 with it; correct?

7 A My assumption is they were trained and
8 experienced professionals, they were independent
9 professionals, and they knew what they were doing.

10 Q And you had no idea what they were doing.

11 A I knew they were administering anesthetic
12 agents to patients, but I'm not an anesthesiologist.

13 Q I understand. But you -- you paid no
14 attention at all; right?

15 A I don't know how to characterize your
16 question. I mean, I was aware of some of the things they were
17 doing in a general sense.

18 Q Okay. Were you --

19 A Was I looking over their shoulder, watching
20 every move? No.

21 Q Okay. What were you aware of in a general
22 sense?

23 A That they were administering anesthetic agents
24 to patients.

25 Q Okay. Did you know it was propofol?

1 A I knew it was propofol. That's what we used.
2 Q Okay. Did you know like the size of the vial?
3 A No, I did not.
4 Q Okay. Did you know if it was multi or
5 single-use?
6 A No, I did not.
7 Q Okay. So after CDC came, and we know it's
8 January 2008, did you then learn after the fact --
9 A Yes.
10 Q -- about propofol; right?
11 A Uh-huh. Yes.
12 Q Okay. And until then, January 2008, was there
13 any propofol policy in writing that you were aware of?
14 A Not that I'm aware of. I know of one I saw at
15 some point, and this was after in the corporate documents. I
16 don't know when that was put in there.
17 Q Okay. But you were aware that after CDC came
18 a policy was put in place on administering propofol and the
19 correct utilization of aseptic technique and syringes; right?
20 A I saw something along those lines there, but I
21 don't know exactly when it was put in there.
22 Q Okay. Well, don't you recall it had happened
23 after BLC -- whatever you want to call it, BLC, SNHD, CDC,
24 after their investigation?
25 A That's when I first saw it, yes.