

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

APPELLANT'S APPENDIX VOLUME 22

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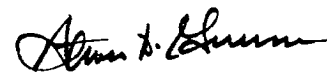
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CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

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

BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE

JURY TRIAL - DAY 26

FRIDAY, MAY 31, 2013

APPEARANCES:

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

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1 LAS VEGAS, NEVADA, FRIDAY, MAY 31, 2013, 9:04 A.M.

2 * * * * *

3 (Outside the presence of the jury.)

4 THE COURT: Everyone ready? We're all here now.
5 Where did we leave off?

6 MS. STANISH: I think I'm up on this -- this is
7 [inaudible] we're ready?

8 THE COURT: Yeah, you were right.

9 THE MARSHAL: So you want me to bring them in?

10 THE COURT: Sure.

11 THE MARSHAL: All right.

12 THE COURT: Get the witness.

13 MS. STANISH: I'm sorry?

14 THE COURT: You can get the witness.

15 MS. STANISH: Oh, okay.

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

18 (Jury entering at 9:07 a.m.)

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

20 THE COURT: All right. Court is now back in session.
21 The record should reflect the presence of the State through
22 the deputy district attorneys, the defendants and their
23 counsel, the officers of the court and the ladies and
24 gentlemen of the jury.

25 And, ma'am, you are still under oath; you understand

1 that?

2 THE WITNESS: Yes, ma'am. I do.

3 THE COURT: All right. Ms. Stanish, you may begin
4 your cross-examination.

5 MS. STANISH: Thank you, Your Honor.

6 JANINE DRURY, STATE'S WITNESS, PREVIOUSLY SWORN

7 CROSS-EXAMINATION

8 BY MS. STANISH:

9 Q Good morning.

10 A Good morning.

11 Q My name is Margaret Stanish, and I represent Dr.
12 Desai. First, before I butcher your last name, could you tell
13 me how to pronounce it?

14 A Drury. Like jury with a D.

15 Q Drury, now I got it. Thank you. I need that.
16 Thank you.

17 I wanted to start off with an interesting comment
18 that you made during your direct exam. That I understand you
19 fare from the great commonwealth of Louisiana? That's a
20 commonwealth?

21 A It's not a ---

22 Q A state?

23 A -- commonwealth, but I don't know what we would
24 call it.

25 Q Don't know what it is, it's just different. But

1 you described yourself as being the gestapo of the preop?

2 A Yes, I did.

3 Q And am I correct in understanding that you are a
4 people person?

5 A Yes.

6 Q And you're assertive?

7 A Yeah.

8 Q And no -- no bars back, if you see a problem in
9 that clinic, you're going to say something?

10 A Yes, ma'am.

11 Q And you're going to do something?

12 A Yes, ma'am.

13 Q And you've already discussed that. And is it a
14 -- is it a fair statement to assume that other people in the
15 clinic were aware of your assertiveness?

16 A Yes, ma'am.

17 Q And your gestapo technique?

18 A Yes, ma'am.

19 Q And as I understand it, you were selected to be
20 the new charge nurse at -- of Shadow Lane and were actually in
21 training for that position by the time the CDC got there?

22 A Yes, ma'am.

23 Q And am I correct in assuming that you were
24 selected precisely for your gestapo technique and care of
25 patients?

1 A Yeah, I would assume so. Yes, ma'am. That's
2 what I felt because I paid attention to details.

3 Q And are you aware of -- in your observations,
4 were other nursing staff attended to detail?

5 A I would say maybe 50 percent of the staff.

6 Q And I -- and I kind of get the impression that a
7 number of nurses who come to the clinic, like yourself, have a
8 lot of experience in working in hospitals?

9 A Yes, ma'am.

10 Q And before you came to the clinic you had, what,
11 26 years --

12 A Yeah, 20 plus --

13 Q -- in nursing?

14 A -- years. Yes, ma'am.

15 Q And many other experienced nurses who were also
16 in hospital settings came to the clinic because they wanted
17 set hours; is that a fair statement?

18 A Yes.

19 Q So unlike a hospital setting where you are
20 working into the wee hours of the morning or weekends, the
21 clinic offered experienced people a set -- set schedule and
22 free weekends; is that fair?

23 A We were a lot of old, tired dogs that did --
24 wanted our weekends and not being on call. Yes, that's why.
25 That's why I specifically went there.

1 Q You're not an old, tired dog while you're in the
2 clinic, are you?

3 A No, not at all.

4 Q I -- there was something else that you mentioned
5 on your direct exam that I found striking. The fact that you
6 brought humanity to the preop area.

7 A Yes, ma'am.

8 Q And, you know, I watch a lot of medical shows on
9 T.V., and am I right in assuming that nurses in a medical
10 setting in general do precisely that, bring humanity to the
11 medical setting?

12 A That is correct.

13 Q And am I -- is it correct to assume that that's
14 the case because nurses spend the most time with patients?

15 A Yes, but can I explain?

16 Q Yeah, please.

17 A At the clinic things were so crowded in the
18 waiting areas, people went through so fast, there were
19 ancillary personnel that had a lot of contact with patients
20 who didn't necessarily -- weren't trained to have a lot of
21 contact with patients. So when I used that term I meant that
22 because I could talk to people, because I -- I felt like I
23 breached that little part of it being cold and clinical,
24 especially in that setting, and that was one of the things I
25 prided myself on in being able to do.

1 Q And the preop area, if we look at -- if we
2 divide the procedure between preop, procedure room, recovery
3 room, the preop is the one area of those three where you --
4 you have patient/staff contact with somebody while they're
5 still alert?

6 A Right.

7 Q And perhaps frustrated because they've had to
8 wait --

9 A Right.

10 Q -- perhaps they didn't have to wait --

11 A Right.

12 Q -- correct?

13 A Well, that's -- what everyone knows when you
14 walk into a place, your first experience is what you judge the
15 rest of it on. So when you walk in the door and they bring
16 you to the back, to the preop area, it would be the first
17 person that they're actually getting to the -- in the facility
18 and is going to give them the impression of what the facility
19 would be.

20 Q Okay. Correct. And then the other two -- the
21 other two areas, the procedure room, the recovery room,
22 they're pretty much under sedation and if there is contact
23 with staff, it's rather minimal because they're under
24 anesthesia?

25 A Right. And the fact that people are under

1 anesthesia. I myself have even experienced that, that you
2 don't always have the perception of what's actually going on.

3 Q So that humanity is truly in the preop area?

4 A Yes.

5 Q And the -- let's focus a bit on the preop area.
6 The -- approximately -- I understand you had at times a lot of
7 patients and some were frustrated -- how much time would you
8 generally spend with the patient in the preop area?

9 A Generally, the one-on-one it would only take me
10 about five to ten minutes total to start an IV --

11 Q Mm-hmm.

12 A -- which is what preliminary initiated the
13 contact and what was the purpose of the interaction. And
14 during my conversation and starting the IV, that's when I
15 would do some of my preop assessment also. But there are
16 times that sometimes patients would be waiting longer in
17 preop, waiting to go to a stretcher, then go into the
18 procedure rooms because if a patient took longer than say
19 another, too many polyps or other things in the procedure that
20 were going on, it would back the whole system up.

21 So sometimes I can have a good 30 minutes, 40
22 minutes with a patient, but that wasn't the usual but it did
23 happen.

24 Q So usually five to ten minutes?

25 A Ten minutes, yeah.

1 Q And during the five to ten minutes you are also
2 assessing the patient?

3 A Talking to them, asking them did you drink all
4 your prep last night? Did you make sure you didn't have
5 anything to eat or drink? You know, anything else going on
6 this morning? You know, was it rough? Was it hard? You
7 know, that kind of thing.

8 Q Would you determine whether they had dentures?

9 A That was one of the things we checked off, yes.
10 All the questions I was asking, though, would also be asked
11 again by anesthesia when they interviewed the patient. So we
12 did ask the same questions a lot twice, but if you asked it in
13 the preop you're already asking the things to see if they go
14 to the next step. If someone was confused about the prep, you
15 have a discussion with them, see what happened and what was
16 the question because if they didn't take the prep right or
17 they didn't take it when they was supposed to, they wouldn't
18 be ready for the procedure, so...

19 Q The -- I want to talk to you -- going back to
20 your gestapo technique. Do you mean gestapo with respect to
21 cleanliness?

22 A Rules.

23 Q And --

24 A To rules.

25 Q -- okay.

1 A To -- that's, like, been my thing all along in
2 nursing for my 30 years now, is that I -- I've always been
3 involved in any unit that I've ever worked at in terms of
4 policies, procedures, knowing the regs, and knowing -- I was
5 never satisfied with just somebody telling me this is how it
6 had to be. I'd always know the rules of where I was going to
7 be working.

8 Q And is that a part of why you were selected to
9 be a charge nurse?

10 A I don't know the reasons.

11 Q Okay.

12 A I can't answer that.

13 Q Did you feel like you were going to be a good
14 charge nurse because of that?

15 A Yeah, I've -- I definitely felt I was going to
16 be able to do well because of that.

17 Q And the -- would your gestapo technique include
18 correcting staff --

19 A Yes.

20 Q -- if you observed -- please let me finish
21 first.

22 A I'm sorry.

23 Q You know how we have to play this stacking
24 question/answer thing, okay? Yeah, you drink it -- water, and
25 I'll ask the question, okay?

1 I -- you -- if you saw a staff member doing
2 something that you thought was contrary to a rule, or
3 jeopardized a patient, what would you do?

4 A If I was in the preop area, I would tell them to
5 stop right there. Don't get the wrong impression, when I say
6 gestapo, I don't mean that I was ugly to people --

7 Q Mm-hmm.

8 A -- because I was not. I was able to speak to
9 people, but I would stop a staff member right there and I was
10 never embarrassed to tell people, no, you can't do that. No.
11 If a -- if a tech was carrying -- for example, if a tech was
12 carrying a scope to hang it up to start a procedure and I
13 would see the scope brush the ground or touch even the side of
14 the bed or something, I'd say, Go get another scope and -- go
15 do it quickly, but --

16 Q And on that topic, and I'm glad you raised that,
17 isn't it the case that you observed both Dr. Desai and Dr.
18 Carrol do exactly the same thing if they saw a scope touch the
19 ground, touch the railing -- the gurney, they -- those two
20 doctors would direct the GI tech to return the scope?

21 A Yes, ma'am.

22 Q And you saw that when you were working the
23 procedure room?

24 A Yes, ma'am.

25 Q And I -- clarify for us again the time frame.

1 You were -- give me a chronology of your work --

2 A From May 1st of 2006, when I was hired, to
3 December of 2006, my exclusive job was to be in the procedure
4 room. That's where I was trained mostly, and that's where I
5 stayed. After that part I had some illnesses that I was out
6 some time, and back and forth in between those times. When I
7 came back, they had rearranged where we -- so we actually then
8 had a preop area and I wound up going into the preop area, and
9 that was my primary place except for early in the morning when
10 I'd start the cases. Because I was an early person, I'd do
11 two or three cases and then I'd go into my preop area or when
12 I would give lunch relief.

13 Q Educate us -- describe for us, please, your
14 observations of the cleanliness of the procedure room.

15 A The procedure room was clean for the most part.
16 It got wiped down at the end of the day, and we tried to get
17 everything that we could in as far as walls or anything like
18 that -- as clean as any other hospital or clinic I've ever
19 worked at. If there were spills or something that happened
20 during the day, one of us would get something -- it was
21 usually me or the tech going to get something to clean it,
22 which would be the sanitary wipes or the spray or something
23 and clean it up.

24 On the top of the monitor and where the scopes were
25 placed, those were cleaned between the procedures. There

1 would be a chux pad down for the procedure, and then anything
2 they used for the procedure, those were taken all out and
3 cleaned between and the new stuff setup. That was the tech's
4 responsibility.

5 The scope room, which I didn't have much to do with,
6 was very small and sometimes that bothered me that it's -- I
7 didn't know how we could get so many scopes cleaned and as
8 fast as we needed to move them.

9 Q Do you recall how many scopes were there at the
10 time you were?

11 A I do not have any number.

12 Q Did you spend a lot of time in the cleaning
13 room?

14 A Actually, no, because that was something that
15 was designated. We weren't even told what the procedure was.
16 I did not learn the procedure of how the scopes were cleaned
17 until after the CDC came, and then I made it my point to ask
18 questions.

19 Q And I -- I'm assuming that when you were going
20 to be taking over as charge nurse, you would have eventually
21 been trained for that or --

22 A I had actually attended one training from the
23 company that provides the machines -- the Medivator machines,
24 which is the high-level disinfectant, and I had just attended
25 one in-service on that. But prior to that it was not felt in

1 the clinic that the nurses needed to actually know the one,
2 two, threes of the processes. That was Jeff Krueger's
3 responsibility.

4 Q And I know I'm kind of jumping around here, but
5 -- well, I won't jump that far. Let me stick to the procedure
6 room, okay?

7 Was there also a nightly cleaning crew that would
8 come in and clean the facility?

9 A Yes, ma'am.

10 Q And the -- did -- were you a bit of a stickler
11 about staff members eating or drinking food in the procedure
12 room?

13 A Yes, ma'am. I absolutely was.

14 Q Tell us about that.

15 A At varying times in the morning sometimes the
16 anesthetist would walk in with their drinks or their lunches
17 or whatever and put them in the procedure room, and I would
18 ask them to leave or, No, you can't do that. And most of them
19 would ignore me, but I would then report it, specifically with
20 Mr. Vinny Sagendorf when he started working there. He would
21 eat his breakfast every morning on the counter in the
22 procedure room, and that was totally inappropriate.

23 Him and I would have verbal volleys about it, and he
24 would call me names and I would report it back up to Jeff
25 Krueger and Katie Maley and that kind of thing. So even had a

1 discussion, I think, with Mr. Lakeman about it at one point.
2 But it was totally inappropriate to have any kind of food or
3 drink in those rooms.

4 Q Is this considered a sterile environment?

5 A It's not a sterile environment, it's a clean
6 environment. But more the fact that whether the food
7 particles -- it's a health hazard for the workers themselves
8 to have food and drink in there. It's kind of stupid for them
9 to do that. And then dirt and filth can be left behind,
10 insects attracted, and then it's a health hazard to the
11 patients.

12 Q All right. And as far as the gurneys being
13 cleaned between procedures, did you observe whether that was
14 done?

15 A Yes, ma'am. I actually did it myself. We have
16 solutions and wipes. Mostly at the time we had a spray
17 solution. You would spray the mattress down. It had what
18 they called a kill time, which is the amount of time that the
19 chemical has to stay on the mattress in order to kill all
20 the -- and different products have different kill times for
21 different bugs, so you would leave it on for two minutes or
22 so, whatever the kill time was; some were 30 minutes.

23 We had different products and I can't say which
24 product we had there because of -- every product is different
25 wherever you work, so -- and then you would wipe it down and

1 then it would air dry, and then we'd put sheets on it.

2 But at the end of the day all the gurneys by the
3 techs were supposed to be -- the mattresses pulled and flipped
4 so that you cleaned both sides of the mattresses and the
5 gurneys too. Wipe them down with the same disinfectants, and
6 then they air-dried overnight.

7 Q And did -- at this time did -- at -- while
8 you're at the clinic, do you have the work ethic that you do
9 not like to see staff sitting around doing nothing?

10 A That is correct because I don't sit around and
11 do nothing.

12 Q The -- back to the procedure room. The -- I
13 want to talk about your -- well, let's first start with what
14 you first do when a patient is brought into the procedure
15 room. What do you first do?

16 A Introduce myself to the patient and the first
17 thing I would do is hook the patient up to the blood-pressure
18 machine and hit start, put the oxygen on the patient, make
19 sure the patient's hooked up to the monitor and, depending
20 upon where anesthesia was in their discussion, turn them on
21 their side -- to the appropriate side for the procedure. And
22 then the next thing I would do is go --

23 Q Okay. Stop.

24 A -- oh.

25 Q Sorry to interrupt you. I just wanted to

1 clarify something that you mentioned there. While you were
2 doing that, hooking the patient up to the monitor, is that
3 happening simultaneously with, generally speaking, with the
4 CRNA doing their assessment, their interview of the patient?

5 A Right. The anesthetist would be talking to the
6 patient also. And actually it was kind of common -- well, it
7 wasn't common courtesy, but it was expected in the procedure
8 room that I didn't ask any of my questions until the CRNA
9 either took a -- stopped a moment or whatever so we were kind
10 of competing to talk to them; but the priority was to the
11 anesthetist to get their questions answered, and then we could
12 talk to the patient and ask any of our questions.

13 Q And the -- did you observe the CRNA when they're
14 doing that assessment taking notes, writing something down?

15 A They would mark on their sheet, whatever it was,
16 that they were asking questions about.

17 Q And we've heard a lot about clocks and monitor
18 time and did -- you said -- did you use the -- the vitals
19 signs for the start and stop time?

20 A For -- for my practice at the clinic I would
21 always go by when I hit the monitor for the first blood
22 pressure was my time in.

23 Q Mm-hmm.

24 A That's why it was the first thing that I did.

25 Q Mm-hmm.

1 A And the time out was the time out of the last
2 blood pressure that they took.

3 Q Mm-hmm.

4 A And that's the way I did my practice.

5 Q And to -- in your mind, did that accurately
6 reflect the length of time that the patient was in --
7 undergoing the procedure from the start of the anesthesia
8 assessment to the end of the procedure?

9 A Yes, ma'am.

10 Q And the EKG things that are put on, those little
11 sticky things --

12 A Mm-hmm.

13 Q -- did those remain on the patient after the
14 procedure?

15 A Most of the time.

16 Q Why is that?

17 A Well, if we put the patient out in the holding
18 area and there was some irregularity or something else we
19 wanted to monitor for them, it was easy to hook them back up.

20 Q When did those typically come off?

21 A When the patient's IV was coming out in post-op
22 or sometimes when the patient got up to get dressed.

23 Q Okay. Let me take you back into the procedure
24 room. You've already described for us the initial part of
25 prepping the patient -- oh, I did want to ask you this:

1 When -- once a person is taken off the monitor, is there any
2 cleanup done on the patient? Because I imagine this could be
3 a messy procedure at times?

4 A Yes. Depending upon -- and that was one of the
5 things that I was a stickler about because we didn't always
6 have the biggest sheets or blankets, and I felt that the
7 patients moving out of the room needed to be covered --

8 Q Mm-hmm.

9 A -- on their bottoms or their bodies or whatever
10 for modesty purposes, but also, sometimes there was a little
11 soilage at the back after a colonoscopy or even on their face
12 when they do an upper endoscopy, and we would grab a
13 four-by-four or whatever appropriate towel or whatever we
14 needed to and clean and stick a new chux underneath the
15 patient.

16 Q So you -- the patient was -- was the patient
17 draped during the procedure for the most part?

18 A I always tried to make sure the patient was
19 draped.

20 Q And the -- is -- let's move now to the point of
21 the procedure where the patient is put under anesthesia. Is
22 the doctor always present when that occurs for the most part?

23 A Yes, ma'am.

24 Q And the -- how -- I know you're not an
25 anesthesia -- an anesthesiologist or a CRNA, but could you

1 tell us what you would observe when the CRNA administered the
2 propofol? How quickly would the patient typically nod off?

3 A Instantaneously. Propofol is very quick acting.

4 Q Have you ever observed that while the patient is
5 under anesthesia that they move?

6 A Not usually with propofol when you're fully
7 under anesthesia. When the propofol is wearing off, a patient
8 will move.

9 Q Have you ever had to -- did that -- did you ever
10 have to assist in cases where the patient is moving around,
11 the procedure is about to end, what would you do?

12 A Well, I wouldn't say it would be at the
13 procedure about to end. I would say sometimes a patient in
14 anesthesia gets really relaxed and they can turn.
15 Specifically, they will turn off of their left side, which is,
16 you know, how we needed them to be. So my job usually, what I
17 did was to stand at the foot of the bed next to the technician
18 or the physician to make sure that the patient didn't roll off
19 of the gurney.

20 Q And --

21 A Because if your legs got crisscrossed you could
22 pretty much pull yourself off.

23 Q I see. And was that something that would occur
24 regardless of who the doctor was?

25 A It happened occasionally and yes, it didn't

1 matter which doctor that was.

2 Q The nature of anesthesia?

3 A Exactly.

4 Q When the procedure is underway, describe for us
5 the lighting conditions of the room.

6 A The monitor was the only thing on that gave any
7 kind of light, and some of the time there may be -- we would
8 actually have to turn on a light to see anything else that we
9 needed to. The nurses -- we were not at the foot, close to
10 the foot of the bed, we were a few feet away because
11 iridescent lighting like that was what we had to stand under
12 so that we could see and chart. So we weren't actually there.
13 So in the darkness of the room I wouldn't actually be able to
14 see everything that's going on on either side. I could see
15 the patient and I could see the monitor and the computer that
16 was on, but it was dark in the procedure room.

17 Q Is it the case that the pace in the procedure
18 room is slower because the staff members are focused on the
19 procedure?

20 A Mm-hmm.

21 Q You have to answer yes or no.

22 A Yes, ma'am.

23 Q Thank you. Could you observe, given the
24 conditions of -- the lighting conditions and your distance
25 from the CRNA, could you observe what the CRNA was doing with

1 the syringe and vial?

2 A No.

3 Q And I know this is like gigantic, but I got to
4 carry a 16-ounce water bottle. If this is a vial, and, I
5 guess, you know, imagine it to be much smaller, when a CRNA is
6 drawing from the vial, do they pretty much keep it upside down
7 and cover the vial?

8 A I can't say.

9 Q You can't even say that?

10 A No, I can't say --

11 Q Okay.

12 A -- it's -- it's not a picture that I have in my
13 head or a memory.

14 Q When you -- when you draw from the saline in
15 preop, do you turn the bottle upside down?

16 A Yes, ma'am.

17 Q And you do that so that there's no air --

18 A Yes, ma'am.

19 Q -- getting into the vial?

20 A Yes, ma'am.

21 Q And going back to the propofol now, would you
22 observe propofol vials being thrown away even though they had
23 some small amount of propofol still in it?

24 A I can't say what was in the propofol. I've seen
25 it. I can say that I saw -- I heard bottles being thrown away

1 during procedures. I can say that I empty needle boxes with
2 propofol bottles containing propofol in it.

3 Q Okay. Fair enough. I know I -- and I -- as I
4 understand it you didn't work recovery room too often?

5 A No, I did not.

6 Q All right. Then let me -- oh, I -- let's see.
7 Let me jump now to, I guess, the fall of 2007. My
8 understanding is you were out on medical leave in the
9 September '07 time frame?

10 A Actually, I went out in August and came back in
11 October.

12 Q And by the way, when you were on medical leave
13 periodically, did Dr. Desai pay you while you were on medical
14 leave?

15 A If I had sick time I used my sick time. The
16 last time I was on medical leave for that extended period of
17 time I received a check in the mail for one of -- what would
18 be one of my 80-hour weeks.

19 Q So you got -- even though you burned off your
20 medical leave you were paid --

21 A Right.

22 Q -- timewise?

23 A One -- well, one time I was --

24 Q One time?

25 A -- yes. It did not replace the whole --

1 Q Sure.

2 A -- that I didn't have stuff for, but I did get
3 something that did help.

4 Q Good. In the -- and so I understand you were
5 out on medical leave and you returned in the fall of 2007,
6 correct?

7 A Yes, ma'am.

8 Q At this time frame am I right to understand that
9 another clinic is going to be opening?

10 A Yes, ma'am.

11 Q And it -- does that account for why they were
12 doing some personnel shifting with the supervisors?

13 A Yes, ma'am.

14 Q And so Jeff Krueger was going to relocate?

15 A I don't remember exactly how all of us were
16 going to -- how it was all going to rearrange, but the one
17 point of it was that Jeff Krueger was too -- going to be
18 pulled too thin to monitor three endoscopy centers.

19 Q And so you -- you're -- you were going to
20 eventually assume the charge -nurse position for Shadow Lane
21 and he would do other supervision elsewhere?

22 A Yes, ma'am.

23 Q The -- do you know who was going to be the
24 charge nurse at the new facility?

25 A No, I don't remember that.

1 Q And do you recall when you were back from sick
2 leave in the fall whether or not there were any inspectors
3 prior to -- in the 2007 -- towards the end of 2007, do you
4 recall whether there were any inspectors that came in to
5 review the -- the clinic? Were you --

6 A AAAHC, which is the ambulatory care center, did
7 come before I came back in the -- the time frame --

8 Q Oh.

9 A -- that I was gone. They came, like, in
10 September or the beginning of October.

11 Q And do -- was that in -- in conjunction with the
12 expansion of the clinic to --

13 A No, that --

14 Q -- relocate?

15 A -- was the regularly scheduled --

16 Q Oh.

17 A -- every -- I can't remember if it's three or
18 four years -- I believe it's three. In order to have an
19 ambulatory care center, you have to be certified with either
20 JCAHC, which is the hospital-based accrediting and
21 regulations, or you can do AAAHC, which is just for ambulatory
22 care centers, and that was the facility's certification and it
23 was just the regular time for them to have their evaluation.

24 Q Had you had any experience previous to '06 when
25 you came to Las Vegas with Ambulatory Surgical Centers?

1 A Yes, ma'am.

2 Q And were those in connection with hospital
3 settings?

4 A Yes, ma'am.

5 Q The -- I understand you were just in training to
6 take over the charge nurse position and you never actually
7 assumed it because the clinic was closed eventually, correct?

8 A Yes, ma'am.

9 Q Could you tell us what kind of training you did
10 have to begin that process?

11 A Well, one of the things was that I was sent to a
12 class -- well, actually they came to us, but the usual class,
13 I sat in on a class where the techs were being trained how to
14 do the cleaning in the room with the scopes. I attended that
15 class which was like a -- it was the first part of a couple of
16 hour different schedule trainings. Kind of going over on how
17 they expected the cases to flow, which you kind of pick that
18 up anyway if you were familiar and had worked at the clinic,
19 you knew how things were supposed to flow and how many cases
20 we did and what the doctor's -- expectations for each
21 individual doctor were for their patients and what things they
22 wanted in the room.

23 Getting to know some of the policies as far as
24 personnel goes. How we train them. How we hire and fire.
25 But mostly at that point it was still just going through the

1 day and making things better. Some things had changed from
2 prior to my sickness to then. At the same time Dr. Desai was
3 out as I was out and Dr. Carrol was assuming more
4 responsibilities, and he was changing numbers and how fast we
5 go through patients and those expectations.

6 So that's kind of the stuff that I was learning at
7 the time.

8 Q And Dr. Desai was out the same time you were
9 out; do you know why?

10 A Yes, he had a stroke.

11 Q And then do you -- can you estimate if you know
12 when he returned to the clinic?

13 A He and I returned the same week.

14 Q Oh, all right. Do you know when that was?

15 A The week after the -- well, I believe it was the
16 21st of October week, I believe. Somewhere around there.

17 Q And so you were working towards under -- get --
18 understanding the administration policy of the practice and
19 making improvements along the way?

20 A Yes, ma'am.

21 Q Now, did you -- I know I'm kind of jumping
22 around here -- in connection with your concern about
23 unprofessional conduct of a staff member, did you ever observe
24 any unprofessional conduct on the part of Rod Chaffee?

25 A Yes, ma'am.

1 Q Would you please describe what you observed? I
2 don't want you to tell me about what you heard from other
3 people, just what you eyeballed. And before you do that, can
4 you tell -- set a foundation for me when this occurred?

5 A This would be early on of when I was there, back
6 when I was still in the procedure room. So we're talking
7 about the time frame of May 2006 to Christmas of 2006, when he
8 was still training me and things like that. Unprofessionalism
9 in that -- one thing that he would do sometimes is he would --
10 if he didn't have a strip on a patient when the patient went
11 to leave the room -- and when I mean "a strip," I mean an EKG
12 strip -- he would pull it off the monitor and maybe use it on
13 that patient; but if he didn't have one, he would go into this
14 drawer where he had several of them stored, and then he would
15 just put an EKG strip on a patient's chart.

16 Q Did you put a kibosh on that?

17 A I didn't have the power at that time to do much
18 about it, other than tell him that's wrong, I completely
19 disagreed with it, and report him to my two supervisors.

20 THE COURT: Are you saying he used EKG strips from
21 other patients?

22 THE WITNESS: Yes, ma'am.

23 THE COURT: So patient A had an EKG strip in the
24 drawer, and then patient B came in and if they didn't have a
25 new one for patient B, he put patient A's strip on patient B's

1 chart?

2 THE WITNESS: Yes, ma'am. I'm saying that.

3 BY MS. STANISH:

4 Q Did you observe any other unprofessional conduct
5 on his part?

6 A He told a nurse -- another nurse and myself --

7 MS. WECKERLY: Objection. Hearsay.

8 MS. STANISH: Oh.

9 THE COURT: Well, I'm not sure if it's being offered
10 for the -- don't --

11 MS. STANISH: I can --

12 THE COURT: -- if it's offered for the truth, I mean,
13 if it's verbal...

14 BY MS. STANISH:

15 Q The -- let's start with a foundation.

16 A Okay.

17 Q First, tell me when and where your next
18 observation occurs?

19 A Would be in a procedure room. He was talking to
20 another nurse and I between patients, and he made the words to
21 the effect that he could blow up this place, that he hated Dr.
22 Desai and he could blow up this place. And at that point I
23 reported it to my supervisor then, and was like, Okay, this
24 ain't happening, so...

25 Q And when it -- when did that occur?

1 A I can't even give you a date on that. I -- I'm
2 a -- I don't know when Rod's last days were. Well, it was
3 that day, actually, but -- it's hard for me to give time
4 frames other than when I know I was there because I was out
5 sick so much and when I would come back, people and things had
6 changed, people had left and coming back and forth, so that's
7 why.

8 Q And then there came a time when he was no longer
9 working there?

10 A Correct.

11 THE COURT: And you reported that incident to your
12 supervisor that day?

13 THE WITNESS: Yep, immediately --

14 THE COURT: Immediately?

15 THE WITNESS: -- and --

16 THE COURT: And by "supervisor" who are you talking
17 about?

18 THE WITNESS: I called Jeff Krueger and Katie Maley,
19 and Tonya Rushing was notified and the police were called.

20 THE COURT: Okay. Did they interview you?

21 THE WITNESS: The police?

22 THE COURT: Yeah.

23 THE WITNESS: No.

24 THE COURT: Okay.

25 BY MS. STANISH:

1 Q By the way, can you estimate for us how many
2 people were employed by the various clinics? I recall you
3 saying you did some research before applying there. Do you
4 know how many people were employed by the various clinics?

5 A No, I can't say that. No, because when you say
6 "various clinics", I have no idea how many people were
7 employed at the gastrology side where they had the offices
8 versus where we were. I know Shadow Lane Endoscopy had about
9 40 employees total.

10 Q I see. And did that include doctors, or are you
11 just focusing on --

12 A Staff.

13 Q -- staff? Okay. Now, I want to move you to the
14 2008 time frame when you learned about the clinic having the
15 -- being the center of a hepatitis outbreak.

16 A Yes, ma'am.

17 Q I know you survived Katrina, but this was a bit
18 of a different sort of hurricane; fair enough?

19 A Just as devastating, but, yes, ma'am.

20 Q And it was devastating.

21 A Yes, ma'am.

22 Q Was it devastating for the patients who
23 contracted the hepatitis C?

24 A I was horrified that that --

25 Q It was devastating for the staff?

1 A Yes, ma'am.

2 Q Were you there when the CDC arrived?

3 A Yes, ma'am.

4 Q And the -- in fact, you were being -- this was
5 when you were being trained as charge nurse, correct?

6 A Yes, ma'am.

7 Q The -- tell me what your contact was with the
8 CDC?

9 A I did not have a lot of contact when they came
10 there.

11 Q Okay.

12 A They already were interceded by other employees
13 at the front desk, which is where most people would enter to
14 come -- conduct business with us. Anytime anything --
15 anybody, any kind of survey or anybody would come, we were
16 supposed to call Tonya Rushing immediately and let her know
17 that someone was there.

18 So that happened and the next contact that we had
19 was that Tonya had a staff meeting with us, instructed us to
20 cooperate, that there's been a cluster of hepatitis C
21 outbreak, that all the patients had had procedures at Shadow
22 Lane, and that we were to cooperate fully and do whatever they
23 asked us to do.

24 Q And was the main objective of the clinic to
25 figure out what went wrong?

1 MS. WECKERLY: Objection. Calls for speculation.

2 THE COURT: State your question again.

3 BY MS. STANISH:

4 Q Was the objective of the clinic to find out what
5 went wrong?

6 THE COURT: Yeah, I don't think she can answer. I
7 think that -- she'd have to speculate about what --

8 BY MS. STANISH:

9 Q You were at --

10 THE COURT: -- other people wanted to do.

11 MS. STANISH: Thank you.

12 BY MS. STANISH:

13 Q You were at a meeting with Tonya Rushing,
14 correct?

15 A Staff meeting. Everyone, yes --

16 Q Staff meeting?

17 A -- ma'am.

18 Q Who all was there?

19 A Everyone. Jeff Krueger, Katie Maley, Tonya
20 Rushing, all the staff technicians and nurses that were there
21 that day. I can't recall specifically everybody there, but it
22 was -- everybody that was there was pulled to the side away
23 from patients and told us -- told that.

24 Q To -- told what?

25 A To cooperate fully with the CDC, and that there

1 had been a cluster of hepatitis cases and they had all had
2 procedures at our facility.

3 Q It was important to you personally to find out
4 what went wrong, correct?

5 A Absolutely.

6 Q And in fact, you assisted Dr. Carroll in his
7 mission to do that, correct?

8 A Yes, ma'am.

9 Q You helped Dr. Carroll review the patient -- the
10 various patient files in an effort to find out what went
11 wrong, correct?

12 A I was approached by Jeff Krueger that Dr. Carroll
13 had requested -- since I was not there during the time of the
14 infection in September -- that he wanted me to take the time
15 to go over the charts and see what my opinion of the situation
16 was. So I was actually taken out of doing patient care -- and
17 in order for me to be taken out of patient care it was
18 something very serious -- so they took me out of patient care,
19 put me in a room, and brought me all the charts.

20 Q I see. Oh, I just want to touch on a few things
21 that I forgot. I'm going to jump around even more.

22 Training. As a nurse you have to have continuing
23 education, correct?

24 A Yes, ma'am.

25 Q And explain to us what that involves.

1 A It -- it's the Board of Nursing is requesting
2 you to continue some sort of training, either in general
3 nursing or whatever area you want to. I usually try to select
4 the area that I'm working in. So I might seek out something
5 on endoscopy if it was endoscopy or if it was OB -- OB or
6 whatever. Or if it's something new. To medicine sometimes
7 they offer CEUs, and that's continuing education credits. We
8 have to have 30 every 2 years from Nevada.

9 Q And would the --

10 A Four years, sorry.

11 Q -- I'm sorry?

12 A It's -- it's 30 for 4 years for Nevada.

13 Q And would the clinic pay for the training?

14 A No, ma'am.

15 Q Oh, you had to pay for those continuing --

16 A Yes, ma'am.

17 Q -- units that were outside the clinic?

18 A Yes, ma'am.

19 Q By -- offered by private organizations?

20 A Yes, ma'am.

21 Q And were there in-house, in-services?

22 A We had in-house, in-services, yes. They were
23 usually related to the yearly things that we needed to do for
24 safety and infection control. Shadow Lane would hire an
25 outside company to come once a year to do that, and usually I

1 would attend more than one in a year -- calendar year -- just
2 because of the way it fell, and other -- trying to get other
3 people to attend.

4 A physician is also -- and the CRNAs are supposed to
5 attend those. We also had to do CPR and ACLS -- advanced
6 cardiac life-support training.

7 Q Do you know if the doctors had to be certified
8 for that cardiac arrest --

9 A Intubation?

10 Q -- correct. If you know?

11 A I can't recall.

12 Q All right. You had mentioned some training on
13 the Medivator. Is it the case that while you were there that
14 the representative of the manufacturer would hold a periodic
15 training on how to use a Medivator?

16 A Yes, ma'am.

17 Q And was that primarily for the GI staff?

18 A The techs, yes, ma'am.

19 Q I see. Almost done. I could be done, in fact.

20 Hold on.

21 A Take your time.

22 Q I have no further questions. Thank you, ma'am.

23 THE COURT: All right. Thank you, Ms. Stanish.

24 Redirect?

25 REDIRECT EXAMINATION

1 BY MS. WECKERLY:

2 Q Good morning.

3 A Good morning.

4 Q You mentioned early on in the -- well, in your
5 direct and your cross-examination that it was important to you
6 to bring some humanity to the patient's experience when coming
7 to the clinic?

8 A Yes, ma'am.

9 Q Did you feel you were limited at all in your
10 ability to do that?

11 A Yes, I did.

12 Q Okay. How so?

13 A I did not feel that the patient's privacy in --
14 as a whole was taken into account. We were in such a small
15 area, a curtain doesn't prevent other people from hearing
16 what's going on. So even patients changing behind a curtain
17 doesn't offer them much comfort when you put a -- then you
18 walk them down a hallway to the preop area, basically totally
19 naked in a -- in a gown.

20 Then when a patient would be on a stretcher, not all
21 of us are made the same size, so one sheet that was supposed
22 to be -- it's a smaller sheet -- used to throw over a person
23 is not necessarily enough to cover someone.

24 A lot of times the anesthetists were very abrupt
25 with patients. At first I attributed it to the fact that we

1 had so many people cranking out of that place that nobody had
2 time to be nice. Some of it I attributed to the fact that I
3 was in a different place that I wasn't used to working, and I
4 just felt sometimes that people were very rough with patients
5 in how they talked and abrupt, instead of being compassionate
6 and nice, which is what I was used to doing.

7 Q And -- and so for your -- your role when you
8 were in preop or in, you know, your sliver of the -- of sort
9 of the whole process, that's -- that's what you would do --
10 you would try to maybe be -- bring some humor or talk to them,
11 the patients, in a friendly way to kind of make it an easier
12 process?

13 A Right. I would try and -- not intentionally,
14 but it's just my way of trying to make people laugh. And, you
15 know, like, one of the things that used to bug me is that --
16 we had put -- Dr. Desai and Katie and Tonya had purchased
17 these chairs to go in the preop area and they are very -- were
18 very narrow chairs. And we had three of those, and any big
19 gentleman or any lady with large hips is not going to fit in
20 there. And so I didn't want patients to be embarrassed -- I
21 didn't want to be embarrassed for them -- so we had a fourth
22 chair in there, so when it was said that I'd -- there might be
23 four patients in there, yeah.

24 There was two reasons why people would sit in that
25 chair -- that fourth chair. One, it was an armless chair that

1 didn't move, so that larger patients didn't have to be
2 embarrassed in trying to squeeze in the little chair, and the
3 other part was, is that if the techs accidentally moved the
4 patients too quickly into the preop area and I didn't have one
5 of the three chairs open, I would have them sit in that chair
6 because I didn't want half-naked people having to walk all the
7 way back to the front and have to wait there. It didn't make
8 any sense, so --

9 Q Was bringing in that chair your doing when you
10 took over --

11 A Yes, ma'am.

12 Q -- kind of preop? And so there were -- I mean,
13 not -- there were measures you took that were within your
14 control to make it a better process?

15 A Yes, ma'am.

16 Q Did you -- when you were working in preop, did
17 the CRNAs come into preop and talk to their patients at all?

18 A Sometimes if we -- it depended upon the flow of
19 the -- how things were moving. It was very -- it was like a
20 dance, I guess you could say, that if another one got tied up
21 and they had a -- anesthesia had a patient in a procedure room
22 waiting for a procedure and the doctor and anesthetist were
23 busy in this room doing a procedure that was taking too long,
24 the anesthetist could very well come out into the preop area
25 and do the preop interview on the patients in the preop area.

1 So it was just a way of kind of saving time.

2 Q And how frequent would that be?

3 A A few times a week, probably.

4 Q Now, Ms. Stanish talked to you quite a bit about
5 your observations of the procedure room and the wipe down that
6 occurred between patients and the kill time on all -- on the,
7 I guess, on germs or whatever that would be on the gurneys.
8 My understanding from your testimony is that you were in the
9 procedure room from May of '06 to 12 of '06, and then, maybe
10 in the morning or to cover at lunch later on?

11 A Correct.

12 Q So those observations that you were discussing
13 with her about the -- what occurred in between or the
14 turnover, would that be in that May '06 time period to
15 December '06?

16 A I would say that would be my whole history
17 there.

18 Q Okay. Were you, like -- I mean, when you -- in
19 '07 when you would start the morning and then you would do the
20 lunch hour, were you able to observe the procedure room, you
21 know, throughout the day or just those --

22 A Just the times that I was in there.

23 Q The -- you were -- you went to a class, I guess,
24 on the proper cleaning of the scopes?

25 A Yes.

1 Q Yeah. And that was in -- after the CDC came?

2 A Actually, yes. It was scheduled before then,
3 but it was -- we usually got the Medivator people to come
4 about every six months based on how often the techs were
5 hired. That was a class the techs had to go through, but
6 usually the nurses never did. Because I was supposed to be
7 charge, that was the first time I was ever learning how all
8 that happened and --

9 Q For your future --

10 A Yes.

11 Q -- position? And did it seem to you that there
12 was a lot of turnover, or the scopes kind of were in constant
13 rotation?

14 A The scopes were always in constant rotation. I
15 did have concern. That was something I watched. We would
16 have to write the scope number on the nurse's note, and even
17 though the scopes could rotate between the two rooms, I would
18 question them if I thought in my mind, and as fast as things
19 were going, that maybe scope 006 came back to me too quickly.
20 So I would ask the technicians, Is this one really back so
21 soon? Show me -- you know, has it been cleaned? How long has
22 it been out, you know, so that I would check back and see.

23 Q So you were kind of keeping track of that when
24 you were in the procedure rooms?

25 A As good as I could. I mean, it wasn't a ledger

1 or anything --

2 Q Right.

3 A -- because everything was too fast.

4 Q Was that easier to do when you were there all
5 day, or, you know, I mean, in the --

6 A Yes.

7 Q -- when you did the first couple cases in the
8 morning, you might not know that, right?

9 A Right. Right.

10 Q Now, it sounds like food in the procedure room
11 is something you really didn't like?

12 A No.

13 Q And that you weren't shy about expressing your
14 opinion that that was totally inappropriate?

15 A Nope. I certainly did.

16 Q And you -- did I hear you say that you discussed
17 that with Mr. Lakeman as well?

18 A Yes.

19 Q What did you see him do?

20 A Well, it wasn't that I discussed it with him
21 like he did it, they all kind of had bottles of water stashed
22 different places in the room, so that kind of was something --
23 and I could live with that because even JCAHO says in a
24 hospital a nurse can have something as long as it's a closed
25 container, you know, on her work station.

1 No, I spoke to Mr. Lakeman because Mr. Sagendorf was
2 blatantly, not only doing it, but taunting me --

3 Q So it was like an actual -- a pretty big
4 disagreement you had?

5 A Yeah.

6 Q And what was Mr. Lakeman's take?

7 A Well, everybody kind of was like, Well, it's not
8 really a big deal, you know; and I'm like, It is a big deal.
9 I just didn't feel it was given this importance by Mr.
10 Lakeman. The reason why I went to him is because we did have
11 a rapport, and then also, he kind of was -- I don't know if it
12 was official or anything, but we all kind of thought he was
13 over most -- or could talk to the CNAs about their behavior.

14 Q But in your opinion, it wasn't taken seriously
15 or --

16 A No, it was not.

17 Q -- you were sort of, you know, come on, lighten
18 up or --

19 A No.

20 Q What was -- I mean, in general what was the
21 nursing staff's relationship with the CRNAs?

22 A The nursing staff, I felt, were tolerated by the
23 CRNAs. In this clinic the CRNAs had the last word. The
24 nurses didn't necessarily have as much to input anything on
25 except to chart in the room, and that was not the role that I

1 was used to having.

2 Q And would it -- would it be acceptable for a
3 nurse to correct a CRNA?

4 A Not at that clinic.

5 Q Now, when Ms. Stanish asked you about how you
6 charted your times when you were in the procedure room and you
7 ran it -- your start time was the initial calculation on that
8 blood-pressure monitor?

9 A Yes, ma'am.

10 Q And so whatever time that is, that's what you
11 write down as your start. And you -- you said -- your answer
12 to her was, well, my practice was to do it this way and the
13 end time is the last reading from that monitor; is that fair?

14 A Yes, ma'am.

15 Q And that was your practice. Are you aware of
16 whether or not that was everybody's practice?

17 A That was not everybody's practice.

18 Q What were some of the other practices you were
19 aware of?

20 A Well, first of all, Mr. Rod Chaffee had his
21 little draw of EKG strips that he used. I don't know the
22 specifics and I don't remember what the calculations were, but
23 I know there was something as far as you're supposed to add,
24 subtract or whatever is how they were in recovery. And I
25 refused to do that, so that's why I wound up never working

1 recovery because I felt like I was making up numbers and I
2 wouldn't do it.

3 Q So was there like a formula in recovery and you
4 were --

5 A I believe so, but I -- I can't remember it
6 because I didn't participate. I knew the way that I could
7 practice what I needed to practice was to go by my first blood
8 pressure and my last blood pressure. I knew that's when the
9 patient was in the room.

10 The other complicating part about that was I was
11 always taught that when you do a procedure everybody uses one
12 time.

13 Q Mm-hmm.

14 A It would usually be the clock in the room -- on
15 the wall. At the clinic we had several times. We had the
16 CRNA's watch. We had the blood-pressure machine. And then,
17 the physician's charting was done in a computer. And even
18 though we tried to keep the time set, the batteries would run
19 out on the clocks on the wall, the time, you know, daylight
20 savings time would go with the blood-pressure cuffs, the -- we
21 would put their names in when the patient first went into the
22 room on the doctor's charting -- computing -- computer, sorry,
23 and so you might have several different times there.

24 So for me to be saying a no, ha, ha, if I ever had
25 to explain myself, that my times are when I first put the

1 blood-pressure cuff on and got the first blood pressure and
2 when I took the last blood pressure on the patient.

3 Q And that blood pressure time, would that be
4 synchronized at all with the clock on the wall or the computer
5 or the CRNA's watch, or was everybody kind of working from a
6 different --

7 A Who knows.

8 Q -- point? Okay. Who knows?

9 A I -- who knows?

10 Q Now, you talked about Mr. Chaffee and this --
11 this drawer he had of strips?

12 A Yes, ma'am.

13 Q Are you -- is it possible to get that machine to
14 just print out a strip in a certain time increment?

15 A I don't --

16 Q Like, can you get it to print, for instance,
17 every 11 minutes or something like that?

18 A No -- well, you set it up when you're in the
19 procedure that it's supposed to give you blood pressures every
20 2, 3, 4, 5 minutes --

21 Q Okay.

22 A -- but as far as to print a strip and then
23 reprint it with different times, you can't alter that. It
24 would be -- you would see one strip with the exact same times
25 for another patient.

1 Q But -- I mean, I -- you know, based on what you
2 observed with him, that some of those monitor strips that are
3 in a patient's chart did not belong to that patient?

4 A Correct.

5 Q You were asked on -- on cross-examination about
6 the AAAH --

7 A C, yeah.

8 Q -- C? Okay. And you weren't present when they
9 were actually there because you were ill or you were on
10 your --

11 A That time I was not, no.

12 Q So you don't know what they maybe observed or
13 did or anything like that?

14 A All of that would be speculation.

15 Q Okay.

16 A Or rumor. I'm getting good at this.

17 THE COURT: You're getting -- I was going to say.

18 BY MS. WECKERLY:

19 Q You knew the objection it would draw. Last
20 thing --

21 A Sorry.

22 Q -- last thing I just want to --

23 THE COURT: Feel free to object to the questions
24 yourself.

25 BY MS. WECKERLY:

1 Q I want to talk about the -- the outbreak of
2 hepatitis C, and you said it was -- it was devastating?

3 A Yes, ma'am.

4 Q And it's -- it's devastating that something like
5 that could happen when everybody knows ways to prevent it; is
6 that fair?

7 A Yes, it is.

8 Q And for you as a professional, I mean, it -- has
9 it been costly for you?

10 A You're going to make me cry.

11 Q Oh, sorry.

12 A I couldn't get a job for a long time after
13 because I had Endoscopy Center.

14 Q Now, do you need a minute or can I --

15 A I'm okay.

16 Q -- okay.

17 THE COURT: Well, we've got tissues already.

18 THE WITNESS: Thank you.

19 BY MS. WECKERLY:

20 Q Now, you mentioned that the meeting with Tonya
21 Rushing, where she announces that the CDC is going to come
22 in --

23 A Yes.

24 Q -- you know where I'm -- what I'm talking about?
25 Now, you said all the staff was at that meeting?

1 A Yes, ma'am.

2 Q Were the doctors present?

3 A I can't recall. I know they knew about it --

4 Q Okay.

5 A -- but I don't think any of the physicians were
6 there.

7 Q Okay. Were the CRNAs there?

8 A I can't recall.

9 Q Was Desai -- Dr. Desai there?

10 A No.

11 Q Now, you -- you assisted Dr. Carrol because you
12 were trying to figure out how this could have happened, or if
13 there was any kind of thing you could discover from looking at
14 the patient charts from that day?

15 A Yes, ma'am.

16 Q And you actually didn't work that day, right?

17 A Right.

18 Q Did you notice anything about the -- the
19 anesthesia times or the procedure times from your review of
20 the charts?

21 A The anesthesia times go longer than what the
22 procedure times are marked down in the blood pressures and the
23 nurses' notes. There's different times everywhere.

24 Q Okay. So there was timing inconsistencies; is
25 that --

1 A Yes, ma'am.

2 Q -- fair? And from -- do you remember what you
3 told the Las Vegas Metropolitan Police Department was, at
4 least at that time, your thought of how this -- how the
5 disease got transmitted?

6 A Well, I did -- I couldn't understand how the
7 disease had gone from one room to the other room. And I kind
8 of felt like -- it was kind of a joke on my part, but nobody's
9 taking it as a joke when I said it, that there was an outside
10 force, that someone had arbitrarily done something and
11 infected people is what I told the police department when they
12 first came.

13 Q Sort of like a rogue employee or --

14 A Yeah, like I -- I couldn't -- none of it was
15 making sense, what the CDC was telling me, what the State had
16 published, what any of it -- didn't make any sense to me.

17 Q But that -- that theory of yours, did you
18 discuss it with Dr. Carrol?

19 A Well, Dr. Carrol and I had several discussions
20 about things, but we both felt that somehow this wasn't making
21 sense. It -- the answers were not there for he and I.

22 Q And at least as to the idea that it was an
23 outside force or a rogue employee, do you hold that opinion
24 now?

25 A No, because the only person I thought could be a

1 candidate of that was not employed at the time. So that's not
2 a possibility.

3 Q Thank you.

4 MS. WECKERLY: I have no other questions.

5 THE COURT: All right. Any recross, Mr. Santacroce?

6 MR. SANTACROCE: Yes.

7 RECROSS-EXAMINATION

8 BY MR. SANTACROCE:

9 Q The conclusions that the CDC raised and the
10 Health Department did not sit very well with you, did it, or
11 Dr. Carrol?

12 A Correct.

13 Q And you and Dr. Carrol had concerns as to how
14 the disease could go from room to room, correct?

15 A Correct.

16 Q And you had concerns as to how the disease could
17 skip over patients; isn't that correct?

18 A Correct.

19 Q You talked about an incident where you went to
20 Ron about Sagendorf eating in the procedure room, correct?

21 A Yes.

22 Q And you went to Ron because he was a friend?

23 A Partially, and he also could speak to all the
24 anesthetists.

25 Q And you wanted him to speak to the other

1 anesthetists?

2 A Yes.

3 Q Okay. You had a chain of command at the clinic,
4 correct?

5 A Yes.

6 Q And your immediate supervisor was Jeff Krueger
7 and Katie Maley, correct?

8 A Yes.

9 Q Did you go to them about it?

10 A Yes, I did.

11 Q Okay. And what was their response?

12 A They talked to Dr. Desai -- oh, this is what
13 they told me, I can't speak for -- that they actually did
14 it --

15 Q Okay. Don't tell me what they told you, just
16 tell me if --

17 A Okay.

18 Q -- anything occurred/changed?

19 A No.

20 Q Nothing happened?

21 THE COURT: You're very good at this evidence stuff.

22 BY MR. SANTACROCE:

23 Q The fact is that it wasn't Mr. Lakeman you were
24 concerned about eating in the procedure room, it was Mr.
25 Sagendorf, correct?

1 A That's correct. That's what I said.

2 MR. SANTACROCE: I have nothing further.

3 THE COURT: Ms. Stanish?

4 RECROSS-EXAMINATION

5 BY MS. STANISH:

6 Q Could you please identify for us the names of
7 the nurses, if you recall, that you believed shared your
8 passion for meticulous care of patients?

9 A Lisa Falzone, Lynette Campbell -- I'm trying
10 because I see faces and I don't have names --

11 Q Yeah.

12 A -- for them. So many people went through.
13 Peggy Tagle wanted to do the right thing. Jeff Krueger, when
14 he took care of patients shared the same thing as me. I can
15 think of a lot of one-day people, but I don't know their
16 names, so...

17 Q Okay. Fair enough. Thank you.

18 THE COURT: Nothing else?

19 MS. STANISH: I have nothing further. Thank you.

20 THE COURT: Ms. Weckerly?

21 MS. WECKERLY: Nothing. Thank you.

22 THE COURT: Counsel, approach.

23 (Off-record bench conference.)

24 THE COURT: We have a number of good juror questions
25 up here. So I'm going to read them -- or ask them to you in

1 no particular order.

2 THE WITNESS: That's okay.

3 THE COURT: All right. How many open bottles or
4 vials of saline were open and used at any given time in the
5 preop? Meaning, how many bottles were open at any one time?

6 THE WITNESS: If I was in there it would be one --

7 THE COURT: Okay.

8 THE WITNESS: -- because I --

9 THE COURT: Did you observe, maybe what other nurses
10 did or this, you know, condition if you came in, like, later
11 in the day or --

12 THE WITNESS: There might be multiple bottles in
13 there open, but as I said before, my -- my practice is to
14 throw them all away and start with my own. So I would only
15 work out of one until it was finished.

16 THE COURT: Okay. So if you came in and there was
17 already an open bottle, you would discard that bottle and open
18 another bottle?

19 THE WITNESS: Yes, ma'am.

20 THE COURT: And then your practice was to use --
21 completely empty a bottle, discard it, and then open a new
22 bottle?

23 THE WITNESS: Yes, ma'am.

24 THE COURT: But other nurses sometimes would use --
25 have several open bottles going at one time?

1 THE WITNESS: Yes, ma'am.

2 THE COURT: Okay. Were the multi-use bottles of
3 saline opened fresh every morning, or were partial bottles
4 used from the prior day the next day?

5 THE WITNESS: I would always throw them away.

6 THE COURT: Okay. Do you know what other nurses did
7 by your observations?

8 THE WITNESS: You know, when I would come in -- say,
9 I didn't do the preop first thing in the morning, I was doing
10 cases, there could always be open bottles of saline in the --
11 in the utility trays.

12 THE COURT: Okay. When reviewing patient files, did
13 you notice any climb in the time for the procedures? Meaning,
14 I guess, the expansion, you know, that it increased?

15 THE WITNESS: Some of the anesthesia times are longer
16 than the actual procedure times.

17 THE COURT: Okay. Was that consistent throughout the
18 files that you reviewed or did the time increase over time, if
19 you will? Meaning, later files had longer times or earlier
20 files had longer times, or any --

21 THE WITNESS: Nothing consistent.

22 THE COURT: -- any pattern like that? No.

23 THE WITNESS: Nothing --

24 THE COURT: Okay.

25 THE WITNESS: -- consistent that I can remember.

1 THE COURT: Have you ever observed anyone precharting
2 at the clinic?

3 THE WITNESS: No, but can I explain that?

4 THE COURT: Sure.

5 THE WITNESS: I think some people misinterpret what
6 precharting is in some ways. The charts, the way they were at
7 the clinic, I could go and write in preop the patient's preop
8 diagnosis on the nurse's notes because everybody knows that
9 Ms. B. is coming in because she has heartburn. And I could
10 fill out that Ms. B. has allergies on the nurse's note, but
11 that's not considered precharting. I'm not charting what the
12 event is. I'm not charting that I turned the patient and the
13 patient was okay before the procedure even happened.

14 But there were parts on that chart that you could
15 write in, and preop did do that sometimes to speed things
16 along. You have to understand how many patients we've been
17 moving through, to write down the preop diagnosis, the
18 procedure they were having, and allergies before they even got
19 into the room.

20 THE COURT: Like drug allergies, things like that?

21 THE WITNESS: Right.

22 THE COURT: Okay. And those were taken, I'm
23 assuming, from the existing medical records?

24 THE WITNESS: A lot of times I always talked to the
25 patient --

1 THE COURT: Okay.

2 THE WITNESS: -- because you can get discrepancies --

3 THE COURT: To make sure --

4 THE WITNESS: -- wrong paperwork, that kind of stuff.

5 THE COURT: -- okay. How long did Rod Chaffee work
6 at the center? I mean, you probably don't know from --

7 THE WITNESS: That's a guess.

8 THE COURT: -- before you started -- was he already
9 there when you started?

10 THE WITNESS: He was there when I started. He was
11 one of the people that I was supposed to be trained by, and he
12 was gone -- he was gone before the summer. I think he was
13 gone, like, in the spring of 2007.

14 THE COURT: Okay. So how much overlap would you have
15 had, you know, approximately?

16 THE WITNESS: A year.

17 THE COURT: Okay. And when you saw him taking, you
18 know, EKGs from one patient, putting them on the chart of the
19 other -- of another patient, who else would have been -- was
20 present that would have also potentially witnessed that or
21 seen --

22 THE WITNESS: I don't think anybody would have
23 because it was usually at the end of the case, the room is
24 dark, and the nurse is finishing up the stuff, so I can't say
25 that a lot of people would have seen that.

1 THE COURT: Okay. And did you observe anyone else
2 doing anything unprofessional?

3 THE WITNESS: Unprofessional in the care of the
4 patients, I saw anesthetists and people sometimes be very
5 abrupt with patients. Linda Hubbard and I got into a heated
6 discussion one day. Sometimes the patients didn't answer the
7 CRNAs quickly, appropriately, didn't understand, whatever, and
8 so there could be, like, a confrontation between them. Like,
9 I asked you -- if I asked you if you've taken medicine, did
10 you take a medicine. That kind of thing. And well, I don't
11 understand that kind of stuff.

12 Linda Hubbard got into an argument about it -- with
13 a patient because the patient didn't want the blood-pressure
14 cuff on a certain arm or -- or something. But she's like,
15 doing this with the arm and trying to put it on roughly, and
16 I'm like -- I had to stop what I was doing, walk over there,
17 and say, Linda, go away. Let me take care of the patient.
18 And she was still aggravated, and I -- you know, it was like
19 -- at that point you say I'll report it, but you can't do
20 anything about it right there, except advocate for the
21 patient.

22 THE COURT: Mm-hmm.

23 THE WITNESS: Maybe one or two things like that.
24 There's maybe some inappropriate conversations when patients
25 were asleep about things that shouldn't be in a procedure

1 room, whether it was people's lives or comments about
2 patients, but nothing that would hurt any patient.

3 THE COURT: Because they're asleep, so they don't --
4 they don't hear what's being --

5 THE WITNESS: Yeah, and that's --

6 THE COURT: -- said about them.

7 THE WITNESS: -- I mean, anybody who thinks that that
8 doesn't happen is kind of silly; it does happen.

9 THE COURT: That's not unusual?

10 THE WITNESS: Yeah.

11 THE COURT: Okay.

12 THE WITNESS: Any hospital, any OR, any --

13 THE COURT: The staff is talking about the patient,
14 like maybe their body or whatever. That kind of thing? Okay.

15 THE COURT RECORDER: She has to answer out loud.

16 THE COURT: Did you --

17 THE WITNESS: Yeah -- yes, ma'am.

18 THE COURT: -- was that yes? Yeah.

19 THE WITNESS: Yeah, I'm sorry.

20 THE COURT: For the record. In your training on the
21 Medivator, was there anything taught on running one-time use
22 bite blocks in the Medivator?

23 THE WITNESS: No.

24 THE COURT: Okay. You stated that only 50 percent of
25 the staff was attentive to details. Can you elaborate on that

1 statement?

2 THE WITNESS: I would say that, just like I'm talking
3 about about the blanket or the covering of a patient, a lot of
4 people didn't think anything of pushing the patient out of the
5 procedure room, across the room to where the preop area is and
6 their butt was hanging out or their shirt was pulled down too
7 far or -- it was just kind of -- and some of that was the
8 techs who really weren't medical people, you know, so they
9 would just push a patient out, and I'd be walking by and grab
10 the sheet and pull them. That was one of my big -- big pet
11 peeves a lot of times.

12 Or just being conscientious of the patient. I can't
13 think of another one, but that was my --

14 THE COURT: Of those specific, okay. So, like a lack
15 of concern about patient modesty and that sort --

16 THE WITNESS: Yeah --

17 THE COURT: -- of thing?

18 THE WITNESS: -- or, you know, when patients -- we
19 had a lot of language barriers and sometimes I felt like
20 people -- people, nurses, nurse anesthetists, would be
21 impatient with language-barrier situations. We had
22 interpreters. I also learned a little bit of really bad
23 Spanish. And we -- that was fun. Peggy Tagle in one room
24 going, se habla Espanol, and I'm in the other room saying the
25 same thing and it doesn't sound like anything.

1 So the being impatient with patients who couldn't
2 answer or couldn't understand.

3 THE COURT: Who weren't fluent in English and --
4 okay. And you had -- you said there were interpreters. Are
5 those just Spanish-language interpreters or --

6 THE WITNESS: Oh, we never had official interpreters,
7 which, kind of by the rules of the whole gambit is not --

8 THE COURT: Okay. Well, don't --

9 THE WITNESS: -- okay.

10 THE COURT: -- yeah.

11 THE WITNESS: We had other employees who were there
12 who spoke Spanish fluently, and if we could we would wrangle
13 them in from their duties and say, can you please come help us
14 ask all these questions.

15 THE COURT: And was that the primary language that
16 you had difficulty with?

17 THE WITNESS: Yeah, we had Tagalog and we had --

18 THE COURT: I was going to ask.

19 THE WITNESS: -- a few others.

20 THE COURT: Mm-hmm.

21 THE WITNESS: But we always seemed to have somebody.

22 THE COURT: So you might have, if there was a
23 Filipino Tagalog speaker, there might have been a Filipino
24 employee who could translate?

25 THE WITNESS: Yeah, and we -- we would also pull from

1 the gastro center if it was something -- they might have
2 somebody over there that could come across and interpret.

3 THE COURT: Okay. Were there specific -- or did you
4 observe any specific thing that was going on that caused other
5 employees at the center to be inattentive?

6 THE WITNESS: I'm having trouble understanding that.
7 Like -- you'll have to elaborate.

8 THE COURT: All right. Well, I don't want you to
9 speculate, but, you know, like, what would cause that
10 essentially?

11 THE WITNESS: I -- my thought would be speed was the
12 most overbearing thing of us having to do everything so
13 quickly with the volume of patients to be inattentive.

14 THE COURT: Okay. And was there a specific area of
15 the clinic that you observed this inattentiveness more than,
16 you know, other areas of the clinic?

17 THE WITNESS: No.

18 THE COURT: All right. Ms. Weckerly, do you have any
19 follow-up on those juror questions?

20 MS. WECKERLY: No. Thank you.

21 THE COURT: Mr. Santacroce, do you have any follow-up
22 on those juror questions?

23 MR. SANTACROCE: No, Your Honor.

24 THE COURT: Ms. Stanish, any follow-up on those juror
25 questions?

1 MS. STANISH: Can I think a bit? Nothing further.

2 THE COURT: All right. Any other juror questions?

3 Ma'am, there are no further questions for you.
4 Thank you for your testimony. Please don't discuss your
5 testimony with anybody else who may be a witness in this case.

6 THE WITNESS: Thank you.

7 THE COURT: Okay. And you are excused.

8 THE WITNESS: Thank you.

9 THE COURT: Just take a break before we move into the
10 next witness. Ladies and gentlemen, we're just going to take
11 our morning recess for about 10 minutes, or as long as you
12 need. The morning recess. I say 10 minutes more for the
13 benefit --

14 MS. STANISH: As long as you need?

15 THE COURT: -- of the lawyers, so I make sure that
16 they're back.

17 During the recess you're reminded that you're not to
18 discuss the case or anything relating to the case with each
19 other or with anyone else; you're not to read, watch, listen
20 to any reports of or commentaries on the case, person, or
21 subject matter relating to the case; and please don't form or
22 express an opinion on the trial.

23 Notepads in your chairs, and follow the bailiff
24 through the rear door.

25 (Jury recessed at 10:29 a.m.)

1 THE COURT: All right. And our next witness is
2 pretty much the rest of the day?
3 MS. STANISH: Yes, I'd --
4 MR. STAUDAHER: That's what we've --
5 MS. STANISH: -- say.
6 MR. STAUDAHER: -- been told.
7 MS. WECKERLY: That's our understanding, but he is
8 the only witness --
9 MR. STAUDAHER: Witness that --
10 MS. WECKERLY: -- we've got.
11 MR. STAUDAHER: -- we have.
12 MR. WRIGHT: And he'll take --
13 MR. STAUDAHER: The other witness that we potentially
14 had --
15 MS. WECKERLY: Had a family --
16 MR. STAUDAHER: -- child had an --
17 MS. WECKERLY: -- in crisis.
18 MR. STAUDAHER: -- accident, apparently.
19 THE COURT: Okay.
20 (Off-record colloquy.)
21 (Court recessed at 10:30 a.m. to 10:42 a.m.)
22 (Outside the presence of the jury.)
23 THE COURT: For the lawyers' information. The jury
24 is asking the bailiff, why do they have to ask the same
25 question five or six times? So, you know, we don't have to

1 cover everything on redirect and recross that's already
2 just -- I'm just conveying that to you. Obviously, the
3 bailiff has no -- didn't respond to that, but that's what they
4 said.

5 They also asked if we could start earlier and go
6 later every day because they're basically getting sick of
7 having the, you know, the length of the trial, and they're
8 concerned that it's clearly taking longer.

9 So the bailiff just said he didn't think so, but
10 he'd, you know, talk to the Judge or something like that. So
11 my thinking is this, being aware of Mr. Wright's issue: maybe
12 starting earlier, like 30-minutes earlier, so on Mondays --
13 because then you've had the two weeks of the -- I'm sorry --
14 two days of the weekend to prep, and then going later on
15 Fridays starting June 5th because that is when our Safekey mom
16 won't have the childcare issue anymore.

17 MS. STANISH: Can we get a --

18 THE COURT: So that way the late day, you've got two
19 days, Mr. Wright. I know you objected yesterday to my
20 suggestion of running 8 to 6 every day. If we do the Monday
21 early start and the Friday late, then you've got the two --
22 two days there of the weekend, something like that, so...

23 And then, obviously if we have later starts for
24 whatever reason, then we can -- after her -- the Safekey issue
25 is resolved, we can go later on those days because our total

1 trial time for the day would be less.

2 MS. STANISH: Okay.

3 THE COURT: Because I think, Mr. Wright, correct --
4 your concern is not just prep time for yourself and your
5 client, your concern, as you indicated yesterday, was your
6 client kind of wears down having to sit here all day, as we
7 all do. But -- okay.

8 So anyway --

9 MR. WRIGHT: But it's not only prep time, it's going
10 over what happened during the day, and then getting ready for
11 the next day. And that's why I had asked for the
12 accommodation of short times to begin with.

13 THE COURT: Well, and --

14 MR. WRIGHT: And then you --

15 THE COURT: -- we've been --

16 MR. WRIGHT: -- and I -- and the bailiff can tell
17 them -- why do they ask so many stupid questions?

18 MR. STAUDAHER: I think I would pass on that one.

19 THE COURT: I think -- I like it -- I like the -- I
20 think the juror questions are good for the record -- or not
21 for the record.

22 MR. WRIGHT: This People's Court horse crap that goes
23 on in this --

24 THE COURT: Hey, you know what?

25 MR. WRIGHT: -- State, there's no --

1 THE COURT: I was opposed to juror questions when I
2 was a DA because I thought, well, you know, they'll be sort of
3 getting in the middle of what I want to do, but as a Judge I
4 like them and I think that the questions so far have indicated
5 that they're really paying attention and following the case
6 and locking, questioning, about the defense that they're
7 seeing, and, you know -- so I like them.

8 Bring them in. Plus, it gives me something to do.

9 (Off-record colloquy.)

10 MS. WECKERLY: Do you know when you're going to do
11 the balance of the bad-acts hearing?

12 THE COURT: No. I mean, it's either going to be in
13 the morning or it's going to be in an afternoon.

14 MS. WECKERLY: Right. But, I mean, will that be next
15 week, or --

16 THE COURT: Yeah, I can do it whenever. I mean, it
17 doesn't really matter to me. I'm here -- you know.

18 MS. WECKERLY: Okay.

19 THE COURT: I mean, it's -- I -- like I said, I'm
20 here anyway. You folks are here anyway. So, you know, maybe
21 what's convenient for the State or the -- you know, everybody,
22 what's more convenient for the witnesses, as long as we do it,
23 you know, either early in the day or at the end of the day.

24 MS. STANISH: It would be more convenient for me if
25 you deny it.

1 THE COURT: And how -- what do we have, three, four
2 people left?

3 MR. STAUDAHER: Three.

4 MS. WECKERLY: Three.

5 MS. STANISH: Three.

6 MS. WECKERLY: But two of them are telephonic.

7 MS. STANISH: Who is the third one? I know you have
8 the two patients --

9 MR. STAUDAHER: Lisa Phelps.

10 THE MARSHAL: Ladies and gentlemen, please rise for
11 the presence of the jury.

12 (Jury entering at 10:47 a.m.)

13 THE MARSHAL: Thank you. Everybody, you may be
14 seated.

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

19 And the State may call its next witness.

20 MS. WECKERLY: Vince Sagendorf.

21 THE COURT: Sir, just right up here by me, up those
22 couple of steps, please. And then just face this lady right
23 there, and she'll administer the oath to you.

24 VINCENT SAGENDORF, STATE'S WITNESS, SWORN

25 THE CLERK: Thank you. Please be seated. And please

1 state and spell your first and last name for the record.

2 THE WITNESS: My name is Vincent William Sagendorf.
3 First name is Vincent, V-I-N-C-E-N-T, William, W-I-L-L-I-A-M,
4 last name is Sagendorf, S-A-G-E-N-D-O-R-F.

5 THE COURT: All right. Thank you.

6 Ms. Weckerly, please proceed.

7 DIRECT EXAMINATION

8 BY MS. WECKERLY:

9 Q Good morning, sir.

10 A Good morning.

11 Q How are you employed?

12 A I am semi-retired.

13 Q Okay. And what's the semi part? What do you
14 do?

15 A I do vacation relief and holiday relief for
16 CRNAs with a pain-management group.

17 Q And where do you work?

18 A Cypress Surgery Center.

19 Q Where is that located?

20 A It's located in Santa Maria, California.

21 Q How long have you worked as a CRNA?

22 A 43 years.

23 Q And where did you go to school for that degree?

24 A I went to Jersey Shore Medical Center-Fitkin
25 Hospital.

1 Q And you've worked -- I -- obviously in
2 California. How many years did you work in California as a
3 CRNA?

4 A 42 years.

5 Q And did you work a portion of a year in Las
6 Vegas?

7 A Yes, five months.

8 Q Five months. Was it at the Endoscopy Center of
9 Southern Nevada?

10 A Yes.

11 Q Do you recall what your first day of work was?

12 A October 1, 2007.

13 Q And your last day?

14 A I think it was March 4th, 2008.

15 Q Okay. So you worked October 1st, 2007, to when
16 the clinic closed in March of 2008?

17 A Yes.

18 Q Five months?

19 A Yes.

20 Q How did you get your job at the -- at the
21 endoscopy center?

22 A I saw it online.

23 Q And you -- did you, like, send in an
24 application?

25 A Yes, I did.

1 Q Did you interview with anyone in order to get
2 the job?

3 A Yes, in July of 2007, I interviewed with Ms.
4 Rushing and with Dr. Desai.

5 Q And tell us about your interview with Dr. Desai.

6 A It was very short. He asked me how many
7 propofol cases I had done, I told him 5,000, give or take. He
8 said, you have the job, go see Tonya.

9 Q Okay. So it was a brief interview?

10 A Very.

11 Q The discussion was, do you know how to use
12 propofol, essentially?

13 A Yes.

14 Q And you'd done it thousands and thousands of
15 times?

16 A Yes.

17 Q After you -- I assume you went and talked to Ms.
18 Rushing at his direction after that?

19 A Yes.

20 Q How soon after you spoke to Ms. Rushing did you
21 actually start working?

22 A That was -- when I talked to her it was in July,
23 and then I had to apply for my licensure and send in all the
24 application parts, and I started -- I got my license
25 September, and quit my job in California and came to Nevada.

1 Q Okay. And what facility did you work at here?
2 Where was it located?

3 A At Shadow Lane.

4 Q Did you ever work at Burnham or the VA?

5 A Not at the VA but at Burnham.

6 Q How frequently would you work at Burnham?

7 A I was there about four times.

8 Q Four times in the five months?

9 A In the five months.

10 Q When you -- when you came, who were the other
11 CRNAs that were already working for the clinic?

12 A It was Vinny Mione and Linda Hubbard, Keith
13 Mathahs, and Ralph -- I don't know his last name -- and then,
14 Ron, who was leaving.

15 Q Okay. Was Ralph at Shadow?

16 A No, he mostly stayed at Desert Shadows.

17 Q Okay. And that's the Burnham one?

18 A Yes, the Burnham one.

19 Q Okay. So you worked with Linda Hubbard, Keith
20 Mathahs, and Vincent Mione?

21 A Vinny Mione was also over at Burnham most of the
22 time, but I did work with him a few times.

23 Q Okay. And I think you said Mr. Lakeman, as
24 well?

25 A I only watched Mr. Lakeman do one IV, and then

1 that was the last I saw of him.

2 Q Okay.

3 A He was mostly over at Burnham.

4 Q He was over at Burnham during the time --

5 A Yes.

6 Q -- you started? When you were working, who --
7 which CRNA would you normally spend your workdays with?

8 A Linda Hubbard and Keith Mathahs.

9 Q And was there any -- like, in terms of your
10 schedule, how were the three of you scheduled?

11 A Keith was part-time, so he would leave at around
12 12 or 1, and then Linda and I were full-timers, but we would
13 switch off coming in at 10:00.

14 Q So one of you would come in when the clinic
15 opened or...

16 A Yes.

17 Q And then the other would come in at 10?

18 A Right.

19 Q Now, when you -- when you and Linda would switch
20 off like that, there would have been a time period when only
21 one CRNA was present in the early morning; is that fair?

22 A No, it would be one of us and Keith Mathahs.

23 Q Oh, and Keith would be there early as well. And
24 then was there a point in time when Ron Lakeman moved and
25 wasn't working for the clinic anymore?

1 A He left two weeks after I got there, so that's
2 about as much as I know about him.

3 Q Okay. And you said you've only seen him do one
4 procedure?

5 A I saw him do one IV in the -- in the neck. It's
6 a very difficult IV, so...

7 Q Other than that you didn't observe him at all?

8 A I never saw him.

9 Q When you started working at the clinic, who were
10 the doctors that you worked with primarily?

11 A Dr. Carrol, Dr. Mukherjee, and Dr. Carrera.

12 Q When you -- when you first got to the clinic.
13 Were you aware that there had recently been an accreditation
14 or some sort of certification done?

15 A Yes, they had -- they had told me they had just
16 passed AAAHC.

17 Q And did you make any observations as to the
18 conditions at the clinic with regard to that type of
19 certification?

20 A There were -- there were things that were --
21 were missed, very, very big things that were missed. There
22 was a ventilator that all the hoses were dry-rotted on. I
23 don't know how -- I don't even know if that thing ever got
24 turned on. There were no suction cannisters or suction
25 equipment at the heads of the recovery room beds, which is a

1 patient-care issue. There were -- they pushed the patients in
2 feet first, which put them the farthest away from the
3 equipment you would need if there was a situation.

4 Q Did you notice those deficiencies in the first
5 couple days you were working?

6 A Yes.

7 Q And so notwithstanding this accreditation, you
8 saw things that concerned you?

9 A Yes.

10 Q And those would be things related to sort of
11 emergency measures that may have to be taken with a patient?

12 A Right, patient-care issues.

13 Q And were you particularly cognizant of those
14 issues because of your -- your training as an anesthetist?

15 A Yes.

16 Q These were all, like, airway-type issues that --

17 A Exactly.

18 Q In the -- in an -- in the event of an emergency,
19 you'd need that equipment?

20 A Right.

21 Q What did you do when you saw those things? Did
22 you bring them to anyone's attention?

23 A I told one of the nurses -- I asked one of the
24 nurses where the cannisters were, and she said that Dr. Desai
25 didn't want to spend the money on them. They had put them

1 away. So I told her to get the suction cannisters and put
2 them on the wall, and I would deal with it if -- if it came to
3 that. I called Mr. Krueger and had him come and change the
4 hoses on the ventilator because it was inoperable the way it
5 was.

6 Q And did those -- did those issues get corrected?

7 A Yes.

8 Q What was the patient load like in your five
9 months that you were there?

10 A Very heavy.

11 Q And by, Very heavy, how many procedures are you
12 talking about?

13 A 70-75 a day in two rooms.

14 Q And did you have a lot of time in between
15 patients?

16 A None.

17 Q Did you have a lot of time to take a break?

18 A You could -- you could take a break if it slowed
19 down or if a patient didn't show up, but that's about it.

20 Q How many hours were you working in a day
21 typically?

22 A 10.

23 Q And was that -- was the number of patients, to
24 your mind, a potential danger to patient care? Were you
25 concerned about it?

1 A Oh, yes. It was a factory situation. We'd just
2 run them through.

3 Q During the lunch hour, how would you handle it
4 with other CRNAs?

5 A Mr. Mathahs would usually -- when the 10:00
6 person got there he would relieve the other person to go to
7 lunch at 11, and then -- then whoever came in at 10, he would
8 relieve them before he went home at 12.

9 Q Now, during your time that you worked at the
10 clinic, did you ever work with Dr. Desai?

11 A Three times.

12 Q Three times. And did anything unusual happen in
13 those three times?

14 A Unusual in what way?

15 Q Did you -- was there anything that caused you
16 concern with those three instances where you worked with Dr.
17 Desai?

18 A Yeah, Dr. Desai tended to be very, very, very
19 fast, and sometimes wouldn't wait for the patient to be
20 totally asleep.

21 Q And --

22 A My first case was that way.

23 Q Okay. And did you tell him, look, the
24 patient --

25 A Well, I said -- I said, whoa, whoa, whoa, as --

1 as I was trying to push the propofol in, and he went ahead and
2 started. He had already inserted the scope.

3 Q And what type of procedure was it?

4 A It was a colonoscopy.

5 Q And so he inserted the scope prior to you
6 anesthetizing the patient?

7 A Prior to the patient being asleep.

8 Q Beyond discomfort to the patient, Is there a,
9 like, physiological concern there?

10 A Well, there is because the -- that area of the
11 body is innervated by what's called the vagus nerve, so you
12 can have a profound pulse drop by inserting that without
13 proper anesthesia, without enough lubricant and so on and so
14 forth.

15 Q The other two times that you worked with him,
16 did he similarly do procedures quickly?

17 A Yes.

18 Q But it sounds like you -- I mean, you didn't --
19 over the five months you worked with him just a very small
20 amount of time?

21 A Very.

22 Q The other doctors that you worked with, did they
23 vary in speed with regard to how long it took them to do
24 procedures?

25 A Yes.

1 Q And describe the doctors that you worked with
2 in --

3 A Well, Dr. Carrol --

4 Q -- that variation.

5 A -- was very quick -- very quick, but he was very
6 thorough. Dr. Mukherjee was a little slower than Dr. Carrol,
7 and on down the line to the -- a doctor who had just gotten
8 out of residency, he took the longest. And I forget his name.

9 Q You -- as you mentioned, you interviewed with
10 Dr. Desai and you discussed whether you had used propofol?

11 A Mm-hmm.

12 Q Is that yes?

13 A Yes.

14 Q Okay. That's obviously the sedation that was
15 primarily used at the clinic?

16 A Yes.

17 Q How would you go about getting the propofol in
18 the mornings?

19 A In the morning it was in a lockbox with a log,
20 and we would just go to the lockbox and unlock it and chart in
21 the log how many bottles were there and then how many bottles
22 we took each.

23 Q And how would those be distributed amongst the
24 CRNAs?

25 A Well, it would be distributed on how many

1 bottles the CRNA might want.

2 Q And some was put in each room?

3 A Yes.

4 Q What size were the vials of propofol?

5 A They came in two different sizes, 20cc and 50cc.

6 Q And were both used?

7 A Yes.

8 Q What was the size of syringe that you used?

9 A 10cc syringe.

10 Q Did you ever use lidocaine?

11 A Yes.

12 Q How would you use it?

13 A Because propofol is acidic, it causes a burning
14 when you inject it. So we would put 1cc of 2 percent
15 Xylocaine in a syringe with the propofol, and that way you
16 could administer it with less pain.

17 Q Okay. In the -- in the time that you worked at
18 the clinic, was there a preop area where nurses would put in
19 the heplocks?

20 A Yes.

21 Q Did patients ever come into procedure rooms
22 without the heplocks?

23 A Yes.

24 Q What -- why would that occur?

25 A Nurses couldn't get the IV in.

1 Q Did the CRNAs ever do those first thing in the
2 morning?

3 A Yes.

4 Q And you all knew how to do that, the -- put in a
5 hepi-lock, correct?

6 A Yes.

7 Q Now, you said that you used -- you used
8 lidocaine, put a little bit in with the 10cc of propofol?

9 A Yes.

10 Q When you had a patient coming in, what type of
11 preparation would you do in terms of the propofol in
12 anticipation of the procedure?

13 A When I first got there, I would usually load 10
14 syringes.

15 Q All with lidocaine and --

16 A No --

17 Q -- propofol?

18 A -- no, 5 with lidocaine and propofol, and then
19 the other 5 with just propofol.

20 Q And what was your thinking with that? Why did
21 you do 5 and 5?

22 A I'd be ready for the first four or five patients
23 because that's when it really got busy. And I'd have the
24 lidocaine already in there; I wouldn't have to waste the time
25 to do that.

1 Q Now, is -- am I correct in assuming that with a
2 patient you use the lidocaine with the first injection of the
3 propofol?

4 A Right.

5 Q And so then you'd use the -- the second syringe
6 would be just propofol?

7 A From then on it would be just propofol.

8 Q Now, how many syringes would you use during a
9 typical procedure?

10 A Two, sometimes three.

11 Q Okay. At least two?

12 A At least two. Sometimes 16.

13 Q Would you use at least two syringes even for an
14 upper endoscopy?

15 A That may take a little more.

16 Q Okay. For an endoscopy?

17 A Yeah.

18 Q It would take at least two and maybe more?

19 A Yeah.

20 Q Can you explain why that would be?

21 A Well, you're -- you're putting something down
22 through the vocal cords.

23 Q Okay.

24 A Or into the stomach, excuse me. And that area
25 is innervated with all kinds of -- with all -- nerve endings

1 for protecting the airway. And so the patients would start to
2 buck or go into laryngospasm if you didn't have them sedated
3 enough.

4 Q Would you use the first syringe, the one with
5 the propofol and the lidocaine -- would you inject the whole
6 thing at first and then move on to the other syringe, or how
7 would that work?

8 A Depending on the age of the patient and the size
9 and the debility of the patient, it would usually take one
10 syringe given, you know, immediately, and then titrate the
11 other syringes.

12 Q So one just to get them sedated --

13 A Yes.

14 Q -- and then others as needed as the procedure
15 goes?

16 A Right.

17 Q And so you're using at least two, possibly more,
18 for every procedure?

19 A Yes.

20 Q Now, as you're -- when you say titrating as you
21 go, what does that mean?

22 A That means, I'm giving small amounts to maintain
23 a smooth patient -- the patient's under and will wake up
24 quickly at the end.

25 Q Okay. Now, you mentioned that you -- at the

1 clinic there were the 20cc vials of propofol as well as the
2 50s?

3 A Yes.

4 Q Did you use those vials on multiple patients?

5 A Yes.

6 Q And you're trained in universal precautions or
7 aseptic technique?

8 A Yes.

9 Q And in your mind, what steps did you take to
10 make sure you adhered to those standards?

11 A Well, I would never enter the propofol bottle
12 without the syringe and needle being sterile.

13 Q Okay. So you never re-entered a propofol vial
14 with a syringe you had already used on a patient?

15 A No.

16 Q Each time you drew it up with a clean needle and
17 syringe?

18 A Right.

19 Q Okay. And in that manner you're able to
20 maintain safe technique?

21 A Yes.

22 Q Now, when you were working with the other CRNAs,
23 did you ever see propofol being moved from room to room?

24 A Yes.

25 Q Explain when that would occur.

1 A Usually at the end of the day, I was usually
2 doing the last case for some reason, and they would bring me
3 over bottles, half-filled, partially filled bottles of
4 propofol in case I needed more at the end.

5 Q And these would be like the remnants of stuff
6 they didn't use on prior ---

7 A Right.

8 Q -- patients? Did you use those --

9 A No.

10 Q -- various vials?

11 A No.

12 Q Why not?

13 A Because standard of care says you never give
14 anything that you didn't open and draw up.

15 Q And would that occur with all of the -- the
16 CRNAs that you were working with at Shadow? Or do you recall?

17 A I don't know.

18 Q Okay. How about during the lunch period? You
19 said you'd go over and cover the other CRNA's --

20 A Right.

21 Q -- room? Were there ever open containers of
22 propofol or partially used --

23 A Yes.

24 Q -- in that instance? I mean, sitting there
25 available for you to use?

1 A Right.

2 Q Did you use it in --

3 A No.

4 Q -- that instance?

5 A No.

6 Q Same reason?

7 A Same reason. I only give what I open and what I

8 draw up.

9 Q Have you ever reused a syringe on a patient?

10 A No.

11 Q Not even on, like, one single patient you've

12 never used a syringe twice?

13 A No.

14 Q Why not?

15 A Because it's the same thing. You're going back

16 in with a syringe that's already been in the patient. When I

17 empty a syringe, the syringe goes into the Sharps container;

18 and I'd use another one, I'd draw up another one, and that way

19 a sterility is maintained.

20 Q When you first started at the clinic, did anyone

21 give you any instructions on the use of propofol at the

22 clinic?

23 A That we weren't supposed to waste it.

24 Q Who told you that?

25 A Mr. Mathahs.

1 Q Keith told you that? And did he kind of orient
2 you on the policies of the clinic?

3 A Yes, he said that Dr. Desai didn't want to see
4 any propofol wasted, and -- I guess we'll get into the other
5 thing here pretty soon.

6 Q Well, let me -- let me ask you, other than Mr.
7 Mathans; did you talk to anyone else about it?

8 A No.

9 Q And you -- I mean, you didn't waste propofol,
10 correct?

11 A No.

12 Q When the other -- in the instances when the --
13 the propofol was brought from room to room, what did you do
14 with the stuff that was brought over?

15 A If it was brought over and I didn't draw it up
16 or anything?

17 Q Right.

18 A I'd throw it away.

19 Q Okay. In the time that you were at the clinic,
20 which is October to the closing, do you remember any meeting
21 about mixing propofol with saline?

22 A No.

23 Q Is that something you'd -- that would stick out
24 in your mind, do you think?

25 A Yes.

1 Q And you don't recall any meeting like that?

2 A No.

3 Q When you started working at the clinic, were

4 you, as the CRNA, required to document the time it took -- or

5 the anesthesia time on a procedure?

6 A Yes.

7 Q In your previous work in California had you

8 documented anesthesia time?

9 A Yes.

10 Q In California how did you calculate your time?

11 A When I started the anesthetic was the start;

12 when I finished the case and -- and took the patient to the

13 recovery room -- when I discharged the patient to the recovery

14 room, that was the end of the anesthesia.

15 Q Okay. And would that be at least sort of

16 roughly consistent with your face time with the patient?

17 A Yes.

18 Q When you went to the endoscopy center, did

19 anyone tell you how to do anesthesia time at the center?

20 A They told me I was supposed to add 30 to 31

21 minutes to each case.

22 Q Who told you that?

23 A Mr. Mathahs.

24 Q Okay. And was that different than you had ever

25 done anesthesia before?

1 A Oh, yes.

2 Q And in your conversations with Mr. Mathahs, was
3 it clear this was for insurance billing?

4 A We knew it was, but it wasn't discussed in that
5 way.

6 Q Okay. You didn't talk about it every day?

7 A No.

8 Q Was there any doubt in your mind that this was a
9 way to sort of expand the time for anesthesia, and thus the
10 billing to insurance companies?

11 A Not at all.

12 Q I mean, was this some foreign concept to you
13 given your experience in working with anesthesia?

14 A No.

15 Q And as you sit here today, was that -- was that
16 the correct thing to do in your mind?

17 A No.

18 Q Then -- but why did you -- why did you do it?

19 A I -- I was caught between a rock and a hard
20 place. I had quit my job in California, I had an apartment in
21 Las Vegas, I need to -- I needed to keep the job.

22 Q And the times, essentially -- the 31-minute
23 times, did those correspond with the face time with the
24 patient?

25 A Oh, no.

1 Q And why -- why was that? What was the
2 discrepancy?

3 A Well, you -- there -- you couldn't keep it
4 together -- you were doing 10-minute case at -- and then you
5 had to put down 31 minutes, well, that next -- the next case
6 got worse, then the next case got worse.

7 Q So those times were false?

8 A Yes.

9 Q Now, you were present when the CDC came into the
10 clinic?

11 A Yes.

12 Q Did you know if they observed you or not?

13 A They did.

14 Q And -- they observed you doing a procedure?

15 A Yes.

16 Q Did you get any feedback from them, or did they
17 ask you questions, or how did that go?

18 A No.

19 Q After the CDC came into the clinic, did you --
20 or were you aware of any change in policy regarding the
21 administration of propofol?

22 A Yes, at one point Dr. Desai met with me out in
23 the hall after I had talked to Dr. Carrol, and he was with Ms.
24 -- Katie, the director of nurses, and he said that he only
25 wanted to see one syringe opened at a time on the -- on the

1 counter.

2 Q And that was after the CDC came?

3 A Yes.

4 Q Now, other than -- than that last conversation
5 -- and I guess in a -- well, let me ask it this way: Did you
6 ever have any other conversations with Dr. Desai about the use
7 of propofol?

8 A Yes. He called me into his office with Dr.
9 Carrol one day and said that I was using too much propofol,
10 and that I was only allowed to use one bottle of propofol
11 from -- on each patient.

12 Q And one bottle, meaning the 50? Or meaning a
13 20?

14 A The 20.

15 Q And when was that meeting in your -- in terms of
16 your employment?

17 A Toward the middle.

18 Q In the middle, so maybe December or --

19 A Yeah.

20 Q -- December? Okay. And so he calls you into
21 his office and Dr. Carrol is present?

22 A Yes.

23 Q And he says he only wants you to use one 20 per
24 patient?

25 A Yes.

1 Q After you had that meeting with Dr. Desai, did
2 you adhere to that policy?

3 A No.

4 Q What did you do?

5 A I gave propofol to the patients because that's
6 what they needed.

7 Q Okay. So you didn't follow the directive?

8 A No.

9 Q Thank you, sir.

10 MS. WECKERLY: I'll pass the witness.

11 THE COURT: All right. Cross? Who would like to
12 begin?

13 MR. WRIGHT: Can we approach the bench?

14 THE COURT: Sure.

15 (Off-record bench conference.)

16 THE COURT: All right. Mr. Santacroce, why don't you
17 go first.

18 CROSS-EXAMINATION

19 BY MR. SANTACROCE:

20 Q Mr. Sagendorf, I represent Mr. Lakeman here, and
21 as I understand it your contact with Mr. Lakeman was minimal;
22 is that correct?

23 A Yes.

24 Q I believe you said you only observed him do one
25 IV to the neck and that was it?

1 A Yes.

2 Q Didn't work with him any other time?

3 A No.

4 Q I want to talk to you just a little bit about
5 the procedures you used at the clinic while you were employed
6 there, okay?

7 A Yeah.

8 Q In the morning you would check out propofol --

9 A Yes.

10 Q -- correct? And you would divvy that up between
11 rooms?

12 A Yes.

13 Q And how many bottles of propofol would be in
14 each room?

15 A Approximately 10.

16 Q And when you -- if you used all of those
17 bottles, how would you get more?

18 A Either ask the nurse or go over to the lockbox
19 ourselves and take it out, put it in the log.

20 Q But you would never go to the other room and
21 swap propofol, correct?

22 A No.

23 Q Because it was important that you preserve the
24 integrity of the propofol that you had; isn't that correct?

25 A Right.

1 Q So each CRNA would use the propofol that was
2 allotted to them?

3 A Yes.

4 Q If they needed more they'd get more?

5 A Right.

6 Q You talked about a time when unused bottles of
7 propofol would try to be cast upon you, correct?

8 A Mm-hmm.

9 Q And I believe you said that was Linda Hubbard
10 that did that?

11 A Yes.

12 Q At least you said that in your Metro Police
13 interview --

14 A Yes.

15 Q -- correct? And that was usually done at the
16 end of the day?

17 A Yes.

18 Q And what would you do with unused bottles at the
19 end of the day?

20 A I'd throw them away.

21 Q Would that be a procedure that most CRNAs would
22 do?

23 A I don't know.

24 Q Well, you wouldn't -- in the morning you
25 wouldn't see any unused bottles of propofol --

1 A No.

2 Q -- and you wouldn't check those out, correct?

3 A No.

4 Q So the presumption would be that they were
5 thrown away at the end of the day?

6 A Yes.

7 Q The 50 bottle -- 50cc bottles of propofol -- let
8 me go back. You said there was 20s and 50s, correct?

9 A Yes.

10 Q Was there a time when you only used 50s?

11 A Yes.

12 Q When was that in relation to your employment?

13 A When -- well, we ordered what was the least
14 expensive at the time, so -- and then we tried to keep them in
15 order of when they were, you know, use what was ordered the
16 farthest away, you know, latest -- what was the oldest. We
17 would go backwards. So we'd --

18 THE COURT: So you'd use the oldest first?

19 THE WITNESS: Right.

20 THE COURT: Closest to the expiration date?

21 THE WITNESS: Right. And if those were just 50s
22 that's all we would use.

23 BY MR. SANTACROCE:

24 Q Okay. I'm not sure I understand. You said that
25 you would use what was the least expensive?

1 A Well, there were different prices when you
2 bought 20s or 50s, and sometimes the 50s, would be cheaper
3 than the 20s.

4 Q Okay. And how do you know that?

5 A That's what Mr. Krueger said.

6 Q Who?

7 A Mr. Krueger.

8 Q Oh, okay. So Mr. Krueger said there was a cost
9 differential between the 50s and 20s and -- you wouldn't do
10 the ordering of those?

11 A No.

12 Q And none of the CRNAs would, right?

13 A No.

14 Q The ordering would be done by Mr. Krueger or
15 somebody else?

16 A Yes.

17 Q And you were given whatever you were given?

18 A Right.

19 Q It would be the 20s or the 50s?

20 A Right.

21 Q Now, I want to talk about the 50s --

22 A Okay.

23 Q -- okay? 50s are a -- a multidose vial,
24 correct?

25 A The bottle says, single-patient use only.

1 Q And what did you interpret that to mean?

2 A Since it was 50cc and it came with a spike, I
3 interpreted that as a multi-dose vial.

4 Q So it could be used on more than one patient?

5 A Yes.

6 Q And you interpreted that because they came with
7 a spike?

8 A Yes.

9 Q And they wouldn't come with a spike if you
10 couldn't use it on more than one patient?

11 A Right.

12 Q And in fact, in your experience that's how it
13 was in other facilities as well?

14 A All over the world.

15 Q Same way?

16 A Yes.

17 Q And in fact, you used those 50cc bottles on more
18 than one patient?

19 A Yes.

20 Q But you testified that you use aseptic
21 practices, and you didn't have a fear of contamination,
22 correct?

23 A Right.

24 Q And you never used a syringe and needle on more
25 than one patient; is that fair to say?

1 A Yes.

2 Q Okay. Tell me about the needles and syringes.
3 Did they come together in one unit?

4 A No, they came packaged separately, 10cc in a
5 paper -- paper package, so you just open it up -- open -- take
6 the needle out of the package, screw it on.

7 Q And would you be wearing gloves when you do
8 that?

9 A Not necessarily.

10 Q In fact, you rarely wore gloves; isn't that
11 true?

12 A Yes.

13 Q So you would touch the needle with your bare
14 hands?

15 A The cap.

16 Q The cap? And then pull the cap off?

17 A Yeah.

18 Q Okay. So we move along now in time, and you're
19 starting to begin the procedure, okay? Did you -- you never
20 began a procedure without a doctor in the room; isn't that
21 correct? I mean, you never began administering anesthesia --

22 A Yes.

23 Q -- before a doctor came in the room?

24 A Yes.

25 Q That's correct?

1 A That's correct.

2 Q Okay. So -- and tell me the procedure how that
3 happened. The doctor -- would the patient be there, the
4 doctor would come in the room, what would happen?

5 A I would see the doctor come in the room; I'd
6 start the anesthetic.

7 Q Okay. Would he tell you start it, or would you
8 just start it because you knew he was in the room?

9 A I'd just start it because I knew he was in the
10 room.

11 Q And you would never leave a patient that was
12 sedated to go somewhere else in the middle of a procedure,
13 would you?

14 A No, not me.

15 Q Okay. And you'd never leave a room for 30
16 seconds while the patient was sedated, would you?

17 A No.

18 Q Okay. You would stay with that patient until
19 the procedure was done?

20 A Yes.

21 Q And either you or a tech would push him in the
22 recovery room?

23 A Yes.

24 Q And in fact, your testimony was, at least to
25 Metro, is that you actually went to the recovery room on at

1 least 60 percent of the time and saw the patients, correct?

2 A Yes.

3 Q And you would do what when you went and saw
4 those patients?

5 A I would usually just walk by because I didn't
6 have a lot of time; I'd make sure that their O2 sats were
7 fine, and then I'd come back.

8 Q You'd make sure what?

9 A Their oxygen saturations were okay.

10 Q Okay. So it was your responsibility as the
11 anesthetist to be responsible for that patient in the recovery
12 room while they were coming out of the anesthesia, correct?

13 A Yes.

14 Q And if there was a problem in the recovery room
15 with the anesthesia, who would the nurses come to?

16 A I went out one day when there was an alarm and I
17 asked the nurse --

18 Q I'm not asking you about that. I'm asking you
19 who would they come to if you had a -- if they had a problem
20 with a patient?

21 A Probably come to me.

22 Q Okay. Who was in charge of the procedure room
23 as far as your experience and knowledge and training went?
24 Who was in charge of that procedure room?

25 A There was a tech in there.

1 Q Well, the tech wasn't in charge of the room, was
2 he?

3 A Essentially -- essentially -- I wasn't in charge
4 of the room.

5 Q Oh, absolutely not. In fact, in your testimony
6 and to Metro you said something about captain of the ship.
7 What did you mean by that?

8 A That's the doctor.

9 Q That's the doctor?

10 A Yes.

11 Q And the captain of the ship is a doctrine?
12 Meaning, that doctor is in charge of that procedure room;
13 isn't that correct?

14 A Yes.

15 Q And he's in charge of that procedure room until
16 that patient is wheeled out to the recovery room, correct?

17 A Correct.

18 Q And then you're still responsible?

19 A Yes.

20 Q When the CDC came to the clinic you -- you said
21 that -- well, let me ask you this: Did they talk to you about
22 the procedures they observed you do?

23 A No.

24 Q You learned something wasn't right when -- after
25 CDC had come there, though, correct?

1 A Oh, yes.

2 Q And what was that? And I'm talking in regard to
3 the propofol.

4 A That there was a contaminated -- someone who had
5 cross-contaminated it before I got there.

6 Q So you believe that there was a contamination of
7 hep C before you got there?

8 A That's what was -- what we --

9 Q CDC --

10 A -- were told.

11 Q -- said?

12 A Yeah.

13 Q Okay. And so procedures changed as to the use
14 of propofol after that, correct?

15 A Yes.

16 Q And the procedure you had been employing since
17 1970 was now suddenly passe and not to be used anymore,
18 correct?

19 A Correct.

20 Q Okay. But for the past 40 years you had been
21 doing it that way and so had everybody else around the world
22 as far as you know?

23 A Yes.

24 Q Going back to the end of the day when you saw
25 this propofol being offered to you, I think you said in your

1 interview you only saw that happen like five times; would that
2 be fair to say?

3 A Say that again.

4 Q At the end of the day when Linda Hubbard tried
5 to give you unused bottles of propofol, which you didn't
6 take --

7 A Mm-hmm.

8 Q -- in your interview to Metro you said that you
9 only saw that happen about four or five times --

10 A Yeah.

11 Q -- isn't that correct?

12 A Right.

13 Q Okay. So it wasn't every day?

14 A No.

15 Q And no one at the clinic -- no Dr. Desai, no Dr.
16 Carrol, nobody told you to reuse syringes and needles; isn't
17 that correct?

18 A Never. Never.

19 Q Okay. You never observed another CRNA leave a
20 patient in the middle of a procedure, did you?

21 A Not that I recall.

22 Q Talk to me about bite blocks; are you familiar
23 with that?

24 A Yes, well, bite blocks are a round-oval block of
25 plastic with a hole through it which the scope would go

1 through on an upper endoscopy so that the patient would not
2 bite onto -- onto the scope, nor would -- it would protect the
3 teeth.

4 Q Is it single or multi-use?

5 A They're supposed to be single.

6 Q Well, did you ever see them being reused at the
7 clinic?

8 A Yes.

9 Q Were they cleaned when they were -- before they
10 were reused?

11 A Yes.

12 Q How about dilators?

13 A I'm not sure what you mean by "dilator".

14 Q Well, I'm not sure either.

15 A Oh, if it's a --

16 Q Except that I --

17 A -- if we're talking about an upper endoscopy and
18 it's a -- it's a piece called a bougie, those are multi-use.

19 Q Well, somebody else told us that the dilator
20 went through the scope; is that possible? A dilator through
21 the scope?

22 A No.

23 Q No? Do you know what a dilator is?

24 A I know what a dilator is.

25 Q Okay. Tell me what it is.

1 A It expands whatever opening you want to -- you
2 want to go into.

3 Q Okay.

4 A But to go one through the scope wouldn't dilate
5 anything.

6 Q Okay. Well, let's forget I --

7 THE COURT: Except the scope.

8 BY MR. SANTACROCE:

9 Q -- said that because I might be wrong. Okay?
10 But I'm relying on your expertise.

11 A The scope is the dilating instrument on its own.

12 Q Okay.

13 THE COURT: So you dilate whatever the part of the
14 body is you're looking at, and then -- then you would stick
15 the scope in and it's to give, basically, room for the scope?

16 THE WITNESS: Well, you could -- there was an old way
17 of doing that, yes.

18 BY MR. SANTACROCE:

19 Q Well, I want to know what the way of the clinic
20 was. Were you -- were you -- did you ever witness dilators
21 being used?

22 A Upper endoscopy dilators.

23 Q Okay. Tell me what that does.

24 A Well, it dilates the -- a stricture in the
25 esophagus.

1 Q Okay. But I mean, mechanically, a dilator looks
2 like what?

3 A It looks like a long, red, pointed tube --

4 Q Okay.

5 A -- floppy tube full of mercury or full of lead,
6 and they just -- they put Xylocaine and jelly on it and then
7 they insert it and they go from smaller to larger --

8 Q Okay.

9 A -- in dilating the opening to --

10 Q And are those -- the purpose of the -- can they
11 be reused?

12 A Yes.

13 Q So it's not a single-use thing?

14 A No.

15 Q And those were cleaned, as far as you knew,
16 before they were used?

17 A As far as I know.

18 Q How about forceps and snares?

19 A Those are thrown away at the end.

20 Q At the end of what?

21 A At the end of the colonoscopies.

22 Q So they were used one time?

23 A Yes.

24 Q You mentioned that some of the doctors were
25 slower than other doctors, correct?

1 A Correct.

2 Q And I think you mentioned in your interview Dr.
3 Faris, by name?

4 A Mm-hmm.

5 Q You worked with him?

6 A Yes.

7 Q How slow was he?

8 A He was down the line. He would take a
9 half-hour, 40 minutes sometimes.

10 Q So he would take a half-hour or 40 minutes for a
11 procedure?

12 A Yeah.

13 Q Okay. So in those cases that he was the doctor
14 and you billed 30 or 31 minutes -- or would you bill 40-45
15 minutes, depending on what he did?

16 A I would bill the longer time.

17 Q So every doctor -- and he wasn't the only one
18 that took that amount of time, was he?

19 A No.

20 Q Who else?

21 A There was a Filipino doctor, out of residency.
22 I don't remember his name.

23 Q How long would he take?

24 A He would take 45 minutes to an hour.

25 Q Okay. How about Dr. Carrera?

1 A Dr. Carrera was in the middle of the lot, he'd
2 take 20-25 minutes.

3 Q Okay. And you talked about the billing time
4 would be when you first contacted the patient but -- and when
5 you ended contact with the patient, correct?

6 A Mm-hmm.

7 Q And I believe --

8 THE COURT: Is that a yes? You have to say yes or no
9 for the record.

10 THE WITNESS: I'm sorry. Yes.

11 THE COURT: Because it's being taped.

12 BY MR. SANTACROCE:

13 Q And I believe you contacted the patients in --
14 sometimes in the preop area?

15 A Yes.

16 Q And you would talk to them?

17 A Yes.

18 Q And what would you get from them?

19 A I would -- I would ask them if they had had
20 hepatitis C, diabetes, if they had had any heart attacks,
21 strokes, or seizures, if they had had any major illnesses in
22 the past. I think just -- things I should know about. Have
23 they had any immediate bowel problems, and that would be about
24 it.

25 Q And would you do that with every patient?

1 A I would try.

2 Q Okay. So that would start in the preop area?

3 A Yes.

4 Q But you wouldn't necessarily see that patient
5 right next, would you?

6 A No.

7 Q They could be waiting in the preop area for a
8 while?

9 A Yes.

10 Q But you still started your time with that
11 person? I mean, that's what you said, it would be --

12 A Yes.

13 Q -- when you contacted the person, right?

14 A Yes.

15 Q Okay. Then they came in the procedure room, did
16 the procedure, wheeled them to the recovery room, you went out
17 and chatted with them -- or you didn't chat with them because
18 they were under --

19 A Right.

20 Q -- but you went and observed their signs?

21 A I just -- I just made sure they were okay, yes.

22 Q Okay. And as you said, your liability continued
23 until that patient was out of anesthesia, correct?

24 A Right.

25 Q Now, the -- when you came to the clinic you

1 weren't given any specific training, right?

2 A No.

3 Q You were expected to know how to do your job and
4 you did it?

5 A Yes.

6 Q Were you given a policies and procedures
7 handbook?

8 A No.

9 Q Nothing?

10 A No.

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

12 THE COURT: All right. Ladies and gentlemen, I guess
13 we'll take our lunch break now. We'll be in recess for the
14 lunch break until 12:45.

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

23 If you'd place your notepads in your chairs, if you
24 have any juror questions ready, hand them to the bailiff, and
25 we'll see you back here.

1 (Jury recessed at 11:34 a.m.)

2 THE COURT: And -- and, sir?

3 THE WITNESS: Yes.

4 THE COURT: Please don't discuss your testimony with
5 anybody else over the lunch break.

6 THE WITNESS: Okay.

7 THE COURT: Okay?

8 (Court recessed at 11:34 a.m. to 12:50 p.m.)

9 (In the presence of the jury.)

10 THE COURT: All right. Court is now back in session.
11 And, sir, you are still under oath, of course.

12 And, Mr. Wright, are you ready to proceed with your
13 cross-examination?

14 MR. WRIGHT: Yes, Your Honor.

15 THE COURT: All right.

16 CROSS-EXAMINATION

17 BY MR. WRIGHT:

18 Q My name is Richard Wright. I represent Dr.
19 Desai. I want to learn about your education, your training
20 before your 43 years of being a CRNA, okay?

21 A Okay.

22 Q Tell the jury your educational background,
23 training --

24 A I went to nursing school at Middlesex College.
25 When I graduated from nursing school I immediately started

1 anesthesia school, was at Jersey Shore Medical Center-Fitkin
2 Hospital for two years training in anesthesia.

3 Q Okay. And so the -- you then -- two years
4 anesthesia school specialty?

5 A Yes.

6 Q And then you become what we've been calling a
7 CRNA?

8 A Right. Once you take the national board.

9 Q Okay. And the national board is a national --

10 A Certification test.

11 Q -- certification. And so you then became
12 certified right out of CRNA school?

13 A Right.

14 Q Okay. And then did you move to California?

15 A Immediately.

16 Q Okay. And in California tell us about your
17 practice -- the type of CRNA practice.

18 A I worked in a general surgery hospital for 25
19 years doing general anesthesia, which was deliveries and neuro
20 cases, et cetera.

21 Q Okay. What --

22 A And then --

23 Q -- kind of cases?

24 A Huh?

25 Q What kind of cases?

1 A Neuroanesthesia.

2 Q Okay.

3 A Obstetrics, et cetera.

4 Q Okay. And that was where?

5 A At Sierra Vista Regional Medical Center in San

6 Luis Obispo, California.

7 Q Okay. So you had 25 years in CRNA practice in

8 hospital setting?

9 A Right.

10 Q Okay. And then where did you go?

11 A Then in 1997 I joined Pain Management Practice,

12 which was located in San Luis Obispo, and expanded to Santa

13 Maria, California --

14 Q Okay.

15 A -- and I was there for 15 years and then I quit.

16 I came here for the -- for the five months I was here --

17 Q Okay.

18 A -- I started back there in October 1 of 2008,

19 exactly a year after I left -- after I started here --

20 Q Okay.

21 A -- and --

22 Q Did you -- did you return to the same company?

23 A Yes.

24 Q Pain Management Specialists?

25 A Yes.

1 Q And so that 15 years in California with Pain
2 Management Specialists, was that a -- what type of clinic was
3 that?

4 A It was a pain clinic.

5 Q And what is a pain clinic?

6 A Pain clinic, you have patients who -- failed
7 backs, fail index surgeries who have nerve -- neuro problems,
8 radiculopathy, diabetic problems, and we do blocks and implant
9 stimulators and pumps to try and alleviate their pain.

10 Q Okay. And the -- and that would be -- those
11 procedures would be done by a physician, and then you were the
12 anesthetist present?

13 A Exactly.

14 Q Okay. And at that time in your career propofol
15 was being used extensively?

16 A Yes, from 1984.

17 Q Okay. And then you came -- you were moving to
18 Nevada?

19 A Mm-hmm.

20 Q I mean, is that why you --

21 A It was a test. I was here, I got an apartment
22 with a seven-month lease just to see if it would work out for
23 my wife and I to retire here --

24 Q Okay.

25 A -- and for me to work. And it didn't work out

1 because of this situation, and then my wife had constant
2 nosebleeds here, so we -- I sent her back to California.

3 Q Okie-doke. And so you -- you on direct
4 examination explained that you actually came in July in
5 response to an advertisement or online or something?

6 A Yes.

7 Q Okay. Interviewed with -- did you interview
8 with Tonya Rushing?

9 A Yes.

10 Q Okay. And then also Dr. Desai?

11 A Yes.

12 Q And he confirmed your experience in propofol and
13 said you're hired?

14 A Exactly.

15 Q Okay. And you've done, like, over 5,000
16 procedures in the last 10 years?

17 A Oh, a lot more than that.

18 Q Okay. And at that point you then have to get
19 licensed in Nevada --

20 A Yes.

21 Q -- correct? I mean, you spoke to them in July,
22 started October 1st, 2007?

23 A Right.

24 Q And in the interim you have to get a nursing
25 license and you have to get a anesthetist license?

1 A Exactly.

2 Q Okay. And so that required you submitting
3 applications or credentials, et cetera?

4 A Mm-hmm.

5 Q And verifying to the -- and is that the State of
6 Nevada, like, Board of Nursing?

7 A Exactly.

8 Q Same -- same board does nurse and anesthetists?

9 A Right.

10 Q Okay. And then by September you had your
11 license?

12 A Yes.

13 Q Or licenses?

14 A Yes.

15 Q Plural. Correct?

16 A Correct.

17 Q Okay. And I'm only having you say it because we
18 got to pick it up on a recorder.

19 A I'm sorry.

20 Q That's all right. And so you start October 1st,
21 correct?

22 A Correct.

23 Q And you worked until the clinic closed in early
24 March of 2008?

25 A Correct.

1 Q And when you started work as a CRNA, was this
2 your first experience in a colon endoscopy clinic?

3 A Yes.

4 Q Okay. And no one had to teach you how to be a
5 -- or how to administer propofol or anesthesia --

6 A Correct.

7 Q -- correct? And you're -- the methods that you
8 utilized at the clinic here in Las Vegas were identical to the
9 methods you had been utilizing throughout your career
10 involving propofol --

11 A Correct.

12 Q -- correct? There wasn't anything that you saw
13 being done differently?

14 A Correct.

15 Q Okay. And -- because -- and you explained that
16 at the time you arrived, October 2007, 20s and 50s were being
17 used?

18 A Yes.

19 Q And I'm talking about the size of propofol vial.

20 A Yes.

21 Q And you were familiar with each?

22 A Yes.

23 Q Okay. And you continued your existing practice,
24 which would be to what we've been calling, prefill multiple
25 syringes?

1 A Yes.

2 Q Okay. And so by prefilling you would take a new
3 needle, new syringe, draw out, like, 10cc, correct?

4 A Correct.

5 Q Put the cap back on top of the needle, set it
6 aside?

7 A Correct.

8 Q And in your practice, like at the Pain Clinic
9 where you had come from, they used 50s -- 50cc vials?

10 A 20s and 50s.

11 Q 20s and 50s. Your practice there with the 50
12 would be to draw up 10 -- 10cc syringes -- wait a minute, did
13 I get --

14 A Five 10cc.

15 Q -- that right? Five. I got that wrong. Five
16 out of a 50, correct?

17 A Right.

18 Q Okay. And set them aside --

19 A Right.

20 Q -- correct? And never go back into the vial,
21 whether it's a 20 or a 50, with any needle or syringe you had
22 used?

23 A Right. I would only use sterile.

24 Q Right. Only a brand-new one?

25 A Right.

1 Q And anytime you used one, your practice was once
2 I use it, toss it?

3 A Right.

4 Q And by "toss it" in the Sharps --

5 A Right.

6 Q -- box? And so the -- you were going along here
7 -- you're -- Las Vegas, at the clinic, utilizing that
8 practice, correct?

9 A Right.

10 Q Now, you've -- you've said on direct examination
11 for the State that Keith Mathahs told you don't waste
12 propofol, correct?

13 A Correct.

14 Q Okay. And of course, that -- that really did
15 not change anything about the way you were doing things?

16 A Correct.

17 Q I mean, you didn't waste propofol previously?

18 A No.

19 Q Okay. And the -- the -- when was the first time
20 you ever became aware that you shouldn't use a propofol vial,
21 regardless of size, for more than one patient?

22 A From the day it came out it had it on it -- had
23 written on it, for a single-patient use only.

24 Q Okay. Well, when did that come out?

25 A In 1984.

1 Q Okay. You're losing me on that.

2 A Okay. In 1984, that's when the drug came to --
3 came to the United States --

4 Q Okay.

5 A -- after 600,000 doses in Europe.

6 Q Okay.

7 A When we got the bottles, it read on the bottle,
8 single-patient use only.

9 Q Okay.

10 A And on most of them, that point on because it
11 was so utterly expensive at that time, everybody started
12 multi-dosing the bottles.

13 Q Okay. Even though it said, single use?

14 A Even though it said.

15 Q Okay. And was -- does the -- does propofol have
16 a, what I call a shelf life after the top is taken off and
17 it's first opened?

18 A Six hours.

19 Q Okay. And did you equate that in any way in
20 your mind with a, like a single-patient use or what they're
21 talking about?

22 A I would not use anything that was more than six
23 hours old, but the cases we were doing and the rapidity that
24 we were doing them in, there was no way they'd be six hours
25 old.

1 Q Okay. And this practice of using propofol on
2 more than one patient, using aseptic technique, that -- that
3 was what you had done throughout your career?

4 A Yes.

5 Q Everyone around you had done?

6 A Yes.

7 Q Everyone you talked to about it had done?

8 A Yes.

9 Q And the first time it came to a stop, the
10 multi-use of propofol vials was when?

11 A It hasn't stopped.

12 Q Okay. Well --

13 A I'm sorry, but that's --

14 Q -- okay.

15 A -- everybody, you know --

16 Q Okay. Well, let me --

17 A -- the only place I know --

18 Q -- put it this way.

19 A -- that stopped it was Southwest.

20 Q Well, what happened when CDC came --

21 A Oh, then we -- we -- then we went --

22 Q -- in January 2008?

23 A Well, then we were opening only one bottle at a
24 time and disposing if there was any left, including the
25 syringe.

1 Q Okay. And so when CDC came, and it's of record
2 in here that was January 8th of 2008.

3 A Okay.

4 Q So using that as a frame of reference, it was at
5 that time the multi-patient use of propofol stopped --

6 A Yes.

7 Q -- correct?

8 A Yes.

9 Q And ultimately you lost your job here?

10 A Yes.

11 Q As everyone did because the clinics closed. You
12 went back to the Pain Management Company --

13 A Right.

14 Q -- in California. What were they doing when you
15 went back to work?

16 A The same thing.

17 Q They were still doing it the -- the old way?

18 A Yeah.

19 Q Not the CDC way?

20 A Right.

21 Q Okay. And the -- when the CDC arrived, you were
22 present during a day of inspection --

23 A Yes.

24 Q -- is that correct?

25 A Correct.

1 Q And were you engaging in procedures when
2 observers from the CDC observed your procedure?

3 A Yes.

4 Q Okay. And you -- do you know who it was?

5 A It was a young lady; I think she was a dentist.

6 Q Okay. And she watched an entire procedure,
7 watched -- do you remember what doctor it was?

8 A No.

9 Q Okay. But whatever doctor, GI tech, nurse,
10 present, it was an ordinary procedure in which they obviously
11 had the consent of the patient --

12 A Yes.

13 Q -- but they watched it, right?

14 A Yes.

15 Q Okay. And then, was there any interview of you
16 that took place?

17 A No.

18 Q Okay. And the -- do you recall a later
19 interview in mid-January with someone from BLC? A different
20 observer or interviewer?

21 A I don't remember that.

22 Q Okay. Do you remember by -- by mid-January
23 after CDC had been there certain new rules applied in the
24 clinic in Las Vegas, correct?

25 A Correct.

1 Q Involving CRNA propofol administration?

2 A Yes.

3 Q And the new rules was one propofol vial per
4 patient? Or don't -- don't use more than -- I mean, maybe you
5 need more than one, right?

6 A Yes.

7 Q That's why you're hesitating. Okay. The new
8 rule was you can only use a propofol vial on one patient and
9 it can't be used on any other patient?

10 A Yes.

11 Q Okay. And one needle, one syringe -- anytime
12 it's used, toss it?

13 A Right.

14 Q Okay. Now, that was your practice anyway?

15 A Yes.

16 Q The only new -- the only new change that
17 affected Vince Sagendorf was no more multi-use?

18 A Right.

19 Q Okay. And no more 50s in the clinic; do you
20 recall that?

21 A I don't recall that, but --

22 Q Okay. And -- but whatever size vial after CDC
23 came and the changes took place, that was to be used only for
24 one patient and if there was some left in it, throw it out?

25 A Right.

1 Q Okay. Now, you explained when you started work
2 -- let me strike that and back up a minute.

3 I'm talking about propofol use -- multi-use before
4 the CDC visit.

5 A Okay.

6 Q You also went and interviewed at Southwest
7 Medical Associates, didn't you?

8 A Yes.

9 Q Okay. And that is another clinic here --

10 A It's another clinic here --

11 Q -- in Las --

12 A -- with CRNAs giving all the anesthesia.

13 Q Okay. And that's an endoscopy center?

14 A No, it's a full-on surgical clinic.

15 Q Okay. Full -- what?

16 A Full-on, they do --

17 Q Full-on? Okay.

18 A Yeah. They do all types of surgeries.

19 Q Okay. Is it an ambulatory --

20 A Yes.

21 Q -- okay, full ambulatory surgery center?

22 A Exactly.

23 Q And you interviewed there?

24 A Yes, I did.

25 Q Okay. And there you observed -- and this was

1 before January 2008?

2 A Yes.

3 Q And they were utilizing propofol multi-use the
4 same as everywhere else?

5 A Yes.

6 Q Now, when you started work -- how long was it
7 before -- you started October 1st, Dr. Desai was not
8 present --

9 A Right.

10 Q -- right? And you understand that he had a
11 medical issue?

12 A Yes.

13 Q And he was out for approximately
14 two-and-one-half months; is that correct?

15 A Yes.

16 Q Okay. Well, you're --

17 A I don't know.

18 Q -- hesitating?

19 A I don't know --

20 Q Okay.

21 A -- how long it was.

22 Q Well, the -- I got that -- did you look at your
23 Metro interview?

24 A I did a little bit, yeah.

25 Q Okay. That -- you were interviewed by the

1 police --

2 A Right.

3 Q -- correct? And you testified at the grand
4 jury, correct?

5 A Yes.

6 MR. WRIGHT: Page 64.

7 BY MR. WRIGHT:

8 Q I'm going to let you look at something and see
9 if this refreshes your recollection.

10 A Okay.

11 Q So I'll -- I'll show it to you and you read it
12 to yourself, and then I'll ask you a question.

13 A Okay.

14 Q You got reading glasses?

15 A Oh, yes.

16 Q Because we got these little tiny pages. Page
17 64. Read as much as you want, but down at the bottom -- and
18 the highlighting is simply my own.

19 A (Witness complied.) Okay. I did say that.

20 Q Okay. And at the previous time -- you were in
21 the grand jury, like, three years ago, okay?

22 A Okay.

23 Q And you were interviewed by the police five
24 years ago.

25 A Yes.

1 Q You talked about Dr. Desai being back in
2 mid-December.

3 A Okay.

4 Q Okay. And does that refresh your recollection?

5 A No.

6 Q Okay. Do you -- do you think what you said then
7 was accurate?

8 A Yes.

9 Q Okay.

10 MR. WRIGHT: So I'd offer it as a -- what do you call
11 it, prior recollection recorded.

12 THE COURT: All right.

13 BY MR. WRIGHT:

14 Q The -- so up until your first two and a half
15 months, Dr. Desai was not there, correct?

16 A Correct.

17 Q Okay. And the -- when he does return you had,
18 as best you can recall, three procedures with him -- cases?

19 A Yes.

20 Q Okay. And do you recall -- you testified on
21 direct examination this morning that you recall one
22 colonoscopy where Dr. Desai started before the patient was
23 asleep --

24 A Yes.

25 Q -- using my layman's terms?

1 A Yes.

2 Q Okay. Do you recall that that was an upper
3 endoscopy?

4 A No, that would be a -- a colonoscopy would be
5 the lower -- the upper endoscopy, I think I recollect doing
6 one with him who was the father of a physician who Dr. Desai
7 said was in charge of us. A Dr. Kim or --

8 Q Okay.

9 A -- or Nim, something like that.

10 Q Okay. I don't think I asked -- I didn't ask my
11 question --

12 A Okay. I'm sorry.

13 Q -- very clearly. I'm saying I think -- when you
14 were interviewed by the police, okay --

15 A Yes.

16 Q -- back in 2008, you explained that the
17 procedure in which Dr. Desai started before the patient was
18 fully under anesthesia was an upper endoscopy; do you recall
19 that?

20 A I don't recall it. I recall doing an upper
21 endoscopy with him, where the patient did have a laryngospasm,
22 but I thought the case that he started where I said, whoa,
23 whoa, the patient is not asleep yet, was a colonoscopy.

24 Q Okay. Do -- the -- do you recall that you
25 participated, like, in the first case where he came back to --

1 A Yes.

2 Q -- work?

3 A Yes.

4 Q Okay. And was that -- do you recall -- who else
5 was present?

6 A Dr. Carrol.

7 Q Okay. And was this a first case to see if he
8 had dexterity back?

9 A Yes.

10 Q Okay. And so you -- that was one of them where
11 you participated with him?

12 A Yes.

13 Q Other you can recall is an upper -- or an upper
14 and a -- you did an upper and a lower with him?

15 A Right.

16 Q Okay. And the -- the issues you pointed out
17 when you came in and looked at the clinic, you talked about a
18 couple of things that you thought weren't quite up to par, and
19 I'm talking about a -- the cannisters weren't wall mounted?

20 A Right.

21 Q Okay. And the ventilator tubing needed to be
22 replaced --

23 A Yes.

24 Q -- correct? And you pointed those things out --

25 A Yes.

1 Q -- correct? And they were corrected --

2 A Yes.

3 Q -- correct? Okay. Now, the -- did you have
4 malpractice insurance?

5 A Yes.

6 Q Okay. And of course, I'm presuming you've had
7 that everywhere you've worked?

8 A Yes.

9 Q Okay. And the -- the medical malpractice
10 insurance is what we're talking about --

11 A Yes.

12 Q -- correct? And so that's in case any --
13 anything goes wrong, any untoward event, you have insurance so
14 that you don't end up destitute, hopefully --

15 A Correct.

16 Q -- correct? If you have liability for it,
17 right?

18 A Right.

19 Q And of course, that liability for it is the same
20 thing Mr. Santacroce was asking you about -- that's Mr.
21 Santacroce -- when he examined you and said when does your
22 liability end.

23 A Oh, okay.

24 Q Right? Okay. And this -- the medical
25 malpractice insurance, that -- that was provided by the

1 clinic --

2 A Yes.

3 Q -- correct? And you were actually employed by
4 Gastroenterologists of Nevada?

5 A Right.

6 Q And they had paid for and got you your medical
7 malpractice insurance?

8 A Yes.

9 Q Okay. And for you to be insurable you have to
10 be a good CRNA, correct?

11 A Correct.

12 Q Now, the -- you indicated there was a meeting
13 with -- or a meeting, I'm not sure if that's right. You
14 were -- talked to Dr. Carrol and Dr. Desai?

15 A Right.

16 Q Okay. And I'm trying to put a time frame on
17 that when Dr. Desai came back in mid-December and when this
18 would have been in relation to your tenure there. And I'm
19 asking because I didn't see anything about that meeting in
20 your police interview or your grand jury interview --
21 testimony.

22 A I think that the meeting had to be during the
23 time we were doing anesthesia because it -- I was called into
24 the office for him and Dr. Carrol to tell -- and he said that
25 I was using too much propofol, and that I was limited to one

1 bottle of propofol, 20cc per patient.

2 Q Okay. And so could -- well, during the time you
3 were doing anesthesia was the entire time you were there --

4 A Yeah, well --

5 Q -- so that's not much of a limitation.

6 A -- it had to be some point in time, sometime in
7 December, I would say.

8 Q Okay. When did you recall that?

9 A Well, I think -- I always said there was three
10 meetings I had with Dr. Desai. One was when I was interviewed
11 to be hired. Two was this meeting here that we're talking
12 about. Three was the meeting after I talked to Dr. Carrol and
13 Dr. Desai -- that's when he told me he wanted only one syringe
14 opened at a time. Those are the only three times that I
15 talked to Dr. Desai in the whole time I was there.

16 Q Okay. Well, I -- when you say you've always
17 said three, you've always said three to who?

18 A To whoever asked me.

19 Q Okay. Well, I -- well --

20 A If the question --

21 Q -- did someone --

22 A -- never came up --

23 Q -- did someone ask --

24 A -- I wouldn't -- then I wouldn't have been able
25 to answer it, so I'm not sure --

1 Q -- okay. Well, did -- who --all has asked you?

2 Let me put it that way.

3 A Mr. -- the --

4 Q Whitely?

5 A -- the assistant --

6 Q Staudaher?

7 A -- yes.

8 MR. STAUDAHER: Yep.

9 BY MR. WRIGHT:

10 Q Mr. Staudaher?

11 A Yes.

12 Q Okay. Do you know Detective Whitely?

13 A Somewhat. It's five years.

14 Q Okay. And did you -- you told them about these
15 three meetings?

16 A Yes.

17 Q Okay. And do you think -- I mean, I didn't see
18 it, did you see it in your grand jury testimony or see it in
19 your Metropolitan Police Department report?

20 A Not that I recall.

21 Q Okay. So that's -- that's what I'm getting at,
22 when did you remember this? When it wasn't in 2008 report and
23 it wasn't in your 2010 testimony, and now you'll come in here
24 and remember it?

25 A I've always known about it.

1 Q Okay. Maybe no one -- maybe they just didn't
2 ask you before?

3 A Well, that's possible.

4 Q Okay. Now that -- and then only have one
5 syringe out --

6 A Yes.

7 Q -- okay? Do you think that was after CDC?

8 A Oh, yes.

9 Q Okay. So, I mean, at the -- I mean, that was in
10 an effort to be more in compliance with the new CDC rules?

11 A Right.

12 Q Is that a fair --

13 A Yes.

14 Q -- characterization? The -- up until then --
15 your procedure, you would have multiple needles out?

16 A Yes.

17 Q Prefilled?

18 A Yes.

19 Q Okay. And your practice would be, after you've
20 done everything, your preop -- interviewed them -- I'm all the
21 way now to injection time.

22 A Okay.

23 Q You would inject, first, syringe with
24 lidocaine --

25 A Exactly.

1 Q -- in it? And that would be like 11cc. 10cc of
2 propofol and 1cc at the most of lidocaine?

3 A Exactly.

4 Q Okay. And then you would immediately toss it --

5 A Yes.

6 Q -- get out a new, prefilled, full one?

7 A Yes.

8 Q And put it right immediately into the heplack?

9 A Yes.

10 Q So that you had a syringe ready to --

11 A Yes.

12 Q -- inject more, if needed?

13 A Yes.

14 Q Is that right?

15 A That's right.

16 Q Okay. So that practice was to end, and it was
17 to simply be you only have one needle out at a time?

18 A Right.

19 Q Okay. Now, you also stated, and I was a little
20 unclear, on the upper endoscopy --

21 A Mm-hmm.

22 Q -- that you gave 200 to 300, at times 300
23 milliliters --

24 A Milligrams.

25 Q -- did I get those right -- milligrams? Okay.

1 And it -- if I understood you, you use more propofol for an
2 upper than for a colonoscopy?

3 A Right.

4 Q Okay. And -- and is that right?

5 A That's true.

6 Q Okay.

7 A Because of the gag reflex.

8 Q Okay. So if -- I had understood propofol -- I
9 mean, don't -- you start with a full 10, correct?

10 A Right.

11 Q And an upper, five minutes? I'm talking about
12 the length of the procedure.

13 A Yes.

14 Q Is average?

15 A Yes.

16 Q Others are -- doctors are faster?

17 A Yes.

18 Q Some two to three?

19 A Right.

20 Q And I'm talking about minutes for the
21 procedure --

22 A Yes.

23 Q -- for the upper, down the mouth.

24 A Yes.

25 Q You give a full 10 -- a person's having an

1 upper, I give a full 10. See -- 10 -- what are they?
2 A Milligrams.
3 Q Milligrams.
4 A 10cc --
5 Q Okay.
6 A -- which is 100 milligrams.
7 Q Okay. And all of that is charted, correct?
8 A Yes.
9 Q Okay. And so that when you do that, you jot it
10 down, that's right on your anesthesia log, right?
11 A Right.
12 Q And then ultimately that's given to the nurse so
13 it can go on the nursing chart, correct?
14 A I don't know about that.
15 Q You don't know that? Okay. But you document
16 it?
17 A I document it.
18 Q Okay. So that you -- you want to know how many
19 injections given and total amount of propofol --
20 A Exactly.
21 Q -- correct?
22 A Yes.
23 Q And so that's why when we look at anesthesia
24 logs we might see 100, 40, 30?
25 A Yes.

1 Q Okay. And so that would mean one full one --
2 syringe --
3 A Yes.
4 Q -- 100 would be 10cc, and then the 30-40 would
5 be additional doses out of the same syringe which you have
6 left in?
7 A Yes.
8 Q Is that --
9 A Well --
10 Q -- in the heplock?
11 A -- it's another syringe.
12 Q Okay.
13 A Totally sterile that you've replaced the first
14 syringe with.
15 Q Oh, right, I'm with you --
16 A Oh, okay.
17 Q -- but you've got -- I mean, on your charts if
18 we looked at them, you'd have 100 written down first?
19 A Yes.
20 Q And that would be the first dose?
21 A Yes.
22 Q Okay. And so that one is empty and you tossed
23 it?
24 A Yes.
25 Q Now, you got a new one out, aseptic, brand-new

1 needle syringe that you had already drawn and filled up, no
2 lidocaine, and you insert it into heplock and then patient
3 needs more you -- I hypothetically said you gave them 40.

4 A Okay.

5 Q Does that make sense?

6 A Yes.

7 Q And then you'd put down 40.

8 A Right.

9 Q Okay. And then if they needed more, 30, that
10 would be a third dose. Each of those are written down --

11 A Right.

12 Q -- right?

13 A Right.

14 Q Correct?

15 A Correct.

16 Q Okay. And yours -- the totals on your uppers
17 are going to all show more than for colonoscopy?

18 A Yes.

19 Q Okay. And the -- and that's because you need to
20 be in a deeper sleep?

21 A Yes, gag --

22 Q Is it --

23 A -- reflex.

24 Q -- I -- okay. Well, in laymen's terms?

25 A Okay. That --

1 Q Do I -- once I get a 10, I mean, maybe I
2 misunderstood testimony here in the courtroom.

3 A Mm-hmm.

4 Q I get a 10, I come in and I'm going to have a
5 procedure and I get 10 and I -- I go to sleep --

6 A Right.

7 Q -- okay? If you immediately gave me a 20 --
8 200, rather than 10, am I in a deeper sleep?

9 A Well, there's a situation called transient
10 apnea, where the patient stops breathing for a short period of
11 time when you give propofol, and so, if you're going to give
12 200, you're going to accentuate that -- that apnea phase and
13 it's going to be even longer.

14 So --

15 Q Okay.

16 A -- because it lasts about 10 to 15 seconds,
17 but --

18 Q Say that --

19 A -- it's expected.

20 Q -- again.

21 A It lasts about 10 to 15 seconds.

22 Q Seconds?

23 A Yes. And you'll --

24 Q The -- what the -- the sleep apnea?

25 A Yes.

1 Q Okay. But do you ever -- see, I -- I thought
2 you put in 10cc and the person -- 10cc, one syringe, I thought
3 the person was asleep. I mean, I'm talking about a standard
4 weight/age or something.

5 A Right.

6 Q Not a big old fat alcoholic and not a little old
7 skinny lady --

8 A That's our --

9 Q -- right?

10 A -- patients.

11 Q What?

12 A That's our patients you're talking about.

13 Q The standard -- if I give someone a 10, I
14 thought they were going to be asleep for, like, five minutes?

15 A Well, you have to obtund reflexes also, and if
16 you don't the patient will go into a laryngospasm, and then
17 you have an even bigger situation on your hands. So that's
18 why you would augment the propofol as the doctor was getting
19 ready to insert the endoscope so you'd know, and it's --
20 that's intuition kind of thing, it's just --

21 Q Okay.

22 A -- something you learn over time.

23 Q Okay. So you'd give a -- do you ever start with
24 more than a 10? Kind of like -- like in a clinic like you
25 were working here in Las Vegas?

1 A Only if it was a general anesthetic -- for like
2 an -- like an open-belly procedure -- a major surgery where
3 you're going to put the tube in and so on. Then you are going
4 to give 20 to 30cc to start.

5 Q Okay. But routinely, like, in the clinic --

6 A Routinely it's 100.

7 Q -- in Las Vegas you're going to start with a 10
8 tops?

9 A Yes.

10 Q Okay. And while -- while at the clinic in Las
11 Vegas, you were never told, ever, at any time by anyone to
12 reuse syringes or reuse needles?

13 A I was never told that.

14 Q Okay. And I presume if you were told to do that
15 you wouldn't have done it?

16 A I'd ignore it.

17 Q And did -- you testified under direct and for
18 Mr. Santacroce that the only time you would ever see propofol
19 vials moving from procedure room to procedure room would have
20 been on four or five occasions in your five months when Linda
21 Hubbard, at the end of the day, came over and volunteered a
22 half-used propofol vial --

23 A Yes.

24 Q -- correct?

25 A Yes.

1 Q And other than that during lunches, any other
2 time, there was no shuttling of propofol vials back and forth?

3 A No.

4 Q Correct?

5 A Correct.

6 Q Okay. And there was never any moving of
7 prefilled syringes around?

8 A No.

9 Q Correct?

10 A Correct.

11 Q It's -- you're saying no and there's a --

12 A I'm sorry.

13 Q -- double-negative so that's why I keep
14 repeating it.

15 A I'm sorry. Correct.

16 Q Okay. Did you like to eat in the procedure
17 room, breakfast?

18 A No.

19 Q You know who Janine Drury is?

20 A No.

21 Q A nurse, Janine Drury, did you happen to see
22 her?

23 A Was she here earlier?

24 Q Yeah.

25 A Yeah, okay. I forgot her name.

1 Q Okay. Did -- don't you remember her getting on
2 you for bringing breakfast into the procedure room?

3 A No.

4 Q No?

5 A No.

6 Q You're Vinny Sagendorf, right?

7 A Yes, I am.

8 Q I get these Vinny's mixed up. Okay.

9 Where you are presently working today you're on
10 vacation/holiday standby?

11 A Yes.

12 Q Okay. So if a CRNA goes on vacation, you're
13 called to fill in?

14 A Right.

15 Q That's the semi-retirement we're talking about?

16 A Right.

17 Q And presently at that facility they are still
18 multi-using propofol vials?

19 A Yes.

20 Q Your interview of patients prior to sedation,
21 that -- most of the time -- took place in the preop area,
22 correct?

23 A Correct.

24 Q And -- because that was your practice?

25 A Yes.

1 Q So that you would go out before they're wheeled
2 in on a gurney and talk to them, and you actually have the
3 form on the back of your anesthesia log --

4 A Right.

5 Q -- all of the pertinent questions --

6 A Right.

7 Q -- correct? And your practice was also, after
8 the procedure to go out to the recovery room and look at your
9 patients?

10 A Yes.

11 Q And if it was too busy, sometimes you couldn't?

12 A Right.

13 Q Is that fair?

14 A Yes.

15 Q And you estimated at least 60 percent of the
16 time you would make it out, if nothing else, to open the
17 curtain, look in, check the monitors, and see that everything
18 is all right?

19 A Exactly.

20 Q And that -- and you were continuing the practice
21 you had had throughout your career?

22 A Yes.

23 Q Now, on the 50s -- going back to propofol
24 vials --

25 A Yes.

1 Q -- you preferred the 50s over the 20s, correct?

2 A Yes.

3 Q And what -- what's the reason you like the big
4 ones better than the little ones?

5 A Because you can use the spike and it's easier to
6 draw the drug up.

7 Q Okay. And if you use the spike, you don't even
8 put the needle on to begin with --

9 A Right.

10 Q -- you just draw it up into the syringe --

11 A And then --

12 Q -- and then put the needle on?

13 A -- then put a needle on.

14 Q Okay. When you would start the heplocks, what
15 we called the --

16 A Yes.

17 Q -- heplock IV --

18 A Right.

19 Q -- that would be on occasion when a nurse
20 couldn't do it or didn't do it, right?

21 A Right.

22 Q Or maybe first patients in the morning?

23 A Yes.

24 Q And you would flush the heplock? Would you
25 flush the heplock?

1 A No.

2 Q Okay. You didn't flush the heplock?

3 A No.

4 Q Okay. When you -- I thought I read something
5 about you flushing them with something called Xylocaine?

6 A Every once in a while you would use Xylocaine
7 before you put the -- the heplock in --

8 Q Oh.

9 A -- to lessen the amount of pain the patient has,
10 but inside the heplock is heparin, so you don't need to flush
11 it. It will not clot.

12 Q Okay. So you didn't -- when you would start the
13 heplock, you would be starting them in the procedure room?

14 A Yes.

15 Q Okay. And so you would just put it -- when you
16 were interviewed and talked about using Xylocaine, is that
17 lidocaine?

18 A Same thing.

19 Q Oh, same thing?

20 A Yes.

21 Q Okay. You were talking about not flushing them,
22 but simply when you would put in the heplock?

23 A Yes, I would make a little wheel, a Xylocaine
24 wheel, so that when I inserted the heplock it didn't cause the
25 patient much -- as much pain.

1 Q Okay. What's a wheel?
2 A It's just a little bump.
3 Q Oh, it --
4 A A little -- a little round bump --
5 Q -- okay.
6 A -- of Xylocaine right underneath the epidural --
7 the epidermis, so that it just sits up.
8 Q Okay.
9 A It's like a pimple.
10 Q You indicated -- testified that there were 70 to
11 75 patients per day --
12 A Yes.
13 Q -- correct? Was that constant the time you were
14 there?
15 A Yes.
16 Q Okay. And has Detective Whitely, the
17 Metropolitan Police Department, or the district attorney's
18 office, when you told them those numbers 70 to 75 patients a
19 day --
20 A Yes.
21 Q -- in October/November/December 2007 --
22 A Yes.
23 Q -- have they ever showed you the true numbers
24 for those days?
25 A No.

1 Q Would you be surprised to learn that there's,
2 like, 53 procedures per day in November 2007?

3 A I'm surprised because the CDC told them to drop
4 the cases down to 50 when they came --

5 Q CDC told who?

6 A Told Dr. Carrol.

7 Q Okay. CDC told Dr. Carrol to drop it --

8 A They said they were --

9 Q -- to 50?

10 A -- we were doing far too much --

11 Q Okay.

12 A -- for safety's sake.

13 Q Were you shown the statistics that for November
14 it was 55 patients per day?

15 A I never saw any statistics there.

16 Q December 54 patients per day. You never saw
17 that?

18 A No.

19 Q So when you told them during your interviews you
20 saw -- it was 70 to 75 patients a day, every day, constantly,
21 they just said okay, right?

22 A Yeah.

23 MR. WRIGHT: No further questions.

24 THE COURT: Redirect?

25 REDIRECT EXAMINATION

1 BY MS. WECKERLY:

2 Q Sir, when you were working in November and part
3 of December, that was when Dr. Desai wasn't at the clinic,
4 right?

5 A Yes.

6 Q So that was when he was out with a medical
7 leave?

8 A Yes.

9 Q And the numbers then were, according to Mr.
10 Wright, 50 or somewhere in there?

11 THE COURT RECORDER: He needs to answer out loud
12 because --

13 THE COURT: You need to answer yes or no --

14 THE WITNESS: Yes.

15 THE COURT: -- out loud. I have people do that all
16 the time, we forget, but --

17 BY MS. WECKERLY:

18 Q When -- when Linda Hubbard would, on those four
19 or five times that you recall when she would bring leftover or
20 partially used vials, was it just one vial she would bring
21 over or more than one?

22 A More than one.

23 Q And, like, I mean -- I know it's hard to
24 remember, but how many?

25 A Four or five.

1 Q Four or five? And these were the ones that you
2 would discard --

3 A Yes.

4 Q -- because you didn't open them yourself? If
5 your recollection is that -- well, you know you started on
6 December 1st, correct, of --

7 MR. WRIGHT: October.

8 BY MS. WECKERLY:

9 Q -- or I'm sorry, October 1st of 2007?

10 A Yes.

11 Q And your recollection in your interview was that
12 Dr. Desai came back sometime in mid-December?

13 A Yes.

14 Q So from your starting date of October 1st to the
15 middle of December, he didn't run any meetings about -- for
16 the CRNAs, right?

17 A No.

18 Q And no meetings about saline during that time
19 period?

20 A No.

21 Q Mr. Wright brought up that you had interviewed
22 with -- on the Southwest Medical Group?

23 A Yes.

24 Q When did you interview with them?

25 A Three weeks after I got there --

1 Q And why --

2 A -- after I started.

3 Q After you started at the endoscopy center?

4 A Yeah, I -- I went over there for a visit, and
5 then I started taking the battery of tests.

6 Q And why did you -- why did you interview that
7 soon into starting at the endoscopy center?

8 A I wanted to leave. The hours were incredible.

9 Q When you were working at the endoscopy center,
10 did you have the opportunity to observe other CRNAs do their
11 work in their procedure room?

12 A No.

13 Q Did you have any time where you could go hang
14 out in another procedure room and watch Keith Mathahs or Linda
15 Hubbard do a couple procedures, or were you busy in your room?

16 A I was busy in my room.

17 Q So you don't know how they might have used
18 syringes, or how they might have administered propofol?

19 A No, I never watched either one of them practice.

20 Q Mr. Wright asked you on cross-examination about
21 all the places you've worked and administering propofol,
22 essentially in a multi-use fashion; do you recall that?

23 A Yes.

24 Q In any of those other places, did anyone ever
25 limit you or instruct you that you should only use a certain

1 number of milligrams per procedure?

2 A Never.

3 Q But that did happen with Dr. Desai?

4 A Yes.

5 Q When you interviewed patients preprocedure in
6 the preop area --

7 A Mm-hmm.

8 Q -- what percentage of time were you able to go
9 out and do that?

10 A I had a couple of minutes.

11 Q But, I mean, like out of -- like, were you able
12 to do that half the time or a quarter of the time; what do you
13 think?

14 A About half the time.

15 Q Half the time?

16 A Yeah.

17 Q And how many minutes would it take to do that
18 interview?

19 A About two minutes.

20 Q About two minutes. And when -- I think you said
21 that you would go to recovery, maybe 60 percent of the time?

22 A Mm-hmm.

23 Q Is that yes?

24 A Yes.

25 Q And when you did that, were you able to stay

1 with the patient for an extended amount of time?

2 A No.

3 Q Was it just a walk-by?

4 A Yes.

5 Q Maybe a minute at most?

6 A At most.

7 Q So if you added that time -- those minutes --

8 into your anesthesia time for the actual procedure, it still

9 wouldn't add up to 30 minutes or over, would it?

10 A No.

11 Q And on -- at least half the time you weren't

12 able to do that at all; is that fair?

13 A Yes.

14 Q Thank you.

15 THE COURT: Mr. Santacroce?

16 MR. SANTACROCE: I don't have anything, Judge.

17 THE COURT: Mr. Wright?

18 MR. WRIGHT: No, Your Honor.

19 THE COURT: Counsel, approach.

20 (Off-record bench conference.)

21 THE COURT: Oh, I'm sorry. I thought we were done.

22 No? Okay.

23 MS. STANISH: Oh, I'm done.

24 MR. WRIGHT: Are you going to ask any --

25 THE COURT: I am.

1 MR. WRIGHT: Oh, okay. I thought you were leaving.

2 THE COURT: All right. A juror would like to know,
3 why did you leave the Center? I think you kind of touched on
4 that already.

5 THE WITNESS: The --

6 THE COURT: The Gastro Center.

7 THE WITNESS: -- Gastro Center? The hours. The --
8 just, I -- it wasn't my kind of place to work.

9 THE COURT: Okay. How can you be responsible for a
10 patient during a procedure and be responsible for patients in
11 the recovery room at the same time?

12 THE WITNESS: We have nurses -- recovery room nurses,
13 specially trained. If there's a problem that they can't
14 handle, then they would come to us.

15 THE COURT: Okay. And that goes into the next
16 question, which is, if there was an emergency in the recovery
17 room, who would take over in the procedure room since no one
18 else has your specific training to administer anesthesia?

19 THE WITNESS: That's always been a big question.

20 THE COURT: Did that ever happen where you had to run
21 out into the --

22 THE WITNESS: It --

23 THE COURT: -- recovery room and you got a patient
24 --

25 THE WITNESS: -- it has. It has. And I have to -- I

1 have to judge which is most -- if I have a patient who is
2 slowly coming out of the anesthetic, then, yes, I can go over
3 and administer emergency care, but I have to rely a lot on the
4 nurses.

5 THE COURT: Okay. Did that happen to you at the
6 Gastro Center on occasion?

7 THE WITNESS: No.

8 THE COURT: Never at the Gastro?

9 THE WITNESS: No.

10 THE COURT: So that's happened to you at other jobs
11 where you've had to --

12 THE WITNESS: It's --

13 THE COURT: -- decide between --

14 THE WITNESS: -- yeah, there's always a --

15 THE COURT: -- somebody --

16 THE WITNESS: -- skeleton-type crew, where I might be
17 alone or be the only anesthesia-trained person there.

18 THE COURT: But never at the Gastro Center?

19 THE WITNESS: No.

20 THE COURT: Okay. And was there a time you had to
21 surrender your license?

22 THE WITNESS: I voluntarily surrendered my license on
23 counsel's recommendation here in Nevada.

24 THE COURT: All right. And so you're not licensed in
25 Nevada anymore?

1 THE WITNESS: Not anymore.

2 THE COURT: But you're licensed, obviously, in
3 California?

4 THE WITNESS: Yes.

5 THE COURT: Now, did you have to kind of reobtain a
6 California license once you moved back there?

7 THE WITNESS: No, I just never let it lapse.

8 THE COURT: Okay. And you've never asked for your
9 Nevada license back?

10 THE WITNESS: I have, but that's been -- that's a
11 whole 'nother story.

12 THE COURT: Okay. So you -- fair to say you haven't
13 gotten it back?

14 THE WITNESS: I have not gotten it back.

15 THE COURT: All right. In the five months that you
16 were there, did you receive any pay raises or bonuses?

17 THE WITNESS: No.

18 THE COURT: Okay. Now, did California take any steps
19 against you, based on this, to suspend your license, or did
20 you have a hearing or anything like that --

21 THE WITNESS: No.

22 THE COURT: -- in the State of --

23 THE WITNESS: No, I --

24 THE COURT: -- California?

25 THE WITNESS: -- I sent in the fact that I had

1 malpractice cases levied against me, but that I had not
2 been -- that they were still under review or whatever --

3 THE COURT: Okay.

4 THE WITNESS: -- they do.

5 THE COURT: So you informed the licensing board and
6 as far as you know they've taken no action?

7 THE WITNESS: No, they put me on a provisional for
8 one year.

9 THE COURT: Okay. But were you allowed to keep
10 working?

11 THE WITNESS: Yes, I was allowed to keep working.

12 THE COURT: Okay. Ms. Weckerly, do you have any
13 follow-up based on those last juror questions?

14 MS. WECKERLY: No, Your Honor.

15 THE COURT: Mr. Santacroce, do you have any follow-up
16 based on those last juror questions?

17 FOLLOW-UP EXAMINATION

18 BY MR. SANTACROCE:

19 Q When did you voluntarily surrender your license
20 in Nevada?

21 A It was almost a week after we were -- after the
22 CDC came out with the charges.

23 Q And you voluntarily surrendered because the
24 nursing board said that they were going to take it if you
25 didn't, correct?

1 A Well, I think that's what Tracy Singh said.

2 Q Okay. And that was your lawyer?

3 A Yes.

4 Q And did you advise California when you reapplied
5 for your license that you had voluntarily surrendered your
6 license in Nevada?

7 A No.

8 Q Okay.

9 THE COURT: Mr. Wright?

10 FOLLOW-UP EXAMINATION

11 BY MR. WRIGHT:

12 Q When -- you're -- you know that you started work
13 October 1st --

14 A Yes.

15 Q -- and the incidents in which there were
16 accidents, clusters, whatever the causation of hepatitis C
17 predated your work --

18 A Yes.

19 Q -- correct?

20 A Yes.

21 Q And you -- you were lucky it took so long for
22 Nevada to license you because you could have been working
23 there in September, correct?

24 A Correct.

25 Q And had you been, it could have been a whole

1 different ballgame, correct?

2 A No.

3 Q No?

4 A I don't -- I wouldn't use contaminated
5 propofols.

6 Q There's plenty of people who didn't --

7 A Yeah.

8 Q -- who still got in trouble --

9 A Well, I still got --

10 Q -- right?

11 A -- in trouble. I still got drug through the
12 mud. I still got that black spot for -- for, you know, with
13 joining the group and then having this happen.

14 Q Right. You had a hard --

15 A I couldn't -- I -- if it wasn't for the job in
16 California, I wouldn't have been able to get a job anywhere.

17 Q Okay. If you couldn't have gone back there, you
18 couldn't get a job as a janitor, correct?

19 A Exactly.

20 Q I mean, those are your words. I'm not being --

21 A Yeah. Yeah, I --

22 Q -- disparaging.

23 A -- because I don't know how to be a janitor.

24 Q Thank you.

25 THE COURT: Ms. Weckerly? Mr. Santacroce, anything

1 else?

2 MR. SANTACROCE: No.

3 THE COURT: Any additional juror questions for this
4 witness before he's excused?

5 All right. Sir, thank you for your testimony.
6 Please don't discuss your testimony with anyone else who may
7 be a witness in this case.

8 THE WITNESS: Okay. Thank you --

9 THE COURT: And you're free --

10 THE WITNESS: -- all.

11 THE COURT: -- to leave. Thank you.

12 All right. Ladies and gentlemen, it has come to my
13 attention that apparently the other witness that was scheduled
14 today had some kind of a personal emergency, and I believe
15 that's all the witnesses that were lined up for today. This
16 last witness, I think, took less time than what was expected.

17 So there being no additional witnesses for this
18 afternoon, we're going to have to take our weekend recess a
19 few hours --

20 MS. STANISH: Ahhh. Sorry.

21 THE COURT: -- a few hours early. So we will
22 reconvene Monday morning at 9 a.m.

23 During the weekend recess you're reminded that
24 you're not to discuss this case or anything relating to the
25 case with each other or with anyone else; you're not to read,

1 watch, listen to any reports of or commentaries on the case,
2 person, or subject matter relating to the case. Do not do any
3 independent research by way of the Internet or any other
4 medium, and please don't form or express an opinion on the
5 trial.

6 Please all place your notepads in your chairs and
7 follow the bailiff through the rear door.

8 (Jury recessed for the evening at 1:54 p.m.)

9 (Outside the presence of the jury.)

10 (Off-record colloquy.)

11 THE COURT: All right. Do you guys -- you don't need
12 me for stipulating to the exhibits and whatnot.

13 MS. WECKERLY: No.

14 THE COURT: Do you need the court clerk to do that,
15 or do you need to stay in the --

16 MR. STAUDAHER: I think that would be good to have
17 her here so that --

18 THE COURT: -- okay.

19 MR. STAUDAHER: -- just as we go through them --

20 THE COURT: Sorry.

21 THE CLERK: I know.

22 MS. WECKERLY: We'll be quick.

23 MR. WRIGHT: Judge? Judge? Judge, while I remember,
24 I want to offer K-1, which was --

25 THE COURT: Right. It was a statement, the --

1 mister, I forget his name.

2 MR. WRIGHT: McDowell -- Ralph --

3 THE COURT: Yeah.

4 MR. WRIGHT: -- McDowell --

5 THE COURT: Made to Mr. Mommett [phonetic] --

6 MR. WRIGHT: -- [inaudible].

7 THE COURT: -- his memorandum. I don't see how that
8 falls within any of the hearsay exceptions --

9 MS. WECKERLY: No, me neither.

10 THE COURT: -- and so -- even a past recollection
11 recorded, you can only read it, you can't admit the whole
12 thing. Plus, he remembered everything that was, I think, in
13 the exhibit. Once he had a chance to look at the exhibit, I
14 didn't catch anything. Maybe one little point, but almost
15 everything he testified to, so I don't see the reason to admit
16 the exhibit, but we can certainly make it a Court's exhibit,
17 if you would like, for Appellate -- well, actually, anything
18 that's offered --

19 MR. WRIGHT: It's marked.

20 THE COURT: -- that doesn't go to the jury is still
21 kept as a marked exhibit, it just doesn't go to the jury,
22 obviously, so --

23 MS. WECKERLY: Sure.

24 MR. STAUDAHER: And the State -- I just -- just so
25 the Court is aware of it before the Court leaves, because the

1 Court had requested this, the Health District report that you
2 asked for --

3 THE COURT: That was given, I know, the other
4 morning, but I have not had a chance to read it all.

5 MR. STAUDAHER: That's fine. I'm just saying --

6 MS. WECKERLY: It's --

7 MR. STAUDAHER: -- it's here --

8 MS. WECKERLY: -- long.

9 THE COURT: Yeah.

10 MR. STAUDAHER: -- and --

11 MS. WECKERLY: Just for scheduling purposes, and I'll
12 certainly adjust this if it's not good for Defense counsel,
13 but I was hoping that we could finish the balance of the bad
14 acts hearing on Thursday? I don't know if that -- well, think
15 -- is that okay with the Court if they think about it and --

16 THE COURT: So, like, Thursday morning?

17 MS. WECKERLY: Yes.

18 THE COURT: Okay. And then, how long do we think
19 that's going to take?

20 MS. WECKERLY: I don't -- well, we have the two
21 telephonic witnesses and one lay witness, I think two hours --

22 THE COURT: The only thing, I know you guys --

23 MS. WECKERLY: Or we could do it at the end, I mean
24 --

25 THE COURT: -- aren't probably that familiar with

1 Court Call? A lot of times it's hard to hear, so that can,
2 you know, like -- if we use the handheld mikes and talk really
3 loud, so -- you know?

4 MS. WECKERLY: Okay.

5 THE COURT: We should be okay. All right. Well,
6 I'll see you Monday. You guys can obviously stay here and do
7 what you need to do. Bye.

8 THE CLERK: Did you say what time Monday?

9 THE COURT: 9 a.m. Monday. That's what I told the
10 jury, right, 9?

11 (Court recessed for the evening at 1:57 p.m.)
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CERTIFICATION

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

AFFIRMATION

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

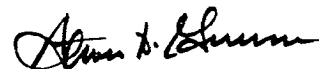
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TRAN



CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

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

BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE

JURY TRIAL - DAY 27

FRIDAY, JUNE 3, 2013

APPEARANCES:

FOR THE STATE: MICHAEL V. STAUDAHER, ESQ.
PAMELA WECKERLY, ESQ.
Chief Deputy District Attorneys

FOR DEFENDANT DESAI: RICHARD A. WRIGHT, ESQ.
MARGARET M. STANISH, ESQ.
FOR DEFENDANT LAKEMAN: FREDERICK A. SANTACROCE, ESQ.

Also Present: NIA KILLEBREW, ESQ.

Han Tieu, Interpreter

RECORDED BY JANIE OLSEN COURT RECORDER
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1 LAS VEGAS, NEVADA, MONDAY, JUNE 3, 2013, 9:07 A.M .

2 * * * * *

3 (Outside the presence of the jury.)

4 THE COURT: Do we have the witness in the hallway?

5 (Pause in the proceedings.)

6 MR. STAUDAHER: Would you like the witness to come
7 forward, Your Honor?

8 THE COURT: Please.

9 Sir, you can just step into like the well of the
10 courtroom there.

11 MR. STAUDAHER: We have an interpreter, also.

12 THE COURT: All right.

13 THE RECORDER: Can we have the interpreter's name.

14 THE INTERPRETER: Han Trieu; H-A-N T-R-I-E-U.

15 THE COURT: And you are interpreting from English
16 into?

17 THE INTERPRETER: Vietnamese.

18 THE COURT: Vietnamese. All right.

19 THE CLERK: T-I-E-U?

20 THE INTERPRETER: T-R-I-E-U.

21 THE COURT: All right. And the name of the witness?

22 THE WITNESS: Nguyen Huynh.

23 THE COURT: And can you spell that for us?

24 THE WITNESS: N-G-U-Y-E-N H-U-Y-N-H.

25 THE COURT: Okay. N-G-U-Y-E-N. And the last name

1 again?

2 THE WITNESS: Huynh, H-U-Y-N-H.

3 THE COURT: Okay. H-U-Y-N-H. We've got that. All
4 right. And it's my understanding, sir, that you were a
5 plaintiff in various civil lawsuits relating to the -- your
6 infection with hepatitis; is that correct?

7 THE WITNESS: Yes.

8 THE COURT: Okay. And that -- have all of those
9 lawsuits been settled?

10 THE WITNESS: Finished.

11 THE COURT: I'm sorry?

12 THE WITNESS: Finished.

13 THE COURT: All finished. Okay. Now, as part of
14 those settlements, my understanding is you may have signed
15 confidentiality agreements.

16 THE WITNESS: Yes.

17 THE COURT: Okay. Where you agreed you would not
18 disclose how much money you received?

19 THE WITNESS: Yes.

20 THE COURT: Okay. Because you cannot limit the
21 rights of the State to call you as a witness or the defense in
22 a criminal case to cross-examine you as far as is relevant, I
23 must order that you're to answer any question that I deem
24 relevant. Specifically, if they ask you, you must disclose
25 the net amount of any settlement you received, meaning how

1 much you received. I don't care -- you don't have to disclose
2 how much your lawyers got or how much any other plaintiffs
3 that you know about got or what the costs were or anything
4 like that, just how much money you wound up with. Do you
5 understand?

6 THE WITNESS: Yes.

7 THE COURT: Okay. And then they can also ask, you
8 know, how much you got from each plaintiff. For example, you
9 know, how much did you get from the drug company or how much
10 did you get from the pharmacy or what have you.

11 THE WITNESS: Yes.

12 THE COURT: Do you understand?

13 THE WITNESS: Yes.

14 THE COURT: And were you the only plaintiff or was
15 your wife a plaintiff as well?

16 THE WITNESS: Only me.

17 THE COURT: Only you. Okay.

18 MS. KILLEBREW: Your Honor, for clarification, I
19 believe Mr. Nguyen Huynh, his wife was also a plaintiff. They
20 received recovery on loss of consortium claim.

21 THE COURT: Oh, she was. Okay. And, sir, do you
22 know what your wife received on her claim?

23 THE WITNESS: Can you repeat that, please?

24 THE COURT: Do you know what your wife received as
25 part of her settlement?

1 THE WITNESS: Yes.

2 THE COURT: Yes, Ms. --

3 MS. KILLEBREW: Your Honor, I'll represent to the
4 Court that we did provide Mr. Nguyen with a net amount of all
5 of the totals of [indecipherable]. He may not be aware of
6 that. The number that we provided to him by my firm
7 encompasses those net settlement amounts.

8 THE COURT: Okay. So any amount, if it went to you
9 or it went to your wife, it's the total net that your
10 household got, you and your wife together, which I believe you
11 got that -- that number from Ms. Killebrew.

12 THE INTERPRETER: What was the name again? Sorry.

13 THE COURT: Ms. Killebrew, his -- his lawyer. Okay?
14 Do you understand all that? And you are ordered --

15 THE WITNESS: Yes.

16 THE COURT: -- to answer the questions regarding
17 that net amount.

18 THE WITNESS: Yes.

19 THE COURT: Okay. Ms. Killebrew, did I cover that
20 to your satisfaction?

21 MS. KILLEBREW: Yeah. Thank you, Your Honor. I
22 appreciate that.

23 THE COURT: Okay. State, anything else I need to
24 cover with the witness?

25 MR. STAUDAHNER: No, Your Honor.

1 THE COURT: All right. Sir, thank you. And you can
2 -- you and the interpreter can return to the waiting area.
3 Okay. Thank you.

4 THE WITNESS: Thank you.

5 MS. KILLEBREW: Thank you, Your Honor. May I be
6 excused?

7 THE COURT: You are excused. Thank you.

8 MS. KILLEBREW: Thank you.

9 THE COURT: All right. Is that the only preliminary
10 matter?

11 MR. STAUDAHER: I believe so, Your Honor.

12 THE COURT: All right. Well, go ahead, Kenny, and
13 get the jury.

14 How did -- Mr. Staudaher, how is -- how are you guys
15 spelling -- is it N-G-U-Y-N?

16 MR. STAUDAHER: Y-E-N, I believe.

17 THE COURT: Y-E-N. Okay.

18 (Pause in the proceedings.)

19 THE COURT: Well, maybe we can start -- before the
20 jury comes in can you start --

21 MR. STAUDAHER: This is the --

22 THE COURT: -- the list of --

23 MR. STAUDAHER: This is how it's --

24 THE COURT: -- the stipulated --

25 MR. STAUDAHER: Yeah, this the --

1 THE COURT: -- exhibits.

2 MR. STAUDAHER: -- how it's spelled, I believe. The
3 one name, which is believe is the last name, is N-G-U-Y-E-N,
4 the what I believe is the first name, although I could
5 possibly have those mixed up --

6 MS. STANISH: You do.

7 MR. STAUDAHER: -- is H-U-Y-N-H.

8 THE COURT: I'm not familiar with the Vietnamese
9 system, but it could be like the Chinese where typically the
10 family name goes first and the first name is said last. So it
11 may be, then, the Vietnamese system that that Nguyen is his
12 surname, but they say it like they do in Chinese, Nguyen
13 Huynh, which would really be Huynh Nguyen if you, you know,
14 switch it over as many Chinese people do when they come to the
15 United States. Then they turn it over.

16 But in China you would be your family name first and
17 then your first name after that, and there's usually something
18 in the middle, too. And I'm not sure what that -- there's
19 something also, a designation, I think, for the women in the
20 family get one name and the men may get another name, and then
21 there's the family name.

22 MR. STAUDAHER: Okay. Oh, did you want me to put
23 the -- the --

24 THE COURT: But I'm not sure about the women and the
25 male thing. That just may be certain families do that because

1 I have personal friends that their families do that. That's
2 how I -- how I know that.

3 MR. STAUDAHER: And, Your Honor, I guess on the
4 record today I want to make sure that we have -- we spent
5 Friday going through -- or at least I -- counsel went through
6 a lot of the exhibits that we had not completely worked on.
7 And as of today it's my understanding that --

8 THE COURT: Wait a second.

9 MR. STAUDAHER: -- that the Exhibit -- State's 1
10 through 163 with the exception of 24, 25, 26, 43, 92, 162, 87
11 are -- I mean, 87 was admitted, but if there was an objection
12 to it it was the, I believe, the affidavit. So there's at
13 least an objection to that. The rest of them have been
14 stipulated to with the exception of 24, 25, 26, 43, and 162, I
15 believe.

16 As far as the exhibits 162, that's the Health
17 District report that we still -- the Court still has to rule
18 on. 24, 25, 26, and 43 I believe Ms. Stanish needs to review
19 those with Nancy Sampson who is coming in this morning before
20 those can be stipulated to, and then, obviously, 162 is the
21 only outstanding one beside that, and 92, I think, as well.

22 Is that correct?

23 MS. STANISH: My understanding, and I don't have the
24 numbers down pat, the documents that are set here and behind
25 the clerk, these are foundational documents primarily. The

1 intention is not to give them to the jury, but should one of
2 the parties need something out of it we can grab it. But my
3 understanding is these are -- or was appellate exhibits.

4 MR. STAUDAHER: They're foundational documents for
5 the charts that -- that have been stipulated to.

6 THE COURT: Right. But they're not actually going
7 to go back to the jury. The -- the charts will be what goes
8 back to the jury.

9 MR. STAUDAHER: Unless -- unless there is something
10 that is needed from those.

11 THE COURT: From those, and then you'll refer to it
12 specifically by the Bates number or we can make it a sub --
13 you know, let's say it's 161. We'll make it A, 161A or
14 whatever so that that, then, will go back to the jury. Or
15 it'll be clear for appellate purposes or something what page
16 we're talking about. Okay?

17 MS. STANISH: And I'm not sure -- I don't think our
18 list really identifies the cutoff, but we'll figure it out.

19 THE COURT: Okay. As long as we do it before, you
20 know, in a month or two from now when we're actually done
21 before it goes back to the jury.

22 All right. Bring them in.

23 (In the presence of the jury.)

24 THE COURT: All right. Court is now back in
25 session. The record should reflect the presence of the State

1 -- everyone can be seated -- through the deputy district
2 attorneys, the defendants and their counsel, the officers of
3 the Court, and the ladies and gentlemen of the jury.

4 And, Mr. Staudaher, you may call your first witness.

5 MR. STAUDAHER: The State calls Mr. Nguyen to the
6 stand.

7 THE COURT: Sir, right up here.

8 And would the interpreter like a chair?

9 THE INTERPRETER: Depends on how long, I guess.

10 THE COURT: Okay. You may want a chair and a
11 sandwich, so the bailiff will assist you with a chair. Do you
12 need a pad or --

13 THE INTERPRETER: I have one.

14 THE COURT: Okay. And for the record, the
15 interpreter will be translating from English in Vietnamese;
16 correct?

17 THE INTERPRETER: That's correct.

18 THE COURT: And from Vietnamese into English.

19 And, ladies and gentlemen, I don't believe we have
20 any Vietnamese speakers on the jury. But I'll, just out of an
21 abundance of caution, give the general instruction. You must
22 rely on the translation as given by the certified court
23 interpreter of the English translation of everything that is
24 said.

25 All right. The clerk will administer the oath to

1 the witness.

2 NGUYEN HUYNH, STATE'S WITNESS, SWORN

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

6 THE WITNESS: Nguyen Huynh; N-G-U-Y-E-N first name.
7 And last name H-U-Y-N-H.

8 THE COURT: All right. Thank you.

9 MR. STAUDAHER: May I proceed?

10 THE COURT: Mr. Staudaher, you may proceed.

11 DIRECT EXAMINATION

12 BY MR. STAUDAHER:

13 Q Mr. Nguyen, is it okay if I call you Mr.
14 Nguyen?

15 A Yes.

16 Q Mr. Nguyen, I know that you have some
17 understanding of the English language, but it's my
18 understanding you feel more comfortable having an interpreter
19 for this proceeding; is that correct?

20 A Yes.

21 Q It's going to be important because we're using
22 an interpreter that even though you may understand some of my
23 words that I say to you in English that you allow the
24 interpreter to interpret that, and vice versa, your responses
25 to the interpreter for us.

1 A Yes.

2 Q Sir, I want to go back in time a bit to 2007,
3 September of 2007.

4 A Yes.

5 Q Did you undergo a procedure at the Shadow Lane
6 endoscopy center in September?

7 A I'm sorry. Shadow Lane --

8 Q Shadow Lane endoscopy center in September.

9 A Yes.

10 Q Do you remember the date that that took place?

11 A It was either July or September. I can't
12 remember.

13 Q If the record showed it was September 21st,
14 would that refresh your memory?

15 A Yes.

16 Q Do you recall what kind of procedure you had
17 there?

18 A Colonoscopy.

19 Q Now, before you had the procedure, let's go
20 back a little bit. Did you -- how did you end up having the
21 procedure? I mean, who was your referring doctor?

22 A Because I went to a checkup. Dr. Patel told
23 me for my -- people my age should have a checkup to see if any
24 cancer.

25 Q So this was just a screening or checkup

1 procedure? You weren't having a medical problem at the time?

2 A Yes.

3 Q When you go to have the procedure done, do you
4 recall what time in the day it was?

5 A About 8:00 in the morning I went in, filled
6 out some paperwork, and pay.

7 Q Then what happened after that?

8 A They asked me to lay down on a -- on a bed,
9 and then they pushed me into another room. Then I waited and
10 then finally they pushed me into a room to check my colon.
11 When I went there the doctor told me that he was going to put
12 me to sleep, and then after that he put me down to sleep.

13 Q Did you see any other person beside the -- the
14 doctor or the person who put you to sleep?

15 A No, only one person, only one doctor.

16 Q So you didn't see the person who actually did
17 your procedure itself?

18 A No.

19 Q When you woke up after the procedure, where
20 were you to the best of your recollection?

21 A They pushed me back out to the initial room
22 that I was waiting, the recovery room.

23 Q So you woke up and then moved back to the
24 place you started?

25 A Yes. After when I woke up I was there.

1 Q Okay. When you were out in the area where you
2 were at where you started, after you got your procedure done
3 did you have anybody take care of you out there?

4 A It was a nurse.

5 Q How long were you out there, roughly, if you
6 can remember?

7 A When I woke up they asked -- they asked me if
8 I was okay. I say -- I say yes, then they say you can go
9 home.

10 Q Did you go home after that?

11 A Yes.

12 Q Now, after the procedure took place, did you
13 feel okay after that? Did you have any problems at all?

14 A I was tired.

15 Q And at some point down the road, did you
16 suffer any sickness or illness?

17 A At that time, no.

18 Q Was there a time later on that you felt --

19 A Yes, I start to feel tired all the time.

20 Q Okay. Beside the tiredness was there anything
21 else?

22 A Sometimes I feel like having the flu.

23 Q Okay. How long did that take or did that --
24 did that last?

25 A One or two days, then it -- when it stopped it

1 would come back.

2 Q As far as your -- I mean, at some point do you
3 learn -- get a letter from the Health District saying you
4 needed to be tested?

5 A Yes.

6 Q Did you go get tested?

7 A Yes.

8 Q And was this for hepatitis C?

9 A Yes.

10 Q What were the results of that test?

11 A After the blood test they say I have hepatitis
12 C, and I have a live virus. And the -- the second time they
13 check it they say the virus has increased, the count of virus
14 has increased.

15 Q So you had an active infection?

16 A Yes.

17 Q Okay. I want to -- I want to stop there for
18 just a minute and go back in time even further than your going
19 to the doctor in the first place.

20 A Yes.

21 Q Had you ever been tested for hepatitis C, for
22 HIV, for hepatitis B, anything like that in the past?

23 A I can't remember. I -- I had blood tests
24 every year and I never have any problem. They always say it's
25 okay.

1 Q So your blood tests every year, were those
2 just checkup kind of things where you go in and get blood work
3 as part of a checkup?

4 A Yes.

5 Q When you were -- when you -- I guess I should
6 ask the question first. Are you married, sir?

7 A Yes.

8 Q And do you recall when you got married?

9 A 60 something.

10 Q When you were 60 or in the '60s?

11 A I was 18. I was joining the army, so I got
12 married.

13 Q I'm going to go forward a little bit. Are you
14 currently -- you're currently married?

15 A Yes.

16 Q In approximately 2002 did you get married to
17 your latest wife?

18 A Yes.

19 Q At that time when you got married did you have
20 to have any blood work done?

21 A Yes.

22 Q Did that include things like HIV, hepatitis C,
23 hepatitis B, that kind of thing?

24 A I think so.

25 Q Do you remember at some point in the past

1 talking to the police in this case?

2 A Yes.

3 Q And I can show you a copy of the transcript,
4 but would it refresh your memory to maybe look at a copy of
5 the transcript on that issue?

6 A I don't need to.

7 Q Okay. In the -- in your interview with the
8 police did you tell them that you had been tested --

9 MS. STANISH: Your Honor, may we --

10 BY MR. STAUDAHER:

11 Q -- for those types of diseases?

12 MS. STANISH: May we approach?

13 THE COURT: Sure.

14 (Off-record bench conference.)

15 THE COURT: All right. Mr. Staudaher, rephrase your
16 question.

17 BY MR. STAUDAHER:

18 Q When you got married back in 2002, I think you
19 said that you had to have infectious disease testing; is that
20 correct?

21 A Yes, I tested. I was tested.

22 Q And those tests included HIV and the like; is
23 that correct? Hepatitis and so forth?

24 A Doctor said we --

25 Q Well, let's not -- let's not get into what the

1 doctor said.

2 THE COURT: Don't tell us what the doctor said.

3 BY MR. STAUDAHER:

4 Q Just did you have the test, first of all.

5 A Yes.

6 Q Okay. At any time after you had those tests
7 did you ever experience any signs or symptoms of hepatitis
8 infection?

9 A No.

10 Q Were you ever treated in any way at that time
11 for hepatitis?

12 A After I --

13 Q No, I'm not talking about after. I'm talking
14 about back then when he got the results of those tests.

15 A You say when I received that letter?

16 Q No, when you -- back when you got married and
17 you had to be tested, did you ever get treated for hepatitis
18 infections?

19 A No, I was not sick.

20 Q Let me ask you some other questions. Have you
21 ever had tattoos, thinks like that?

22 A No.

23 Q Body piercings?

24 A No.

25 Q Have you ever used IV drugs?

1 A No.

2 Q Have you ever -- and I know this -- some of
3 these questions might be a little personal, but have you ever
4 had multiple sexual partners?

5 A No.

6 Q Blood transfusions before 1984?

7 A No.

8 Q Have you ever had blood transfusions at all
9 ever?

10 A No.

11 Q Have you ever worked in the medical field or
12 around blood or blood products?

13 A No.

14 Q Have you had any surgeries in the past?

15 A I had a knee surgery once.

16 Q And was that in this country, the United
17 States?

18 A Yes.

19 Q And do you recall roughly what year that was?

20 A It's been awhile. I can't remember. A long
21 time.

22 Q Are you from the United States originally?

23 A No.

24 Q Where are you from?

25 A Vietnam.

1 Q When did you come to this country?

2 A 1980.

3 Q Did you have your knee surgery, obviously,
4 after you came here in 1980?

5 A Yes.

6 Q Do you know how long you had been in the
7 United States, roughly five, six, seven years, how -- how many
8 years after you got here did you have your knee surgery?

9 A I came here in '89, and then '90, '91 I had
10 surgery.

11 Q So in 1989 you came to the United States?

12 A No. 1980. I moved from Los Angeles.

13 THE COURT: So in 1989 did you move from Los Angeles
14 to Las Vegas?

15 THE WITNESS: Yes.

16 THE COURT: And when you came from Vietnam in 1980
17 you went to California?

18 THE WITNESS: Yes.

19 BY MR. STAUDAHER:

20 Q And after you came to Las Vegas is when you
21 had the knee surgery?

22 A Yes.

23 Q And no blood transfusion ever?

24 A No.

25 Q Have you -- you said that you have had blood

1 tests every year as part of a checkup, sort of medical thing;
2 correct?

3 A Yes.

4 Q Is that for like a wellness check, like you go
5 in for a physical kind of thing?

6 A Yes.

7 Q Okay. Have there ever -- to your knowledge
8 has there been ever any issue with any of your blood work?

9 A Every time it's good.

10 Q So let's go forward in time now. We talked
11 about the things before you went to the clinic and we've
12 talked a little bit about after the clinic when you got the
13 letter. When you got the information, meaning you were tested
14 and you found out that you were positive for hepatitis C, did
15 you go back to your doctor for treatment?

16 A Yes.

17 Q And what kind of treatment did you have?

18 A Okay. Dr. Patel refer me to a specialist in
19 kidney -- or liver, I'm sorry, liver.

20 Q So did you have to have some medicine or
21 treatment as a result of that?

22 A Yes. I went to take tests, and then the
23 second time I had got test the virus count has increased.

24 Q Did they eventually have you go through some
25 treatment for that?

1 A Yes.

2 Q And do you recall what that treatment was,
3 what it entailed?

4 A 48 weeks. I had to have shot every week and
5 also take five pills a day.

6 Q And that lasted for the whole time, the whole
7 48 weeks?

8 A Yes.

9 Q Now, during the time that you had the shots
10 and the pills and you were doing that, how did -- how you were
11 you feeling?

12 A When I have a shot I feel like I was dying, I
13 was half dead.

14 Q And this was every week?

15 A Yes.

16 Q And it looked like I interrupted you. Were
17 you going to say something else, sir?

18 A That shot was poisonous. I had hot and cold,
19 and then I had to use electric blanket when I get cold and I
20 was shaking. I couldn't eat. I feel like vomiting.

21 Q And this is for the whole time?

22 A Yes, 48 weeks. Yeah, I was dying.

23 Q At some point you stopped the treatment; is
24 that right?

25 A I stopped after 48 weeks.

1 Q Do you still have the virus infection?

2 A Yes.

3 Q Do you get tested regularly for that?

4 A Six months, every six months.

5 Q Have you ever been shown to be -- have the
6 virus cleared from your system?

7 A No, only increase, but not reduce.

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

9 THE COURT: All right. Thank you.

10 Cross, Ms. Stanish.

11 CROSS-EXAMINATION

12 BY MS. STANISH:

13 Q Good morning, sir.

14 A Good morning.

15 Q Clarify for me, please. I understand you went
16 through this 48 weeks of medication. How long after you had
17 the colonoscopy in September of 2007 did you start that
18 treatment?

19 A When I received the letter I went to have
20 blood test. I went to see a doctor and then --

21 Q Excuse me for interrupting. Can you find out
22 what he's --

23 THE COURT: Oh, what are you -- is that a card from
24 your doctor?

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

1 THE COURT: Yeah. It might have the appointment
2 date on it. Is that what --

3 THE WITNESS: When it first start, from this day to
4 this day.

5 MS. STANISH: Okay. Your Honor, for the record, the
6 witness has some notes with start and end dates.

7 Can I see that, please? Thank you.

8 THE COURT: Oh, I see. It's just a handwritten
9 note. And for the record, the witness retrieved the note from
10 his wallet in response to a question from Ms. Stanish.

11 MS. STANISH: I don't have a problem with him
12 refreshing --

13 THE COURT: Okay.

14 MS. STANISH: -- his recollection on dates.

15 THE COURT: You can look at the note if that
16 refreshes your memory on dates and things like that. Okay.

17 BY MS. STANISH:

18 Q So the question was, sir, when did you start
19 taking the medication?

20 A From March 19, '09.

21 Q And then for 48 weeks thereafter; correct?

22 A Yes, and on February 19, 2010.

23 Q Is that when it ended, the treatment?

24 A Yes.

25 Q And you haven't had to take that kind of

1 medication since then; is that correct?

2 A No.

3 Q And did you provide the district attorney's
4 office or the Metropolitan police with copies of your medical
5 records?

6 A Yes.

7 MS. STANISH: Court's indulgence.

8 BY MS. STANISH:

9 Q Did you file lawsuits relating to the
10 hepatitis C infection?

11 A Yes.

12 Q And were those lawsuits against the clinic
13 itself? Were those lawsuits against the clinic?

14 A You'd have to ask my attorney.

15 Q I'm sorry?

16 A You'd have to ask my attorney.

17 Q Okay. Do you know if the lawsuit was against
18 Dr. Carrera?

19 A I went to the attorney and he represented me
20 and he sued the hospital or the clinic.

21 Q Do -- do you know if your lawsuits were filed
22 against the manufacturer of propofol?

23 A Yes.

24 Q Do you know the name? Do you remember the
25 name of the manufacturer?

1 A I do not.

2 Q Do you know if the lawsuits were filed against
3 the distributor of the propofol?

4 A Yes.

5 Q Do you remember the name of the distributor?

6 A I don't remember.

7 Q Do you -- have you heard the name of a
8 distributing -- distributor named Baxter?

9 A No.

10 Q How much -- are all of your lawsuits settled,
11 by the way?

12 A Yes, finished.

13 Q And, sir, would you please tell us how much
14 money you recovered, you and your family, how much money you
15 recovered in those lawsuits.

16 A Yes.

17 Q Have you got to look at a note?

18 A Yes.

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

20 THE COURT: Sure.

21 MS. STANISH: Thank you.

22 THE WITNESS: 3,296,022.66.

23 BY MS. STANISH:

24 Q Okay. Keep that out, okay?

25 MS. STANISH: For the record, Your Honor, the

1 witness has the total amount of recovery which was over \$3
2 million.

3 THE WITNESS: Yes.

4 MS. STANISH: And there is a break down --

5 THE COURT: From who --

6 MS. STANISH: -- according to who --

7 THE COURT: -- which defendant.

8 MS. STANISH: -- paid him.

9 THE COURT: Okay.

10 MS. STANISH: If he could just read it into the
11 record. I suppose that would be the easiest.

12 THE COURT: Okay. If you could just tell us which
13 defendant paid -- you know, paid how much.

14 THE WITNESS: I don't have each one of them.

15 BY MS. STANISH:

16 Q Well, I just -- the piece of paper you have
17 there. Why don't you just read that.

18 A 17,200.

19 MS. STANISH: May I approach again, Your Honor?

20 THE WITNESS: NMIC, 144,346. Products --

21 MS. STANISH: Products.

22 THE WITNESS: Yeah, 2,401,908. HMO, 732,570.91.

23 BY MR. STAUDAHER:

24 Q And, Mr. Nguyen, this \$2.4 million figure,
25 that's against the product manufacturer; is that correct?

1 A Yes.

2 Q And do you recall that NMIC is the medical
3 insurance company for the clinic?

4 A Yes.

5 Q And do you recall that the name Grear -- and
6 for the record that's spelled G-R-E-A-R -- that that's the
7 name of the pharmacist?

8 A I don't know. I can't remember. I don't know
9 what Grear.

10 Q Okay. Just to clarify a couple points, sir.
11 Were you approximately 29 or 30 years old when you moved to
12 the United States?

13 A Yes.

14 Q And do I understand that you were in the
15 military in Vietnam?

16 A Yes.

17 Q And was that -- what -- what service did you
18 serve in?

19 A Navy.

20 Q U.S. Navy or a foreign nation?

21 A South Vietnamese.

22 Q All right. While you were in Vietnam did you
23 have to get vaccinations?

24 A Once.

25 Q When you -- when you joined the Navy did you

1 have to get routine physicals?

2 A Yes.

3 Q And did you also -- when you -- as part of
4 your routine physicals did you have to have blood drawn?

5 A Yes for both tests.

6 Q And was that an annual -- did you have to do
7 that annually or every few years or so?

8 A Only when I first joined, first started, to
9 know what kind of blood I had.

10 Q I'm sorry?

11 A To know what kind of blood I have.

12 Q Okay. And then you had to have physicals
13 thereafter?

14 A Yes.

15 Q And did you have to have flu shots and
16 vaccinations?

17 A Yes. U.S. Navy provided the shots.

18 Q I have nothing further. Thank you, sir.

19 THE COURT: Mr. Santacrocce?

20 MR. SANTACROCE: I have no questions.

21 THE COURT: Mr. Staudaher.

22 MR. STAUDAHER: No redirect, Your Honor.

23 THE COURT: Any juror questions for this witness?
24 No juror questions?

25 All right. Sir, thank you for your testimony.

1 Please don't discuss your testimony with anyone else who may
2 be a witness in this case. All right. Thank you, sir, and
3 you're both excused.

4 THE WITNESS: Can I go home?

5 THE COURT: You may go home, yes.

6 All right. State, you may call your next witness.

7 MS. WECKERLY: Linda Hubbard.

8 THE COURT: Counsel approach while the bailiff is
9 getting Ms. Hubbard.

10 (Off-record bench conference.)

11 THE COURT: Ma'am, just right up here to the witness
12 stand up those couple of stairs there, please. Put your bag
13 down, and then I need you to face this lady right here who
14 will administer the oath to you.

15 LINDA HUBBARD, STATE'S WITNESS, SWORN

16 THE CLERK: Thank you. Please be seated. Can you
17 please state and spell your first and last name for the
18 record.

19 THE WITNESS: My name is Linda Hubbard; L-I-N-D-A,
20 last name is Hubbard, H-U-B-B-A-R-D.

21 THE COURT: Thank you.

22 Ms. Weckerly.

23 DIRECT EXAMINATION

24 BY MS. WECKERLY:

25 Q Good morning.

1 A Good morning.

2 Q Ma'am, how were you employed in 2007?

3 A I was employed at the gastro unit on Shadow

4 Lane.

5 Q What was your job there?

6 A I was a certified registered nurse

7 anesthetist.

8 Q And that requires school or training? Are you

9 okay?

10 A Yes.

11 Q Okay. To be a CRNA requires you to get some

12 formal training; correct?

13 A Yes, ma'am.

14 Q Where did you go to school to become a CRNA?

15 A I did my nurse's training at Cooper Hospital in Camden,

16 New Jersey, and my anesthesia training at Nazareth Hospital

17 School of Anesthesia for nurses in Northeast Philadelphia.

18 Q And after you got your training, did you work

19 as a CRNA back east?

20 A Yes.

21 Q Where did you -- what state were you working

22 in?

23 A I worked in New Jersey and Pennsylvania.

24 Q And where did you work when you were working

25 in New Jersey? Where did you work as a CRNA?

1 A I worked at Helene Fuld Hospital, and then I
2 worked at Hamilton Hospital, and then I went to Mercer Medical
3 Center. Well, it was Mercer Hospital, and then it became
4 Mercer Medical Center.

5 Q When you were working in those hospital
6 settings, were you working as a CRNA in like a surgery type of
7 setting?

8 A In the operating room.

9 Q Okay. And was it all kinds of surgeries that
10 you would perform the anesthesia for?

11 A Yes, ma'am.

12 Q After -- after working in New Jersey where did
13 you work?

14 A I came out here.

15 Q Okay.

16 A I worked there for over 30 years.

17 Q So quite a bit of time.

18 A Yes, ma'am.

19 Q And always in a surgical type setting in a
20 hospital, or did you ever work in a -- in a clinic and
21 outpatient setting?

22 A I worked in an abortion clinic down in
23 Atlantic City for probably four or five years. And then I
24 worked Tuesday afternoons for about a year at -- it was a
25 private practice medical center, but we did like three or four

1 colonoscopies on Tuesday afternoons.

2 Q Okay. So before you came to Las Vegas you had
3 some experience providing anesthesia for colonoscopies or --

4 A And we also did them in the hospital.

5 Q Okay. So you had that --

6 A We did them in the short stay unit in the
7 hospital.

8 Q So you had actually probably quite a bit of
9 experience working in -- providing anesthesia for a
10 colonoscopy procedure. Is that fair?

11 A Quite a bit, yeah.

12 Q Did you also do endoscopies before you came
13 out here?

14 A We did some, yes.

15 Q What year did you come out to Las Vegas?

16 A 2005.

17 Q And you worked at the Endoscopy Center of
18 Southern Nevada?

19 A Yes, I did.

20 Q Was that your first job coming out here?

21 A Yes.

22 Q How did you go about getting the job?

23 A I answered an advertisement that was placed in
24 the American Association of Nurse Anesthetist Journal.

25 Q And when you answered the ad, did you have to

1 send like your resume and your --

2 A We came out.

3 Q I'm sorry?

4 A We came out here for an interview.

5 Q Who interviewed you?

6 A Tonya Rushing --

7 Q And --

8 A -- and another woman. I -- I honestly don't
9 remember what her name was.

10 Q So at least you were interviewed by Tonya
11 Rushing, but you believe another woman was present?

12 A Yes.

13 Q How soon after your interview did you start
14 work?

15 A It was probably the better part of two months
16 because I had problems. I had never been fingerprinted in New
17 Jersey to get a license, so I had to be fingerprinted and
18 cleared through the Nevada Board of Nursing, and the
19 fingerprints were taking time in Virginia, so I was here for
20 probably the better part of a month before I actually started
21 working.

22 Q What month do you think it was you started
23 working at the center?

24 A I'd say August of 2005.

25 Q When you started working there, do you recall

1 what doctors were working at the clinic in 2005?

2 A I know Dr. Desai, Dr. Carrol, Dr. Carrera,
3 Faris, Sharma. I think McKergy (phonetic) was there and
4 Estasai (phonetic).

5 Q Do you recall which CRNAs were working when
6 you arrived in August of 2005?

7 A Ron Lakeman was the main person that I worked
8 with.

9 Q Okay. Was Keith Mathahs working there? Maybe
10 not with you, but was he working at the clinic in 2005?

11 A He filled in for us when we wanted time off.
12 He had officially retired, I think. I think I was his
13 replacement.

14 Q Okay. Any other CRNAs that you remember back
15 in 2005 when you started?

16 A Ann was there, Ann Lobiondo. And Vince Mione
17 would come over once in awhile in the afternoon and help us.

18 Q And so was Ms. Lobiondo like in the regular
19 schedule, or did she work --

20 A No, she was another one that kind of filled in
21 every once in awhile.

22 Q So she and Mr. Mione came every once in
23 awhile, and you primarily worked with Mr. Lakeman?

24 A Yeah. And then Ann came in for -- she was on
25 the schedule for awhile, but --

1 Q That's okay. Just to the best of your
2 recollection. Who kind of oriented you and showed you how
3 things worked at the endoscopy center when you arrived?

4 A Well, when I -- when I went for my interview
5 Ron gave me a copy of the anesthesia records so I could become
6 acquainted with it as to where different things when on the
7 record. And then he kind of walked me through a couple of
8 cases before I started on my own.

9 Q Okay. And when he walked you thorough a
10 couple cases was that you observing him doing cases?

11 A Yes.

12 Q And describe what you observed about him doing
13 those cases. What did you see?

14 A It was nothing out of the ordinary. Made sure
15 that the IV was working, put on all of the monitors that were
16 there to be put on, the pulse oximeter, the EKG leads, blood
17 pressure cuff, got a base reading on all of them, and finish
18 talking to the patient as far as did he have anything to eat
19 or drink or any of that kind of background stuff. And gave
20 him some propofol and let him nod off to sleep.

21 Q Okay. Did you watch any subsequent
22 procedures, or just one?

23 A It was -- it was probably a couple. I -- I
24 really don't remember.

25 Q Okay. Well, we'll come back to that. When

1 you got to the endoscopy center in August of 2005, how would
2 you describe the pace of it or the number of patients compared
3 to the other places you had been?

4 A It was far more rapid turnover than what I was
5 used to.

6 Q And when you say rapid turnover, how many
7 cases do you think you did in a day in 2005?

8 A My myself --

9 Q Yes.

10 A -- or the clinic as a whole?

11 Q You yourself.

12 A Probably a good 25 or so.

13 Q And did that change at all over the years from
14 August of 2005?

15 A It increased.

16 Q And when did you notice an increase?

17 A It's hard to say. I really -- you know, it
18 was just a gradual kind of thing that we just kept doing
19 faster and faster.

20 Q And what was -- what was the -- what was your
21 work schedule? Did you work Monday through Friday?

22 A Yes, ma'am.

23 Q And what time did you typically start work?

24 A We started at 7:00 in the morning.

25 Q 7:00 in the morning. And I think you said

1 this, but you were at Shadow Lane; correct?

2 A Yes, ma'am.

3 Q Did you ever have to go over to Burnham or the
4 VA?

5 A I never went to VA, and the only time I went
6 to Burnham was after Dr. Carrol and I had a disagreement.

7 Q Okay. And that was the end of your
8 employment?

9 A That was the very end of everything.

10 Q So primarily from 2005 through 2007 you're at
11 Shadow from 7:00 to what time?

12 A Anywhere -- 6:00, 6:30, 7:00 at night.

13 Q And the -- and you're doing over 25 procedures
14 a day?

15 A Yeah, and then it got up -- it probably got
16 closer to 40 by the time --

17 Q Okay. When you were working there and you
18 were dealing with that number of patients, was that a concern
19 to you?

20 A In some ways yes because it seemed as though
21 we really couldn't give the care to the patients that we
22 should.

23 Q And did you -- I mean, did you ever express
24 that to anybody?

25 A Not actually express it, but, you know, like

1 all the employees kind of agreed that it was a little bit of
2 stretching ourselves.

3 Q Okay. Who -- who did you perceive to be your
4 supervisor at the clinic?

5 A When it came to nursing kind of things, it
6 probably would have been Jeff, and then Katie came onboard and
7 she was kind of the overall supervisor type person.

8 Q And that's Jeff Krueger?

9 A Yes.

10 Q And Katie Maley?

11 A Yeah, whatever. I don't really -- I don't
12 remember her last name either.

13 Q Okay. And so you said with nursing type
14 things you would regard that as the supervisor?

15 A Yes.

16 Q Any other areas of your employment that you
17 would consider someone else your supervisor?

18 A When it came to billing and all of the things
19 that people were coming down, you know, making us change times
20 on charts and this, that, and the other thing, it had to be
21 Tonya.

22 Q Okay. While you were working at the clinic,
23 did you ever -- were you ever restricted or told to restrict
24 your use of supplies?

25 A Supplies as to --

1 Q Any kind.

2 A I would oftentimes be told that I shouldn't
3 give anymore propofol because the case was just about over.

4 THE COURT: Ms. Weckerly, the jury needs a break.

5 MS. WECKERLY: Okay.

6 THE COURT: So we're going to take a break.

7 Ladies and gentlemen, we're just going to take a
8 quick break until about 10:30. And during the break you're
9 reminded that you're not to discuss the case or anything
10 relating to the case with each other or with anyone else.
11 Don't read, watch, or listen to any reports of or commentaries
12 on the case, person, or subject matter relating to the case.
13 And please don't form or express an opinion on the trial.
14 Notepads in your chairs, and follow the bailiff through the
15 rear door.

16 And, Ms. Hubbard, during the break, please don't
17 discuss your testimony with anybody.

18 (Jury recessed at 10:14 a.m.)

19 THE COURT: And, ma'am, you can either sit there if
20 you want to during the break. If you need to use the restroom
21 or something you can leave the courtroom.

22 THE WITNESS: No, I might as well just sit.

23 THE COURT: Okay. That's fine.

24 THE WITNESS: My knees and hips aren't doing too
25 well this morning.

1 (Court recessed at 10:15 a.m., until 10:31 a.m.)

2 (In the presence of the jury.)

3 THE COURT: All right. Court is now back in
4 session.

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

7 MS. WECKERLY: Thank you.

8 BY MS. WECKERLY:

9 Q Ms. Hubbard, I think where we left off is we
10 were talking about use of supplies at the clinic.

11 A Uh-huh.

12 Q And my question is do you recall any type of
13 limitation or suggestions to limit your use of supplies while
14 -- while you were there?

15 A Only that I would often give more propofol
16 than what was deemed necessary.

17 Q Okay. And who -- how did that occur? What
18 were the -- who was telling you that?

19 A The physician that was doing the endoscopy.

20 Q And was -- did it happen with all the
21 physicians?

22 A Not all of them.

23 Q Which ones did it happen with?

24 A Dr. Desai, Dr. Carrol, sometimes Dr. Carrera
25 got kind of upset.

1 Q Okay. Let's talk about Dr. Desai first. When
2 did that circumstance occur with Dr. Desai?

3 A Usually after the scope had been passed as far
4 up as he was going to go. And, you know, I just -- the
5 patient would start moving or moaning a little bit, and I'd
6 just go to give a little bit more and he'd say no, that he was
7 just about done.

8 Q Okay. And what would you say?

9 A That the patient was waking up and was
10 uncomfortable.

11 Q And was this a calm conversation to your
12 recollection or was it tense or how would you describe it?

13 A Let's go middle of the road. It wasn't -- it
14 wasn't super charged.

15 Q Okay. And how was it resolved? Did you end
16 up giving more --

17 A Yes.

18 Q -- propofol?

19 A Most of the time.

20 Q Okay. How many times do you think that
21 occurred with Dr. Desai?

22 A I really -- I don't know.

23 Q Well, was it something that happened once a
24 week or once a day or once a year? How would you describe it?

25 A More than once a week.

1 Q More than once a week? Is that yes or --
2 A More than once a week.
3 Q More than once a week.
4 A Right.
5 Q Okay. And you said this also occurred with
6 Dr. Carrol?
7 A Uh-huh.
8 Q Is that yes?
9 A Yes.
10 Q And sorry to --
11 A I'm sorry.
12 Q -- make you say that. It's just that we're
13 recording --
14 A Understood.
15 Q -- and so we have to say yes or no. When --
16 when this happened with Dr. Carrol, was it through the -- the
17 course of your employment there?
18 A Yes.
19 Q And was it the same type of circumstances,
20 meaning did it occur at the same point in the procedure?
21 A Basically, yes.
22 Q And what -- what would you say to Dr. Carrol,
23 was it the same thing?
24 A You know, it was -- it was basically the same
25 thing. If the patient was reacting and then they were feeling

1 something, so they needed something else to keep them asleep a
2 little longer.

3 Q Okay. And how was it resolved between
4 yourself and Dr. Carrol?

5 A I gave him the propofol.

6 Q You gave him more propofol. And did the same
7 thing happen I think you said with Dr. Carrera?

8 A Yes, ma'am.

9 Q And, well, actually let me back up. With Dr.
10 Carrol how frequently would that occur?

11 A Probably at least once a week.

12 Q Once a week. Okay. Now, with Dr. Carrera, is
13 it again the same circumstance?

14 A Yeah, only he took longer to do procedures.
15 And it was really -- it was very hard to figure out when he
16 was going to be done because he might put the scope back in
17 further again.

18 Q And we'll talk about that in just a second.
19 But what I -- what I'm understanding you to say, though, is
20 there are times when the patient would be moving and you would
21 want to give more propofol, and what would Dr. Carrera say?

22 A That it wasn't necessary.

23 Q Okay. And could you tell where he was at in
24 the procedure at that point?

25 A Sometimes yes and sometimes no.

1 Q And so how would you resolve it between
2 yourself and Dr. Carrera?

3 A The patient got more propofol.

4 Q And in his case, how often did that occur for
5 you to have this issue?

6 A Probably about the same.

7 Q Everybody once a week?

8 A Yeah, it was at least once a week.

9 Q Now, in your work over the years there, it
10 sounds like you worked with all of the -- the doctors at
11 Shadow.

12 A All of the physicians that were at Shadow,
13 yes.

14 Q And from your previous answers there's a
15 suggestion that the amount of time each doctor took to perform
16 a colonoscopy or an endoscopy varied; is that right?

17 A Correct.

18 Q Explain -- explain how it varied and, you
19 know, what the -- I guess which doctor and how it varied.

20 A Well, it just depended upon the physician
21 himself. Some were more -- I can't think of the word. But
22 they were -- they were just inclined to do things more
23 rapidly.

24 Q Who was --

25 A And it depended upon how well the patient's

1 colon was prepped --

2 Q Sure.

3 A -- or, you know, like -- there were a lot of

4 different things that --

5 Q A lot of factors.

6 A -- weighed into the factors. Right.

7 Q But generally who was faster at doing

8 procedures?

9 A I would say probably Dr. Desai because he had

10 more experience doing them.

11 Q Okay. Was Dr. Carrol fast?

12 A Some days, yes.

13 Q And was Dr. Faris quick?

14 A No.

15 Q How about Dr. Carrera?

16 A Not usually.

17 Q When you first started working at the clinic,

18 what was the drug that was used to sedate patients?

19 A Propofol.

20 Q And was any other drug used during your time

21 there, or was it primarily propofol?

22 A I'd say probably 99 percent of the time it was

23 propofol. There were very few people that had had problems

24 with propofol in the past that we'd give some versed or

25 sublimaze or something to, but that was -- it was like not --

1 I would say not even once a month.

2 Q Okay. And when you first started working in
3 2005, what was the size of the propofol vial that you would
4 use?

5 A Probably the 20 ccs.

6 Q And did that ever change over time?

7 A It depended upon what we received from the
8 company, at least according to what Jeff told me.

9 Q Well, what -- my question is, though, did you
10 ever use anything other than a 20 cc vial?

11 A We had some 50s.

12 Q When did the 50s start to be used?

13 A I don't -- I really don't know.

14 Q Okay. Well, was it earlier in your employment
15 or was it in 2007 do you know if 50s were used?

16 A It was kind of sporadic. They would -- you
17 know, from what Jeff told me, it depended upon what the
18 company had to send us.

19 Q Okay. So your recollection is sometimes you
20 were using 20s, sometimes you were using 50s?

21 A Correct.

22 Q Now, in a typical -- well, let me ask you
23 this. What size syringes, how many cc syringes were you using
24 for administering the propofol?

25 A I think they were 10s.

1 Q Always 10 ccs?
2 A Yes.
3 Q Okay. And so how many syringes would you use
4 on a typical endoscopy?
5 A Probably two.
6 Q Two? And did the first syringe, did you fill
7 it solely with propofol, or did you mix it with lidocaine?
8 A I think most of the time there was lidocaine
9 added to it.
10 Q Okay. And that was because it would sometimes
11 burn?
12 A Propofol would burn.
13 Q Okay. So --
14 A We used small -- we used very small IV
15 catheters. And if you don't have a lot of circulation there,
16 then I understand that it burns quite a bit.
17 Q Okay. So you would use one -- one syringe
18 with lidocaine, and then the second syringe, I assume, as the
19 procedure was going on?
20 A Correct.
21 Q And that was for a typical upper endoscopy?
22 A Well, for an upper we probably would only use
23 one syringe.
24 Q Okay. Just one? You wouldn't use more
25 syringes for an upper?

1 A We -- if -- if it was deemed necessary, yes,
2 but an upper procedure was usually not anywhere near as
3 involved, as long as a lower.

4 Q Okay. And on a lower, or on a colonoscopy,
5 how many syringes would you typically use?

6 A I'd say two or three.

7 Q Okay. Depending on the length of the
8 procedure?

9 A And how big the patient was and how charged up
10 they were.

11 Q Okay. So when you were preparing to do an
12 upper endoscopy and you filled the one syringe with lidocaine
13 and propofol, did you have a second syringe ready in case the
14 procedure went longer?

15 A Yes, ma'am.

16 Q And if you didn't use that second syringe,
17 what did you do with it?

18 A Saved it for the next time I needed it.

19 Q Meaning the next patient?

20 A Uh-huh.

21 Q Is that yes?

22 A Yes.

23 Q Okay.

24 A I'm sorry.

25 Q When you got propofol in the morning at the

1 start of the day and you were in your procedure room, what was
2 your process for getting ready for the procedures that you
3 were going to do that day? Did you prefill the -- the
4 syringes?

5 A Yes, ma'am.

6 Q And how -- how did you go about doing that?
7 Did you fill five or ten or how did you do it?

8 A Well, first we had to put the syringes
9 together, and then I put lidocaine in five or ten of them.
10 And it depended upon how much time I had.

11 Q Okay. And you'd put lidocaine in five or ten
12 of them. Did you fill any more that were just filled with
13 propofol?

14 A Yes.

15 Q And would that be the same number, five or
16 ten?

17 A Probably.

18 Q And was the -- were you anticipating using one
19 with lidocaine and one without on each procedure as you went
20 through the day?

21 A Yes.

22 Q Now, in your experience can a 50 cc vial of
23 propofol be safely used on multiple patients?

24 A When it's drawn under sterile conditions with
25 clean needles and clean syringes, yes.

1 Q Okay. And by that do you mean a clean needle
2 and syringe every time you draw from the vial?

3 A Correct.

4 Q Have you ever drawn from a 50 cc vial with a
5 syringe you had used on a patient?

6 A Probably if it was the last little bit of
7 propofol in the bottle and I didn't need that much and like we
8 were approaching the end of the procedure, I'd say yes.

9 Q Okay. In those instances would you ever use
10 that vial of propofol on a subsequent patient?

11 A No, because I was finishing the vial of
12 propofol.

13 Q Okay. Why -- why wouldn't you use it on a
14 subsequent patient? Is there a danger there?

15 A Well, yeah, and I would draw the rest of that
16 propofol.

17 Q Okay. Well, let -- let me ask you this.
18 According to your training, would it ever be appropriate to
19 inject a patient with a syringe, use that syringe to draw
20 additional propofol, inject the patient again, and then use
21 that vial of propofol on a subsequent patient?

22 A No.

23 Q Why not?

24 A Because you're taking a chance of cross
25 contamination between one patient and another.

1 Q Do you recall when you were working there any
2 meeting about the use of saline with propofol?

3 A Just -- yeah, I did.

4 Q Okay. When -- when -- when to the best of
5 your recollection was that meeting?

6 A It was late in the afternoon after a very busy
7 day, and I don't -- I don't really remember when it was.

8 Q Was it towards the end of your employment
9 there or do you think it was a year before the clinic closed
10 or what do you think?

11 A I'd say probably a year or so before we
12 closed.

13 Q Okay. So sometime maybe in early 2007?

14 A It could be. I -- I really -- I do not
15 remember when it was.

16 Q Okay. Who -- do you remember who was there or
17 who ran the meeting?

18 A I think most of the nurse anesthetists were
19 there and maybe Dr. Desai. I'm not sure. I'm really not
20 sure.

21 Q Okay. What was the meeting about? What was
22 the -- what was the idea with saline and propofol?

23 A The idea was to inject saline after the
24 propofol had been injected so that the propofol that was in
25 the injection site would go into the patient's blood stream.

1 Q And so it was to get -- use the --
2 A To flush it out.
3 Q Use the saline to get that last little bit of
4 propofol into the patient?
5 A Correct.
6 Q Because some might, I guess, get stuck or get
7 left behind in the heplock itself?
8 A Uh-huh.
9 Q So to flush that last part through?
10 A Correct.
11 Q And do you recall whose idea that was?
12 A I really don't.
13 Q Okay. Was this a policy that you were
14 directed to try and see if this worked?
15 A It was something we were to try, yes.
16 Q And who told you to try it?
17 A I don't know. I -- I really -- I guess it
18 would be Dr. Desai. I -- I really don't know.
19 Q Did you try it?
20 A Yeah, we all tried it.
21 Q And did you think it worked?
22 A No.
23 Q Why don't you think it worked?
24 A There wasn't that much propofol there.
25 Q Okay. And so --

1 A It didn't really make a difference.

2 Q So it didn't reduce the amount you would use?

3 A No.

4 Q Do you recall how long you tried it, you
5 personally before it didn't work -- or before you determined
6 it didn't work?

7 A Maybe a week.

8 Q And did you keep up with it for several
9 months, or did you just decide like this isn't working, I'm
10 not doing it?

11 A I think it just went away.

12 Q No other meeting on that other than the one
13 that you kind of --

14 A I don't think so.

15 Q -- vaguely recall? Okay. Now, you -- you
16 said that it was -- that it's your practice or it was your
17 practice to use a clean needle and syringe every time you went
18 into a vial of propofol; correct?

19 A Correct.

20 Q Unless maybe it was the last little bit and
21 you knew this was the last patient of the day. Is that fair?

22 A Or that the patient that was there, the
23 patient that I was taking care of, maybe they just needed a
24 little bit more and there was a little left in the -- in that
25 vial of propofol.

1 Q Okay. Did you ever see ay CRNA use a
2 different method than you, like reuse a syringe on the same
3 patient?
4 A On the same patient, yes, but not on another
5 patient.
6 Q Okay. Who did you see use -- reuse a syringe
7 on the same patient?
8 A I think we all probably did.
9 Q Okay. Did you see Ron Lakeman reuse a syringe
10 on the same patient?
11 A But he wasn't the only one.
12 Q Okay. Well, I'm going to ask you who else,
13 but did you see him do it?
14 A Yeah, we all did.
15 Q Okay. And so you saw Keith Mathahs do that?
16 A Yes.
17 Q And you saw Vince Sagendorf do that?
18 A Probably.
19 Q Probably or you saw him?
20 A You know, when Vince Sagendorf came to work
21 for us is when we were probably at the height of our numbers
22 and we really didn't have a lot of time to see each other do
23 anything.
24 Q Okay. Well, that -- that's why I asked. Did
25 you have the opportunity --

1 A I probably -- say no.

2 Q Okay. And what about Vince Mione?

3 A Yes, for the same, you know, like for the end
4 of the day last patient end of the case, yes.

5 Q Okay. Now, when you saw -- I want to talk
6 about Mr. Lakeman. When you saw him do that -- do that method
7 where he would refuse a syringe to access a bottle of
8 propofol, do you remember what size vial it was?

9 A No.

10 Q Okay. Do you remember talking about this when
11 you interviewed with the police back in 2008?

12 A No, I really don't.

13 Q Okay. Would looking at your interview refresh
14 your recollection?

15 A No, because I have that and I -- I just -- I
16 don't remember that.

17 Q Okay. Well, if I told you said it was from a
18 50 cc vial would that sound right to you?

19 A It could.

20 Q Okay. Well, I'll show you. This is page 23.

21 MR. SANTACROCE: I'm going to object. She said it
22 wouldn't refresh her recollection.

23 THE COURT: Well, she can look at it and then see if
24 it refreshes her recollection or not. If it doesn't, then Ms.
25 Weckerly will --

1 THE WITNESS: No, I mean, these are the things --

2 THE COURT: -- move along.

3 THE WITNESS: -- that I've already read through.

4 BY MS. WECKERLY:

5 Q Okay.

6 A You know, I'm sorry, but --

7 Q No, I'm not asking you to remember.

8 THE COURT: And that's fine if it doesn't refresh
9 your recollection --

10 THE WITNESS: I really --

11 THE COURT: -- then just tell us it doesn't.

12 THE WITNESS: No, it doesn't.

13 BY MS. WECKERLY:

14 Q Okay. Well, let me ask you this. When you
15 were asked by the police back in 2008 if Ronald Lakeman
16 re-accessed a 50 cc vial, did you -- did you tell them that?
17 Did you say yes?

18 A I could have, but I -- I really --

19 Q Are you disputing what's --

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

21 BY MS. WECKERLY:

22 Q -- on the page?

23 MR. SANTACROCE: -- ask that she be allowed to
24 finish her answer.

25 THE WITNESS: I don't understand. You know, I -- I

1 -- I understand what you're saying and I understand what those
2 papers from the testimony says -- say that I said, but I'm
3 also saying that it could have been the end of the case and
4 the patient just needed a little bit more and there was a
5 couple of ccs left in that bottle of propofol.

6 BY MS. WECKERLY:

7 Q Okay. Well, do you remember telling the
8 police back in 2008 that you observed Ron Lakeman change a
9 needle but reuse a syringe on a 50 cc vial and you were
10 concerned about it?

11 A No, I really don't.

12 Q Okay. Do you remember telling the police --

13 MS. WECKERLY: And, again, this is on page 23.

14 BY MS. WECKERLY:

15 Q -- that you questioned him about this
16 practice?

17 A I don't remember any of that.

18 Q Okay. And do you remember telling the police
19 that that wasn't a practice that you would engage in?

20 A I know that it isn't a practice that I would
21 engage in, but I don't remember. I really don't remember that
22 whole incident.

23 Q Okay. And do you remember telling the police
24 that you even talked to Jeff Krueger about it because you
25 didn't want to do that practice?

1 A I don't remember that.

2 Q Okay. Are you saying you don't remember
3 telling the police or you don't remember this incident at all?

4 A I don't remember that incident at all.

5 Q Okay. And this would have been kind of a big
6 deal, right, because you just started work according to your
7 interview on when -- when this occurred; correct?

8 A I don't know. I don't know when it would have
9 happened.

10 Q Okay. Well, did you tell the police that when
11 you first started working you observed Ron Lakeman doing this
12 practice and you questioned him about it?

13 MR. SANTACROCE: Asked and answered.

14 THE COURT: Overruled.

15 BY MS. WECKERLY:

16 Q Did you tell the police that?

17 A I don't really remember.

18 Q Well, I'll show you your statement, this is
19 the top of page 23, and you read through it and just answer if
20 that's what you told them.

21 A But I've already read through this.

22 Q Okay. My question is is that what you told
23 the police?

24 A I don't know.

25 Q Well, you can read it. Are you --

1 A I've read it.

2 Q -- disputing the recording?

3 MR. SANTACROCE: Objection. It's argumentative.

4 THE COURT: All right. Well --

5 THE WITNESS: I've read that and I just -- I really
6 don't remember that happening.

7 BY MS. WECKERLY:

8 Q Okay. Well, it says in the transcript of your
9 interview --

10 MR. SANTACROCE: I'm going to object as hearsay.
11 She said she didn't remember it over and --

12 MS. WECKERLY: I'm impeaching.

13 MR. SANTACROCE: -- over again.

14 THE COURT: All right. Well, counsel approach.

15 (Off-record bench conference.)

16 BY MS. WECKERLY:

17 Q Did you tell the police, the only time I
18 really saw this was when I first started working and Ron
19 Lakeman was the nurse anesthetist that was breaking me into
20 the job, into how to do the paperwork, how to position the
21 patient, and do things on a rapid basis the way we did in the
22 gastro unit. And I questioned him about changing the needle
23 and he said that's the way it's done. And that's not my
24 practice. It never has been my practice. And I talked to
25 Jeff Krueger about it because I wanted him -- I didn't -- I

1 didn't feel right wasting 10 cc syringes every time I drew up
2 5 ccs of propofol. Do you recall saying that at all?

3 A No, I don't.

4 Q Do you recall being asked to identify what
5 size vial it was, and you said it was from a 50 cc vial?

6 A No, I don't.

7 Q Okay. Do you recall being asked how he did
8 it, like if it was with a spike or with a needle and you
9 indicated it was with a spike?

10 A No, I don't remember that.

11 Q Okay. Do you recall telling the police, and
12 then put another needle on and reinject the patient, and then
13 after that was done, if he needed more, he would take that
14 same syringe, put it back on the spike, draw up more, and get
15 a clean needle. Do you recall telling them that?

16 A No. I've -- I've read through all of that and
17 I really don't remember that whole thing.

18 Q Okay. And then you were asked if this was how
19 he instructed you to do it, and you said it was -- it was --

20 MR. SANTACROCE: Your Honor, I'm going to object to
21 her reading --

22 THE COURT: Yeah.

23 MR. SANTACROCE: -- the whole transcript. I mean,
24 it's just hearsay when she said she doesn't remember.

25 THE COURT: All right. Ms. Weckerly, did --

1 Ma'am, did you read that whole transcript?

2 THE WITNESS: Yes, I did. I've got it with me, as a
3 matter of fact.

4 THE COURT: Okay. Now, fair to say you did speak
5 with the police and were interviewed. Do you remember that?

6 THE WITNESS: Yes.

7 THE COURT: Okay. And is it that you don't remember
8 what you told the police or what?

9 THE WITNESS: I don't -- I really don't remember
10 what I told them. I don't -- you know, I -- I think over that
11 period of time I had been interviewed by the FBI and by the
12 police on two days in a row.

13 THE COURT: Okay.

14 THE WITNESS: And I just -- I don't know.

15 THE COURT: Okay. Did you review both transcripts,
16 the FBI transcript, or was there a transcript, and the police
17 interview that --

18 THE WITNESS: From the police it was more of an
19 overview kind of thing.

20 THE COURT: Well, I mean, was there --

21 THE WITNESS: But this one --

22 THE COURT: -- a transcript, you know, question,
23 blah blah blah. You, answer, blah blah blah. Did you get
24 that to review?

25 THE WITNESS: No.

1 THE COURT: You never got that?
2 THE WITNESS: I got it from the police interviews.
3 THE COURT: Okay. That's what I'm asking about.
4 THE WITNESS: Yes.
5 THE COURT: And then the FBI there wasn't a
6 transcript --
7 THE WITNESS: No.
8 THE COURT: -- question, blah blah blah --
9 THE WITNESS: It was just like --
10 THE COURT: -- answer. It was --
11 THE WITNESS: -- paragraphs.
12 THE COURT: -- just like he summarized -- the FBI
13 agent summarized the gist of the conversation --
14 THE WITNESS: Yes.
15 THE COURT: -- and that's what you got? Okay. And
16 you're a little --
17 THE WITNESS: This was almost --
18 THE COURT: No --
19 THE WITNESS: -- five years ago.
20 THE COURT: -- I understand.
21 THE WITNESS: And I -- I really don't remember these
22 things.
23 THE COURT: Okay. All right. Go on, Ms. Weckerly.
24 MS. WECKERLY: Okay.
25 BY MS. WECKERLY:

1 Q Do you recall telling Jeff Krueger, though,
2 that you couldn't do it that way?

3 A I don't -- I don't remember that conversation.

4 Q Okay. Do you recall telling Mr. Lakeman you
5 couldn't do it that way?

6 A No, I don't.

7 Q Do you recall telling the police that you
8 expressed that to both of them?

9 A No, I just -- I don't remember that.

10 Q Okay. Do you remember asking Jeff Krueger to
11 order you 5 cc syringes so you didn't -- so you could do it
12 your way by drawing up each time without wasting any more
13 propofol?

14 A The syringes I remember, yes.

15 Q Okay. And what was -- what was the reason,
16 then, for wanting the 5 cc syringes?

17 A So that I wouldn't have to draw -- use the 10
18 cc syringe to draw up smaller amounts of propofol.

19 Q Okay. Do you remember having a conversation
20 with Dr. Desai wanting you to do it the way Ron did it?

21 A No.

22 Q Okay. This is on page 25. Do you recall
23 telling the police Dr. Desai wanted me to use, you know, to do
24 it the way Ron did it.

25 A No, I don't.

1 Q You don't recall saying that?

2 A No.

3 Q Do you recall saying that you still didn't do
4 it that way even though Dr. Desai wanted you to, you still did
5 it your way?

6 A Yes.

7 Q You recall saying that part?

8 A No, I don't recall saying it. I'm sorry.

9 Q Okay. I'm confused. What part do you -- what
10 part do you recall?

11 A I continued to draw the syringes up prior to
12 the procedure and not to go back into the bottle of propofol
13 if it wasn't like the very end of the case or the end of the
14 propofol.

15 Q Okay. But you don't have a recollection of
16 either telling the police that Dr. Desai wanted you to do it
17 Ron's way or the actual event of Dr. Desai telling you that?

18 A No, I don't.

19 Q Is there any reason like why you'd have
20 trouble remembering something that's kind of significant to
21 your line of work?

22 A It's probably just time.

23 Q Just time? Okay. Do you remember telling the
24 police that Dr. Desai actually observed you not following that
25 method, Ron's method --

1 A No --

2 Q -- and him --

3 A -- I don't.

4 Q -- correcting you?

5 A No, I don't.

6 Q So you don't remember anything about syringe

7 reuse with either Dr. Desai or Mr. Lakeman?

8 A No.

9 Q Okay. Or discussing it with the police?

10 A No, I didn't. I don't.

11 Q Would you agree with me that at the time you

12 were interviewed this was sort of a big issue in the

13 investigation of the hepatitis C outbreak?

14 A Yes.

15 Q Okay. And how syringes were used would be

16 sort of an important piece of information concerning how those

17 people might have gotten sick?

18 A But it wasn't the only way.

19 Q Well, no, I'm just asking you if the topic was

20 important.

21 A Yes, it was.

22 Q Okay. And so would you have tried to provide

23 accurate information to the police?

24 A Yes.

25 Q Now, the CDC came -- well, let me ask you

1 this. When you were working at the center from 2005 until it
2 closed, did you ever see open vials of propofol being moved
3 from room to room?

4 A At the end of the day, yes.

5 Q Describe what those circumstances would be.

6 A It would be the last case of the day. And if
7 the person the other room would have propofol left that was
8 just a small amount. Because the propofol isn't good after
9 six hours, so there's no way you could use it the next day.

10 Q Okay. And so were you ever the person
11 bringing propofol to the other procedure room?

12 A Yes.

13 Q Did you -- and you gave it to the other CRNA
14 to use?

15 A Yes.

16 Q Did other CRNAs ever bring you partially open
17 vials of propofol to use on your end of the day patients?

18 A Yes.

19 Q How often would this occur?

20 A Whenever -- every day.

21 Q Every day? Who were the CRNAs that you
22 remember bringing you propofol at the end of the day?

23 A Ron, Keith, Vince, Ann.

24 Q And who did --

25 A Vinnie.

1 Q So all of them?

2 A Yeah.

3 Q And who -- who did you deliver the propofol
4 to?

5 A The same.

6 Q The same? Everybody?

7 A Yes.

8 Q Did you see them use it?

9 A No.

10 Q Because you had to get back to your own cases?

11 A Yeah, I mean, either I would go back and clean
12 my room out and get ready to leave because they were doing the
13 last case, or vice versa, they would leave while I was doing
14 the last case.

15 Q Did you -- you were present when the CDC and
16 the Health District came to the clinic?

17 A Yes.

18 Q And do you recall if some officials observed
19 you doing procedures?

20 A They stayed with me the first afternoon they
21 were there. Dr. Carrera was seeing a patient over on the
22 other side, and it took forever for him to get back over to do
23 the last procedure.

24 Q And when they observed you, would they have
25 observed you kind of pooling partially used vials of propofol?

1 A No.

2 Q No? You would never have more than one open
3 vial out on your table?

4 A I was in the room that we worked from a
5 drawer, really.

6 Q Okay.

7 A We -- and I had syringes that had already been
8 drawn.

9 Q Right. But in the -- would they have observed
10 you with partially, not syringes, but partially used vials of
11 propofol?

12 A No.

13 Q You never had that happen?

14 A No.

15 Q You wouldn't redraw maybe one syringe from
16 three different vials?

17 A Oh, no.

18 Q You never did anything like that?

19 A No.

20 Q Do you remember talking to them at all?

21 A Very minimal.

22 Q Okay. Do you remember telling them that you
23 were told to reuse syringes but you didn't do it?

24 A No.

25 Q You didn't say that to them?

1 A No. The only -- the only time I remember them
2 talking to me about syringes was on the exit interview that
3 they had with us.

4 Q Okay. And so just to be clear, you never
5 pooled vials of propofol; correct?

6 A No.

7 Q Okay. And you also never told them that you
8 were told to reuse syringes; correct?

9 A No.

10 Q And you don't remember your interview with the
11 police?

12 A No, I really don't.

13 Q Okay. Do you remember a meeting that took
14 place where -- with Dr. Desai and Dr. Carrol after the CDC
15 came to the clinic?

16 A I can't say I do.

17 Q Okay. Do you remember Dr. Desai ever asking
18 you after the CDC came if you had reused syringes?

19 A No, I don't think so.

20 Q Okay. Do you remember telling that to the
21 police?

22 A No.

23 Q Okay. Is that just another instance where you
24 don't remember the event and you don't remember what you said
25 in your interview?

1 A Correct.

2 Q Okay. Explain what happened between yourself
3 and Dr. Carrol after the CDC came in and he wanted to
4 terminate you. Do you remember that?

5 A Yeah, I was drawing the last of the propofol
6 out of a 20 cc vial when he came in the room. And he
7 evidently thought that it was from a patient prior to the
8 patient that was in the room at that time. And he took me
9 upstairs to Sonia's office -- to Tonya's office and he fired
10 me.

11 Q So he was wrong about what he observed?

12 A Yes, he was.

13 Q Okay. Because he -- if he thought that you
14 were pooling propofol after the CDC came in, that's something
15 you wouldn't do?

16 A We were instructed to just use one 20 cc -- to
17 use the 20 cc vial for the patient. And if we needed another
18 one, you know, if we needed like 30 ccs, then we'd go to
19 another 20 cc vial. And then when that patient left the room,
20 that vial was to be thrown away.

21 Q Okay. And he thought that you did something
22 other than that; correct?

23 A Correct.

24 Q He thought that you had used a partial vial
25 and then were using that vial on a subsequent patient;

1 correct?

2 A Correct.

3 Q And you're saying that he was wrong in his
4 observations?

5 A Correct.

6 Q When you went up to -- I think you said you
7 went up to Tonya Rushing's office?

8 A Correct.

9 Q What was -- I mean, what was the outcome?

10 A He wanted me fired. She told me to go home.

11 Q So you went home. At some point you go to
12 work. You get -- you don't really get fired; right?

13 A Correct.

14 Q You go to work at Burnham?

15 A Correct.

16 Q Who -- who do you have the conversation with
17 so you know to go to Burnham? Who calls you or who --

18 A Tonya.

19 Q Tonya. So you report to Burnham; correct?

20 A Correct.

21 Q Once you're there, were you supervised?

22 A Dr. Mason sat me down before we started cases
23 that morning and, you know, told me exactly the same things
24 that I was told before about not using propofol between one
25 patient and another. And I guess he kind of alerted the nurse

1 that was in the room and she kind of collected all my propofol
2 bottles.

3 Q I'm not -- you know what, I'm not fully
4 understanding that. Dr. Mason has a conversation with you.

5 A Correct.

6 Q And then you're in the middle of procedures
7 and what -- what does the nurse do?

8 A Well, the -- the nurse was like hovering over
9 me making sure that I didn't draw propofol from one bottle for
10 another patient.

11 Q Okay. So the nurse would take them away?

12 A Yeah, at the end of the case she'd take my
13 bottles away from me.

14 Q And did that happen every day you were working
15 at Burnham?

16 A Yes.

17 Q How many days was that?

18 A I think it was -- I think it was two weeks.

19 Q At some point did you go back and work at
20 Shadow?

21 A Yes.

22 Q How -- how long -- was it two weeks or do you
23 think longer?

24 A I went back -- it was probably the two weeks
25 before the clinic closed.

1 Q Once you were back at Shadow, did you use any
2 50 cc vials of propofol at that point?

3 A No, ma'am.

4 Q Do you recall telling the police that you
5 actually used up the remaining 50s?

6 A That was prior to me going to Burnham, I
7 think.

8 Q Oh, okay. So let me make sure I get the time
9 frame correct. After the CDC came in, did you use 50 cc vials
10 of propofol at the Shadow Lane clinic?

11 A There were like four or five vials left, and
12 Jeff Krueger asked me if I wanted to use them. And I used
13 them as 20 cc vials.

14 Q What does that mean?

15 A It was discarded at the end of the -- of the
16 case. It was used for one patient only. It wasn't draw up
17 five syringes and use them for whatever.

18 Q Okay. So you used them up, but only on one
19 patient? Is that --

20 A One 50 cc at a time, yes.

21 Q And did Dr. Carrera ever see that?

22 A Yes.

23 Q What did he do?

24 A He got very upset that I was using a 50 cc.
25 And I tried to explain to him that I was using it as a 20.

1 Q What did he do with them, the vials?

2 A He threw them away.

3 Q He threw them away? And that was, to my
4 understanding, after the CDC is there, but before you go to
5 Burnham?

6 A I think that's when it happened, yes.

7 Q When you were working at -- at hospitals and
8 prior to your employment at the endoscopy center, how did you
9 calculate your anesthesia time?

10 A It was the time of the actual procedure.

11 Q Okay. And at the endoscopy center, what was
12 your way of calculating the anesthesia time?

13 A There was the time of the procedure, plus we
14 added on a little for a pre-op evaluation, a pre-anesthesia
15 evaluation, and then kind of rounded it off.

16 Q Okay. Well, let me ask you a couple questions
17 about that. The pre-anesthesia evaluation, where did that
18 take place?

19 A Either outside of the procedure room or inside
20 the procedure room. It depended upon how things were moving.

21 Q Well, when you were doing those 60 or more
22 patients a day, how much time -- or how often did you have
23 time to go to the pre-op area and do an anesthesia evaluation
24 in pre-op?

25 A Depended upon if the next patient was on the

1 stretcher or if they were sitting back after getting their IV
2 started or whatever.

3 Q Right. I understand what it's dependent on.
4 My question is how often?

5 A I really can't tell you.

6 Q Half the time?

7 A I -- I --

8 Q A quarter of the time?

9 A I don't know.

10 Q You don't have any recollection of how often
11 you went out to pre-op to do the pre-anesthesia?

12 A Well, it was -- the pre-op and the post-op
13 were kind of together. Everybody was on stretchers lined up
14 outside the door.

15 Q But you're doing a different thing; right?

16 A Yeah, but I'm also looking at the post-op
17 patients, too.

18 Q Okay.

19 A I don't know, maybe -- maybe 50 percent of the
20 time.

21 Q So maybe half the time you went out and did a
22 pre-op evaluation?

23 A Outside of the room, yes.

24 Q And how long would that take typically?

25 A Depending on how much the patient had going

1 on.

2 Q Okay.

3 A Ten minutes.

4 Q Ten minutes? And that was while you were
5 doing 60 or 70 patients you could spend 10 minutes out in
6 pre-op?

7 A Yes.

8 Q Okay. And then you would do a 10 minute
9 procedure typically; right?

10 A Correct.

11 Q And then what would happen to the patient?

12 A The patient would then be discharged to the
13 recovery area.

14 Q Okay. And once they went to recovery, how
15 much contact did you have with them?

16 A Contract was -- contact was probably very
17 rare.

18 Q Okay. So there really wasn't contact after
19 they left the procedure room, is that fair?

20 A Correct. But we were supposedly responsible
21 for these people.

22 Q Okay. Well, I'm not asking about your
23 liability because liability and anesthesia time aren't the
24 same thing.

25 MR. WRIGHT: Objection.

1 MR. SANTACROCE: Objection.

2 MR. WRIGHT: That's a total misstatement of their
3 prior witness's testimony.

4 THE COURT: All right. Well, Ms. Weckerly, don't,
5 you know, you don't need to make comments as to where you're
6 going.

7 BY MS. WECKERLY:

8 Q Okay. Is it your understanding that your
9 liability could end if you left the facility?

10 A When?

11 Q Well, let's say you did a procedure and let's
12 say you were concerned about your -- your liability. Could
13 you just leave the center and not be responsible for the
14 patient anymore?

15 A Would I tell somebody else that I was leaving?

16 Q Yeah, sure.

17 A As long as it was somebody that I trusted.

18 Q Okay. But is it your understanding, like you
19 just said, well, I was still responsible for the patients in
20 recovery.

21 A Correct.

22 Q Is it your understanding that if you left the
23 building and left someone else in charge that would end your
24 liability for that patient?

25 MR. SANTACROCE: I'm going to object as to

1 foundation. When, where?

2 THE COURT: Well, that's sustained. Kind of
3 rephrase it.

4 BY MS. WECKERLY:

5 Q Do you have --

6 THE COURT: Do you -- did that ever happen that she
7 left a patient, you know.

8 BY MS. WECKERLY:

9 Q Do you have an understanding of -- well, let
10 me ask you this. You said that when you worked at the other
11 hospitals prior to coming to the endoscopy center that you
12 didn't calculate anesthesia time the same way; is that right?

13 A Correct.

14 Q It was the procedure time?

15 A Correct.

16 Q And at the endoscopy center you added time on
17 at the beginning and added some time on at the end.

18 A Correct.

19 Q But if I understand you correctly maybe 50
20 percent of the time you were in pre-op; correct?

21 A 50 percent of the time?

22 Q You were able to go and spend --

23 A That I was able to talk to the patient before
24 they came into the room, yes.

25 Q Okay. And so then they come into the room.