IN THE SUPREME COURT OF THE STATE OF NEVADA

DIPAK KANTILAL DESAI, Appellant, vs. THE STATE OF NEVADA, Respondent.	)	CASE NO. 64591

APPELLANT'S APPENDIX VOLUME 20

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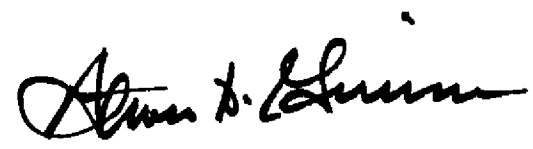

CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA
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THE STATE OF NEVADA, Plaintiff, vs. DIPAK KANTILAL DESAI, RONALD E. LAKEMAN, Defendants.	)	CASE NO. C265107-1,2 CASE NO. C283381-1,2 DEPT NO. XXI **TRANSCRIPT OF PROCEEDING**

BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE

JURY TRIAL - DAY 24
AFTERNOON SESSION

WEDNESDAY, MAY 29, 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.

RECORDED BY JANIE OLSEN COURT RECORDER

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I N D E X

WITNESSES FOR THE STATE:

LAS VEGAS, NEVADA, WEDNESDAY, MAY 29, 2013, 12:46 P.M.

* * * * *

(In the presence of the jury.)

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

And Mr. Mione will be recalled and we'll finish with his testimony.

Sir, just come on up here back to the witness stand, and just have a seat. You are still under oath. Do you understand that?

THE WITNESS: Yes.

THE COURT: All right.

Mr. Santacroce.

MR. SANTACROCE: Thank you, Your Honor.

VINCENT MIONE, STATE'S WITNESS

CROSS-EXAMINATION

BY MR. SANTACROCE:

Q Good afternoon, Mr. Mione.

A Good afternoon.

Q I represent Ron Lakeman. You know Mr. Lakeman; correct?

A Yes, I do.

Q How do you know him?

A He came to the clinic for work after I was there.

Q So you were working there prior to him being employed there; correct?

A Yes. Yes, I was.

Q Did you ever work at the same clinic?

A At Shadow Lane, yes.

Q At Shadow Lane? How about anywhere else?

A I don't recall. I don't think so.

Q Okay. I'm going to ask you some questions about your testimony yesterday.

A Uh-huh. Yes.

Q And if I misstate anything that you said, please correct me and we'll move this along. Okay? You testified that you were a CRNA since 1965; correct?

A Yes.

Q And you stopped working as a CRNA in 2008?

A Yes, that's true.

Q And why did you stop in 2008?

A The clinic closed.

Q The clinic closed?

A Yes.

Q And did you obtain another CRNA job around town?

A No.

Q Why?

A I don't think I would be hirable.

Q Did you lose your license?

A No, we voluntarily turned it in and we're told that we're going to get it back in a couple of months. That was five years ago.

Q And so you --

THE COURT: Have you tried to get it back?

THE WITNESS: Yes, I've spoken to our lawyer we had and --

THE COURT: Go on, Mr. Santacroce.

BY MR. SANTACROCE:

Q So you voluntarily surrendered your license?

A Yes.

Q Pending the investigation; correct?

A Correct.

Q And you've never received your license back; correct?

A Correct.

Q Now, you testified that you were first introduced to the use of propofol in the 1980s; is that correct?

A Approximately that time.

Q And how were you introduced to the drug propofol?

A They had it at our hospital in Hollywood in little glass ampoules.

Q In Hollywood, Florida?

A Hollywood, Florida, yes.

Q And did you receive any special training on the use of propofol in Hollywood, Florida?

A I imagine we read the brochure on it, etcetera. I don't remember a formal class at that time, but I'm sure we had some kind of lecture or another. It's too long ago to remember.

Q Okay. Well, I need you to try to remember back because you were -- prior to using propofol what were you using?

A Pentalthal, sodium pentathal.

Q And how did you learn to administer sodium pentathal?

A When I was in training for anesthesia.

Q So through school?

A Yes.

Q And then this new drug becomes introduced to take the place of sodium pentathal. And are you telling me that there were no classes or anything? You were just given the drug and said read the brochure?

A Well, they pretty much act, you know, in the same way. And I -- I -- I can't recall. I really can't. We

just -- you know, there was -- I worked with many physicians and other anesthetists and I'm sure we were prodded, you know, taught along the way somehow or another, but we also read a brochure about it. But we had many drugs to use.

Q And this was in a hospital setting; correct?

A Yes.

Q In a surgery center?

A No, a hospital.

Q Okay. A hospital, I mean the hospital it was in the surgery -- in the surgery room; correct?

A Yes.

Q For all different types of surgeries?

A Correct.

Q And can you tell me what some of those surgeries were that you used propofol?

A Primarily most -- most of the anesthetics we were using it for. As it came out we -- they found that we can use it on certain cases and other cases and it -- it eventually took the place of pentathal, sodium pentathal.

Q Did you administer sodium pentathal in the same way you administered propofol?

A Well, there were several ways to administer it. We -- it was an injection also with a syringe.

Q Through a hep-lock?

A Usually we had IVs running.

Q Okay. So that was the drip bag?
A The drip -- drip IVs, yes.
Q Okay. And when did you start using hep-locks, at what point in your career?
A Mostly we used them at this clinic.
Q Does the procedure you used for propofol back in the '80s the same procedure that you used at the clinic?
A Pretty much, yes.
Q And I believe you testified that in the morning you would preload syringes, 10 cc syringes; correct?
A Yes.
Q And you would use those syringes until they were gone?
A Pretty much.
Q And then you would try to reload more syringes?
A In between the cases we would try to get a few more loaded before the next patient is coming in.
Q And tell me about how you got the propofol in the morning.
A Many times it was already set out.
Q And who would set it out?
A A lot of times Keith would come -- Mathahs -- he'd come in early a lot of times and set up the rooms.
Q Keith Mathahs?

A Yes, Mathahs.

Q And so there would be a box of propofol in each room?

A Yes.

Q And how many bottles were in a box?

A Well, it wasn't really a box. Sometimes he would just bring in a handful of bottles.

Q But there would be a number of bottles in each room; correct?

A Yes.

Q What time would you get to work in the morning?

A Usually around 7:00 a.m.

Q Was there two CRNAs on duty about 7:00?

A Well, one of us would be there and, yeah, there would be one in each room.

Q Okay. So always there would be two CRNAs at 7:00, one in each room; correct?

A Yes.

Q And there would be a stock of propofol in each room to use; correct?

A Yes.

Q So you'd never have any reason to take propofol from one room to another; correct?

A Correct.

Q I'm sorry?

A Correct.

Q When you first got to the clinic, I believe you testified that you were mentored, that's my word, but you were shown the ropes by Keith Mathahs; correct?

A Basically, yes.

Q Mr. Mathahs never showed you or taught you how to use propofol; correct?

A No.

Q You were expected to know how to use propofol?

A Correct.

Q So you used propofol, Keith used propofol, Ron used propofol, Linda Hubbard used propofol. There was never any meeting or class to teach you all how to use propofol?

A No.

Q And there weren't any written direction or policies from the clinic on how to use propofol, was there?

A No.

Q Did pretty much all the CRNAs administer propofol the same way?

A I never really observed them very much, but I assume we all did the same thing.

Q At the end of the day, if there was any propofol left over in a sealed container, what would happen to it?

A I'd throw it -- it'd be thrown away.
Q No, if it wasn't opened.
A If it wasn't opened, it'd go back into the -- usually Jeff or somebody would take it back and put it in the tin box.
Q Back into a locked --
A A locked --
Q -- cabinet?
A Yes.
Q Would you ever have that responsibility yourself?
A I think on occasion I may have put -- put them in the tin box, but it was still open because all those cases were going -- he just returned it into the box, and somebody at the end of the day closed it up.
Q Now, why don't you tell me a little bit about the procedure itself? You would be in a procedure room, and a patient would be wheeled into that procedure room; correct?
A Yes. Yes.
Q That patient would for the most time have a hep-lock already started; correct?
A Mostly.
Q And there would be a doctor, a nurse, a GI tech and yourself; correct?
A Yes.

Q And the doctor would -- you would take a brief history of the patient?

A Yes.

Q And what would you want to know?

A Well, we had a list of questions to ask on the back of the anesthesia record.

Q And you did that for every patient?

A Yes. It was rather a rapid history.

Q So you went through and checked the boxes and asked the questions?

A I would ask as quickly as we could, yes.

Q And the doctor would come in and tell you to start the anesthesia?

A Yes.

Q And you would administer how much?

A I usually start around 80 milligrams and see --

Q So 8 ccs?

A -- if they got --

Q 8 ccs?

A About. About. If they were small, it might have been 40.

Q Okay.

A It's sort of a judgment call.

Q And then if you would have to -- if that

patient started to wake up and you'd have to administer more, tell me the procedure in doing that.

A Well, usually if I had -- usually I left the syringe in the hep-lock. And if they started to move a little bit after we turned them, they were going to start, push another 20 or so, 40 ccs.

Q But what if you ran out of propofol in that syringe, what would you do?

A I'd pick up another filled syringe and use it.

Q And if you were out of those ten syringes that you had lined up in the morning, you'd have to go back into the bottle of propofol and reinject the patient; correct?

A Yeah. Get a new syringe and needle and draw some more propofol.

Q And do you believe that to be an aseptic practice?

A Yes.

Q Were you observed by the CDC doing a procedure?

A I recall seeing them visiting outside of the room, but I never saw them come in the room.

Q So you never visibly saw someone from the CDC observe you do a procedure?

A No. But if they did, they were looking in through the doorway because nobody came in the room. It was

darkened. The room was -- you know, the lights are down low and they're working. And if they came in, I wasn't really paying attention to them. I was doing my -- taking care of the patient.

Q Well, the door is closed during the procedure; correct?

A Sometimes it's open.

Q But as you sit here today you don't recall them observing you?

A No.

Q You don't recall them talking to you or interviewing you?

A I don't remember an interview at all, no.

Q Do you know what universal medical practices means?

A You mean universal precautions?

Q Yes.

A Yes.

Q And what does that mean?

A It means your sterile technique in doing your procedures, you know. Either being careful not to contaminate anything and --

Q Do you believe you were observing universal precautions in your administration of propofol?

A I believe so.

Q Now, I believe that you testified that you didn't have many conversations with Dr. Desai regarding the use of propofol; isn't that correct?

A That's correct.

Q Dr. Desai pretty much left the use of propofol to each of the CRNAs; isn't that correct?

A Yes.

Q That had to do with the way it was administered, as well as the amount that was administered; correct?

A That's correct.

Q In your interview with the Metropolitan Police Department, you talked about flushing out a syringe and redrawing. What did you mean by that?

A I don't recall saying that.

Q Do you have any idea what that means? What does it mean to flush out a syringe?

A I guess wasting whatever was in there. I don't know. I don't remember.

Q Okay. The -- you testified that in the beginning in the morning there'd be one CRNA in one room, another in another room; correct?

A Yes.

Q Now, at some point you guys had to have lunch; right?

A Correct. Yes.

Q And tell me about the procedure for -- for the lunch. What -- what happened when one CRNA went to lunch?

A Then we'd cover -- usually we'd cover both rooms.

Q And when you did that, you would use the propofol that was in Room 1 for Room 1, and propofol in Room 2 for Room 2; isn't that correct?

A Yes.

Q What other medications did you have available to you as a CRNA?

A Well, there are -- you mean in an emergency kit or just --

Q Yeah, in emergency.

A -- sitting on our table?

Q Talk to me about what happens in an emergency. What medications would you have available?

A Well, we probably had some epinephrine available for low -- for drop -- dropping a lower blood pressure. And they had IV fluids available if they -- you want to administer it if they got hypotensive.

Q Okay. So you would have some emergency medical drugs; right? Would you have Benadryl?

A There were probably -- in the -- in the kit that they had. It wasn't sitting -- it was not sitting at our

tables.

Q I want you to tell me about the kit that had the emergency medication and what was --

A Well, they kept some -- I imagine they kept some in the -- in the tin box. We really never got to use any of it.

Q I want you to tell me the box, what did the box look like?

A I have no idea.

Q Where was it kept?

A It was there in one of the rooms. I don't know where it was.

Q Well, what if you needed to use it?

A Well, either the circulating nurse or someone around would get it.

Q Would you describe that box as a tackle box?

A I don't know. I couldn't recall.

Q In any -- in any case, the box that had the emergency medication in it did not have propofol in it; isn't that correct?

A Correct. I imagine that -- well --

Q Well, you never went to that so --

A I never went to it. I really don't know if it was in it or not.

Q Well, you never went to that box to get

propofol out of it, did you?

A No.

Q And you never carried hat box from room to room, did you?

A No.

Q I want to talk to you a little bit about -- well, let me go back to that lunch procedure for the CRNAs. Would that procedure also apply of someone had to use the restroom or something? One CRNA would come over and relieve them for maybe a bathroom break?

A Occasionally.

Q And the same thing would apply. You would use the propofol that was already in that CRNA's room for that room; correct?

A Well, I'd use their -- their equipment there, yes.

Q Now, I want to talk to you a little bit about the structure of the clinic as far as an employee of the -- of the clinic. I believe you testified that you were an employee of the corporation. You didn't run any of the operation, is that a fair statement?

A Correct.

Q And you didn't have anything to say about the patient load; isn't that correct?

A I complained about it, but that was about it.

We had no say in how or what they would do, no.

Q Did you have any say in whether 20 cc or 50 cc bottles of propofol were ordered?

A No.

Q So somebody would do the ordering and supply you with the bottles of propofol; correct?

A Yes.

Q Whether they be 20s or 50s?

A Yes.

Q You testified that both the 20s and 50 had a label that said single use; correct?

A They had single use only.

Q And yet the manufacturer would send you spikes for the 50 cc bottles; correct?

A Yes.

Q And that implied to you that that bottle was reusable; isn't that correct?

A Yes.

Q Because the very device of being a spike means that you can go back into that bottle and use it on more than one patient. Isn't that the theory?

A That's the theory.

Q So you had no control over what size bottles of propofol you used, you had no control over the patient load. Did you have any control over billing?

A No.

Q You testified in your direct examination that when you got to the clinic Keith Mathahs told you to bill 31 minutes; correct?

A Well, I questioned what it was about, and he said that there was a --

Q I don't want you to tell me what he said. Just tell me if that's correct. Did he tell you to put 31 minutes or not?

A Several people said that.

Q And tell me who.

A The girls that came down from the billing office.

Q Okay. So these were secretaries --

A Yeah.

Q -- for the billing department?

A I imaging that's where it's from and they said just Dr. Desai wants 31 minutes on these cases.

Q Okay. And they would hand you your anesthesia record because you had billed less than 31 minutes?

A Correct.

Q And it didn't take you long to figure out that you had to put 31 minutes or more on the anesthesia record?

A Correct.

Q But other than that, those situations, Keith

Mathahs or the secretaries from the billing department, Dr. Desai never told you to bill 31 minutes directly, did he?

A Their statement was that's what he wanted.

Q I'm asking you if Dr. Desai confronted you like I'm looking you in the eye right now and said bill 31 minutes.

A He didn't tell me that, no.

Q When you billed the 31 minutes, this was on your anesthesia record?

A Uh-huh. Yes.

Q That record would go where?

A I imagine it went back to wherever they do their billing.

Q The bottom line is you had no idea where it went, did you?

A No. No. And I didn't know it was used for billing, either.

Q So you filled out the record as you were told to fill it out and you never saw it again, did you?

A Correct.

Q You never received any direct payments from any third-party payors, insurance companies, Blue Cross, any of those companies never sent you a check for your anesthesia services, did they?

A No.

Q You got paid a salary of about 120,000 a year. Less? I don't know.

A Yes.

Q Okay. And you got some periodic bonuses?

A Yes.

Q Those bonuses weren't tied to any kind of patient load. In other words, you didn't have to meet a quota. You didn't have to do 50 patients a day to get your bonus, did you?

A There was no quota.

Q And you didn't have to bill so much money to the insurance company to get a bonus, did you?

A I didn't do -- I had no idea what they were doing.

Q You never had a meeting with all the CRNAs and Tonya Rushing or Dr. Desai and said, look, this is how we're going to bill because this bill goes to the insurance company and they're going to reimburse us. Did you ever have any such meeting?

A No.

Q How many patients do you think that you billed this way?

A I don't -- I don't understand the question.

Q Okay.

A I don't bill patients.

Q For each patient -- I understand you didn't --
A Okay.
Q -- bill, and I'm sorry for using that word. Because you feel that you didn't have anything to do with the billing, you put time down on the chart. That was it; correct?
A Correct.
Q How many patients did you put this time of 31 or more minutes on?
A Well, as time went by I think I was automatically putting down 31 minutes on most of the patients.
Q Do you remember the number 5,000 coming out in your Metro police interview?
A Of my patients?
Q Yeah.
A No.
Q Do you remember --
A Possibly. I don't recall.
Q Do you remember the AUSA saying he's looked at 5,000 charts where you billed for 31 minutes or more? Do you remember that?
A Probably. I can't remember.
Q You haven't been charged for insurance fraud, have you?
A No.

Q You haven't been charged for theft, have you?
A No.
Q You haven't been charged with obtaining money under false pretenses, have you?
A No.
Q You haven't been charged with act in reckless disregard of a person or property resulting in substantial bodily harm, have you?
A No.
Q You haven't been charged with criminal neglect of patients resulting in substantial bodily harm, have you?
A No.
Q You haven't been charged with murder, have you?
A No.
Q I imagine you've had a lot of time to reflect on what's happened and transpired over the years; correct?
A Yes.
Q And, in fact, you had a theory as to how the patients were infected, didn't you?
A Yes.
Q And what was that theory that you had?
A Well, I felt a lot of times the -- it could have been the scopes, endoscopes.
Q Okay.

A They weren't --

Q So --

A They were not -- a lot of times they weren't correctly cleaned.

Q Okay. So you possibly thought maybe the scopes caused the infection?

A Yes.

Q And that was based on your observation of that, of the scopes?

A Not just observation, just hearsay in -- in the chit chat in the clinic.

Q So are you telling me you actually never saw dirty scopes?

A I haven't seen a dirty scope, no.

Q Okay. You had another theory, too, about the infection starting in the pre-op area.

A Yeah, the multiple use of their saline to flush the --

Q Hep-locks?

A -- the hep-locks, yes.

Q So in the pre-op area it was custom and procedure to flush hep-locks with saline; correct?

A Yes.

Q And they would reuse that saline on multiple patients; isn't that correct?

A Yes, it's a multiple -- it's a multiple does vial that they used.

Q And you believe that was a possibility for the cause of infection; isn't that correct?

A Yes.

MR. SANTACROCE: I have nothing further. Thank you.

THE COURT: All right. Redirect.

REDIRECT EXAMINATION

BY MR. STAUDAHER:

Q I'm just going to pick up with where counsel left off. So the scopes, the multi-use saline, those were things that you considered?

A Yes, especially after reading many of the reports all over the country about contamination in other places.

Q Okay. Did you ever read the report, the Health District report in this case?

A I did.

Q Okay. And --

A I don't believe completely, but I read a lot of it.

Q Did you read the part where they said it was unsafe injection practices?

MR. SANTACROCE: I'm going to object as to hearsay as to what the report said.

MR. STAUDAHER: I'm asking -- he's been asked these questions for --

THE COURT: Well, overruled.

MR. SANTACROCE: I didn't --

MR. WRIGHT: He did not.

MR. SANTACROCE: -- recite what the report said.

MR. WRIGHT: Objection.

THE COURT: Well, counsel approach.

(Off-record bench conference.)

THE COURT: All right. Mr. Staudaher, restate your question.

BY MR. STAUDAHER:

Q You said you read at least portions of the Health District report; correct?

A That portion, yes.

Q Okay. What portion did you read?

A I just read whatever was on the Internet.

Q Did you read the conclusions of the Health District report?

A Mostly, and I think one of their conclusions was they weren't sure if they'll ever find out where it came from. Sure where the infection came from, you know, from all the --

Q You think the Health District report ended up with they don't know where it came from?

A Well, no, they say where it came from, but they weren't -- they said they were -- could never -- I can't remember how it was worded.

Q Well, what was -- what was your belief as to the conclusion as to where this came from?

A I still think it came from other sources.

Q I'm not talking about that. I'm talking about if you read everything, all the things you told us about. What was the general conclusion as to where this came from?

A Well, the conclusion from the report was it was injection practices.

Q And your observations to the clinic, we've talked about some of the things that you did or didn't do in the clinic; correct?

A Yes.

Q Did you ever observe anyone doing unsafe injection practices at any place in the clinic?

A No.

Q And I'm talking about the saline flushes. Did you ever see anybody doing anything funky with that?

A I didn't observe them either, no.

Q What about injection practices in the actual endoscopy suites themselves?

A I was doing my -- my injections. I wasn't watching anybody else do them.

Q Have you looked at the evidence or any -- any information about how many syringes there were in the clinic, how many bottles of propofol were checked out on a particular day, anything like that?

MR. SANTACROCE: I'm going to object. It's outside the scope.

THE COURT: Overruled.

BY MR. STAUDAHER:

Q Have you looked at it?

A Yes.

Q Okay. Did any of that make sense to you when you read that stuff?

A Well, according to the reports there was -- the conclusion was there was less used than should have been.

Q Less of what?

A Of propofol.

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

MR. WRIGHT: Can we approach --

MR. SANTACROCE: The reports --

MR. WRIGHT: -- the bench?

THE COURT: Yeah, that's -- that's sustained.

Sir, the -- sir, the --

MR. WRIGHT: Can I [inaudible].

THE COURT: Oh, do you still need to approach?

Okay.

MR. WRIGHT: I'm sorry.

(Off-record bench conference.)

THE COURT: Mr. Staudaher, rephrase your question.

MR. STAUDAHER: Thank you, Your Honor.

BY MR. STAUDAHER:

Q In coming to your conclusions, did you do any kind of investigation in this case, independent, your own?

A I -- so many articles the news media had put out. That's --

THE COURT: Okay. And don't tell us what you read in the news, media, or anything like that.

BY MR. STAUDAHER:

Q But, I mean, did you ever go back and talk to anybody at the clinic --

A No.

Q -- for example? Did you ever have heightened observations when things started to break before the clinic was closed as to what was going on?

A I had no idea what was going on.

Q You were asked some questions regarding billing, do you recall that, just a moment ago?

A Yeah.

Q You said you had no idea that what you were doing was for billing purposes. Is that what you said? I'm

talking about --

A What they were doing?

Q -- putting down the times and all of that. You had no idea that was for billing?

A No, I -- I didn't know that was for billing at all.

Q So when they said to you that they wouldn't pay for your services unless you put down 31 minutes, what part of billing doesn't that involve?

A That was -- they mentioned one insurance company that was --

Q But you did it for all the insurance companies.

A I know. Because I was under the impression that the charge for anesthesia was like $75 or $150, something like that. That's all I remember. I asked several times and nobody ever could give me a straight answer.

Q And was one of those persons Keith Mathahs? Did you ask him, confront him about this whole thing about the 31 minutes, why we have to do it?

A Not really. We didn't discuss it. I was asking in the clinic, you know, and nobody seemed to know that I recall.

Q The record that you put down, that you put down just the time, they had you just fix the time; right?

A Correct. Yeah.

Q Okay. But you went ahead and fixed more than just the time, did you not?

A Yes.

Q I mean, you went back and actually added vital signs and so forth; correct?

A Yes.

Q And if I got your testimony correct before you said it was so that if anybody ever looked at it those would match up; is that right?

A Yes.

Q Now, clearly if you're in a procedure for ten minutes with somebody and their vital signs and oxygen saturations and blood pressure, all of that are reading at a certain place, and then they're not with you anymore for 15 or 20 minutes and yet you continue to record all of that stuff, that's false information; correct?

A Yes, it was.

Q And you were putting that in a medical record?

A Yes.

Q In 30 plus years of working in the medical field and anesthesia you said you had never done that before.

A No. I just --

Q Is that right?

A That's correct.

Q So when you come here to Las Vegas to Shadow Lane and you're told to put down 31 minutes and you decide to put false information in the record beyond just that time, why did you do that?

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

THE WITNESS: Because they just --

MR. SANTACROCE: It's a compound question. 31 minutes has nothing to do with false information in the record, other false information. It's two separate issues.

THE COURT: Okay. So make two questions.

MR. STAUDAHER: Okay.

THE COURT: You can ask him why did he do --

MR. STAUDAHER: Sure.

THE COURT: -- the 31 minutes, and why did he do other information.

MR. STAUDAHER: Fair enough, Your Honor.

BY MR. STAUDAHER:

Q The 31 minutes.

A Yes.

Q Knowing that that was false information, it wasn't accurate; correct?

A Correct.

Q Right? And that's going to be for a medical record; correct?

A Yes.

Q And in your training with regard to medical records, were you ever trained that it's important to actually write down what actually happened to the patient?

A Yes.

Q And why would that be? Why would that be important to have accurate information of a patient's record, how they did under anesthesia, things like that?

A To see the history of their progress at the procedure.

Q And in case anybody had to look at it later on to rely upon that maybe?

MR. SANTACROCE: Objection. Leading.

THE WITNESS: It could be, yeah.

THE COURT: Yeah, don't --

BY MR. STAUDAHER:

Q Well, would there be other reasons why that would be the case?

A It was just to match up the time that we put down.

Q Okay.

A That we were told to put down.

Q So the time is going to be wrong, but you agree to do that. Again, what is the reason you did that?

A Match up the time.

Q The time.

A To match up --

Q When they come back and --

A -- the vital signs with the time because most of the --

Q No, I'm not talking about the vital signs. We're going to break it apart into two different parts.

A Okay.

Q The time alone, when they come to you and say it's got to be more than 31 minutes, Dr. Desai wants that.

A Okay.

Q Would you have done it if you didn't believe Dr. Desai was the one who wanted it? It was just a secretary walking down saying put down 31 minutes, would you have done it?

A No.

MR. SANTACROCE: Objection. Calls for speculation.

THE COURT: State your question again.

BY MR. STAUDAHER:

Q If it wasn't Dr. Desai that wanted it and it was just a secretary walking down, would you have just put down 31 minutes if she told you to?

A No. Several times I used to tell them to put it down themselves because I didn't know why they wanted it in the first place.

Q Did it make you uncomfortable to put down

false information like that?

A Yes, it just -- after awhile it would just get annoying because they used to come in a lot of times while we're doing other cases and they wanted the time as such. So I think automatically we just started putting it down because -- just to be, you know, not bothered.

Q Okay. Now, the second part of that.

A Yes.

Q Okay. I -- I get you that you think Dr. Desai wants it, and you agree, do you not, that this was for the purpose of at least submitting to an insurance company for reimbursement because --

MR. SANTACROCE: I'm going to object to --

BY MR. STAUDAHER:

Q -- they wouldn't pay if you --

MR. SANTACROCE: -- to State's --

BY MR. STAUDAHER:

Q -- didn't do it?

MR. SANTACROCE: -- to State's testimony that Dr. Desai wanted it.

THE COURT: Well, overruled.

BY MR. STAUDAHER:

Q They wouldn't pay if you didn't do this?

A Yes, the insurance company -- I was told they wouldn't pay unless it was 31 minutes.

Q Now, does that imply that if the anesthesia is less than 31 minutes that the insurance company is not going to reimburse? Is that what you were told?

A Correct. And I -- if they had their insurance, why should they have to pull it out of their pocket to pay for it? It was a basic outpatient procedure. Most of those have a basic pay, I thought. I don't know. I just assumed that that's the way it worked.

Q Well, so you know that when you put down information on your anesthesia record that somebody is going to pay for what you put down there; correct? The patient or the insurance company or someone?

A Yes. Uh-huh.

Q So you know that the purpose of what you write down is for billing; correct?

A I imagine, yes.

Q Okay. You imagine yes?

A Well, I imagine they paid for the procedure.

Q Okay. Now --

A And not -- and not particularly for anesthesia.

Q Let's put that aside for a minute.

A Okay.

Q Okay? The anesthesia record, normally your vital signs would have ended at the 10 minute mark or the 15

minute mark or whatever it was; correct?

A Yes.

Q They come back to you with a sheet and they say fix the time.

A Correct.

Q You would fix the time; is that right?

A After enough badgering, yes, I did.

Q Okay. And then did you -- you took it upon yourself to then alter the vital signs so that it matched with the time; is that -- is that correct?

A It would match the time, yes.

Q And why, then, if only the time mattered did you alter the vital signs to match up with that time?

A I just -- I just did it. I don't know. I didn't have a good reason.

Q Isn't the reason because you said before --

MR. SANTACROCE: Objection. Leading.

MR. STAUDAHER: Actually, I'm clarifying what he's previously --

THE COURT: All right.

MR. STAUDAHER: -- said before, Your Honor.

THE COURT: Go ahead.

BY MR. STAUDAHER:

Q Isn't it true that you testified awhile ago, not today, but yesterday when you were here, that the reason

you did that was so that the record, if anybody looked at it, the record would match up?

A That's correct, yes. That's the only reason we did it.

Q I mean, clearly, if somebody looks at the record and they see 31 minutes of anesthesia time and they look up and they see vital signs for 10 minutes --

MR. SANTACROCE: Objection.

BY MR. STAUDAHER:

Q -- that's going to be a problem.

MR. SANTACROCE: Argumentative, testifying.

THE COURT: Yeah, that's sustained.

BY MR. STAUDAHER:

Q You were asked some questions about, well, the RNA has got to -- Dr. Desai let them use propofol the way they wanted; right?

A Yeah.

Q Remember that?

A Yes.

Q Do you remember talking to the police, talking to the FBI, and actually testifying yesterday about that very issue, about whether or not you had free reign to do with propofol as you saw fit?

A Yes, I think.

Q Did you say that there was any restrictions on

what you did with the propofol in any of those forms?

A No, the only -- the only restriction was not to use as much propofol as we might want to.

Q In the situations where you wanted to give more propofol --

A Yes.

Q -- clearly you believe that there is a medical indication for that. You testified to that; correct?

A Yes.

Q Would that mean that you wanted to give more propofol to a patient?

A Yes, right.

Q And in those instances when Dr. Desai would tell you, no, don't give it, you indicated the scope wasn't right at the anus, it was in the patient. Because you said he would just draw it out quickly, and you used kind of a serpentine motion to indicate the scope was well into the patient; is that correct?

A Yes.

Q Okay. So at that point you believe that it's medically necessary to give more, and you're being told not to give more.

A And at -- at that point, yes. But --

Q Okay.

A -- because he was going -- he said he was

through and I figured if he's going to remove the scope and it wasn't necessary at that point.

Q Well, you know the scope at the time you make that decision to give more, you know the scope is well within the patient; correct?

A Yes.

Q And you said that you -- when you testified before that your concern was that there might be a perforation or something because the scope is inside the patient and the patient is starting to move around.

A Right.

Q Is that what you testified?

A Yes.

Q So clearly there is some limitation there on the propofol; is that correct?

A Yes.

Q You also, did you not, testify and tell the police that Desai wanted you to use less propofol to put patients to sleep?

A Well, he was -- he was always saying that, yes.

Q And wasn't that the whole purpose behind this saline flush thing?

A Yes.

Q That there were lots of pressure to cut costs,

and propofol was on the top of the list. Did you not testify about that?

A Yes.

Q With regard to history. Remember you were asked some questions on cross-examination about you would take a history on the patient --

A Yeah.

Q -- on the back of your anesthesia form?

A Correct.

Q And typically, if I understood correctly from your -- your statement, you said that it was basically the patient rolls in and you start to do a quick sort of history; is that right?

A Yes.

Q Is that where it would take place?

A A lot of times it took place in the room if we had time. Sometimes it took place out in the holding area, but --

Q Did you ever get pressure from Desai to shortchange that, to limit how much information you'd get?

A There were times when we had to make --

Q I'm talking about Dr. Desai. Would he be the one to say move it along, you don't need to do that, anything like that?

A He'd want to start it right away and we'd just

have to make it quick, as quickly --

Q Now --

A -- as possible and not cover --

Q -- what is the purpose of you doing that history part on the chart?

A Find out their -- if they had any previous problem, medical problems, or any diseases or any operations.

Q Would this be potentially important for you in getting anesthesia and caring for the patient during a procedure?

A Yes.

Q So you're getting rushed or you're limited in what you can do. Would that be a compromise of patient care in your view?

A Well, I -- these patients, most of the patients were rather healthy, and that's, you know, probably a reason we -- I probably overlooked some of that reasoning.

Q Why did you even do it, then? Why do you even take a history if that doesn't matter?

A Well, I wanted to know if they had allergies or any problems or any serious medical problem.

Q So it's important when you do the procedure to have that information?

A Yes, it is. Uh-huh.

Q Would you feel comfortable in not having any

of that information and just having a patient roll in and do a procedure on them?

A No.

Q And I think your words when counsel asked you was you took a brief history, did a rapid history as quickly as you could.

A Correct.

Q And even at that you're still getting rushed by Dr. Desai to do it faster?

A Yes. He just wanted to start cases and move along.

Q I have to ask you, related to the CDC, you said you were present when they came in and did their investigation. You were at Shadow Lane when that happened; correct?

A Yes.

Q And they were observing procedures?

A Yes.

Q And you said you were, I think on cross, you were in a room. You don't know if they came into the room. The door may have been open, something like that.

A Yeah, I never saw them come into my room.

Q Okay. Do you remember ever talking to them at all?

A One person I -- I don't know if I said --

probably greeted her something. We didn't speak about much of anything that I can recall.

Q Okay. I'm going to ask you about a statement, one statement, and tell me if you remember telling this to the CDC. And that's the time frame we're talking about is when they're there in 2008, of CDC personnel talking with you. Okay? Did you ever tell the CDC that you were instructed to reuse syringes to provide additional propofol to patients, but that you did not do so? Did you ever say that?

A I might have. I don't recall saying it, but I might have.

Q So you might have said that, but you don't remember as we sit here today?

A I don't remember, no.

Q The propofol reuse and the syringe reuse issue that you've been questioned about, have you used a syringe, single syringe, more than one time on a single patient?

A on the same patient, yes.

Q Yes.

Q Have you used a bottle of propofol and a single syringe going into the bottle more than one time on a single patient?

A Yes.

Q Have you used an open bottle of propofol that you used on one patient on a subsequent patient?

A Yes.

Q In that situation have you ever used an open bottle of propofol that you went into to draw medication out of, went into a patient, went back into the bottle with that same syringe, and then took that bottle and used it on another patient?

A No.

Q So in the situation where you've used propofol from patient to patient, is that essentially has just gone in with a clean needle and syringe every time you've entered the bottle?

A Yes, clean needle, clean syringe.

Q You were also asked about a common bottle of lidocaine that was in the procedure rooms as well. Do you recall that?

A Yes.

Q Did you use lidocaine at times during these procedures?

A Yes.

Q If a patient required multiple injections, meaning beyond the 10 cc syringe that you had, you used all of that up with, say, lidocaine in it initially for a patient.

A Uh-huh.

Q And before I ask that question, what is the purpose of the lidocaine again?

A It's to relieve the discomfort from the -- the alkalinity of the medication. It burns a little bit.

Q Would it be necessary, or in your experience did you ever use that after the patient was asleep? Did you add lidocaine to it after the patient was asleep?

A Not if I redrew a new syringe and needle, no.

Q It wouldn't be necessary at that --

A No.

Q -- point? Okay. So you would use the lidocaine on the first essentially injection or syringe full --

A Correct.

Q -- is that right?

A Yes.

Q And would you ever go back into the bottle of lidocaine with a used syringe?

A No.

Q Would there ever be a reason to do that?

A Only if there was -- it was at the end of the bottle and there was some -- still some residual in it, I would draw that up on that same patient and use it on that patient.

Q Would you ever need to use lidocaine after the first dose --

A No.

Q -- on a single patient?
A No.
Q Okay. So that would be for a new patient?
A Correct.
Q And you're not going to use a new syringe -- or a used syringe on the new patient; correct?
MR. SANTACROCE: Objection. Leading.
BY MR. STAUDAHER:
Q Well, are you ever going to use a new syringe -- or a used syringe on an additional patient?
A No.
Q Would you ever, then, enter that bottle with anything other than a brand new syringe for use on that very first patient?
A I'd use the -- the syringe that I used on the patient initially.
MR. STAUDAHER: Court's indulgence, Your Honor.
THE COURT: Uh-huh.
MR. STAUDAHER: Pass the witness, Your Honor.
THE COURT: Recross.
MR. WRIGHT: Yes.

RECROSS-EXAMINATION

BY MR. WRIGHT:
Q Mr. Mione, I'm confused about this instruction to reuse syringes. Okay?

A Okay.

Q You told the police over and over that no one ever told you to reuse needles and syringes; correct?

A Yes.

Q I mean, that's -- that's what you told them; correct?

A Okay. Yes.

Q Okay. And they asked you did anyone, Keith, CRNAs, Dr. Desai, did anyone tell you reuse needles and syringes, and you said no; correct?

A That's correct.

Q Okay. And that's true; right?

A Yes.

Q You -- in fact, you told them the only thing I was told by Dr. Desai was don't use so much propofol; right?

A Right.

Q Okay. Now, you were just asked if you told the CDC that they told you to reuse syringes.

A I don't recall that.

Q What?

A I don't recall that.

Q Okay. Well, what -- what would -- assuming you were interviewed -- I thought the CDC didn't interview you.

A I don't recall an interview from them.

Q Okay. So there was no interview; correct?
A It may have been a casual question, but I don't recall that.
Q Okay. Why do you think there was a casual question?
A I don't recall. It's been five, six years ago.
Q Well, if -- if they interviewed you and said, Mr. Mione, did anyone tell you to reuse syringes --
A Yeah.
Q -- I presume you would have said no because that's what you've testified to and told the police --
MR. STAUDAHER: Objection.
BY MR. WRIGHT:
Q -- correct?
MR. STAUDAHER: Speculation, Your Honor.
THE WITNESS: If they -- if they ever interviewed me. I don't know if they did or not. I can't remember.
BY MR. WRIGHT:
Q Okay. But if they did, Mr. Staudaher read you some statement from somewhere. He read you a statement.
MR. WRIGHT: Where is that statement?
THE WITNESS: That was years ago.
THE COURT: So as you sit here today you don't remember being interviewed by the CDC?

THE WITNESS: No, I don't remember at all.

BY MR. WRIGHT:

Q Did you report to the CDC during an interview that you had been instructed to reuse syringes to provide additional propofol to patients, but you would not -- but reported that you did not do so?

A I don't recall saying it, but that's what I would have told them.

Q Pardon?

A I don't recall being interviewed. I don't --

Q Okay.

A -- recall the statement. It may be there. If it's there, then it's there.

Q Okay.

A It's a long time ago.

Q But if -- if you were interviewed, you wouldn't have lied to them, would you?

A No, but if I was interviewed, they would probably sit me down someplace and interview me. And they sort of catch you and -- all I remember is them walking around and, you know, doing what they were doing. I don't recall having any formal interview. They may have asked that question in their --

Q Do you even remember the -- whether you were interviewed by the BLC as opposed to the CDC?

A BL -- who is the BLC?

Q Bureau of Licensing of something. Do you remember -- do you remember a couple of young ladies with clipboards?

A There were a few, yes. And some -- some man with them and they were walking around. I didn't know who they were.

Q Okay. Do you remember --

A I thought they were inspecting the place to, you know, accredit it or something.

Q Okay. Do you know when this was?

A I was -- I think I was at another clinic and I was called over there that day.

Q Okay.

A I think I was at --

Q And is this the day you gave a blood sample?

A Yes, they called me back because they wanted a blood sample.

Q Okay. Called you back. You weren't there. You were at Burnham?

A I believe I was at Burnham.

Q Okay. And they said come over and give a blood sample; right?

A Well, when I got over there that's what they said. I had no idea what they wanted.

Q Okay. But I just want to focus in on the day, okay?

A All right. Yes.

Q Is that the blood -- you gave a blood sample; right?

A Yes.

Q Okay. And do you know who you gave it to?

A No. I imagine it was from the CDC. I don't know who they were.

Q Okay. And at that time did they interview you about your injection practices and propofol?

A No, they just asked me some of my history --

Q Okay.

A -- before they drew the blood. They were some -- they weren't even the people walking around, I don't believe, downstairs. There were older women downstairs.

Q Okay.

A These were young people.

Q So -- so if they contend they spoke to someone named Vince --

A Uh-huh.

Q -- and Vince says I was ordered to reuse syringes to give propofol, that wouldn't be this Vince; correct?

A I don't believe I ever said that.

Q Okay. Thank you.

MR. WRIGHT: Nothing further.

THE COURT: Mr. Santacroce?

MR. SANTACROCE: Nothing.

THE COURT: Mr. Staudaher?

MR. STAUDAHER: Nothing further, Your Honor.

THE COURT: All right. We have a couple juror questions up here.

A juror wants to know when you worked at the VA and the second endo location, what time did you put on the CRNA records? The real start and stop time, or did you also use this 31-minute time.

THE WITNESS: No, I put the real start time and ending time.

THE COURT: Okay. Is that for both the VA and the Endo 2 clinic?

THE WITNESS: Endo 2, I'm not sure.

THE COURT: Okay.

THE WITNESS: I don't recall.

THE COURT: But at the VA you used the --

THE WITNESS: Yes.

THE COURT: -- actual time? Okay. And then another juror wants to know if you ran out of propofol either during a procedure or between procedures, meaning there's no more bottles of propofol in the room, did that ever happen?

THE WITNESS: I don't believe so. I know I used to try ahead of time to have someone bring some in.

THE COURT: Okay. Well, that kind of gets to the question. Did you ever have to get a resupply of the propofol, meaning the bottles themselves?

THE WITNESS: Yes, usually the -- the head nurse running, you know, in charge of the clinic would bring in some more propofol before it was all used up or if there was, you know, some kind of interval we would ask him to bring -- bring some more bottles in.

THE COURT: Okay. So it was normally Jeff would bring the bottles in?

THE WITNESS: Most of the time.

THE COURT: Okay. Did you ever have to go and get the other bottles, the additional bottles of propofol yourself?

THE WITNESS: I have on occasion.

THE COURT: Okay. And where did you go to get the additional bottles of propofol?

THE WITNESS: Usually I have to find someone with the key and open the box and get some.

THE COURT: Okay. So the box was under lock and key?

THE WITNESS: Yes, it was -- sometimes it was in the room. Sometimes it was in the area where he kept it. I think

it was kept in between the other two rooms. I wasn't -- I'm not sure where it was exactly kept.

THE COURT: Okay. And then who had he keys to get the -- open the box?

THE WITNESS: The supervisor. Jeff would.

THE COURT: Okay.

THE WITNESS: He's normally the supervisor.

THE COURT: Okay. Was he the only one that you ever went to for propofol or did other nurses have keys?

THE WITNESS: Yeah, sometimes if they had some unopened bottles in the room I'd grab one from there and use it.

THE COURT: From another room?

THE WITNESS: Yes, but it was, you know, a full bottle. It wasn't a half a bottle or anything.

THE COURT: Okay. So if there was an unused bottle in another room, you might just --

THE WITNESS: Yes.

THE COURT: -- run over there and grab it?

THE WITNESS: If I needed it quickly, that was the best way to get one.

THE COURT: Now, was there in your memory ever a time when you ran out of the bottles of propofol during a procedure or right before you were supposed to start a procedure or anything like that?

THE WITNESS: Well, they'd have to wait until I got some.

THE COURT: Okay. Do you remember ever having to hold things up to get more propofol?

THE WITNESS: Not really.

THE COURT: Okay.

Mr. Staudaher, any follow up to those --

MR. STAUDAHER: Just one.

THE COURT: -- last questions?

FURTHER REDIRECT EXAMINATION

BY MR. STAUDAHER:

Q Just so I'm clear on this, you said that you would necessarily go over and -- and maybe grab, just run across to the room and grab a bottle of propofol and bring it back?

A I'd ask them if they had one. If someone was in there they'd give it to me, or if there was one there still capped, I'd take it.

Q Okay. And did I understand you correctly in saying that you would never go over and grab an open bottle and --

A No.

Q -- bring it back? Did you ever yourself take an open bottle to someone else, another CRNA, Ralph McDowell, anybody like that?

A I don't believe so.

MR. STAUDAHER: Nothing further, Your Honor.

THE COURT: Mr. Wright, any additional questions?

MR. WRIGHT: No.

THE COURT: Mr. Santacroce, any additional questions?

RECROSS-EXAMINATION

BY MR. SANTACROCE:

Q So when you ran out of the propofol on these rare instances and Jeff brought you another bottle, it wasn't in an open bottle, it was a sealed bottle?

A No, they were -- they were always from the supply.

Q So -- and those supplies were always full, sealed bottles?

A Yes.

Q With regard to the times on the anesthesia record, the start time you always recorded accurately, didn't you?

A Yes.

Q So it was only the ending time of 31 minutes?

A Yes, sir. Correct.

Q Okay.

THE COURT: All right. Mr. Staudaher, any additional questions?

MR. STAUDAHER: No, Your Honor.

THE COURT: Do we have any additional juror questions for this witness?

All right. I see no additional juror questions.

Mr. Mione, thank you for your testimony. Please don't discuss your testimony with anyone else who may be called as a witness in this case. Thank you, sir, and you are excused.

State, you may call your next witness.

MS. WECKERLY: Ralph McDowell.

THE COURT: All right.

Sir, just right up here by me, please, up those couple of stairs. Face this lady right here who will administer the oath to you.

RALPH MCDOWELL, STATE'S WITNESS, SWORN

THE CLERK: Thank you. Please be seated.

THE WITNESS: Your Honor, can I set this down on the floor?

THE COURT: Sure, go ahead. And, sir, if you need a break, just let me know and we'll take one.

THE WITNESS: Thank you very much.

THE COURT: All right.

THE WITNESS: That's a distinct possibility.

THE COURT: That's what I understand.

THE CLERK: Will you please state and spell your

first and last name for the record.

THE WITNESS: First name Ralph, R-A-L-P-H. Last name McDowell, M-C-D-O-W-E-L-L.

THE COURT: All right. Thank you.

Ms. Weckerly.

MS. WECKERLY: Thank you.

THE WITNESS: If I'm not speaking loudly enough, tell me.

DIRECT EXAMINATION

BY MS. WECKERLY:

Q Okay. And if you need water, it's just right in front of you. Okay?

A Oh, I don't want to do that.

Q Okay. How were you employed back in 2008?

A 2008. It was 2008 we -- what was the year we closed?

Q 2008.

A Okay.

Q How were you employed --

A Forgive me.

Q -- before that?

A Well, from February to 2002 until closing time, whenever that was, I was employed at the Gastroenterology Center of Nevada, for the most part the one at Desert Shadow and Burnham.

Q And what did you do for the center? What was your job?

A I was the nurse anesthetist who administered propofol and generally took care of the patients who were having endoscopy procedures.

Q And can you tell us a little bit about your educational background that allows you to work as a CRNA?

A Okay. Now we're getting into the old stone age. Let me see, from --

Q Generally the years, the best of your recollection.

A From 1962 to 1965 I attended Alexian Brothers Hospital School of Nursing in Chicago. From 1965 to 1967 I went to St. John's Hospital School of Anesthesia in Springville, Illinois. And then I worked here after I graduated for maybe a year or maybe 18 months. And then I moved to St. Louis, Missouri. And after that pretty much worked at -- at hospitals as a CRNA.

Q Okay. And so you worked like in a hospital setting or in a surgical setting in St. Louis?

A Yes.

Q For a number of years?

A Yes.

Q Where did you go after you were working in St. Louis?

A Well, 20 years, to me exact.

Q Okay.

A Which is much longer than anyone should stay in St. Louis. After that I left. I moved to California and worked at a plastic surgery center. That was 1989 to 1990. After that I moved on to Orange County and worked at FHP, which was a staff model, basically, hospital until 1996. And then from 1996 to about 1997 or maybe a little later into that year I was traveling. Then I came back and went to Texas where I worked about six month, again in a hospital. And then I came back to Los Angeles, and then I started doing locum tenens for various agencies which --

Q Okay. Let me just stop you there. What -- what was the term that you just said?

A Which one is that? Locum tenens? Oh, that means the agency sends you out God knows where in the country and you -- they pay your room and board and food and you administer anesthesia for a set amount of time and then you return.

Q So in that -- in that regard you were kind of an independent contractor?

A Yeah, well -- yeah, I -- yeah, I guess you could say that. Yeah.

Q Okay.

A Yeah.

Q And we're recording in here, sir, and I -- I apologize if I interrupt you. But you have to let me finish my question before you answer, and I'll do the same thing for you.

A Okay. Sorry.

Q That's okay. It's a little unnatural, but we'll get a better record that way.

A Okay. Fine.

Q After you worked in Los Angeles, and I would call that an independent contractor but I know there's a more official term, where did you go after that?

A Okay. Now, what year are we talking about?

Q After you were in Los Angeles.

A Okay. From when I -- I got to Los Angeles in 1989, worked until 1990 at a surgery center in Beverly Hills.

Q Okay.

A For a plastic surgeon. All right. And then in 1990 I left there and went from -- went to FHP in Fountain Valley, California, where I worked from 1990 to 1996.

Q And what happened after --

A Okay.

Q -- 1996?

A And in '96 I decided I might want to retire, so I started traveling to the Far East and then -- and then I came back. My father at the time was not well, so I thought I

better come back to the States. They live in Milwaukee, Wisconsin, so I came back to the States in probably around -- I'm getting a little fuzzy -- around April of 1997. I believe I took a job in Texas for about six months until, well, whenever six months was. I think that would probably have brought me up to about -- I don't remember.

But anyway, after I came back to Los Angeles, then I went to work for the various agencies, and I did that right up until the end of about 2001, which would bring me to 2002, pretty much. Took a couple of months of vacation, and then went to work for the gastroenterology center in February of 2002.

Q Okay. And so in total, how many years have you worked as a CRNA?

A Too many. Well, 20 years in St. Louis, then another six years in California, and then another three or four years, or whatever it was anyway, until I got to gastroenterology center, and then another six years -- six years at the gastroenterology center.

Q So over -- I mean, over 30 years?

A Oh, yes. Yes. Yeah.

Q Okay. And you started at the gastro center in 2002?

A February of 2002. That's correct.

Q How did you get your job there? Who did you

interview with?

A Pardon me? Who did I --

Q Interview with?

A Oh, well, I -- I believe I answered a -- I believe I answered an ad in some magazine. It could have been an anesthesia magazine. But anyway, I called up and spoke with Dr. Desai and I made an appointment with him. And then we came to Las Vegas, and then I interviewed with him and things went pretty well. So I guess he hired me then, and then told me when I would be starting.

Q And what -- what clinic did you work at?

A Of the -- of the -- oh. Well, it later became to call -- it later came to be called Desert Shadow. It wasn't called that when I got there, but it was located on Burnham and -- Burnham and, what's the street, Flamingo.

Q Okay. And we've been calling it the Burnham clinic. Is that okay if I use --

A That's fine.

Q -- that term?

A Yeah.

Q Okay. Who were the doctors that you worked with at Burnham --

A Okay.

Q -- when you first started?

A Okay. Well, the first one -- actually, I had

an interview with Dr. Sharma, so he was -- and I believe -- well, all right, the first two days that I was there I was asked to go to the Shadow clinic. Is that the word you're using?

Q Yes.

A I think for one or two days so that Dr. Desai could observe me work. I don't believe it was any more than two days and then I came back. And when I came back I was working with Dr. Sharma, Dr Mason, Dr. Sood. Who else?

Q Herrero?

A Herrero? Was I there that early? Maybe Herrero, but I --

Q He might not have been there when you first started?

A Yeah, I think maybe he was -- yeah, I think -- if my memory serves me right, he came a little later than that.

Q When you were at Burnham when you first started, was there another CRNA there that worked with you or did you work by yourself?

A At Burnham?

Q When you first started, yes.

A No, I was the only one. Now, I -- before, like I say, there was a lady named Ann Marie who was working at Shadow whom I observed work maybe once or twice, you know,

just to get an idea of how to do things. But when I came to -- excuse me. When I came to Burnham I was pretty much the -- the man.

Q The only one?

A Yeah, as I recall.

Q How many procedure rooms were there at Burnham when you first started?

A Just one.

Q And how would you -- I mean, explain how your day went when there was just one procedure room. Did you just do all the patients that were scheduled that day? Or you describe that for us.

A Well, pretty much. I mean, they just came in one after the other and I would just do them as they came. I don't know. I could be more specific, I suppose.

Q Well, let me ask you this. I sort of asked a vague question. In your experience, typically how long does a regular colonoscopy take?

A A colonoscopy?

Q Uh-huh.

A Well, that pretty much depends upon the practitioner. Dr. Sharma was -- I always felt that he took a little longer. He was very meticulous, very, you know -- if I may -- if I may venture an opinion. I mean, he was very meticulous about things and it seemed like he took a little

slower.

But, again, a lot of times it would depend upon the procedure because they weren't all just routine procedures. A lot of times they would run into things, you know, unexpected. And so on average, if I had to give you an average, I'd say maybe 10, 15 minutes, you know.

Q Okay. And an endoscopy?

A You mean upper endoscopy?

Q Yes.

A Well, those were usually quite a bit quicker, maybe -- maybe five minutes.

Q Okay.

A Three minutes. Depending on who was doing it.

Q And when you first started at Burnham when you only had the one procedure room, how many patients do you think you saw in a day?

A When I first started?

Q [Nods head yes].

A Oh, maybe about 15 to 20. That is, again, as I -- later on things picked up. But I mean, I -- the most honest answer that I can give which may not even be, you know, a true answer, but it's 15 to 20 I would -- I would think. Yeah.

Q Okay. And those would all --

A Depending on the day, you know.

Q And those would all have been in that one room because when you first started there was just one procedure room?

A Yes. I was the only one there and I seem to have been in that one room, so I guess, yeah.

Q Okay. At some point there's two procedure rooms at Burnham; is that right?

A Well, we -- after we moved downstairs, I mean, we moved the entire operation from the third floor to the first floor, at which time there were actually three procedure rooms, two of which were used most of the time, one of which would open occasionally, depending on maybe if some other doctor came along and wanted to work as well.

Q Do you remember when it was you moved downstairs?

A Oh, gee, you mean the year?

Q Approximately.

A Maybe -- maybe two years after we started.

Q Okay. So --

A I honestly don't remember, but maybe that's, you know, to the best that I can recall.

Q Sure. And when you have the two rooms, and I think you said there was a third room that -- that would sometimes be used, but primarily procedures were done in those two rooms?

A Two rooms, yes.

Q Was there another CRNA with you at the Burnham location once you had two rooms going?

A Well, when we moved down there there must have -- yeah, I think we had two CRNAs working down there. Myself and I believe Vince Mione was -- was he the first one? I believe he was.

Q Vince Mione?

A Yeah.

Q So he would -- he would work out there with you at Burnham?

A In a different room. I was in Room A, I think, and he was in Room B.

Q Were the -- were the rooms at Burnham designated A and B?

A I believe there was something. Yeah, I think so. I believe it was. I mean, that's how I referred to them --

Q In the --

A -- A, B, and C. Yeah.

Q In the morning, how would you get the propofol that would be used in the procedures for that day? How would you get it?

A Well, if I was the first one there, which was frequent, there was a -- just off the recovery room there was

a room which kept all the supplies. So I would go into that room and pick -- usually pick up two of the small vials, the 5 cc vials. I would pick up two packages. Some -- one of which might have been opened already. I mean, none of the vials were open, but maybe one of the packages was open, maybe not. And I would put one in my room, put one in the other room.

Q Well --

A And then allow whoever was in there to do his own thing.

Q Okay. And how much are you putting in each room at the start of the day?

A Well, it would have been -- I think there was -- how many were in there in those boxes? 25, I think, or something like that.

Q 25 vials?

A Yeah. Either 25 or 30. I --

Q And each vial, do you remember how big -- how many cc were --

A Well, those were the smallest vials, which I guess were 5 ccs.

Q Okay. Your recollection is they were five?

A Or was it 10 ccs? Well, it would have to be 10 ccs, yeah, because I would frequently draw up the entire vial in a 10 cc syringe.

Q Okay.

A So it would have to, yeah.

Q So at first you had smaller vials. Is that yes?

A That's correct.

Q And you would check them out in the morning and put a supply --

A Yeah.

Q -- in each room?

A Yes.

Q Okay. So then you, I think, said that you typically worked in what you call Room A?

A Yes. Correct.

Q When you were starting the day before patients got there, what process would you go through to get ready for the procedures that you were going to do throughout the day?

A You mean with respect to the propofol and stuff?

Q Yes.

A Okay. Well, I had the -- I may have opened up maybe two of them, draw them up in a sterile syringe, put the cap on, put it down, and maybe draw up another sterile syringe, put the cap on, and put it down just in case for the -- for -- so I'd be ready for the first procedure. And if during the first procedure more was needed than one syringe, which was very common, then I would have another one ready to

go and I wouldn't have to fumble around asking the doctor to wait while I opened up another one just for the sake of keeping things moving.

Q Now, does it take a lot of time to put a needle on a syringe and then draw up additional propofol?

A Does it take a lot of time to put the needle on the syringe?

Q Yes.

A Well, not really. You open it up and then you have to open up the -- I mean, it takes enough time that if you keep doing it it seems like you're wasting time. But not ordinarily much time, no.

Q Well, what was the reason you had for predrawing or prefilling your syringes?

A Just so I'd be ready to -- in other words, if during the procedure I suddenly need another one, all I have to do is go and pick it up rather than saying, wait, you know, I have to draw this up.

Q Okay. And how many would you get ready for a single procedure?

A Probably about two.

Q Two? How -- how many ccs were the syringes?

A The syringes I used? Well, there was two size syringes, 5s and 10s. I myself would ordinarily want to start with a 10 because I found that it usually took about that much

to get the patient initially asleep and able -- enough to do the procedure. 5 would -- it would be a rare occasion that you could give 5 ccs to a --

Q Okay. And you would get two ready for the first case of the day, is that --

A Yeah, right.

Q -- is that fair?

A That's correct.

Q Did you ever put lidocaine in your syringe?

A Yes, I did. Well, there -- may I answer? I don't want to interrupt.

Q Yeah, go ahead.

A Sometimes I would -- you know, again, the lidocaine was there, too. We did have lidocaine and we'd have, you know, some saline also in case we needed it. I would -- sometimes I would draw up maybe a cc of lidocaine in the syringe, fill the rest of it with propofol, or on occasion just draw up lidocaine in a separate 5 cc syringe and use that ahead of time.

Q Okay. The -- if you used a syringe with lidocaine and propofol --

A Uh-huh.

Q -- and you had a second syringe of propofol ready for the same case; is that right?

A Yeah. Well, I would have been -- I'm sorry.

Q Would that -- that's okay. Would that second syringe have lidocaine in it as well, or only the first one that you were going to use?

A Probably -- probably just the first one for me.

Q Okay.

A Yeah.

Q And if that first syringe had lidocaine in it, would it hold the full 10 ccs of propofol?

A Well, if you drew it past -- I mean, there was always a little bit of slack, so at the very top you would -- there would be a line that was drawn that said 10. And if you pulled it a little farther it would -- but I wasn't always slavish about doing that. Sometimes I would just say, all right, I'm giving him 9, not 10.

Q Okay. And in a -- in a typical case did you find that you went into the second syringe, meaning, you know, you had to use the first one completely, and then you started using the second syringe?

A For a colonoscopy I would say yes.

Q Okay.

A Not necessarily for an upper endoscopy. Although, then that might happen, too. But almost certainly for a colonoscopy, unless it was a very small frail patient who -- I mean, there were cases that I gave when I didn't even

use the full 10, but that was rare.

Q Okay. But with -- with colonoscopies you almost always used two syringes; is that right?

A Or at least a syringe and a half, yeah.

Q And then the one that's half left, what would you do with that?

A Throw it away.

Q And was there like a container or something that you used?

A Well, there was a sharps container. You just -- you know you can squirt it out into the sharps container and then throw it, or just throw the whole thing.

Q And then for the next case would you have prefilled syringes ready or would you fill -- fill them in between patients or what was the -- the procedure you used?

A Well, usually you want to fill them between patients just to keep things moving. I mean, I wouldn't ordinarily wait, although, sometimes the patients moved so fast that I found myself drawing up when the patient was already in there.

Q And so in a typical colonoscopy how many milligrams of propofol do you think you'd use?

A Typical?

Q Yes.

A Typical, that'd be an average, I suppose,

maybe -- well, anywhere from -- milligrams?

Q [Nods head yes].

A Maybe 100, 150 to 200 milligrams.

Q Okay. And so that would be like a syringe and a half or two --

A That's right.

Q -- syringes?

A Uh-huh. Yes.

Q Okay. Throughout the day, then, you would keep filling them in between patients? Is that the method you used?

A Well, as long as they were patients that I knew were coming, yeah. I mean, if -- if we were -- if I was -- if there was going to be a lag, well, then I wouldn't fill anything. I'd just wait until it came close to the time when we were expecting the next patient to come in.

Q Did you ever prefill like ten syringes in a morning?

A No.

Q And why not?

A Well, there's no need. Well, for the -- well, I mean, I -- I would have no idea how long it would take me to use ten -- you know, that many syringes. And it's just when you prefill that many syringes it begins to be a little difficult to keep track of what you're doing. The chances for

error are too great.

Q Okay. Now, at Burnham when you had the two rooms going --

A Uh-huh.

Q -- how many patients were seen a day approximately?

A Well, on very slow days when two rooms were going -- well, there is -- on very slow days we've had as many as -- as few as 15. On really fast days we had as many as -- I mean, heavy days we had as many as I'd say 50.

Q Okay. So --

A After 50 we really started complaining a lot, so --

Q 50 seemed like a lot?

A Oh, yeah. Oh, yes, definitely.

Q Did you feel like you were -- you were pretty busy there?

A Well, yes, I think so.

Q Okay. Now, I think you said when you very first started you worked with Dr. Desai at Shadow Lane for like two days or something like that?

A I don't think it could have been any more than two.

Q Did you ever go back and work at Shadow during the rest of your career?

A All told I think I probably worked five -- I might have worked at Shadow five to six days out of my career. I don't think it would have been much more than six.

Q And on the days you went back to Shadow, how would you compare Burnham versus Shadow in terms of how busy it was or the number of patients?

A Well, things did seem to move a bit faster at Shadow than -- I mean, let me put it this way, if things moved that fast -- if they had moved that fast at Burnham, we would all have been complaining a lot.

Q Okay. Was it a pretty striking difference or --

A Well, it was -- it was fast enough, you know. Of course, while I'm over there I'm hearing all these things like we're doing, you know, 60, 70 patients a day even though I may not have been doing that many. But, you know, so --

Q On the occasions where you went back to work at Shadow Lane --

A Yes.

Q -- do you -- did you ever work with Dr. Desai?

A Yes. Oh, yes, I did.

Q Okay.

A Yes.

Q And did he ever talk to you about -- well, let me ask you this. When -- do you remember the days or the

years that you came -- that you went back and worked at Shadow? How about we start with that first.

A Well, the actual day or the year? I mean, I can --

Q Let's go year.

A -- give you -- I can give you an occasion.

Q Okay.

A There was one time that I had to see a doctor for my heart. And then when I was done seeing the doctor for my heart I came back to Shadow and Dr. Desai said, well, do you want to go home or can you help us out? And I said, well, I said I'll just stay and help you out. So I believe that day I worked with him. There was another day, which is -- which was a Saturday, actually. We were called in on a Saturday which is pretty unusual, and I worked with him then.

Q And --

A That may have been the last day I ever worked there.

Q And on those two days, or either of those two days that you just described, did Dr. Desai ever talk to you about the use of propofol or how much propofol you used?

A Yes.

Q What -- what do you remember him saying to you?

A Well, I remember him making a comment to the

fact that I probably use too much.

Q Okay.

A And that at one point I -- I took it to mean that in connection with propofol he said that I was the most expensive CRNA they had.

Q Okay. And -- and was that -- that was either on the Saturday or the time you stayed and helped out?

A It was probably -- if my memory serves me, probably that Saturday, yeah.

Q And how did it -- how did it come up that you ended up talking about propofol? Did he just bring it up or did you bring it up or --

A Well, it seems to me that he was coming close to -- it was at a point in the middle of the case when I probably would have thought that he was going to take longer, but he thought that he was going to be finished.

And perhaps I had just given too much and then he said, well, no, don't give him anymore, I'm ready to -- because he had his own technique which was somewhat different from the other doctors. So, I mean, it was very easy for me to think that it was going to take longer than it actually took.

So I would give -- I would be thinking about what I did when I worked at -- at Burnham, and when the doctor usually put the scope in -- and we're talking about a

colonoscopy now, okay. So when the doctor puts the scope in, goes all the way around and reaches the ileocecal valve, well, if the patient shows any sign that they might be getting light, that's about the time I give more propofol.

Q Okay.

A But when I was at Shadow, it didn't quite work that way.

Q Well --

A Because that could have been close to the end of the case.

Q And so -- I mean, if I'm understanding you, on that Saturday there was at least a couple cases that you did with Dr. Desai?

A Yeah.

Q And --

A It was more than a couple, I would say.

Q Okay. And you -- you recognize the point in the procedure to be when the scope was already at the cecum?

A Yeah.

Q And you had -- did you administer, actually give more propofol?

A Well, I either already did -- I mean, actually even other than that Saturday I worked with him one day when I was working with him and when he reached that point that I did give more propofol because the patient was obviously getting

light. And at that point the procedure ended or he may have told me don't give any more propofol after I had already given it. I mean, he probably didn't know that I had already given it.

Q Okay. And you said that his, from your observation, his method of performing a colonoscopy was different than what you had observed from the --

A Yes.

Q -- other doctors you worked with?

A Yes.

Q Describe what you saw about his method that was different.

A All right. Well, he would, you know, do the -- there was -- there was the in-phase and the out-phase, obviously. During the in-phase he would go all around the colon, then you end up at the ileocecal valve. And usually -- and then once or twice at that point he would just pull out the scope and that was the end of the procedure, which could be a bit disconcerting for me if I had already given more propofol at that point. That's why it sticks in my mind.

And one time I did, I said -- I asked him, well, I've noticed that other doctors don't do it this way. Do you always do it this way? And he said -- and I said or do you, you know, do it -- do you do the exam on the way out? And he says only if I'm not sure of it.

And I took that to mean that if he was going in and saw something that he was uncertain of, he would go all the way to the ileocecal valve and then come out slowly as well. If he was sure of it, in other words if he didn't see anything suspicious on the way in, well, that would be the end of the procedure and then the scope would come out. That was my understanding of what he said.

Q And on those couple of days that you worked with him, on how many occasions or how many patients had you already administered additional propofol and he was actually done with the procedures?

A Well, probably more than one. I mean, it's -- because it sticks in my mind that I was frequently caught, you know, in that position where I have a patient that was now loaded with propofol and this is the end of the case and so, you know -- and then, of course, they're not going to be awake when they're leaving the room, which is of some concern to me.

Q Had you, in those -- on those occasions when you worked with him, did you ever see him start a procedure without the GI tech being in the room?

A I can -- I can only remember one time when that actually happened. I mean, he just -- he just took the syringe and the GI tech had gone off for some reason, and he just took the syringes or whatever it is that they usually use and started the case, yeah, by himself. I can -- I can

remember one. When that was, I'm not sure, but I remember one case in which I observed that, yes.

Q When you worked at Shadow, did it -- did it seem -- did you feel more pressure than when you worked at Burnham?

A Oh, yes. Yeah.

Q And --

A Well, I mean, pressure in that -- I mean, I knew I wasn't going to have to stay there for too many days, thank God, so I knew I was coming back to Burnham. But while I was there, yeah, there was quite a bit of pressure to keep things moving, yeah.

Q And we've talked about this a little bit during your testimony, but the -- the drug that was used to provide anesthesia for these procedures was -- was propofol; correct?

A Yes. Oh, yeah.

Q And in your career prior to coming to the endoscopy center had you used propofol?

A Oh, yes. Yeah.

Q It's a common drug?

A Well, at a certain point pentathal became somewhat passe, and then everybody was using propofol, except for certain cases where there is a very debilitated patient or something. But generally propofol was the drug that was used,

yes.

Q And did the size of the vials that were ordered by the clinic ever change in the history of your employment there?

A At Burnham now? I mean --

Q Uh-huh. At Burnham.

A Oh, yes. Yes, they did.

Q Describe that for us.

A Well, as I say, we first started out using the 10 ccs, and then after that they -- they ordered some of the larger ones, which I imagine it would have been 50. 50?

Q 50 ccs?

A Yeah, I think so. Does that sound right? Yeah.

Q Do you remember when it was that they switched to the 50s?

A When?

Q When.

A Oh, I couldn't give you a year. No.

Q Okay. Was it in the -- well, did it ever switch after -- you said there were 10s, then there were 50s. Did it ever switch again?

A Well, I mean, there was a time -- there were times when we had both coming in, you know, when we would, you know, use some -- some of the small ones and some of the large

ones, yeah.

Q Did you ever have to work exclusively with smaller vials like where the 50s weren't used anymore?

A Well, like I said, when I started I recall we only -- I only used the small ones.

Q And at the -- at the end of your employment there did you go back to small ones?

A Yes, we did.

Q Now --

A There was a -- there was an official policy announced, which I was not aware of until very late in the game, that we were only going to use the small ones from that point on.

Q Okay. And we'll talk about that. But when you -- over your career when you've administered propofol, do you know whether or not it's labeled as a single-use or multi-use drug in the packaging?

A Well, I think the small one -- I mean, I -- I did -- I did see the small one say for a single patient use only or something to that effect.

Q And on the larger do you know if it says that as well or --

A I don't believe it said that, no.

Q Okay. You -- in your -- in your work at Burnham were you ever called upon to -- to, I guess, put the

hep-lock in a patient?

A Oh, yes, frequently. Well, I mean, there were times when the -- the IV was started in the holding area. A patient came in and it was obviously botched, so I had to do it over again.

Q Okay.

A Or they would say, oh, we can't do this, you better do it. So then I would do it, and if I couldn't do it, I'd usually pass it off and ask, you know, the doctor in the room to do it if he was there or something like that. But I -- I had to do plenty of them, yes.

Q Is it an unusual occurrence for you to have to put the hep-lock in or was it an unusual occurrence?

A Well, it wasn't exactly unusual. It wasn't the routine. The routine was for the most part when we were at Burnham for the person in the -- the nurse working in the holding area to put it in so that by the time the patient got there, you know, we could pretty much move things along.

Q In your -- in your training as a CRNA are you familiar with the term aseptic technique or universal precautions?

A Well, I don't think there's anyone who isn't familiar with that.

Q I would agree with you. What -- what is that? What does that mean to you? What does it mean?

A Well, it means that you cannot assume that anything is sterile unless you know that it's sterile.

Q Okay.

A And so in other words, if something -- well, you can assume that it's sterile if it's new. If it comes out of the box, I mean, I don't -- you don't usually think that the company is going to send you a contaminated bottle. So as long as the bottle is closed, it's sterile. Once you begin to -- once you've cracked -- taken the blue cap off of the bottle, then -- then it's my job to supervise to see that it remains sterile, which means that if it's contaminated, then it's my fault.

Q How might something get contaminated? How might the propofol be contaminated?

A Well, one way it would be contaminated, which I'm sure everybody in here has heard by now, is if you have used a -- I can go into a really long-winded discussion about this if you want me to, but --

Q Well, can we have the short answer first?

THE COURT: Please don't.

THE WITNESS: I'm a very prefatorial type. Sorry.

THE COURT: Why don't you start with the short explanation, and then Ms. Weckerly can follow up if she feels that there's a need to --

THE WITNESS: Yes, Your Honor.

THE COURT: -- do that. Okay.

THE WITNESS: Okay. If you have used a needle syringe unit, and as far as I'm concerned that must be considered a unit, the fact that you can detach the needle from the syringe is irrelevant, all right. If a needle syringe unit has been used anywhere on the patient, and I can, again, saying what I mean by on the patient would require my long-winded explanation, then it must be assumed to be contaminated.

BY MS. WECKERLY:

Q Okay.

A Which means you cannot use that to tap into a sterile bottle unless you are using that sterile bottle on the same patient.

Q Okay. So let me ask you a question. Would it be okay, in your training, to take a needle and syringe, go into a vial of propofol, administer it to a patient through a hep-lock -- are you with me?

A Yeah.

Q Decide the patient needs more propofol, take that needle/syringe, just remove the needle but keep the same syringe, put a new needle on, go back into the vial of propofol, and then readminister it to Patient A, and then use that vial of propofol on a subsequent patient?

A No, absolutely not. It's like I said, the

needle and syringe is a single unit. The fact that you've removed or put another needle onto the syringe is irrelevant.

Q And in your experience is this something that -- that's well known, or is this some big secret that --

A Well, this is just my opinion, but if you went out on the street and found any reasonably well-informed, well-educated person and brought them in, they could probably tell you that, I think. Because to me it is just so intuitive -- intuitively obvious.

Q So when you have the -- the big vials of propofol at Burnham, I assume you didn't use the whole 50 milliliters on a single patient --

A No.

Q -- is that fair? How did -- how did you use them, then, appropriately?

A Okay. Well, there's two ways. If you -- if you've used -- if you've tapped into one of them with a -- with a needle and a needle unit, a needle/syringe unit that has already been into the patient, and then you go back and tap into that, that automatically becomes contaminated and has to be discarded.

Q The vial?

A After that patient, yes. And it doesn't matter how small or how large it is.

Q So one way is to use one vial per patient and

throw --

A Yeah.

Q -- vial away --

A Yeah.

Q -- regardless

A Now, if you've tapped into it only with a sterile needle/syringe unit, then, with an important caveat, you can assume that it has not been contaminated, all right. The caveat is that every time you tap into a vial, there is always the possibility that there is some -- some -- you know, there's frequently microscopic droplets in the air or dust or something that's landing on the stopper which could be thrust into the propofol with the needle, all right, which is why it's good, if you're going to do that, to do what I did and take an alcohol swab, wipe it off, and then let it air dry by doing this.

Q Every time you go in?

A Yeah. Right.

Q Okay. And if you have a big vial and you have a clean needle and syringe every time --

A Yes.

Q -- a separate one every time you go into that vial, would there be contamination?

A Well, if there would be I can't -- you know, I would -- someone would have to explain to me, with the provise

that I just gave you, how that would be possible. Because if that were the case, then logically no one should ever use injectable vials, needles, or syringes anytime ever. Because that would mean that you can contaminate a vial with a sterile needle and syringe, which means that you shouldn't even be doing it the first time.

Q Right.

A Which is absurd.

Q Okay. And so to officially use the big vial of propofol, what did -- what did you do? I mean, what method did you use?

A Well, if I used it on one patient, then I'd throw it away. That's all. Again, it doesn't matter how large the vial is.

Q Okay. And did you ever tap into it more than once, a big vial of propofol, more than once with a clean needle and syringe each time?

A Oh, yes. I didn't tend to like -- because the larger vials were -- were unwieldy. They were messy. Frequently you would draw medicine out and it would -- it would be running all over the place. They just weren't quite as efficient as the smaller ones, at least in my experience.

Q When you were working at Burnham, I think you said you worked with Mr. Mione.

A Yes.

Q Did you two ever share propofol from room to room?

A There was one time that I can recall when I opened one. It must have been a large one. It couldn't have been a small one. And I was about ready to leave, so I had used a small amount. And because I was the one that opened it, and, again, this is not a common practice with me, I made an exception because I was the one that opened it. I took it over to him and said I opened this. It's not -- it's not contaminated. Do you think you might need it? That happened one time with me.

Q Did he ever offer you open bottles --

A Yes.

Q -- of propofol, you know, throughout the day that, you know, were half empty or a quarter empty for you to use?

A Yes.

Q Did you use them?

A No.

Q And why didn't you use them?

A Because I did not open them. My policy is if I don't -- again, going back to what I originally said, you know, which is axiomatic, once that -- that cap pops off, you are directly responsible for maintaining the sterility of that. And since I didn't open it and I didn't see it being

opened, I have to assume it's contaminated no matter how high my estimation is of the person that's doing it.

Q And what did you do with the partially used vials of propofol that he brought into your room for you to use?

A Threw them away.

Q Just threw them in the sharps or whatever?

A Yeah.

Q Was it frequent that he would come over and offer you the partially used vials?

A Well, it was -- it happened -- it was frequent enough, yeah.

Q Okay. Now, I think you talked about this -- this earlier, but before the CDC and the BLC and all those acronyms came into the clinic, were you aware of policy on propofol use at the clinic?

A The policy on -- what kind of policy?

Q Any kind, like how to administer it, how much to administer, anything like that?

A Promulgated by the clinic itself, you mean?

Q Yes.

A No.

Q Okay. Did you ever have any meetings with Dr. Desai about using propofol?

A Well, there was one meeting that sticks in my

mind after -- after the news broke of the six patients -- was it six that --

Q Okay.

A -- that -- yeah, that contracted -- yeah.

Q And we'll talk about that in a little bit. Do you remember any meeting at all about propofol and -- and like an efficiency study?

A Oh. Oh, that one. Okay. All right. I'm sorry. Yeah, we were --

Q When was that one?

A How come everybody is laughing?

THE COURT: Well, I don't know. Maybe because she can't really lead you where you want to -- where she wants you to go. She didn't just start out let's talk about the meeting --

THE WITNESS: Okay.

THE COURT: -- about efficiency studies.

BY MS. WECKERLY:

Q You remember a meeting about --

A Yes, I --

Q -- with Dr. Desai --

A Yes, I do. I do, in fact.

Q Okay. And do you remember approximately when that meeting was?

A When?

Q Yes.
A Oh. What year, you mean?
Q Okay.
THE COURT: We'll start there.
THE WITNESS: Why do you keep hitting me, an old man with no memory about these years? It was -- it couldn't have been more than a year or two before we shut down. I mean, I don't even think it was two years. It must have been more like one.
BY MS. WECKERLY:
Q Okay.
A And the reason I -- all right. Well, the reason I say that is this, because -- do you want me to give you the gist of the meeting now or --
Q Let me just ask you couple more questions about it. Okay?
A Okay.
Q You think it was in the last year and a half that the -- the clinic was open sometime?
A Well, yeah, I'm sure.
Q Where -- where did the meeting take place?
A Shadow.
Q Shadow Lane?
A Yes.
Q Who was at the meeting?

A Well, now, Dr. Desai was there, I was there. That I know for sure.

Q Okay.

A There was -- the reason I hesitate is because there was one person missing. I believe Tonya Rushing was there. There was one person missing and I can't, for my life, remember who that one person was. So until I know who the one person was that was missing, I can't with certainty say who was there.

Q Okay.

A But there was one person missing.

Q But we know you're there?

A Yes.

Q And Dr. Desai is there?

A Yes.

Q And Tonya Rushing is there?

A Yes.

Q And this meeting takes place at Shadow. Was it during the business hours or after hours?

A I believe it was after hours.

Q And --

A Around 4:00 in the afternoon or something like that, yeah, I think.

Q Were other doctors at the meeting?

A I don't believe so.

Q Were other CRNAs at the meeting?

A Well, yes, other CRNAs.

Q What do you remember Dr. Desai saying at this meeting?

A Okay. And he said that, yeah, well, the purpose of the meeting was there was -- the expenses of running the clinic were high. And I took that to mean the whole operation, not just necessarily Shadow Lane. And then he said he had called in a person, an efficiency expert, and I forget the exact title, who examined the situation and did his own assessment and everything and came to the conclusion that the reason that expenses were in the stratosphere was because we were using too much propofol, all right.

Q And did he say who this like efficiency expert was or who it was that he consulted?

A Well, I didn't -- if he gave the name, I certainly don't remember it.

Q Okay. Did he say how much the assessment cost to -- to do this study?

A Well, as I recall, the figure of a million dollars was given out there. You know, I -- again, I think that's what he said, but --

Q And at the time you were working, did you ever see someone assessing how much propofol you were using prior to this meeting? Did you ever have to log your use

differently than -- than you had before, you know --

A No.

Q -- this meeting?

A Not that I recall, no.

Q So what does he tell you about the costs are high and that in relation to propofol? What does he say about that?

A All right. Well, there is actually two things. One thing is that -- well, I mean, I don't know which one to go first. That if we are able to bring the cost of propofol down to an acceptable level, the savings would be shared with us, i.e., the CRNAs, in the form of a bonus.

Number two, there was also the suggestion given that one way that you could economize in propofol would be to give normal saline, I believe, injection, 5 ccs or so, before giving the propofol of after, whether it's before or after I don't remember now. But it was -- it was in conjunction with giving the propofol in that there was some reason to believe that that would actually cut down on the amount of propofol used.

Q Okay. Let's talk about the bonus -- the bonus aspect first. It was just -- well, let me ask it -- did he say how much had to be saved before the CRNAs would get a bonus?

A Well, no, that was kind of vague. I mean,

basically if it brought -- I took it to mean if -- if -- in actual dollar figures no. If -- if the costs were brought down to some acceptable level, then the savings would be passed on to us in the form of a bonus.

Q And had you -- had you been compensated by the clinic in the form of a bonus --

A Yes.

Q -- prior to that?

A Yes.

Q And was that -- what was that based on when you go the bonus before?

A Well, when I first came to work there I was given a salary and a bonus. I mean, my pay, which was roughly 30,000, was in the form, I think, of 110,000 salary, 20,000 bonus, I believe. Yeah. And then I believe that was still in effect at the time of this meeting. And the reason I say it was still in effect is because later on, for reasons that weren't clear to me, the bonus disappeared.

Q Okay. Now, let's -- let's talk about the second part, which is the saline.

A Yeah. Yeah.

Q What was -- what was the -- what was his explanation of that or what was he talking about in terms of saline?

A Well, I'm not sure whether any kind of a study

was cited or anything. I'm not quite sure why it is that it was believed that there would -- that this would cut down on the use of propofol. But it didn't seem like something that they just pulled out of the air. There was some reason that was given as to why. It may have been a study, but, again, it wasn't really clear. I've never seen a study that said that.

Q And what were you supposed to do, though?

A Well, when -- when we went back to -- when I went back to Shadow I was supposed to give saline along with the propofol. It was either 5 ccs of saline before or after the initial injection of propofol.

Q What was that supposed to do?

A Cut down on the amount of propofol needed for that particular procedure.

Q Okay.

THE COURT: Ms. Weckerly, I'm going to interrupt you. We're going --

MS. WECKERLY: Oh. Okay.

THE COURT: -- to take our break.

MS. WECKERLY: Sorry.

THE COURT: Ladies and gentlemen, we're going to take about a ten minute afternoon recess. During the break you are reminded you're not to discuss the case or anything relating to the case with each other or anyone else. You're not to read, watch, or listen to reports or commentaries on

the case, person or subject matter relating to the case. Don't do any independent research. Please don't form or express an opinion on the trial. Please place your notepads in your chairs.

If you have any juror questions ready, you can give them to Kenny on the way out the door.

And, sir, please don't discuss your testimony with anyone during the break.

THE WITNESS: Oh, I won't. Do I have to go outside or do I -- well, I probably should. Yeah.

THE COURT: You can stay here, if you want to.

(Court recessed at 2:43 p.m., until 3:02 p.m.)

(In the presence of the jury.)

THE COURT: Court is now back in session.

And, Ms. Weckerly, you may resume your direct examination.

BY MS. WECKERLY:

Q Sir, I think when we left off you were talking about the meeting where the idea was proposed by Dr. Desai to follow the propofol with some saline in the injection.

A Uh-huh.

Q Did you try that method of administering propofol?

A It was either precede or follow. I --

Q Okay.

A I'm not sure.

Q Either one.

A Yeah. Yes, I did.

Q And did you know or did you observe any other CRNA following it?

A Well, no, I didn't observe anyone else because I usually work by myself.

Q Okay. Do you -- do you know how long you tried it for?

A Well, maybe three weeks, maybe a month or so.

Q And why was it discontinued?

A Well, I don't know whether it was officially discontinued. I discontinued it simply because -- well, with a healthy dose of imagination and probably that sort of thing you could say, well, yeah, it works. But then you'd have to ignore the patients on which it didn't work. So it's kind of like a placebo, you know. It works if you want it -- because you want it to. I couldn't honestly say that it made any difference.

Q Okay. Did you perceive any risk to the patient in -- in trying that method?

A As long as the -- as long as the techniques we've been discussing are adhered to, no.

Q Okay. In -- in early February -- or, sorry, early January of 2008 your facility was visited by the BLC.

Do you recall that?

A Yes. BLC, Bureau of License and -- or I've got these -- this -- this alphabet soup gets me confused.

Q Do you recall if the people, the officials that came to Burnham were male, female, anything like that?

A Well, that one that I spoke to was female.

Q At the -- at the time you were working and that official was present, was there another CRNA working in Room B, the other room, do you know?

A I assume. Yes, I believe there was. Yeah.

Q You --

A I believe it was Mr. Mione.

Q Mr. Mione. Did you have a conversation with the -- with the official?

A Yes, with this particular one.

Q Okay. Did you talk about how you administer propofol to that person?

A Well, she asked me to. She asked me a question. It was actually -- when I started talking to her we were not doing a case. We were between cases and I had -- and I had a few vials of propofol left on the -- small ones, I believe -- left on my tabletop, maybe two or three. And she said to me are you going to throw away those that you have sitting there before the next case started, and I said no.

Q Did you explain why?

A Yes, I said because they're not contaminated. At which time she started writing things down furiously, you know, and -- and then as -- as the conversation progressed I said to her -- then I got into much of the same discussion that I did before. I said as long as I'm not using a contaminated needle/syringe unit that I've used before to tap into these vials, there is no reason to believe that they are -- that I am contaminating them and cross-contaminating with another patient. And that is why I made the very -- and I said I want you to understand now what I am saying. I said I am saying that the needle and syringe unit must be sterile. If it is not sterile, then I can't use it. Do you understand that? And she said yes.

Q Okay. After that encounter with her, was there -- did you have a meeting or a conversation with Jeff Krueger or Katie Maley?

A Well, I believe Jeff came in and said Tonya wants to see you. Tonya Rushing was in the -- in the men's -- in our break room, in --

Q Okay.

A -- you know, the break room.

Q And I don't -- I don't want to know what they -- what they said to you, but did you have a conversation with them?

A With --

Q Tonya.
A Yes. Yes.
Q And was Jeff Krueger present?
A Well, he was there. I mean, whether he was actually there when I -- he probably was in the room, yeah, when Tonya was there. Yeah.
Q Okay.
A Yeah, I think so.
Q At that -- sometime after that meeting were you issued a memo on how to use propofol --
A Yes.
Q -- or a policy?
A Yeah, after the meeting.
Q How long after the meeting did you get that memo?
A Well, I think it came down the next week or in the next two weeks, something like that.
Q Prior to getting that memo, were you aware of any policy regarding the use of propofol or how to administer propofol?
A No.
Q After the outbreak, did you ever have a conversation with Dr. Desai?
A Yes.
Q How -- how long -- well, did this conversation

occur after the BLC was -- was present at Burnham?

A I believe -- yes, I believe so. Yeah.

Q Do you know how long after?

A Well, maybe. It was soon after this whole thing broke. I mean, and then Dr. Desai made a visit to our facility. Maybe a week, two weeks, something like that.

Q And it -- and the conversation, you said, was at your facility meaning Burnham?

A Yes. He came over to visit our -- yes.

Q Where in the building was it, the conversation?

A Well, as I recall we were in Room -- here on this side, you have Room A, B, and across the hall you have Room C, so it was in Room C.

Q Who else was present?

A Dr. Mason.

Q And was it during the normal work hours?

A It could have been in -- it could have been in between. It may have been at the end. I'm inclined to say that it was during normal work hours, although I wouldn't -- it probably was during normal work hours.

Q What do you remember Dr. Desai saying?

A Okay. Well, he -- when I -- he started -- obviously this was all common knowledge by this time, and he said, well, you know, they're coming down pretty hard on me.

He told us we had six, five or six patients who contracted hepatitis C around the same time, maybe on the same -- same day. You know, we had five or six patients --

Q Who --

A -- over at -- at Shadow.

Q Who was coming down hard on him?

A Well, the -- whoever. I mean, you know, the powers that be.

Q Okay.

A he wasn't more specific.

Q And he said how many cases were at Shadow?

A Well, five or six evidently that had -- but this, again, was already after this --

Q You already knew that.

A Yeah. Sure.

Q Okay. Did he say anything else?

A Well, he said -- well, then he spoke to me personally and -- and Dr. Mason was also there. And he said, you know, if you -- if you are using bad technique and something like this happens where there is a lawsuit, well, you won't be able to work anywhere in the world, I mean, as far as -- and then he also said I've always know you to do the right thing. He said it to me.

Q Did he -- did he tell you whether or not he thought your license was at stake?

A He may have mentioned that. I can't say for sure.

Q And what did he say about working anywhere in the world?

A Well, in other words, if -- if this -- if I were -- if someone was contaminated as a result of my bad technique and I were sued or brought before any kind of a tribunal, that would pretty well end my career as a CRNA. I mean, that was the idea.

Q Okay. And what did he -- did he say anything else that you recall?

A Well, there were other things said, but, I mean, nothing that really sticks in my mind other than what I've just told you.

Q Okay. Did he talk to you about what you should say if you were asked about multi-use vials?

A Now, that -- that question is beginning to refresh my memory. I'm trying to think now. Be patient with me here now. I believe -- I believe it was -- and, again, this is not really with absolute clarity, but I believe it was said that we should from then on say that we are only using the small use -- the small vials, I believe. I mean, it's -- this is starting to get really hazy now, but --

Q Okay. You gave an interview to the police department back in 2008; correct?

A Are you going to remind -- I brought this with me. Can I pull it out and refer to it?

Q Yes, but just let us know what you're -- are you referring to your interview?

A Yeah, that's what I -- yeah.

Q Okay. And then I just want to direct you to page --

A Yeah.

Q -- 60 of your first interview.

A Okay. My first interview. Okay.

MS. WECKERLY: May I approach the witness, Your Honor?

THE COURT: Uh-huh.

THE WITNESS: Page 60. All right. Here we are.

BY MS. WECKERLY:

Q Okay. And just read -- read to yourself page 60 through 61 and into 62. So just read that to yourself and let me know when you're done.

A The whole thing?

Q Well, you can probably start in the middle of the page.

A Okay.

Q Okay. And then just let me know when you're done.

A [Witness complied]. All right. Yeah. Okay.

Q Okay. Does that refresh your recollection?
A Yes, it certainly does. Yes.
Q Okay. And did you have a -- did Dr. Desai talk to you about people may be coming around and talking to you?
A Yes.
Q And what did he tell you about how to handle that situation?
A Okay. If somebody asks you whether you use multi-dose vials you say to him what's that.
Q Okay.
A I remember that now, yeah.
Q Yeah. And did that instruction strike you as odd?
A Well, I mean, it's -- well, in the sense that, yeah, because I know what a -- I know what a multi-dose vial is, obviously.
Q Yeah. And --
A It would be -- the idea was that we were saying to them -- we were -- it would mean that we were telling them, no, we didn't because we don't even know what such a thing is.
Q Okay. But you -- you knew what a multi-dose vial is.
A Oh, certainly. Yes. Of course.

Q And, in fact, you used propofol, the larger vials, in a multi-dose fashion?

A Yes.

Q So would -- if you had answered that way to someone who asked, would that have been true?

A No.

Q Okay. Do you remember him saying anything else in that regard?

A Well, other than what I've already told you. I mean, this -- this refreshed my memory on that point.

Q Okay. Did he tell you to be careful?

A Well, I -- that's a pretty vague sort of -- yes, I imagine he did tell me that, but that kind of goes without saying.

Q How long was this conversation that you had with him?

A Oh, maybe 10 minutes. Not long.

Q Did he -- did he say anything about your personal technique, how he viewed it?

A Yes, he did.

Q What did he say?

A Well, I think I mentioned this. He said I've always known you to do the right thing.

Q Okay. And -- and as of that time, how many days had you worked with Desai?

A Well, like I said -- well, now, in addition to the time that I went over there to Shadow, he would -- he would, at times, once in a blue moon, come over and work with us. Not often. Not very often at all.

Q Okay.

A In fact, if I were to add them up all together, I might say maybe five times that I was actually working there out of the six years. It wasn't very often.

Q So you probably worked with him directly maybe ten times or less?

A Yeah, something like that. 10, 12 times, yeah.

Q All right. But he said he always -- always knew you to do the right thing?

A Yeah. Now, whether that meant that he observed me or whether somebody told him that, I don't know, you know. But that's what he said, yeah.

Q One -- one last area, sir, I wanted to ask you about was anesthesia time and billing.

A Uh-huh.

Q As a CRNA were you called upon to document your anesthesia time when you worked at the endoscopy center?

A You mean enter it on the chart? Yes.

Q Okay. And would you chart vitals as well as the procedure start time and end time?

A You mean blood pressure and pulse? Yes. Sure.

Q And what was your understanding of how you were supposed to document your time?

A Well, that -- with me there were several different ways of doing it. When I first started, as I recall, I simply put the -- you have four boxes there. You have procedure beginning time, procedure end time, which is pretty cut and dried. And then you have anesthesia start time, anesthesia finish time, which is probably what's in question here.

Q Okay.

A When I first --

Q And -- and let me just stop you. This is the first policy that you're going to discuss; right?

A Yes. Yeah.

Q Okay. Go ahead.

A When I first started there, I mean, I would -- I would put -- I always define the beginning of anesthesia time as the time when I came into attendance with the patient, which doesn't mean the time that you give the anesthesia. It means if you spoke to the patient, interviewed the patient, or even started the patient's ID -- IV, I'm sorry. I mean, as soon as you started focusing on that patient and doing things for that patient --

Q And would --

A -- that was the beginning of anesthesia time.

Q And would that be -- would it be fair to say that's when they come into the procedure room and you get their history before even administering any medication?

A Oh, yes. Yes.

Q Okay. And under that first policy, when would -- when would your anesthesia time end?

A Well, I hesitate to call it a policy because I was doing this myself.

Q Okay. How about your system?

A Was when the patient left the room.

Q Okay. So when they go to recovery time ends.

A Once they were not -- I was not attending them anymore, attendance being the, you know, the deciding criteria. And then, yeah, that would be the anesthesia end time. Yes.

Q Okay. And then when I -- when you say attendance, I understand that to mean kind of face time with the patient.

A Well, I'm attending -- yeah, I'm attending the patient rather than doing something else, yeah.

Q Okay. So the first way you did it was when they're with you face to face.

A Yeah. Right.

Q What was the second way you did it?

A Yeah, at one point, and I -- I can't even tell you what year this was, but the directive came down that we were not to put anesthesia end time in at all because the recovery room would do it.

Q Okay. And that was version two that you followed?

A Yes. Yeah.

Q Okay. What -- what was -- what was the next one?

A Okay. Version three. Well, version three was that we put down the beginning end time and then the -- or the beginning time would be, of course, the time that I've already spoken about, and then the end time would be about 30 -- 32 minutes after that.

Q And --

A 32, 33, whatever.

Q -- what was that based on? What would -- why -- I mean, what -- what measures of time would you use to come up with the 31 or 32 minutes?

A That was the policy that was handed down. I mean, I didn't -- come up with it.

Q It didn't correspond to anything like face time or --

A Yeah. Well, I mean, what -- what their --

what their considerations were for making that policy, I don't know, you know.

Q Okay. But did you follow that for a while?

A Yes. Oh, yes, sure.

Q Did you have any concerns about it?

A Well, at the time -- at the time -- all right. Let me put it this way. At the time there's basically four different kinds of things in my mind, okay. Number one is context, all right. I don't have the benefit of hindsight. In other words, I might have questioned it if I had known that later all of this other stuff came to light which would make it look like extreme measures were being taken to -- to cut costs. At that time, of course, we didn't have that.

Number two, my focus is mainly on the patient. I'm not too concerned about, you know, administrative policies. And, I mean , it's an insult if it comes through. Number three, of course, we have the factors of rationalization and denial. I work for this, which is by any standards, a big small business, okay. They have their own billing department. I knew the person in charge of billing personally. I spoke with her. And we have this chief operations officer, I presume they know what they're doing when it comes to anesthesia billing, so why should I worry about it?

Q Okay.

A Those were the things that were in my mind at

the time.

Q And -- and, I mean, when you say that -- I think you said rationalization and denial. Did those exist for you back when you were filling in the 31 or 32 minutes at all?

A Well, I would use those -- I would use those terms in retrospect.

Q Okay. That you were in denial and that you were rational?

A Yeah, if I -- if I said at the time, well, I'm in denial, of course, well, that would be a doubt.

Q Right. Right. But that's how you -- I mean, I guess would you describe yourself in denial or rational?

A Yeah.

MS. WECKERLY: I'll pass the witness.

THE COURT: All right. Cross.

CROSS-EXAMINATION

BY MR. WRIGHT:

Q My name is Richard Wright. I represent Dr. Desai.

A How do you do, sir?

Q Did we ever meet? Have we ever met?

A Well, I've seen you in the hallway, but, no, we haven't met.

Q Okay. Out here. But we didn't speak; right?

A Oh, no, of course not.
Q Okay. When you were first interviewed about this back in July 2008, okay, did you go get an attorney?
A When I was first interviewed by whom, now?
Q Law enforcement.
A Oh, yes, I did.
Q Okay.
A Yeah, I did.
Q Okay. Was that John Momot?
A Yes.
Q Okay. And prior to that did you have an attorney to assist you with your licensing?
A Well, the -- the facility hired Tracy Singh to, I assume, assist all of us as a group, yeah.
Q Okay. The CRNA group?
A Yes, the CRNA group, correct.
Q Okay.
A Yes. Yes.
Q And so they hired her because you were going to be either -- you were licensed by the nursing board?
A Yes, her main job, as I understand it, was to administrative matters vis-a-vis the nursing board. Uh-huh.
Q Okay. So it was to help you all in your battle with the nursing board?
A If you want to put it that way, yes.

Q Okay. Well, that's what it was; correct?
A Well, it didn't seem to be much of a battle because I lost on the first day, but --
Q Okay. Well, it was -- you resigned; right?
A Yes, sir. Yes.
Q I mean, you turned in your license.
A Yes, I did.
Q Okay. And what you had been told was either you surrender it or we surrender it for you.
A Yes. There would -- yeah, if -- if we surrendered it, it would not involve a disciplinary action. If by the noon the next day they decided to act that it would be -- it would go down on our record as a disciplinary action, yes.
Q Okay. Now, I want to go back. I'm not going to take you way back in your history, but I want to go back to your --
A Thank you for that.
Q -- prior work and -- and your move and coming to work in Las Vegas. Okay? Now, generally when you stepped in and started work first for a couple of days at Shadow Lane --
A Yes.
Q -- and then as the sole individual, the sole practitioner of CRNA at Burnham --

A Yes.
Q -- you were experienced?
A Yes.
Q Okay. And you started practicing the administration of propofol on the patients the same way you have already been practicing?
A Yes, I would say that would be fair to say, yes.
Q Okay. So the --
A Before I went to work there, yes.
Q Yes.
A Yeah.
Q I mean, when you walked in the door, I mean, you were interviewed by Dr. Desai and Dr. Sharma?
A Yes, he was the first other doctor that interviewed me and that was over at --
Q Okay.
A -- Burnham.
Q And they didn't tell you anything to indicate you should cut corners or engage in what you would think is unsafe, non-aseptic technique?
A Oh, no. No. Certainly not, no.
Q Okay. And that -- that was when you started and all the way through to when the clinic is closed; correct?
A Well, around that time, yes.

Q Okay. Well, I mean, never was there any -- any directive that you interpreted or perceived was going to be someone telling you to administer propofol unsafely or in a manner that would put patients at risk?

A Oh, no. No. No, no.

Q Okay. And if anyone had, if -- like who's that director of nursing, Jeff Krueger?

A Well, he was the administrator for our facility now. I think he was also back and forth between Burnham and Shadow. That was my understanding.

Q Okay. If he had come and said, look, from now on we're going to cut down on some things so we're just going to use four needles and syringes a day, hypothetically, okay, as a cost cutting measure, would you have done that?

A Well, certainly not, no.

Q Okay. And you wouldn't do that regardless of job or anything --

A No.

Q -- because you understand that you are -- you are not going to do anything that puts patients at risk; correct?

A That's right.

Q And that's the way you practiced throughout --

A Yes.

Q -- your career before Las Vegas and during Las

Vegas?

A Yes.

Q Correct?

A Yeah.

Q And even when things got busy on the days when there were like 50 at Burnham --

A Yeah.

Q -- did you just start cutting corners on your administration of propofol?

A No, because I was trying to -- I had people tending to look at me as the slow guy anyway, so, no, I didn't.

Q But, I mean, you -- you took the time you needed to do it?

A Of course.

Q Is that right?

A Yes. Yes, certainly.

Q Okay. Now, you understood that large vials of the big vial of propofol was multi-use, fair?

A Well, it didn't say, as I recall, maybe it does say it, but I didn't see it on there. It didn't say single-use, I don't think. I mean, I --

Q Okay. Whatever it said --

A Yeah.

Q -- and you understood that you were utilizing

it on multiple patients --

A Correct.

Q -- in a safe manner.

A Correct.

Q And that -- that wasn't something that just started in Las Vegas, but like in hospitals where propofol --

A Sure.

Q -- and it's drawn out of multi-use; correct?

A Yeah.

Q And that -- and that's all safe and done every day as long as it is safely done --

A Yes.

Q -- using the needles and syringes; correct?

A Frequently in hospitals that I worked they would have a large -- I mean, whether it was a liter or something, a big -- well, it was a large container of propofol and before cases started every day people would come in, draw some out, someone else would come in and draw some out until -- yeah, that was -- that was common, too. I just thought I might --

Q Okay.

A Yeah.

Q And the -- when -- when you or the -- what was that term when you were a --

A You mean locum tenens?

Q Right.
A Yeah.
Q Is that like a traveling nurse?
A I don't know why people always have to use Latin words when they mean something English. That's absurd. Yeah, it means that you're working for an agency who pays you and they direct you to go to this, that, or the other hospital.
Q Okay. And you get to go visit different cities?
A Yeah.
Q Okay.
A Frequently in the south, Texas, Mississippi, yeah.
Q Okay. And the -- so you had experienced a great deal of CRNA propofol practice in a wide ranging, almost national setting of hospitals or clinics; correct?
A Yes.
Q And having experienced all that, when you stepped into working at Burnham from 2002 or '03? I can't remember.
A Yeah, February of 2002.
Q Okay. All the way through 2008 you were practicing administering propofol the same way you understood it to be safely everywhere you'd worked; correct?

A Using the same, you know, precautions. Yeah. Yeah, sure.

Q Okay. Now, you were the second CRNA -- or do you know you were the second CRNA to go to work for the clinics?

A Well, because when I got there there was this lady called -- her name was Ann Marie who was then working at Shadow Lane.

Q Okay.

A And I observed her do a couple of cases. I came in, actually, days before I actually started working and she just sort of showed me the ropes, you know.

Q Okay. Ann Marie Lobiondo?

A I believe that was the last name I knew her by, yes.

Q Okay. And the -- and her -- her practice that you observed was similar to yours? I mean, under -- I mean, you looked at it and it made sense?

A Well, there was nothing egregiously wrong with it. I may say that.

Q Okay.

A You know, there was nothing -- no. I mean, yeah.

Q Okay. There wasn't --

A There was nothing that made me take notice.

Q Okay. Were you, whoa --
A Yeah. No, no.
Q -- what's going on here?
A No, nothing like that. No.
Q Okay. So you watched her at Shadow Lane.
A Uh-huh.
Q And then -- and you went in and practiced a couple days with Dr. Desai, and then from then on Burnham was your refuge for the time; correct? Other than those few times you came over and worked Shadow Lane; correct?
A Yeah, my -- my -- yeah, the lion's share of my work was at Burnham. Yes.
Q Okay. And it's all -- I mean, it's like 99 percent or something.
A Well, it would -- if you have to -- over a period of about six years, I think it would probably come to that, yes.
Q Okay. And on the times that you practiced with Dr. Desai --
A Uh-huh.
Q -- either at Burnham when he occasionally came over --
A Yes.
Q -- or at Shadow Lane, it was those times that you -- he told you you're the most expensive CRNA he has?

A On one occasion, yes.

Q On one occasion?

A Yeah. That's the sort of remark I don't forget.

Q Okay. And -- and you -- and you -- that was a remark about your over propofoling patients?

A Yes, I would take that to be the --

Q Okay.

A Yes.

Q And there was -- there was a patient that Dr. Desai had finished the procedure and you had just redosed with propofol; correct?

A Well, at the point he reached the ileocecal valve, this happened probably more than once where I was sort of caught off guard and then the procedure is done and I'm saying to myself, well, now I've got a patient full of propofol, you know, and the procedure is done.

Q He's going to -- the patient is going to keep sleeping.

A Right.

Q Okay. And the -- the -- when he made remarks like that, was he chastising you, did he argue you -- with you, did he write you up, did he discipline you?

A Oh, no, he was never, you know, strident about it, no. No.

Q Okay.
A He just stated matter of factly.
Q Okay. And -- and there were times when he would say -- he would tell you, I'm almost done or I'm pulling out, whatever the language is between the team, meaning no need to redose, procedure ending?
A Yeah.
Q Is that -- is that a fair --
A That also happened at times, yeah. A couple of those times I had already, though, given it, you know.
Q Okay.
A Because I wasn't expecting it to be done that quickly.
Q And on -- on his procedure, talking about a colonoscopy -- or first an endoscopy. He did upper endos.
A Well, they all -- everybody did, yeah.
Q Okay.
A We did uppers and lowers.
Q Okay. Just on that when he would do an upper, what they call an upper endo, that -- that'd be like a three, four minute procedure, is that --
A Well, they were generally much faster than colonoscopies, yes.
Q Okay.
A For most doctors across the board.

Q And so for most of -- most of the time that's -- that -- that would be one injection, one 10 cc at the most?

A Most of the time, yeah.

Q Okay. So for endo procedures, you know, you went through on direct examination drawing up two or three full syringes to be ready --

A Uh-huh.

Q -- for a procedure.

A Yes.

Q And if it's an upper procedure, essentially you would use no more than one generally.

A No, but there was always a possibility that they might be delayed and I'd have to. And I think if you didn't have an extra one ready to go that could almost endanger the patient. Because when you've got a scope in somebody and somebody suddenly wakes up and starts moving, it's not only inconvenient to the doctor, it's dangerous to the patient as well.

Q Okay. But as far as the amount used, if some -- if it's a three-minute procedure --

A Roughly.

Q -- all right, or four or five, whatever it is, would it be usually a single needle and syringe use of propofol?

A Yes.

Q Okay. And then --
A Depending on the patient.
Q Okay. Yeah, because -- I can't remember if your police statement or another one. Little old people use --
A Yeah.
Q -- very little; right?
A Generally speaking, yeah.
Q Okay. How about alcoholics?
A Well, you'll probably use more.
Q Fat people?
A Well --
Q Is that your statement or another one?
A I mean, so if a guy comes in there and looks like a grizzly bear, he's probably going to use more than one syringe of propofol.
Q Okay.
THE COURT: It's kind of related to weight; right?
THE WITNESS: Well, weight -- not only weight, but also general stamina. I mean, some of these guys, you know, their metabolism must be extremely high and I know I'm probably not going to get away with using just one syringe of propofol.
BY MR. WRIGHT:
Q Okay. And so as a rule, or I don't even want

to call it a rule, the vast majority of the time for colonoscopies, at least two syringes?

A Colonoscopies?

Q Yes.

A Yeah.

Q Because --

A Yeah, yeah.

Q And then maybe sometimes a third?

A Yeah. Well, and some --

Q Is that --

A Sorry.

Q Pardon me. Go ahead.

A On some really protracted cases, which occurred once in awhile, I've used as many as five.

Q Okay.

A But that certainly was not the rule.

Q Okay. And the -- you -- you discussed with Dr. Desai during a procedure his technique, asked about it.

A I asked, yes.

Q Okay. And because you had spoke to other doctors or seen other doctors; correct?

A I watched them. I watched them, yeah.

Q Okay. And the -- and so you asked him do you always do it the way you do it?

A Yeah.

Q Fair?
A Right.
Q Right.
A Words to that effect.
Q Okay. And what -- the it you were talking about was colonoscopy?
A Right.
Q And it was going in --
A Yeah.
Q -- reaching the --
A Ileocecal valve.
Q That's what I was going to say. Taking a picture of it?
A Yes. Yes.
Q And, of course, all of this, all that he's doing and going in and the pictures and taking it, all of that's up on the monitor that he's watching --
A Yeah.
Q -- right?
A Right.
Q And so then he would withdraw; correct?
A Yes.
Q And that -- the it you are asking him about, is that the way you always do it --
A He was withdrawing quickly once you -- yeah.

Q Right. As opposed to slowly examining on the way out?

A Yes.

Q And what he -- what you understood him to tell you --

A Yes.

Q -- was that he examines on the way in. And if there's anything he saw -- now, by saw, he's looking at the monitor; correct?

A Yeah.

Q Then he -- he deals with it on the way out. Is that --

A Well, on the way out he would move more slowly to take another look at the very least.

Q Okay.

A Yeah, that's what I understood him to mean, yes.

Q Okay. And that's what you asked him about?

A Yes.

Q And that was his answer to you?

A Yes.

Q Okay. Now, on the -- I want to be sure about something because I think you -- you've been talking about 10 cc vials of propofol and the big one, 50 cc vials.

A Well, we have the small ones and the --

Q Small ones and large ones?
A Yes. Yeah.
Q And there were just -- they started off there were small ones --
A Yes.
Q -- correct?
A Yes.
Q And I think you're talking about 20 cc are the small ones.
A All right.
Q Okay. Well, I'm glad your police statement --
A I should remember all this, but I don't.
Q Okay. No, I don't want to leave confusion like there's a third size.
A If I saw the bottles here in front of me, I would say that's it, that's it, you know. 20 -- okay. 20 is probably correct.
Q Okay.
A Sorry.
Q No, no. I just want it -- want it clear that there were two sizes we're talking about; right?
A Right.
Q And the -- in their statements -- I mean, and I'm talking about your interviews with the police department on those days.

A Okay.
Q Okay? You said that they used both 20 cc and 50 cc vials on multiple patients.
A All right. Yeah, okay.
Q Okay. I'm looking at page 21.
A 21?
Q Yes, sir.
A Okay.
Q Is that right?
A Well, I've got 21 here now, yeah. Yeah, I was talking about there is a -- there was a white device, the spike that they put in the bottle which was obviously meant -- the very fact that you have a spike would indicate that that bottle was intended to be used more than once.
Q Okay. And --
A And I --
Q -- what we're talking about now is the big bottle; correct?
A Right. The big bottle, yeah.
Q Okay. And so the big bottle of propofol came from the manufacturer with a -- do you call it a spike? That's what we've called it here.
A Whatever you want to call it, yeah. But it goes in there and there's a little --
Q The thingamajiggy.

A -- cap that -- yeah, there's a little cap that comes off and then you take the needle off the syringe and then you draw the propofol into the syringe through this device. Right.

Q Okay. And you would -- you would, from your entire career at Dr. Desai's clinics, you would utilize both sizes as multi-patient use; correct?

A Well, now, I don't want to give a misleading answer here. During my -- during my entire career we didn't use both sizes, I think which I've already pointed out. But at the times which I did, I would personally view -- view either size as multi-use, yes.

Q Okay.

A Because it really makes no difference as to, you know, whether you have a 20 cc bottle, 50 cc bottle, a liter bottle, or a 50 gallon drum. The principle is the same. Once you've contaminated it by the use of -- by -- by using a needle/syringe unit that's been contaminated, then after that you either -- you have to through the entire thing away. So it makes no difference.

If you have not contaminated it, then there's no reason why you can't use it again with one -- again, there is one proviso here. There is a little -- I don't know if I'm talking too much, but there is a little -- there is label on it that says single-use only. Now, people have asked me in

the past why would that be on there if it wasn't that you only use it once?

Well, there is a very good reason. Because for -- for reasons that I don't quite understand, once a propofol bottle has been tapped into, if it's allowed to stand for several hours, there is some sort of chemical reaction that occurs. Why, I don't know, but it becomes unusable. And you can tell just by looking at it. That would be a very good reason why that label would be on there over and above any considerations of contamination.

Q Okay. Because it -- it -- in layman's terms, it apparently doesn't have a preservative in it. Once it's --

A Yeah.

Q Once you -- it comes and it's got a metal cap on it; right?

A Well, it's a plastic cap. A blue --

Q Plastic cap.

A -- blue plastic cap, yeah.

Q Okay. And then once you puncture it that first time --

A Yeah.

Q -- you would take it and wipe it with the alcohol --

A Yeah.

Q -- air dry --

A Yeah.

Q -- puncture it. At that time no preservative when it's cultured or whatever you call it, it could allow some type of bacterial growth?

A Well, my guess is even -- even if air got in there or something. I mean, there is some chemical response that goes on, which I don't -- I can't say I can explain it because I don't know why. But that's -- that's the result.

Q Okay. And so you understood it to mean -- I'm using aseptic techniques, and so I'm going to use a 20 or a 50, small or big --

A Uh-huh.

Q -- multiple patients --

A Uh-huh.

Q -- because I am not going to contaminate it. And the only concern would be a time limitation.

A Right.

Q Because for you -- you use it in an hour or two?

A I wouldn't even wait that long.

Q Okay.

A Because I'm just -- I prefer to err on the side of restriction than on --

Q Okay. And the time limitation I'm talking about is if -- if it was a slow day a Burnham and you had a

half of a vial of propofol sitting there, and so two hours goes by before our next procedure, you would then toss that; correct?

A Well, yes, I mean, under the circumstances, at the rate we moved patients through, the question of time limitation hardly even arises. If -- if -- I will say this. If I had opened something and left it on the table and then we took an hour break and came back, would I use that same one? No, I wouldn't.

Q Okay. And -- and that was because -- not an issue of contamination from patient to patient, but environmental contamination --

A Yeah.

Q -- because it has no preservative, which you interpret as why it says single use on it?

A Right.

Q Okay. And when -- when you were at Burnham and Vince Mione was working there --

A Yes.

Q -- you testified about you took over to Vince a partially used vial of propofol?

A Yeah.

Q And vouched for it?

A Yeah.

Q Said here is some you can use?

A Yeah.

Q Okay. And that would have been at the end of the -- your procedure, end of the day?

A It would have been one that I -- well, I don't know whether it was the end. It probably -- I think it was probably the end of the day because I was fixing to leave, so --

Q Okay.

A -- I would -- in any case, it would have been one that I had just opened within the last ten minutes or so.

Q Okay.

A Yeah.

Q And the -- also you explained that Vince Mione, and I think you said at the end of the day, would bring over any partials, partial vials that he still had, and say do you want to use these?

A Yeah.

Q And you, being polite, would say thank you and take them?

A Yeah, and then --

Q Right?

A -- put them aside.

Q And then toss them in the trash. I mean, is that -- am I -- is that fair?

A I suppose, yeah.

Q Okay. I mean, you didn't say no, no, you can't do that, Vince, and give him one of your lectures?

A No.

Q You would just take it?

A Yeah.

Q Okay. And -- and the lecture you just gave on the size, whether it's a tiny one, big one, is that the same explanation you gave the BLC lady who started writing furiously?

A Well, I don't know that I used those exact words, but, I mean, the gist of my conversation was I use it because I -- I will reuse these bottles, yes, but I will use them only with a fresh, uncontaminated, sterile needle and syringe unit. I will not -- and I made this very emphatic -- I will not use it, no, if -- if I have used either the needle or the syringe or both on another patient.

Q Okay. And what -- what you were explaining to her is there is -- there is no way on earth, and you were defying her to show how there could be any cross-contamination from your administration of propofol in that fashion; correct?

A You mean in the -- in the aseptic fashion?

Q Yes.

A Yeah. No, with the one possibility that once you've punctured something, with the next puncture you could be bringing in things from the air which could settle on the

-- so you, again, you use the alcohol swab, wipe it off, and air dry it.

Q Okay. And did that satisfy her?

A Well, she did a lot of writing. I don't know that it satisfied her.

Q Well --

A It didn't -- it did not satisfy a lot of people.

Q -- you're the one that surrendered your license.

A Well, that was not done because I -- I didn't do that because I was being nice or -- like I said, I did that because I deemed that the battle had already been lost at that point.

Q Okay. Now, the propofol saline push efficiency meeting.

A Uh-huh. Yeah.

Q Okay. Now, that would have been Shadow Lane?

A Shadow Lane, yes.

Q And do -- do you think it was at the end of 2007?

A Well, when I -- when I could be fairly sure it was in -- it was within a year or a year and a half before we shut down. I mean, it was not a long time before. At least that's my recollection.

Q I've got to show you something.
A I may be wrong, but that's my recollection.
Q Have you ever seen that before?
A Yes, I did.
Q Who wrote that?
A Me.
Q Okay.
A I did.
Q And you wrote that on July 15, 2008?
A July 15, 2008, yeah. That's after I had already hired Mr. --
Q Momot?
A Uh-huh.
Q That was your lawyer; correct?
A My what?
Q Your lawyer that you hired.
A Lawyer, yeah, criminal attorney.
Q Okay. I marked that one. It's the same, it just has a --
A Oh, I see. Oh, okay.
Q Now, the -- at the time, July 15, 2008 --
A Yeah.
Q So that's -- you were literally writing a memorandum to Mr. Momot while things were fresher in your mind than they are five years later; correct?

A Yeah, I think that's a safe assumption.
Q Okay. And in -- in that memorandum it says in the later part of 2007.
A Where does it say that? What page?
Q Regarding the use -- I'm on page 1.
A Page 1. Okay. All right. Okay. Over here. Okay. Right. Okay. There we go. Uh-huh.
Q Okay. And the -- your -- I mean, that was literally six months later; correct?
A Six months after? You mean this memo?
Q Yeah.
A Yeah.
Q Okay. And this was right in the -- you had surrendered your license, and this was right in the thick of things within a five months after -- or actually, four months after the closing of the clinic.
A Well, the closing was on March 3rd, as I recall.
Q Okay.
A Okay. Yeah.
Q And so would you -- you would think that your memory was much better at that time.
A I would think so.
Q Okay. So would you agree that it looks like it was the end, later part of 2007?

A Yeah.

Q Okay. And at -- at that meeting it had -- Dr. Desai, and this was all of the CRNAs but one --

A Yes.

Q -- right?

A As I recall, yes.

Q Okay.

A But which one, I don't know.

Q Okay. But -- but we -- you do know some that were there?

A Yes.

Q Who?

A Well, until I know the one that wasn't there, I can't for sure say who the ones that were there. It would have had to have been all but the one that I can't remember that was absent.

Q Okay. All but one was there. And the --

A That was what I -- at the time I remember somebody making a point that so and so is missing.

Q Okay.

A But who so and so was, I don't remember.

Q Was Linda Hubbard there?

A Well, she might have been the one missing, but I --

THE COURT: Do you specifically, as you think about

it, think of anyone -- any particular CRNAs that you remember being there?

THE WITNESS: Okay. I believe Keith was there. Now, the minute I say that, it may turn out that he was the one that wasn't there. But I believe Keith was there, I believe Vince was there, I believe Linda was there. If I had to -- see, we had another Vince, too. Vince Sagendorf.

BY MR. WRIGHT:

Q Sagendorf?

A He probably wasn't there.

Q Okay.

A Probably. Because he didn't work for us for very long.

Q Okay. Now -- and at -- at this meeting, Dr. Desai explained that he had had a study done regarding the practice; correct?

A Well, I don't know if I'd call it a study. There was somebody who had been hired to come in and assess the situation.

Q Okay. And one -- one of the findings was that the -- the administration of anesthesia was a big cost factor in the practice.

A Yeah. Right.

Q And he was asking about how to save costs, how to reduce costs.

A Well, that was -- yes. Yeah.

Q Okay. And at -- and then suggested, Dr. Desai did, this propofol push by saline.

A Yes.

Q Is that right?

A Yes. Because I -- as my memory serves me, that was brought up at this meeting and there would have been no one else that would have brought that up but him, I don't think, so, yeah.

Q Okay. Well, could -- was Ralph there?

A Who?

Q You're Ralph.

A Ralph. Was I there? Yeah.

Q That wasn't a trick question. I get mixed up talking.

A Don't confuse me this late in the day, sir.

Q Was Vince Mione there?

A Well, now we got -- I believe he was, yes.

Q Okay.

A I believe, as I sit here, that he was not one of the ones missing, although I wouldn't go to my --

Q Okay.

A -- grave on it.

Q Now, do you recall talking to Dr. Nayyar about this?

A Yes.

Q Okay. And this, I'm talking about this use of saline to mix with propofol to reduce the amount of propofol needed to affect the patient.

A Yes.

Q Okay.

A Dr. Nayyar, yes.

Q Okay. And did -- did you discuss it with him on several occasions?

A Well, when I gave -- well, I mean, when I gave cases with him, he was very much -- I mean, he very much believed in the efficacy of that method. And he -- at the time that he would give the case he was -- I don't -- I would hesitate to say pressuring, but he was sort of -- he had the expectation that while I was giving his case that I would use this technique.

Q Okay.

A Which I did.

Q Okay. And so this technique, I mean, that Dr. Nayyar was championing; correct?

A Well, I would say that he believed in it, yes.

Q Okay. He was a true believer in the technique; correct?

A Yes.

Q Okay. And he -- and he -- he would explain to

you why; correct?

A No.

Q Okay. Didn't he talk about at the VA and using saline and it comes in?

A There was a -- I believe he did make a statement to the effect that it had something to do with the action of propofol at the nerve endings, or it was -- it was some sort of explanation which --

Q Receptors?

A -- tended to put me to sleep on the spot. I mean, because I don't care why it works. All I care about is whether it works.

Q Remember him using receptors?

A Yeah, I think he did use that word, some kind of receptors.

Q Okay. Do you have any idea what he was talking about?

A Not really.

Q Okay. But --

A Well, I know what receptors are, but I -- I don't know what --

Q Okay.

A -- mechanism he was talking about.

Q And -- and do you recall that at the -- you've been to -- you went to the what we here have called the VA

clinic?

A Yeah. Uh-huh.

Q Filled in on occasion?

A Yes.

Q Okay. And at the VA clinic did they utilize a -- not a hep-lock, but an IV line?

A They had an IV line, yeah. It was -- well, it usually was, you know, a plastic in-line catheter attached to an IV? Yeah.

Q Okay. And did -- do you recall -- I'm trying to jog your memory -- any discussions with Dr. Nayyar or Dr. Desai about at the VA they inject saline at the --

A I can't honestly say I did, no

Q Okay.

A I mean, if I did, I probably ignored it or something. But, no, I mean, it was never a point that was made to me that stayed with me.

Q Okay. Let's see if I can figure out where I read it.

A Well, if you figure it out, let me know.

Q Go to page 41 and 42.

A Of?

Q Of your second.

A Second interview?

Q Yes, sir.

A Oh.
Q July 18th.
A Okay. I didn't index this one. 41 and 42?
Q Yes.
A All right. I'm on 41.
Q Read the bottom of 41, or as much as you want, but over onto the top of 42.
A From the bottom of 41 to the top of 42?
Q Yes, sir.
A Oh, okay. Okay.
Q Did you figure -- do you figure that out?
A Yeah, well, what I'm saying there sounds like gibberish. I'm trying to make sense of it. I mean, I'm lacking a context here on this.
Q Okay. Well, read as much as -- before and behind it as you need.
A Okay. If you ask me a question I can --
Q Okay.
A -- I can give this some context here.
Q What -- what I'm reading here is, this is you speaking, what I did say to Dr. Desai, I said in the times I worked at the VA, I -- at the VA they didn't do it the way that we did it. Everyone came in with a bag and tubing. They just --
A Yeah, that's what they did. Yes. Most of

these patients were --

Q Well, right. And this is -- I'm continuing on down.

Now, I observed -- now, this is very anecdotal. I thought my impression was when I gave anesthesia to those people, and there could be any number of explanations for this, but I thought I usually had to use less on them than I did on our patients.

A Well, that would probably be because of the kind of patients they were. Most of those patients were very sick and they -- they didn't generally -- I mean, they were not robust and they didn't as a rule, as best as I can recall, need as much as you would if you had your own people coming in.

Q Okay. And it continues in the same.

Usually Dr. Nayyar worked over there and he's not real fast, so that wouldn't explain why I was using less. In fact, if anything, he was kind of slow. But I felt that I was not using as much. So in my mind I thought, well, does that fact that it's being diluted with the solution have anything to do with this? Maybe. I don't know. But I did mention this to D, and he said, yeah, that's a good reason because, you know, it was diluted with the fluid.

A Okay. Well, I have to --

Q I -- I thought you were talking about saline.

I thought you were talking about the it we are talking about.

A Okay. Now you're losing me. I'm sorry.

Q Okay.

A Let me --

Q Weren't you talking there about using saline in addition to propofol?

A Yes, I must have been. Yeah.

Q Okay. And you were talking about Dr. Nayyar had talked about it?

A Well, the instances that I remember Dr. Nayyar talking about was when he was Burnham or working with us.

Q Okay.

A I can't say I remember him talking about it when he was showing up at the VA?

Q Okay. Well, the -- I am reading that, but tell me if I'm wrong. I was reading that that you were engaged -- D is Dr. Desai; right?

A Yes.

Q And you were telling him that at the VA where solution is used with the propofol, less seems to be used and that may be why.

A Okay.

Q Is that right?

A Yeah. Now -- now at the meeting we're talking about; right?

Q Yes, sir.
A Yeah, I may well have said that. Yeah.
Q Okay. And the -- all -- all CRNAs to your understanding were then going to try it?
A Say again?
Q All the CRNAs were going to try this new technique?
A Well, I -- whether they did or not, I assumed they were going to try it, yes.
Q Okay. Well, D -- Dr. Desai is suggesting it; correct?
A Yes.
Q Okay. And so you tried it?
A Yes.
Q Okay. And it didn't seem to make any noticeable difference; correct?
A Well, if I had to be really objective about it, I would say, no. I mean, I don't think it did.
Q Okay. It didn't --
A There were times when I thought it did. But then I probably would have thought that ignoring the times that it didn't, which isn't a very scientific way of going about things.
Q And there -- and there was nothing unsafe, there was nothing risky whatsoever about what you were

testing; correct?

A Oh, no. No, because, again, the same principles of sterile -- of aseptic technique would apply.

Q Okay. I think you -- you also stated -- I'm jumping around here checking my notes -- that there was an occasion where Dr. Desai did a colonoscopy before the GI tech was there; correct?

A I recall one such instance --

Q Okay.

A -- because I think they had disappeared from the room for some reason or other, and then not wanting to wait he just went ahead and started himself and the things that he needed were put right in front of him.

Q Okay. So he was there.

A Yeah.

Q And I think you described him to the police as being self-sufficient.

A Yes.

Q And that he -- he could go ahead and perform the colonoscopy. And you indicated that other doctors would simply yell, where the hell is that GI tech?

A I imagine they would, yeah.

Q And instead he would just go ahead and perform --

A Yes.

Q -- the procedure --

A Yes.

Q -- because everything was there; correct?

A Yeah, everything that the GI -- or that the tech would have provided him was in front of him. And so instead of having them hand it to him, he would just pick it up himself.

Q Okay. And when -- I want to jump now to your meeting with the BLC lady.

A All right.

Q And what you were doing. I mean, we know from records that have been produced here that it was on July -- January 30, 2008.

A I don't know the date, but I remember the incident.

Q Okay. The day of the incident you were being observed by BLC?

A Well, yes. Yes.

Q Okay. Meaning they were in the clinic observing the --

A Observing.

Q -- practices --

A Right.

Q -- that were going on.

A Right. Uh-huh.

Q Now, this is after the CDC and Southern Nevada Health District and BLC had come into Shadow Lane; is that correct?

A Well, now, by CDC you mean the health department?

Q Yes.

A Well, now, again, to be honest with you, I don't know whether they came or not. I know that the -- that the BLC came because I saw them. I was talking to them.

Q Okay. Right. No, what I'm saying is they came to Burnham --

A Yes.

Q -- after having been to Shadow Lane.

A I presume so, yeah.

Q Okay. And when BLC came and observed you and you had the conversation with this lady, you -- you were utilizing the same practice that you had your entire time in Las Vegas and in your career of propofol --

A Right.

Q -- correct?

A Yeah.

Q And that was you were using propofol, you were using aseptic technique --

A Right.

Q -- and you finished the patient and you had a

partially filled propofol vial or two --

A Uh-huh.

Q -- still sitting there.

A Yeah.

Q And she engaged in conversation and said what are you going to do with those?

A Yeah.

Q And you said use them on the next patient.

A Yeah.

Q And she starts writing.

A Right.

Q Okay. And then you explained to her that it was aseptic --

A Yeah.

Q -- and there was no possible way contamination could occur.

A Yeah.

Q And you then had meetings soon thereafter. Who did you first meet, Jeff or Tonya? Do you remember?

A After I -- after she left?

Q Right.

A Now, again, she did not observe me giving a case. When I spoke to her was between cases. All right. Then after that I believe Jeff -- I encountered Jeff either in the hallway or he came into the room or something. And then

he announced that the new -- that the policy was that we only use single -- we only use small -- the small vials once, you know, for one patient, and then we discard them. Well, that was a revelation to me. But anyway, and then I went -- and he said, well, Tonya wants to speak with you, so I went --

Q Okay.

A -- in to see Tonya. And then I spoke to her and she said -- she announced the same policy. And Jeff was in the room. Now it's coming back. I believe he was in the room, yes.

Q Okay.

A And they were both telling me, well, that was the policy handed down. And I said, well, that's a revelation to me. I didn't know about any such policy. At which time Tonya said, well, I'm going to send around an official memorandum announcing that is the policy.

Q Okay.

A And as I was leaving the room that lady was in the hallway. And I again approached her and I said -- I said are you sure you understand what I've been telling you? Because I want to make this distinction very clear to you. And she says, no, I understand. Don't worry, I understand.

Q Okay. And -- and you had understood that 50 cc vials were gone --

A Yeah, after that.

Q No, before that.

A As a matter of policy, no. In fact, yes. I mean, I think so. I believe we started -- yeah.

Q Okay. Well, I mean, you weren't at Shadow Lane when CDC and Health District came in on January 8th; correct?

A I wasn't at Shadow Lane, no.

Q Okay. And you weren't there on the 9th and 10th during inspections?

A No.

Q Okay.

A No.

Q And so all -- all you knew is that you had been told -- and tell me if I'm wrong on this. I'm just getting it from having read your interviews and your statement to Mr. Momot. You -- you had been told that only 20s were going to be used going forward, only that; correct?

A At some point, yes, I believe I was told that. Or, in fact, they just started using them. I mean, but I think --

Q Okay.

A Yeah, from now on, yes, we'll be using 20s.

Q Okay.

A Yeah.

Q And so what -- no more 50s, only 20s.

A Right.
Q But Jeff Krueger did not additionally tell you, and those 20s are only to be used on one single patient at a time --
A No.
Q -- right?
A No.
Q Sorry?
A That's correct.
Q Okay. I'm saying it right?
A Yeah, correct. Yeah, you're saying it right.
Q So when -- when you were confronted by Tonya and Jeff Krueger, and they were essentially saying, not quotes, but the message they were communicating was, Ralph, you're violating policy because a policy has come down. 20s are only to be used for one patient and then thrown away; right?
A Right.
Q And you said, I knew there were only 20s, but no one ever communicated to me that it is not to be multi-use.
A Right, or words to that effect, yeah.
Q Okay. And then they, Tonya -- Tonya said we'll make the policy going forward, so there's no confusion --
A Yeah.

Q -- is one small propofol vial per patient, throw it away, no multi-use.

A Right.

Q And I'm going to put it in writing and circulate it.

A Yeah.

Q Correct?

A Which she did, yeah.

Q Okay. And then after that meeting at a later time is when you had a meeting with Dr. Mason and Dr. Desai?

A After that? Was it before that or after that? Probably after that. But, again, don't -- don't let my life depend on this now. But, yeah, I believe it was after that. It was --

Q Well, it was --

A Yeah, it must have been after that because --

Q Okay.

A -- yeah, I think it --

Q Because at the time of the meeting with Dr. Mason and Dr. Desai, you knew that -- that the policy was one vial per patient.

A Yes, I believe.

Q That -- I mean, you -- correct?

A Yeah.

Q I mean, I don't want to --

A I believe -- I believe so, yeah.
Q -- mischaracterize this.
A I believe so, yeah.
Q Okay. And the -- and I'll tell you, you -- you stated that to the police department.
A Okay.
Q I'm not going to point it out to you. If I'm wrong, they'll find it and show me.
A Okay.
Q Okay?
A All right. I'll take your word for it.
Q I can't remember where it was.
A I'll take your word for it.
Q You had this meeting with Dr. Mason, and he -- he was the medical director of Burnham?
A Right.
Q Okay. And with Dr. Desai?
A He was there, yes, in the room. Room C.
Q Okay. Both of them were there?
A Yes.
Q Okay. And Dr. Mason also talked?
A Well, they both talked.
Q Right. I mean, this wasn't just Dr. Mason sitting there --
A No.

Q -- and Dr. Desai talking?
A No.
Q And -- and when -- and at this meeting, Dr. Desai told you that with the investigation and what had happened --
A Yeah.
Q -- at Shadow Lane --
A Uh-huh.
Q -- there were five to six hepatitis C positive patients; correct?
A Uh-huh.
Q And they were coming down hard, meaning all of those alphabet agencies --
A Yeah.
Q -- correct?
A That's what I understood him to mean, yeah.
Q Okay. And he told you that he had known you to always do right -- I'm not quoting -- but to always perform correctly as a CRNA.
A No, he said to do -- I've always known you to do the right thing.
Q Okay. And you interpreted that as meaning that you had always been a good CRNA and doing things safely and properly; correct?
A Yes.

Q Okay. Because, in fact, Dr. Mason said I -- I agree with that assessment and I'll even testify for you; right? Correct?

A Yeah. Yeah, not that I recall that, yeah, he did say that. Now you're refreshing my memory.

Q Okay.

A At first I didn't --

Q Well, I'm getting it out of your --

A Okay. All right. Well --

Q So it -- he -- and additionally they stated that their -- this investigation and because of what has transpired can have very severe consequences for those involved; correct?

A Yes.

Q And I'm not quoting again or anything.

A Yeah, well, that's --

Q I'm just saying if -- you tell me if my sentiment or characterization is accurate. And that you being caught up in this, if you had done something wrong or were drug into it, could lose your license and your ability to practice.

A Yes.

Q And they were telling you to be careful --

A Yeah.

Q -- and make certain going forward everything

is done properly and that they trusted you had already in the past.

A Yes.

Q Fair?

A Yeah.

Q And the -- the -- the exchange -- when -- when Dr. Desai said you've never heard of propofol, let me understand that clearly. Because the way I understood it from reading your interviews and what you have written was that Dr. Mason is there. Dr. Desai is saying investigators could come in and watch you.

A Right.

Q And understand, it's one needle, one syringe, one vial, one patient.

A Yeah.

Q Correct.

A Yeah.

Q And he was talking about the policy now going forward; correct?

A Right.

Q And then he said if they say to you what's multi-use vial, or do you use multi-use vials, say what's that.

A Right. I do remember that, yes.

Q Okay. Well, is my characterization correct?

A Yes.
Q I mean, that he is --
A Sounds like it, yeah.
Q He was saying when they say to you, are you using multi-use vials again, Ralph, you say what's a multi-use vial?
A What's that, yeah.
Q Or was he telling you to lie to them?
A Well, no, because -- I see what you're saying now. Yeah, I mean, if in fact we were using only the small vials and they came around and said are you using multi-use, to say what's that, well, that -- I mean, we could interpret that both ways. I would not necessarily have to be saying, well, I've never heard of such a thing. No. But in a very colloquial way you could say that would be a way of saying no.
Q Okay.
A Yeah, that would be --
Q Okay.
A In a very colloquial way, that's --
Q Right. And is that the way you interpreted it?
A At the time that he said it?
Q Yes.
A Yeah, I think I so. I mean --
Q Okay. In the colloquial way?

A Yeah, I think so. Yeah. I did not interpret it that he was telling us to lie. At the time that was not my interpretation.

Q Okay.

A Because that's -- that's pretty extreme.

Q I understand Dr. Desai in running the clinic was cost conscious and didn't like waste. Is that fair?

A Certainly.

Q And he didn't like people sitting around when they're supposed to be working.

A Yes, I would say that's true.

Q Okay.

A I mean, I never heard him say that to me. But, I mean, that wouldn't make him unique, though. I don't think anyone that's running a business would say anything else.

Q Okay. And the -- how -- even though he was -- would cut costs, he liked to keep costs down, how -- how was he, as an employer like to you?

A Say again? How was he --

Q How was he -- how was Dr. Desai as an employer -- employer --

A Yeah.

Q -- to you?

A To me personally?

Q Yes.
A Well, he was very cordial.
Q Okay. And did he -- did -- did you get extra things like sick leave or whatever it is?
A Yes, I did.
Q Okay. And explain what that was.
A All right. Well, there was -- well, see, we only had so many PTO, personal time off days. The way it worked is you had a block of personal time off days, which you could use any way you want. Sick time tend to be part of personal time off. So whether you were sick or whether you went out to play golf, I mean, it was personal time off. Okay?

So at one time when I had this heart problem, I was actually -- I had used up my -- because I think I was actually in the hospital for a few days for that and I had used up my personal time off. And as it -- as I remember he gave it to me anyway. In other words, he gave me back -- it's as if I hadn't used that time. So he reimbursed me. Even though he didn't have to, he did.

The second time was a much more serious situation where I was -- I was in the hospital for a week and some emergency developed when I was on-call. And to make a long story short, I almost died. I mean, I developed a colon obstruction. Okay? And now so I was really -- after I got

out of the hospital I was in no position to work for the next -- I was out at least a month, which used up my -- which used my personal time off and then some. Well, he gave me that time back.

Q Okay. Thank you.

A For which I was grateful then and I'm grateful now.

MR. WRIGHT: I'm just wrapping up, Your Honor.

BY MR. WRIGHT:

Q Did -- are you aware that the 20 cc, the small propofol vials, cost the same as the large propofol vials by volume?

A No.

Q Okay.

A I don't believe I was ever told that.

Q Okay. Do you recall asking Jeff about why they were ordering the larger vials, and Jeff told you that the cost --

MS. WECKERLY: Objection. Hearsay.

THE COURT: Sustained.

MR. WRIGHT: That it is. I was going to offer it not for the truth of the matter.

THE COURT: Then what for?

MR. WRIGHT: But I -- no, but I changed my mind.

THE COURT: All right.

MR. WRIGHT: I want it for the truth of the matter.
BY MR. WRIGHT:
Q Linda Hubbard came to work for a period of time at Burnham?
A Yes.
Q Okay. And that was near the end?
A Near the end, yes.
Q Okay. And the -- did -- what was your understanding of why she was there?
A Well, again, you know, what I heard, and this is not necessarily from authoritative sources.
Q Okay.
A Was that she was working at Shadow and someone had observed --
Q Hold on.
THE COURT: Okay. Then --
MR. WRIGHT: Hold on.
THE COURT: They don't care.
MR. WRIGHT: Oh, okay. Let it flow.
MS. WECKERLY: I've already got testimony on it.
THE WITNESS: When you start objecting, I have a long-winded way of speaking, it throws off my train of thought. But it's all right.
BY MR. WRIGHT:
Q Linda -- Linda Hubbard showed up at Burnham.

Why did she get run out of Shadow Lane?

A Well, no, again, I don't get this from authoritative sources. But, you know, the story was --

THE COURT: Water-cooler talk, in other words?

THE WITNESS: Yeah. Yeah, I mean, other anesthetists or even not anesthetists say that she was observed, and they used the term, you know, double dipping, which I take it to mean doing the things that we said are a no-no when --

BY MR. WRIGHT:

Q Okay.

A -- you're giving propofol. So she was sent over there to be observed, proctored, or perhaps instructed in how to do the right things. I also -- my understanding was initially she had been let go, but then somehow or another they decided to send her over to us instead. But that was what I --

THE COURT: You weren't assigned to --

THE WITNESS: Me?

THE COURT: -- mentor her or --

THE WITNESS: No.

THE COURT: -- anything like that?

THE WITNESS: No, no.

THE COURT: Okay.

BY MR. WRIGHT:

Q Okay. Do you -- do you recall if anyone at the clinic, meaning Tonya, Dr. Desai, any other physician, Jeff Krueger, Katie Maley, did any -- anyone tell you you should multi-use propofol vials?

A By multi-use you mean --

Q Use it until it's empty.

A Use --

Q Use it until it's empty.

A No.

Q Okay.

A No.

Q Because -- because that was something no one needs to tell you or any other CRNA because that's the way it was being done; correct?

A Yeah.

Q And did Dr. Desai or anyone -- anyone, again, ever tell you to reuse the syringes and needles?

A Never told me, no.

Q Thank you.

MR. WRIGHT: No further questions.

THE COURT: All right.

Mr. Santacroce.

MR. SANTACROCE: Thank you.

CROSS-EXAMINATION

BY MR. SANTACROCE:

Q Good afternoon, Mr. McDowell. How are you?
A Good afternoon, sir.
Q Do you have that letter that you wrote that was marked as an exhibit?
A You mean this one here to Momot?
Q Yeah.
MR. SANTACROCE: Your Honor, I'm going move to admit this if it hasn't been admitted.
MR. WRIGHT: I'd move it's admission.
THE COURT: I'm sorry? Which one?
MR. SANTACROCE: Did you move to admit this?
MR. WRIGHT: No. I move to admit it.
THE COURT: Any objection, State?
MS. WECKERLY: Yes. What grounds is it admissible?
MR. WRIGHT: It -- have you read that July 15, 2008, letter to Mr. Momot?
THE WITNESS: Have I read it very recently?
MR. WRIGHT: Right.
THE WITNESS: I pretty much skimmed over it. I mean, I read it quickly.
MR. WRIGHT: Okay. And everything in there is true and correct and -- and -- and was written at a time it was fresh in your mind?
THE WITNESS: Yes, I wouldn't have written if it were -- no. Yeah.

MR. WRIGHT: Okay.

THE COURT: You're objecting as hearsay?

MS. WECKERLY: Yes.

THE COURT: All right. At this time I'm not going to admit the letter, but you can certainly question him about things that he put in his memorandum.

MR. SANTACROCE: Okay.

MR. WRIGHT: Is it hearsay?

THE COURT: Yeah. Were you trying to get it in as a past recollection recorded or --

MR. WRIGHT: Yes.

THE COURT: Okay. Let me have time to read the letter, which I'm seeing right now for the very first time.

MR. WRIGHT: Okay.

THE COURT: At this point I'm not going to admit it because I haven't had a chance to see if it fits under that or not. At this point, as I said, Mr. Santacroce can certainly question him about what's in the letter.

MR. WRIGHT: I understand. I was just wanting to know the basis in case I didn't cover something. That's what I'm really asking.

THE COURT: Okay. Well, they're -- they're objecting as -- as hearsay, and you're saying it falls under one of the exceptions.

And at this point, Mr. Santacroce, go ahead and

question him about the contents of the letter, if you want to do that.

MR. SANTACROCE: Okay. Well, we'll get to that.

THE WITNESS: And do I still have a copy? Yeah, here it is.

THE COURT: Yeah, he's --

MR. SANTACROCE: I'm not ready to get into that.

THE COURT: -- he's not ready to get into that.

THE WITNESS: Oh, okay.

THE COURT: But he's going to --

BY MR. SANTACROCE:

Q Just some preliminary matters, I represent Mr. Lakeman, Ron Lakeman. Do you know Mr. Lakeman?

A Yes, I do.

Q Have you ever worked with him before?

A No. Met him probably one time, but I've never actually worked in the room with him or --

Q You never observed his procedures?

A No. No.

Q Were you ever in a meeting with him?

A Here we go again.

Q I might provide a missing --

A He was probably --

Q -- link for you.

A He was probably there at that meeting,

although I wouldn't --

Q You wouldn't swear to it.

A You mind if I ask him?

Q It depends on what you define as the latter part of 2007. Can you tell me what you --

A Well, I'm talking about -- the meeting that we're talking about now is the meeting with Dr. Desai about the propofol.

Q Right.

A Yeah, so somebody was missing.

Q Okay. What's the latter part of 2007 to you?

A Well, I guess that would be the latter part of the year 2007.

THE COURT: Well, he means is that like Thanksgiving through Christmas?

Is that what you mean?

MR. SANTACROCE: Yeah.

THE COURT: Is it Halloween?

THE WITNESS: Probably. Probably in that area, I think. Yeah.

BY MR. SANTACROCE:

Q So in November or December?

A Well, let's just say October through December.

Q Okay. Well, we haven't solved the issue. I'll represent --

A When it comes to these dates, I just --

Q I'll represent to you that Mr. Lakeman was no longer employed there --

A Okay.

Q -- in October of 2007.

A Oh. Okay.

Q So --

A Well, I guess --

Q -- that's why I needed to know what was the latter part to you.

A Okay.

Q Okay. So you have no independent recollection of him being there, though; correct?

A No. No.

Q You testified -- again, you testified that you lost your license as a result of this incident; correct? Your nursing license?

A Well, we -- by lose, I mean, they -- we voluntarily surrendered it with the understanding that if we didn't it would be taken the very next day by 12 noon.

Q Okay. So that's not much of a choice.

A No.

Q So you lost your license or you surrendered it, however you want to --

A Yes.

Q -- define it.
A Yes.
Q You don't have it.
A No.
Q And neither do the other CRNAs to your knowledge?
A Not to the best of my knowledge, no.
Q Okay. Were you also given an immunity agreement for prosecution?
A No.
Q Are you being charged criminally?
A No, not that I know of.
Q Well, I think you'd know it. You'd probably be sitting next to me. You wrote a letter or a memorandum to Mr. Momot and you told Mr. Momot that, you know, you can dispense it to whoever you want; right?
A Well, I suppose I allowed him to use his discretion, yes. I mean, yeah, I -- I don't -- if you're asking me whether I would consider the letter frivolous information --
Q No, I'm not asking you to give me any legal opinions.
A Oh, okay. All right.
THE COURT: Did you know that this letter could be disseminated by Mr. Momot to other people? Is that the point

of you writing this letter?

THE WITNESS: Well, no, it probably was for him -- for me to inform him of what was going on. It wasn't --

BY MR. SANTACROCE:

Q Okay. Look at page 4.

A And we're talking about the date July 15, 2008?

Q Yeah. No, April 14, 2013, memorandum. Do you see that?

A Wait a minute now.

Q The last full paragraph before the sign off. Please feel free at your discretion to distribute copies of this memorandum or otherwise share its contents.

A Well, I guess I did, then, yeah.

Q Okay.

A I trusted him.

Q All right. I want to ask you a few things about this.

A Okay.

Q And I really want to get off this propofol, but I can't, so I've got to ask you a couple more questions about it. The aseptic techniques that you testified to about propofol, do you believe those in your heart and in your 30 plus years of practice to be aseptic technique; correct?

A I do.

Q And those were practices you used throughout your 30-year career?

A [Nods head yes].

Q You need to answer audibly.

A Yes. Yes.

Q And that included in various types of settings, hospitals, clinics, surgery centers, wherever you worked.

A Yes. Wherever I worked. Uh-huh.

Q And those practices and techniques were shared in common practices that were used by other CRNAs to your knowledge, isn't that true?

A As far as I know, yes.

MS. WECKERLY: Objection. Foundation.

BY MR. SANTACROCE:

Q Well, you've observed other CRNAs in various settings of your practice; correct?

A Yes.

MS. WECKERLY: When?

BY MR. SANTACROCE:

Q Throughout your career.

MS. WECKERLY: I sound like Mr. Wright.

BY MR. SANTACROCE:

Q Throughout your career.

A What am I supposed to --

Q Hospital settings.

THE COURT: No, I mean, the question is throughout your career have you observed other CRNAs and, you know, as they're administering anesthetic agents to patients.

THE WITNESS: Yes.

THE COURT: Okay.

THE WITNESS: Yeah.

BY MR. SANTACROCE:

Q And you -- those practices are fairly common in the industry; correct?

A Yes.

Q And they didn't deviate much from your practices --

A No.

Q -- correct?

A No.

Q And, again, just to reiterate those aseptic practices, you're not denying that you used propofol on multiple patients out of the same bottle; correct?

A Right. I'm not denying that, no.

Q But you are asserting that those were aseptic techniques?

A That is correct.

Q Using one needle, one syringe, swabbing the bottle with alcohol, air drying it --

A Yes.
Q -- and then reentering it?
A That's right.
Q And you believe that to be aseptic?
A Yes.
Q The CDC here -- go ahead.
A Up to a point. Now, it depends on how long --
Q Yeah.
A -- the bottle is open.
Q Yeah, the bacteria.
A Yeah, well -- yeah, that and the fact that it tends to deteriorate because, as was pointed out, it's lacking a preservative.
Q Okay.
A And it usually takes much more hours, many more hours than I was willing to -- I mean, to me, an hour or so is the cutoff point. I don't care how long it takes.
Q Okay. But apparently the CDC didn't really agree with your interpretation of aseptic.
MS. WECKERLY: Objection. That assumes facts not in evidence.
MR. SANTACROCE: Well --
THE COURT: Well --
MS. WECKERLY: If you want to get the CDC conclusion.

BY MR. SANTACROCE:

Q You don't have your license today, do you?

A No.

MS. WECKERLY: The CDC didn't --

MR. SANTACROCE: Okay.

THE COURT: It wasn't the CDC.

MS. WECKERLY: -- take his license.

THE COURT: It was the nursing authority.

BY MR. SANTACROCE:

Q Well, let's look at the letter, on page 2 of your letter. You testified, I believe, that the CDC didn't observe you do a procedure and that you actually talked to somebody in the hallway. Was that your testimony?

A The CDC?

Q Southern Nevada Health District, CDC, did anybody observe your procedure? Anybody meaning persons of authority, CDC, Southern Nevada Health District, BLC?

A No, the BLC was what I told you. The lady came in and spoke to me. But what she observed me doing was -- actually, she did not observe me doing a procedure. Because when she came in and spoke to me we were between cases.

THE COURT: But you had two partially used vials --

THE WITNESS: Yes.

THE COURT: -- that were still there on your tray or

whatever?

THE WITNESS: Yeah, that she observed.

THE COURT: Okay.

THE WITNESS: Yes.

THE COURT: And then she asked you, okay, what are you going to do with these two partially used vials --

THE WITNESS: Right.

THE COURT: -- correct?

THE WITNESS: Correct.

THE COURT: And that's when you said, well, I can reuse them --

THE WITNESS: Right.

THE COURT: -- on another patient.

THE WITNESS: Right.

THE COURT: And that started the whole discussion.

THE WITNESS: Right. Right.

THE COURT: Okay. But now to your knowledge did anyone in authority, CDC, ABC, whatever, did any of them actually watch you caring for a patient or administering propofol?

THE WITNESS: No.

THE COURT: Okay.

BY MR. SANTACROCE:

Q Okay. Look at page 2 of your memorandum, the first full paragraph. You read that to yourself.

A Well, there's -- you mean the first paragraph or --

Q No. I'm sorry. The second paragraph where it begins on or about January 30th.

A Okay. They observed one procedure in my room. That's beginning to --

Q Okay. So what did you mean by that? Did she observe you giving a -- doing a procedure or not?

A I don't believe she did observe me doing -- I don't believe she was observing me. No. I mean, she may have been in the room now that I think about it just standing -- you know, observing somebody else working, but she wasn't standing right by me watching me do anything.

Q But she was in the room while the procedure was going on?

A Probably yes. Until I read this, up until now I -- I would -- I would have thought that she just came in between the cases. But now that I read this again and think about it, yeah, she probably was in there, but not observing me.

Q Well, we don't know who she was observing. That would be speculation.

A Yeah, well, I mean, she wasn't standing -- she wasn't standing right by me looking at --

Q Okay. And then after that incident, that's

when you had this conversation with her in the hallway or whatever?

A Well, in the room and then later in the hallway.

Q And did she give you any indication that the procedure as you explained it to her was not proper?

A No, she didn't really say that. She seemed to be more curious about what I was telling her as if she wasn't expecting to hear that and she was writing rather furiously on her notepad.

Q Well, we may see that somewhere else down the line, then. Let's move on.

A I mean, she didn't -- I'm sorry. She didn't say to me, no, you're doing the wrong thing or something like that. No. She didn't -- not that I ever recall her saying that, no.

Q All right. Did you perceive it as you were doing something wrong?

A No.

Q Let's -- let's leave the propofol alone for a minute, except -- except for one last point on that, and that's this issue about Mr. Mione bringing over half-used bottles of propofol to you. And you testified you never used those.

A No, never.

Q And you testified that only one time in the whole time that you worked at Burnham did you ever bring a half-used bottle over?

A As far as I can remember, yeah.

Q And I believe you testified it was late in the day that happened?

A It probably was, yeah, because, otherwise, I probably would have had no reason for doing it. I was probably fixing to leave.

Q Let's -- let's talk a little bit about the procedures at Burnham. We've talked a lot about Shadow Lane, but I don't know that we've talked about it at Burnham. What would happen during lunch breaks with you guys? Would one person relieve the other person?

A All right. Yeah. Yes. Now, I would -- I would -- I was very adverse to taking lunch breaks simply because -- well, I just never did. I mean, I would prefer to just stay with the patient and not let somebody else come into my room and -- and, you know, start messing around with my tabletop. I was very meticulous about my tabletop.

Q Very protective.

A Yeah, you know, like Mr. Monk. Have you ever watched Monk?

Q Oh, yeah.

A Well, I was kind of like Mr. Monk. Yeah, I'm

Mr. Monk when it comes to giving anesthesia.

Q Okay. So very protective --

A That's right.

Q -- of your territory.

A Yeah. Now, I can continue to answer your question here?

Q Yeah, go ahead.

A Now, frequently Vince would come -- would say, oh, I have to go to lunch, which meant that the doctor was -- either there were two doctors, or more than likely one doctor going back and forth which meant that I would have to, you know, go over there and follow him, come back and follow him. When I went over there, if he had anything open on his table, I would either push it aside or discard it because I would not use anything that he had opened or anyone else had opened. I opened it myself.

Q So you would open a new, sealed --

A Yes.

Q -- bottle when you got to that room?

A Yeah. Regardless of how much was left in any other bottle that might be there.

Q And that would be the practice and procedure at Burnham?

A For me, yes. Yeah.

Q Okay. We -- we talked about the billing of

anesthesia times. And anesthesia billing is a very complicated science, isn't it?

A It is now.

Q I mean, prior to this incident.

A Don't forget, I started back in the Paleolithic Era when billing was invented. We didn't even know about all that stuff.

Q You wrote it on rocks?

A Pretty -- we might as well have.

Q Okay. Well, let's talk about when paper came into use.

A All right.

Q Tell me how you did it when you had to actually document things.

A Well, I usually documented -- I mean, the -- the farthest back that I can think, you know, right off hand was when I was working in St. Louis at Jewish Hospital. And there they actually did give you a directive. They say the time, anesthesia time, is the time that you come into attendance with a patient until the time that you let the patient go.

Now, on very -- on other places that I've worked, and I can't -- I mean, there would be so many, but, you know, the -- the anesthesia time would include the recovery room time so that they would say don't fill in the end time, let

the recovery room do it. So, you know, all these things going through my mind at the time that -- at the time we're talking about and I'm thinking to myself, well -- and I've never personally had to -- to be involved in billing patients at all ever. I mean, my -- my check came down. All I was concerned was that I got my check. How they -- how they figured it was their own affair.

Q Okay. So let's go back. Some of the facilities actually billed the anesthesia time when the patient left the recovery room; correct?

A Well, the recovery room would fill it in. So my -- my understanding was that maybe anesthesia time included recovery room time, too, which is logical to a point because rarely, especially after long surgical cases does your patient leave the operating room wide awake. So that actually the recovery room personnel are doing quasi anesthesia services.

Q Well, in addition to that, who would be responsible at the endoscopy center if a patient had a problem with coming out of anesthesia when they were in the recovery room?

A Yeah.

Q You.

A That's right.

Q Okay.

A Right.

Q They would come to you.

A That's right.

Q So theoretically you haven't relinquished your liability with that patient until they were actually out of anesthesia and discharged, isn't that true?

A I would say so. Yes, absolutely. Uh-huh.

Q Did you guys at Burnham have emergency medical supplies in case you needed -- you had a problem with a patient while he was under anesthesia?

A Well, there was -- you know, there is, of course, facilities there for giving forced -- in other words, positive pressure respiration. I believe there was also a defibrillator there. It wasn't in every room, but it --

Q What about Benadryl and stuff like that? Did you have that?

A Yeah, there were things that were kept usually in a -- in a -- and I'm trying to remember where they even kept that stuff now. One of the -- one of the things was succinylcholine.

Q Okay.

A Succinylcholine is something -- if a patient suddenly goes into laryngeal spasm, succinylcholine is a very good thing to have around. Now, the reason I'm bringing this up is because I personally was involved in a something of a dispute with administration on that. I thought that each of

us should have succinylcholine in the room with us.

Q Uh-huh.

A They didn't agree. They said, well, we'll keep it in the refrigerator there somewhere or something like that, but --

Q So you guys didn't have a tackle box with all these emergency things in it, did you?

A Well, it wasn't kept -- if there was, it wasn't kept in every room, no.

Q Okay. You didn't seeing CRNAs carrying it around from room to room like a tackle box, did you?

A Well, no, I never used a tackle box. Unless maybe they came from Shadow to help out for a day and they carried their laryngoscope and blades and things. I think maybe they may have done that.

Q They wouldn't have carried propofol from --

A No, no.

Q -- place to place?

A There'd be no purpose in that.

Q And when you recorded times on the anesthesia record, the start time would be an accurate time?

A The start time would be the time that I came into attendance with the patient. Now --

Q You had four times, though; right?

A Well, there's procedure time and anesthesia

time. I don't think procedure time is really much in dispute here, is it? I mean, because it's pretty cut and dry. When the doctor starts working, that's when it starts. When it stops working, that's when it ends. And it's pretty obvious when that is.

Q But, I mean, you had two times on your charts when a patient actually -- you receive the patient; correct?

A Yeah, well --

Q And when you started anesthesia?

A But the -- there was a box with four squares. One was anesthesia time start/stop, procedure time start/stop.

Q Okay.

A Four boxes.

Q And the start times were -- how did you determine start times?

A Well, the way I determine start times -- okay, now let me qualify this. The way I would determine start time is the time, like I said, when I came into attendance with the patient. There were times when somebody might work up the patient before the patient came in to me, and write down the start time there as that, as the time --

Q Would you look at a clock, a watch, clock on the wall, how would you determine?

A Well, I usually used my watch because it was convenient. I mean, as long as it wasn't too far off the --

the wall clock time.

Q So there may have been a discrepancy between your watch and the wall time?

A Yeah, well, if it were, it wouldn't be very much.

Q Not much. A minute or two?

A Yeah.

Q Okay. So you would check your watch and you'd write --

A Yeah.

Q -- when the patient came in.

A Yeah.

Q And when the procedure started.

A Right. Right.

Q There came a point in time when you actually read the Southern Nevada Health District report; correct?

A That's correct.

Q And you were very critical of that --

MS. WECKERLY: Can we --

BY MR. SANTACROCE:

Q -- report, weren't you?

MS. WECKERLY: Can we approach?

THE COURT: Sure.

(Off-record bench conference.)

THE COURT: Ladies and gentlemen, we're not going to

finish with this witness today, so we'll go ahead and take our break. We'll be in recess for the evening break until 9:45 tomorrow.

During the evening break you are reminded that you're not to discuss the case or anything relating to the case with each other or with anyone else. You're not to read, watch, or listen to any reports of or commentaries on this case, any person or subject matter relating to the case. Do not do any independent research by way of the Internet or any other medium. And please do not form or express an opinion on the trial.

If you would all please place your notepads in your chairs. If you have any questions, hand them to the bailiff on the way out and we'll see you back here tomorrow.

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

And then, sir, during the break, this evening recess, don't discuss your testimony with anyone else. And we'll be starting at 9:45, so try to get here, you know, a few minutes early.

THE WITNESS: 9:45?

THE COURT: 9:45.

THE WITNESS: So I should be out there about 9:00 in the morning in the hallway. About 9, 9-ish. Okay. Well, I hate to be late.

THE COURT: Okay. 9 is --

MR. STAUDAHER: Your Honor, what time did you say?
THE COURT: I said 9:45.
THE WITNESS: 9:45.
THE COURT: So be --
THE WITNESS: I'll be out there by 9:00.
THE COURT: You don't need to be that early.
THE WITNESS: Well, I -- I like to be early.
THE COURT: Okay. Well, that's your preference. It's up to you.

And he's excused for the evening unless he needs to talk to somebody in your office about arrangements or anything like that.

MS. WECKERLY: I don't think he does. I think he's good.
THE COURT: Okay.

All right. Sir, you're excused for the evening.
THE WITNESS: Thank you, Your Honor.
THE COURT: All right. On the issue of the report.
MR. SANTACROCE: Yes.
THE COURT: Defense objected when the State wanted to get into the report with Mr. Mione and, you know, how he felt about the conclusions of the report and this and that. So I said they can ask Mr. Mione what he knew about the report and if he agreed with the, you know, method at the conclusion as to the method of transmission or whatever. And I don't

remember exactly how that panned out.

MR. SANTACROCE: That's all I intend to do. Actually, what I want to do is he makes some statements about how the report attributed misinformation about him from another CRNA.

MS. WECKERLY: He's wrong in reading the report.

THE COURT: Okay. Here's the deal. If -- if he says something that's in the report, that's not in the report, or is wrong in the report, then at least that portion of the report then can be read into the record to clarify that that's not what the report says.

MS. WECKERLY: Okay.

THE COURT: And whatever you need from the report to make it complete. That doesn't mean the whole report comes in, but whatever is germane to that --

MS. WECKERLY: Sure.

THE COURT: -- area of the report, then they get to correct the record. This is what the report actually says. Because we can't leave the impression that's -- that's wrong. Or you can ask him, all right, as to the conclusion that, you know, blah blah blah. I mean, is that what you want to get out? I mean, what exactly -- maybe we can all agree here. What exactly do you want to get out from this witness?

MR. SANTACROCE: If you look at page --

MR. WRIGHT: She doesn't have that.

MR. SANTACROCE: Oh.

THE COURT: I don't have -- I never get anything.

MR. SANTACROCE: Okay. He says --

THE COURT: You know what we get? Whatever exhibits you choose to give us and the declaration of arrest or the arrest warrant thing unless it's an indictment. Then we don't even get that. We get a copy of the indictment, and that is the district court file. So we don't have -- you know, we don't -- unless you give it to me, I don't have it.

MR. SANTACROCE: Okay. Well, I'm going to give it to you and then you can read it.

THE COURT: Okay. Well, all I'm saying is maybe the State won't object if we find out what your question is going to be and what information you're trying to elicit.

MR. SANTACROCE: He says that I submit that the report presented in a poorly organized truncated manner --

THE COURT: Oh, I do have that. I don't have the CDC report.

MR. SANTACROCE: No, I don't have that either.

MR. STAUDAHER: I'm going to bring it over and make it at least a Court's exhibit. It's our intention that we need to litigate this at some point because it's our full intention --

THE COURT: As to whether or not --

MR. STAUDAHER: -- to get that entire report in.

THE COURT: -- the report comes in.

MR. STAUDAHER: And we believe there's a number of exceptions that it comes in under, and we can litigate that, obviously, at another time. But the one thing I think I would point out to the Court and to counsel so everybody is on record here, the report itself, the Health District report, is made up of parts. And the last portions of the Health District report are two things. One is the CDC trip report, and the other thing is the BLC report.

So there's two documents which were attached as appendices to the Health District report in which are in some degree included, but not in the body of the text of the original Southern Nevada Health District report. Therein lies the confusion, and I want to make sure that counsel is fully aware of this before they go into this line of questioning with this witness. Because he is confused as to which portion of the report that he is having issue with.

And the numbers and designations within the report are not -- that he's referring to are the trip report, not the CDC's Health District report. Excuse me, not the trip report, but the BLC report. So just so they're clear on this when they get into it, because if they go down that line --

MR. WRIGHT: Not they.

MR. STAUDAHER: -- it opens up the door -- it opens up the door, in our opinion -

THE COURT: Mr. Wright is done.

MR. STAUDAHER: -- to the whole thing coming in before we litigate it.

THE COURT: Okay. So, Mr. Santacroce, on this memorandum --

MR. SANTACROCE: Right.

THE COURT: That's what you're looking at now?

MR. SANTACROCE: I'm looking at this portion right here where it's --

THE COURT: In the latter part of 2007?

MR. SANTACROCE: No.

THE COURT: You have something different than what I have.

MR. WRIGHT: There is a copy of what he has. That's a different one.

THE COURT: This is a different one. Okay. I don't have this one.

MR. STAUDAHER: And we already stipulated to the admission of the two attached reports to the CDC report --

THE COURT: Right.

MR. STAUDAHER: -- which is the trip report --

THE COURT: Okay.

MR. STAUDAHER: -- and the BLC report.

THE COURT: So what you're looking at is the December 21, 2009, memorandum.

MR. SANTACROCE: Yes.

THE COURT: And he says, I submit that the report, presented in a poorly organized, truncated manner, lends itself to confusion and misinterpretation by even trained personnel, let alone a lay reader. Specifically the terms CRNA 1, CRNA No. 1, 2, 3, 4, and 5 are used indiscriminately and fail to distinguish among the possible personnel to whom they could be referring. Okay.

MR. SANTACROCE: And then it says I contend further that I have been misrepresented --

THE COURT: Misrepresented.

MR. SANTACROCE: -- and placed false light by the report. He said risked damage because he's saying that they attribute things from another CRNA to him and vice versa.

MS. WECKERLY: Yes. But that's -- see, he's wrong. He -- he thinks he's CRNA 1. He's not in the CDC report. He is CRNA 1 in the BLC report, and that's why he is confused. Now, we can put this all on --

THE COURT: Okay.

MS. WECKERLY: -- to clarify it.

THE COURT: Let me -- maybe we can -- maybe you lawyers can agree. How are you, Ms. Weckerly, basing he's CRNA 1 in this report? Is there like a legend who says who is who?

MR. STAUDAHER: Not -- not in the --

MS. WECKERLY: Not in the report, but from Labus and from -- they didn't go to Burnham. Okay. So when Labus says CRNA 1, it can only be someone at Shadow and we know who was at Shadow that day, and it wasn't McDowell.

THE COURT: Okay.

MS. WECKERLY: So 1, 2, 3, and 4 can only be --

THE COURT: So they're numbered differently in the two reports?

MS. WECKERLY: Yes.

MR. STAUDAHER: In the two reports. Correct.

MS. WECKERLY: Yes.

THE COURT: And you agree with that, Mr. Wright?

MR. WRIGHT: Yeah.

THE COURT: Okay. So you agree that if you understand how they're numbered they're not referring to this last witness in the Health District report.

MR. STAUDAHER: Correct.

MS. WECKERLY: That's right. He's not CRNA 1.

THE COURT: Okay. And that, Mr. Wright, comports with your reading?

MS. WECKERLY: Right. And the witness is confused.

THE COURT: Okay. So if the witness is confused --

MR. WRIGHT: That's correct.

THE COURT: -- then maybe you don't even want to go down the line of questioning, Mr. Santacroce, because then

they're just going to clarify the whole thing and then we're going to realize, okay, that was another 25 minutes of nothing because he was confused.

MR. SANTACROCE: All right.

MR. WRIGHT: Well, he's --

MR. SANTACROCE: I'll sleep on it.

MR. WRIGHT: I agree, but -- but, I mean, he's -- he's -- he's upset because the trip report uses his name.

MR. STAUDAHER: No.

MS. WECKERLY: No the BLC.

MR. STAUDAHER: No, the BLC.

MR. WRIGHT: Okay.

MR. SANTACROCE: See, we're all confused.

MR. WRIGHT: Okay. Right. The BLC --

MS. WECKERLY: Yes.

MR. WRIGHT: -- uses his name, you know, and so it leaves the impression if one were to read the whole thing, and they did number it, even though their appendixes are all page numbered all the way through. It leaves the impression to someone who doesn't know something that he -- he may be CRNA 1.

THE COURT: Well, it --

MR. STAUDAHER: That's certainly his impression.

THE COURT: It seems to me, then, Mr. Santacroce, if -- if -- you know, I mean, it would be relevant to say, yeah,

I didn't say these things and they say I said them. But if they're not saying you said things and then it's just going to be clarified, again, it seems like we're going to waste 30 minutes on nothing, which isn't going to be probative of anything.

MR. SANTACROCE: Okay. Then I probably won't go down that road.

THE COURT: All right. Is that the only issue we need to resolve regarding --

MS. WECKERLY: For him.

THE COURT: For him?

MS. WECKERLY: Yes.

THE COURT: Okay. And then you may have already made this -- why don't you just, so everyone can sort of be prepared for this upcoming argument on the Health District. This is the Ken Labus report?

MR. STAUDAHER: Yes.

MS. WECKERLY: Brian.

THE COURT: Or Mr. Labus. Now, I have not seen that or I don't believe I have seen it. You are -- your exceptions to the hearsay that you seek to get it admitted under are what?

MR. STAUDAHER: Well, public records exception for one, business record exception for the other. It's a report made pursuant to a duty imposed by law. He has -- this is a

document that's fully available on the internet through the Health District cite to any public person.

THE COURT: That Internet exception.

MR. STAUDAHER: No, not that there's --

THE COURT: Well, I mean --

MR. STAUDAHER: -- an Internet exception, but it's --

THE COURT: -- how is this report --

MR. STAUDAHER: -- a public document. It's a public document.

THE COURT: Okay. Mr. Staudaher, how is this report different from a police report?

MR. STAUDAHER: Well, because it was not made --

THE COURT: That wouldn't be admissible.

MR. STAUDAHER: Yes. Now, there's -- it would not be admissible.

THE COURT: Exactly.

MR. STAUDAHER: Correct.

THE COURT: We're all on agreement on that. So how is this different from a police report or, you know, that wouldn't be admissible?

MR. STAUDAHER: A police report, obviously, is made at the -- at -- for purposes of law enforcement for prosecution of a witness or defendants and so forth, and for investigation that relies on certain leads that they follow up

on which may or may not pan out and the whole like.

THE COURT: Hearsay, which may or may not --

MR. STAUDAHER: And they get --

THE COURT: -- be true, just like --

MR. STAUDAHER: Thinks like that.

THE COURT: Okay.

MR. STAUDAHER: Now, this one is different. This is a public agency, which is basically charged with -- with producing an investigative report based on an investigation that they have to do as a -- as a duty imposed by law.

They have to investigate these and then report their findings to the state epidemiologist as well as the public in general for what they find in their reports. They take that information and they -- and they submit it to the, you know, MMWR for publication. They actually use the information to base a peer reviewed journal article off of.

All of this -- all of this information is the basis by which they then publish additional documents. All of these things are out there in the general public. There's no hearsay stuff in there in the sense that it comes from just general people. This is direct observations at the clinic. Information they receive from different individuals at the clinic. Then they --

THE COURT: Which would be their hearsay statements. I mean --

MR. STAUDAHER: Correct.

THE COURT: -- whether they're employees or not employees doesn't mean that their statements are reliable. They have obvious motivations to be unreliable, in fact.

MR. STAUDAHER: It's a document that is produced in the regular course of business for the Health District. They do this kind of thing when they have an outbreak and they have to give a public reckoning or a public record of what they did in their report. It's not something like they keep behind closed doors and it ever gets released.

I mean, the whole purpose of the public sort of vent by which the Health District operates is to disseminate information to the public to make people aware so that things like this don't happen. If there are legitimate outbreaks where they're just trying to correct some practice that's not the best.

In this particular situation, the two main exceptions are the business records exception and the public records exception to the hearsay rule, which would bring these documents -- this document in. And there's really not a reason to keep it out because there's a hearsay statement within it because it is --

THE COURT: Well, no, the whole --

MR. STAUDAHER: -- a public record.

THE COURT: -- document is hearsay document. The

issue is it's hearsay within hearsay. It's hearsay on the part of the witnesses --

MR. WRIGHT: Right.

THE COURT: -- or the employees. That's their hearsay, and then the document itself is hearsay.

MR. STAUDAHER: Well, and the author is going to be here and subject to cross-examination.

THE COURT: Well, that's not -- that doesn't mean -- like every other statement that we haven't -- you know, if that were the case, if that were the standard that they're here, then all of their police statements and all of their other statements of any other witness could come in.

MR. SANTACROCE: Just like this letter here?

THE COURT: Just like this letter here, or just like every witness's statement to Metro and other statements. So whether they're here and subject to cross-examination isn't the standard for whether a report comes in.

Now, you're saying it's a public record and a business record.

MR. STAUDAHER: I mean, it is. I mean, I -- I think that there's no -- I don't see how there's even -- even an argument against that when it was made for the purpose of dissemination to the public, it has been disseminated publicly, and it is available to anyone who wishes to look at it for that sole purpose to find out what happened. That's

the public portion of it.

The business records exception portion of it is that they produced this document in the course of their investigation as part of their investigation. They just don't investigate and then not do anything. They have to document what they do. They put it into a report, and they make that report available not just to the public, but they are required by law to then report that information to the state epidemiologist. They have to do this. They have to -- they're charged with actually conducting an investigation for public health related issues for communicable diseases.

The people that were at the Shadow Lane campus and any other medical facility that comes across a designated communicable disease has to report it for these various reasons so that it gets disseminated. I don't see that there's anything in there that is not considered public, is considered confidential, is work product, or anything that would be considered something that would prevent it from being utilized in a public forum or as a business record. I mean, it is.

THE COURT: Yeah, well, that -- just because something is not confidential doesn't make it a public record. There's -- you know, only certain things are public records. The fact that it's not confidential doesn't necessarily mean that it's a public -- a public record. So I'd like a copy of

this report --

MR. STAUDAHER: I will get it.

THE COURT: -- at some point so I, you know, can read it and know what we're talking about. But Mr. Wright, go ahead and make your --

MR. WRIGHT: Yes. Yeah, when you see it, be aware of certain things, I mean, because it is a big report. There is hearsay in there meaning witnesses say blah blah blah blah blah blah blah blah, just like a police report.

And this genuinely is a report dealing with the very offense that is being prosecuted here, and it was written by a member of the criminal task force team who participated with the U.S. Attorney's office all the way up until December 2009. And, in fact, when he was deposed, because he was a member of the law enforcement task force, he couldn't reveal any information he learned from law enforcement, which he then used to write this report.

And this report has things in it that all deal precisely with this case. But the false billing is in this report. The 31 minutes. Now, why is that in there for the transmission of hepatitis C. This is --

THE COURT: I can -- I can speak to that, Your Honor.

MR. WRIGHT: -- an investigative report written by a member of the law enforcement task force team. That's his own

words in the deposition. And so if -- if this isn't a law enforcement investigative report --

MR. STAUDAHER: It is not by any stretch of the imagination. And he does not act as a police actor. He was merely there to provide information, not to act as any portion of the investigative arm. The police did not charge him with doing anything, to do any portion of the investigation.

THE COURT: Well, I think what --

MR. STAUDAHER: As a matter of fact --

THE COURT: Sorry to interrupt you.

MR. STAUDAHER: -- the police did not --

THE COURT: I think what Mr. Wright may mean, though, is, okay, yes, he's not a law enforcement officer. His duties are to the Health District. He's not -- he has no duty to Metro. He has no duty to the FBI. And so probably in that way they can't direct him. He's an employee of the Health District and his duty is to prevent the spread of disease and to evaluate how diseases are spread and that's his duty. Not a law enforcement duty. But if he's kind of working hand in glove --

MR. STAUDAHER: He is not working --

THE COURT: -- with Metro --

MR. STAUDAHER: -- hand in glove.

THE COURT: -- or the FBI --

MR. STAUDAHER: In the sense --

THE COURT: -- or something like that, then -- and he's including their investigation in his report --

MR. STAUDAHER: No, that is --

THE COURT: -- then we --

MR. STAUDAHER: -- not the case.

MR. WRIGHT: There are things in that report --

THE COURT: Well, let me read the report.

MR. WRIGHT: -- which he learned from law enforcement.

MR. STAUDAHER: The issue --

MR. WRIGHT: And when he's on the stand I'll prove it.

MR. STAUDAHER: The issue regarding the billing issue that counsel refers to is when they looked at the records they're trying to figure out what's going on. It's something that became obvious to them that none of the times and things were matching and they put that in their report. They knew that there was falsification of the records, which made it harder for them to do their investigation.

Even with regard to this law enforcement thing, they -- it's not like there is a free flow of information. As the Court is aware, we brought motions before this Court to try and get information from them. They have flat out refused to give us information all the way along the line.

Even at this stage the Health District, if we went

to them and asked them for things they've already given us, not to disseminate anything additional, they will not do it because the expiration of the HIPAA releases that were already signed in this case have happened. They're not -- they act in that sense in an antagonistic form or situation because they are not providing that information just because they have a --

THE COURT: I don't think that's antagonistic. I think the fact that the Health District is trying to follow the law as they understand it is not antagonistic to the State.

MR. STAUDAHER: But it's not like there's a free flow of information as if they were a part of the investigative law enforcement team, so to speak. That is not the case, it has never been the case. They were simply present at these various meetings to provide information as far as their investigation, not to influence the police investigation.

As a matter of fact, the police investigation never finished until we had the Health District report to say what they found in their portion of the investigation. Then and only then does the police investigation ever come to a finality and -- and the actual report written by Metro, which includes information of their own investigation, as well as the incorporation of other sources of information, one of which was the Health District.

THE COURT: Let me ask you this, Mr. Staudaher. Let's just kind of cut to the chase here. Other than your own interpretation of this falling within a business record or falling within a public record, do you have any authority anywhere, have you done any research at all as to a similar document from a similar type of an agency being admitted substantively?

MR. STAUDAHER: I have not done that right now.

THE COURT: Okay.

MR. STAUDAHER: I was not --

THE COURT: And there may --

MR. STAUDAHER: -- prepared to do --

THE COURT: -- be nothing --

MR. STAUDAHER: -- this full argument today.

THE COURT: Well, right. And there may be nothing. We're jumping the gun a little. I'm just asking you if, you know, other than us all saying, well, I think this is this and I think this is that, you know, if anybody has any authority as to whether, you know, somebody else looking at this and saying whether it is or whether, you know, whether it's not. So I'll let you all do that. I'd like to see the report so I can read it --

MR. STAUDAHER: I'll provide it tomorrow.

THE COURT: -- and make my own determination.

MS. STANISH: It's on the Internet.

THE COURT: Well, you know, Ms. Stanish, I don't really think it's my job to scour the --

MR. WRIGHT: With all of the footnotes.

THE COURT: -- to scour the Internet.

MR. WRIGHT: There's a bunch of footnotes that footnote every statement, and law review articles and everything else. I mean, it's the damndest document I had ever seen that would come in.

THE COURT: Let me ask this, just to -- I mean, isn't all this information going to pretty much -- other than some of the hearsay statements, isn't this all just going to come out through his testimony anyway? I mean, that cuts both ways. Why do they want it in and why do you care. I mean, if it's all coming in anyway.

MR. WRIGHT: Well, because I -- I don't think all of it that's in there --

THE COURT: Other than the hearsay statements and, you know, there's also the possibility of redacting the hearsay statements from the report.

MR. STAUDAHER: Well, the hearsay statements thus far, for example, like Mr. Mione, that statement I asked him directly, I intend to fully get that in through another witness based on the fact that he now has denied making that statement. So I think there are specific statement hearsay exceptions.

THE COURT: Well, things like that where, you know, they've denied this statement and you can prove it up other -- other ways, then that's different.

MR. STAUDAHER: Right. And that's what we're talking about as far as actual statements by people. There's not -- if you look at the document, and you will have, obviously, an opportunity to do so, but if you look at the document in general, it is not based on this person telling us this, this person telling us this. This is -- this is direct observations of the people that were there and them looking at hard records to see what they found. That's what -- that's what the investigation is part of.

The fact that they then do testing and get people positive and then they send off those to the CDC and the CDC genetically matches those people, that's what the investigation is all about. So to that degree I think the issue of individual hearsay statements is very limited and a number of those are probably going to come in anyway. And as far as the document itself is concerned, the Court probably also needs to be aware when the Court reviews it that the last, as I mentioned earlier, that the appendices, attachments --

THE COURT: Are already in.

MR. STAUDAHER: -- are already in. So that's not part of what we're talking about. We're talking about the

actual conclusions of the Health District report.

THE COURT: Mr. Labus's report.

MR. STAUDAHER: Correct.

THE COURT: That's it.

MR. WRIGHT: Correct. Because in there and part and parcel of it will be this 105 possibles. What do you call them? The 105 non-genetically potentials which I would like to cross-examine all of them before any of that comes in.

THE COURT: Well, we went over that before and I mean --

MR. STAUDAHER: That's already an issue that we believe has come in.

MS. WECKERLY: Well, we couldn't get those records. I mean, we're -- we're precluded --

MR. WRIGHT: No. They rely on 105 people to say I didn't have it ahead of time and I didn't have this risk factor or that risk factor or anything else, so therefore you're in this category, so therefore they're in that report, so therefore Labus says there's 105 other out there and I want my right of confrontation on those.

That's why we didn't stipulate this in. That's why I agreed with the other two because they don't do that. There's no confrontation issue. Here if they want to bring out their 105 others like it, and they're relying upon hearsay statements of those people that make them [unintelligible], I

have to confront them.

THE COURT: Well, we talked about this last time.

MR. WRIGHT: Right.

THE COURT: Weeks ago.

MR. WRIGHT: At this point now it's the same issue.

THE COURT: Well, it's the same issue, but as I said, you know, there's probably -- I understand that doesn't really address your confrontation clause issue, but on the issue of whether or not it's inaccurate, that there's probably some -- even give 50 percent for false reporting or whatever, that's probably at least 50 people who were infected with -- I mean, generously, who are infected with hepatitis and have no known risk factors. Like I said, I'm going to be generous.

Let's say 50 percent falsely reported deliberately, accidently, you know, whatever. They didn't, you know, remember that risky thing they did in, you know, college or whatever and they -- you know, they didn't report. But I still think there would be some sub number, there has to be, that reported accurately. And so I mean, I think that we can all agree without confrontation or confronting and cross-examining that there is some sub number that's accurate that actually was infected at the clinic.

And we talked about it in another context with the false impression, but, you know, I'm very satisfied that some number, whether it's as high as 50, I mean, a sizeable number

of people had to be accurately reporting and had to have been infected at the clinic. Now, the means of transmission we don't know.

MR. WRIGHT: But I don't concede anyone -- any of those.

THE COURT: Well, no, you don't concede anything. But I'm saying that there -- to me there is some number that would have been. Because if you factor in false reporting, I think we said it's probably 40 or 50 percent. I think there is some statistic out there.

You even, Mr. Wright, may have had the statistic that -- that there is some number that would have been infected -- would have been infected at -- at the clinics. I mean, there just -- there just has to be.

All right. Well, we'll revisit this --

MR. SANTACROCE: Your Honor.

THE COURT: -- issue tomorrow.

Yes?

MR. SANTACROCE: I don't know what motion we're on right now, but I want to join in the defense motions, whatever they are, for the record.

THE COURT: You don't understand that motion, but you're joining in anyway.

MR. SANTACROCE: I'm joining in whatever Mr. Wright says.

MR. WRIGHT: Count me in.

THE COURT: Mr. Santacroce is quite funny this afternoon.

MS. STANISH: He's entertaining. So 9:45 tomorrow?

THE COURT: Yes.

(Court recessed for the evening at 5:26 p.m.)

CERTIFICATION

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

AFFIRMATION

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

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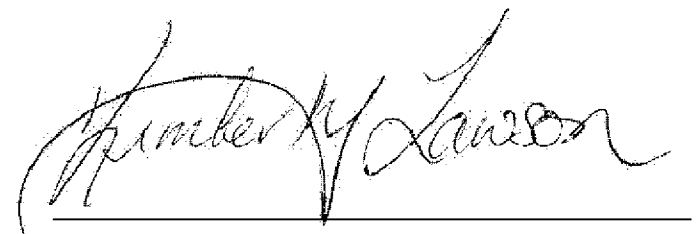

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