

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 25

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1 Q Okay. Well, was what you call -- or what we
2 call double dipping. Okay.

3 A Mm-hmm.

4 Q Double dipping is going back into a vial after
5 I've already used it once on a patient, going back in to
6 re-dose the patient, right?

7 A Right. And then -- right, and then --

8 Q Right. Whether it's single dose vial or
9 multi-dose vial, all we're talking now is use of syringe,
10 right?

11 A Mm-hmm.

12 Q Going back in --

13 A Yes.

14 Q -- using it a second time to use on the same
15 patient.

16 A Yes.

17 Q Today best practices are don't do that, correct?

18 A Correct.

19 Q Do you recognize that there was a time in the
20 recent past when that was viewed as safe?

21 A I don't -- I'm -- I've seen articles where reuse
22 of syringes from patient to patient was done in the remote
23 past, but I -- you know, I don't --

24 Q No, no. Not patient to patient. I mean, in
25 fact, it seems to me there were articles where like in the

1 '90s, patient to patient were used. I mean places that
2 actually use it on one patient, then they took and changed the
3 needle thinking that that made it sterile and then used on
4 another patient was as high -- was in the --

5 MR. STAUDAHNER: Objection. Assumes facts not in
6 evidence. She's not familiar with this.

7 MR. WRIGHT: I'm asking [inaudible].

8 THE COURT: Well, he can ask if that ever occurred in
9 her knowledge, or that was a practice that was --

10 BY MR. WRIGHT:

11 Q I mean, do you recognize that was --

12 THE COURT: I mean, you can probably find one --

13 BY MR. WRIGHT:

14 Q -- prevalent in like in the '90s?

15 A I recognize that that did occur, the prevalence
16 of which I can't speak to. But yes, I recognize that that did
17 occur.

18 Q Okay. I think they called that overt reuse or
19 something.

20 A Right.

21 Q And so that's like using the same needle and
22 syringe all day in a practice and just changing the needle.
23 And then that -- that's not a good practice.

24 A Correct.

25 Q And so slowly the incidence of that has become

1 less and less through education and maybe younger doctors like
2 yourself coming around. Do you recognize that?

3 A Yes.

4 Q Okay. And the reuse of the syringe not overt,
5 not patient to patient, but simply I'm going to reuse it on
6 the same patient, we've had doctors in here testify already
7 that that is absolutely 100 percent safe and they would defy
8 anyone to prove how there could be contamination, because I'm
9 using the same needle, same syringe on the same patient.

10 A So --

11 Q And that practice was viewed as acceptable,
12 would you agree with that, in the past?

13 A I can't answer that question. I don't -- I
14 don't know.

15 Q Okay. And --

16 A I didn't practice back in the '90s, so.

17 Q Okay. You were educated in a different time.

18 A Correct.

19 Q And these studies that you participate in
20 recognize that somehow there is this lapse, whether it's
21 education, whether it's having an officer on premises or
22 something, but somehow some of these things, best practices
23 just persist not being followed, correct?

24 A Yes. There are instances where best practices
25 are not followed despite the fact that they should be, yes.

1 Q Okay. But a large number of them like in this
2 study, 28 percent reusing multi-use vials?

3 A Reusing single use vials, correct.

4 Q Correct. And somehow there is no recognition of
5 the what you see is the risk, correct?

6 A I can't explain why these people did that,
7 whether it was lack of recognition or other reasons, but that
8 could be one reason.

9 Q Well, you don't think there's one out of four of
10 those people are criminals just consciously doing something
11 wrong, do you?

12 A [Inaudible.]

13 MR. STAUDAHNER: Objection. Speculation, Your Honor.

14 THE COURT: All right. Well, she already said she
15 can't answer.

16 BY MR. WRIGHT:

17 Q I mean, who in the CDC -- I mean, maybe I'm
18 talking to the wrong person. Who is it that studies this slow
19 recognition of adopting best practices, the resistance in the
20 healthcare community?

21 A I don't know as far as a specific study for why
22 certain things are adopted. I know that we have, you know,
23 educational campaigns and do our best to get these
24 recommendations and work with professional organizations into
25 the hands of the providers so that they do follow them.

1 Q Okay. But you also recognize that there are
2 people out there, healthcare providers that we've heard in
3 this courtroom who insist double dipping is safe?

4 A I'm aware of that, yes.

5 Q Okay. And they will argue with you about it and
6 defy you to show how there could be any contamination or any
7 spread of disease.

8 If we had Ralph McDowell here, a CRNA, he would
9 challenge you and say I take needle and syringe, I wipe off
10 propofol, I air dry it, I go in, I withdraw, I use it on that
11 patient. The patient needs re-dose, I wipe it off, I take the
12 same needle and syringe, I go in, I take it out, I dose that
13 patient again. I then take everything I used on this patient,
14 throw it away. I am absolutely aseptic and safe when I do
15 that is what he says. And is he correct, that he is aseptic
16 and safe?

17 A So I am not concerned when that practice, if
18 every single one of those steps is followed, resulting in an
19 outbreak of hepatitis C virus infection. What I am concerned
20 is, is when they forget or they skip a step and they don't
21 throw that vial away. That's why it's best practice that you
22 don't re-enter, because mistakes, as you said, happen and you
23 don't throw the vial away, and it's then used on subsequent
24 patients.

25 So the practice you're describing that he did is

1 not -- if they do every single one of those steps routinely,
2 is not going to result in an outbreak of hepatitis.

3 Q Okay. And so it isn't his practice, it would
4 simply be a mistake or an accident if something happened,
5 that's the risk, correct?

6 A If his routine knowledgeable practice is that he
7 always does this, you are taking a risk by re-entering that
8 vial even for that patient if you don't discard the vial
9 immediately after the case. So whether accident, intent,
10 distraction, whatever, that's the -- that's the -- what I'm
11 concerned about.

12 Q Okay.

13 A And so if I don't re-enter the vial, I've taken
14 that contamination out of the chain and that risk out.

15 Q Okay. It's just a prophylactic, a preventative
16 type thing to make it less likelihood of an accident, as
17 opposed to it being an improper --

18 MR. STAUDAHNER: I'm going to object to accident.
19 That's not what she's testifying to.

20 MR. WRIGHT: I wasn't -- I wasn't --

21 THE COURT: Finish your question.

22 MR. WRIGHT: I can't remember it. The --

23 BY MR. WRIGHT:

24 Q You are -- it isn't the practice if I am doing
25 as I represented to you and I'm wiping the top, doing

1 everything best practices, and I am simply using one needle
2 and one syringe for one patient, and I can re-dose her, like
3 if it's four doses of propofol and I was using a 20 and it's
4 all done and I'm done with both and I throw it away, that is
5 absolutely safe and aseptic, but your best practices that say
6 I should never do that because I might make a mistake?

7 A Our recommendation is you don't do that because,
8 yes, if you don't throw that vial away and you use it on other
9 patients, you risk infecting them, yes.

10 Q Okay. That would be a mistake under my
11 scenario?

12 A Yes.

13 Q Okay. And the same thing where we look at
14 propofol, if we use Mr. Sagendorf, who said we in California,
15 in that clinic we use propofol, use it all up, but every
16 single time we go into that 50 or 20 or 10, we use a brand new
17 needle and syringe every single entry, injection, toss it
18 away; that practice is absolutely aseptic, safe and no risk of
19 transmission of hepatitis C?

20 A I would not see how that would result in
21 hepatitis C transmission.

22 Q Okay. And it is safe --

23 A A clean area, new needle and new syringe for
24 each entry into the vial focusing just on hep C, that would
25 not -- I could not see how that would result in viral

1 hepatitis transmission.

2 Q Okay. And the once again, best, if these best
3 practices were rules, they would be -- Mr. Sagendorf, the
4 clinics he work at are violating the best practices of the
5 CDC?

6 A They're violating the labeling on the
7 medication, the best -- the recommendations of CDC, the
8 recommendations of the American Society for Anesthesiology,
9 and the recommendations of varying other professional
10 organizations.

11 Q Okay. Violation, violating any regulations or
12 laws or statutes you're aware of?

13 A Through the Centers for Medicare and Medicaid
14 Services, yes. They, when they inspect, would issue a
15 citation if they saw multi-patient use of a single use vial.

16 Q Okay. On the multi use, it's presently, did
17 that occur in 2009?

18 A No -- I'm sorry. What?

19 Q The no -- I'm not talking about syringes now.
20 The multi use, CDC -- not CDC, what's the other one?

21 A CMS, Medicare.

22 Q Right. 2009, that was implemented?

23 A That sounds about right.

24 Q So that never happened until after this?

25 A I don't know if it happened prior to this, but

1 it was on the worksheet that they were supposed to be using
2 systematically to assess that practice. I don't know if they
3 did or didn't cite previous to that, but it was made a
4 systematic thing to actually look at that.

5 Q Okay. Before recommendations, the teeth were
6 put into it in 2009, correct?

7 A I'm sorry. Can you repeat?

8 Q Teeth were put into it, that's the way I call
9 it.

10 A Sure.

11 Q So and of course the events here occurred in
12 2007.

13 A Yes.

14 Q Okay. Now, the -- the changing of the needle
15 practice, okay.

16 A Okay.

17 Q You're aware of the what do you call it,
18 misbelief, misapprehend -- I mean, what do you call the myth
19 that that is safe, or the miss --

20 A I'm aware of that.

21 Q Okay. And what practitioners believe, that
22 putting a new sterile needle on the syringe is -- makes it
23 safe --

24 A Yes.

25 Q -- that's a myth out there, right?

1 A Yes. Yes.

2 Q And do you know where that came from?

3 A I don't.

4 Q Okay. And the -- but there are -- you
5 understand that even today on the various studies, that there
6 are still practitioners believing changing needles makes it a
7 safe unit to use again?

8 A Yes. I believe there are still practitioners
9 that believe that changing the needle makes it safe for
10 syringe use.

11 Q Okay. Have you seen that before?

12 A Yes, I have.

13 Q Are you familiar with what it is?

14 A I'm familiar with what it is, but if you're
15 going to ask specifics, I want to -- are you going to put it
16 up here so I can look?

17 Q Yeah.

18 A Okay. Thank you.

19 Q First I need to mark it.

20 A Okay. Thank you.

21 MR. WRIGHT: Next in order.

22 THE COURT: Did you show that to the State?

23 MR. STAUDAHER: Yes. No objection to its admission.

24 THE COURT: No objection. All right. We can admit
25 that then.

1 (Defendant's Exhibit M-1 admitted.)

2 MR. WRIGHT: Misperceptions, that was the word I was
3 looking for.

4 BY MR. WRIGHT:

5 Q Exhibit M-1, are you able to read that?

6 A Yes, sir.

7 Q Is this currently utilized?

8 A It's from -- it's not from the CDC website.
9 It's from the One and Only Campaign website. I don't know if
10 this is still on there or not.

11 Q Okay. Are these -- I mean, these myths and
12 truths are still persistent and they're still being taught out
13 there?

14 A Right. We're still trying to debunk the myths.

15 Q Okay. And the first myth, it says, "Dangerous
16 misperceptions. Here are some examples of dangerous
17 misperceptions about safe injection practices. Myth, changing
18 the needle makes the syringe safe for reuse. Truth, once they
19 are used, both the needle and syringe are contaminated and
20 must be discarded. A new sterile needle and a new sterile
21 syringe should always be used for each patient and to access
22 medical vials," correct?

23 A That is what it says.

24 Q And so this is -- this comports with your CDC
25 best practices?

1 A Correct.

2 Q And next one, "Syringes can be reused as long as
3 an injection is administered through an intervening length of
4 IV tubing."

5 A That's what it says under the myth, yes.

6 Q Okay. And it's a myth because we didn't really
7 utilize IV tubings, and in this case --

8 A Correct.

9 Q -- it hasn't been discussed that much other than
10 at [inaudible]. But with an IV tubing, is there a myth that
11 if I inject way up high on the tubing there isn't any chance
12 of contamination?

13 A I think there's a myth if you inject anywhere
14 within the tubing that there -- it prevents contamination.

15 Q Okay. If you don't see blood in the IV tubing
16 or syringe, it means that those supplies are safe for reuse?

17 A That is a myth.

18 Q That's a myth. And the truth is what?

19 A Do you want me to read it?

20 Q Or you can just say it, either way.

21 A Just that you can have viral or bacterial
22 pathogens present even without visible blood in the syringe or
23 the tubing or the needle.

24 Q Okay. "Single dose vials of large volumes that
25 appear to contain multiple doses can be used for more than one

1 patient." And the best practice is it should not be used for
2 more than one patient, correct?

3 A Correct.

4 Q And the -- this still -- M-1 still has to be
5 utilized and taught and have webinars, because people still
6 persist that they are acting safely in doing certain things
7 which don't comport with best practices, right?

8 A Correct.

9 Q When you went back to Atlanta back in 2008, you
10 CDC, you all were continuing to communicate with the Southern
11 Nevada Health District?

12 A Yes.

13 Q Okay. And Southern Nevada Health District and
14 you all were formulating a notification plan because of the
15 unsafe practices that had been observed at the clinic?

16 A Yes.

17 Q Okay. Now, you know ultimately it ended up an
18 approximate four year patient notification?

19 A Yes.

20 Q Okay. Was there a plan within CDC to make it a
21 lesser six month?

22 A I don't -- I don't recall.

23 Q Okay.

24 A That might have been discussions with
25 supervisors and others. I don't recall.

1 Q I'm asking because I saw in your notes --

2 A Okay. What page? If you show me, I might be
3 able to figure --

4 Q Can't read the --

5 A What's the page before, can you read that one?

6 Q Sixteen, 19, 20.

7 A So this page. This page?

8 Q Yes.

9 A Okay.

10 Q Just look at that, read it to yourself.

11 A Okay.

12 Q Does that refresh your recollection at all?

13 A Somewhat.

14 Q Okay. I know. It doesn't make a lot of sense
15 to me either, but it looks like to me there was a proposal for
16 a six month notification, and then depending upon the results
17 it may be expanded. Does that look --

18 A So again, and I'm limited in my recollection
19 here. I'm -- you know, I think that there was, at least from
20 what the notes here, discussion of focusing on, you know, we
21 had transmission in July and September, so focusing on that
22 period and doing really intense following of all the results
23 to do -- and for CDC to do additional specialized testing to
24 look for other clusters of transmission so that, you know, we
25 could focus on that time period.

1 And I don't recall if -- if at this point in time
2 there was uncertainty about the duration that syringe reuse
3 and the reuse of the vials had been going on, because
4 sometimes that's a factor in. And if, you know, it was just a
5 new employee that started doing it this week and it had never
6 happened before, you don't have to necessarily notify everyone
7 in the history.

8 It's kind of the duration of how long the unsafe
9 practice had been occurring. And so that's -- I'm wondering
10 if that was part of the discussion there. I can't recall
11 specifically.

12 Q Okay. You do recall that there was a -- and you
13 don't know who decided like to make the decision to go for
14 four years rather than six months?

15 A Well, I think -- I think we had information
16 suggesting that the unsafe practices had been going on for
17 that entire span. And we know that that is a practice that
18 can result in transmission, so the right thing to do is to
19 notify all those patients. So I don't --

20 Q Okay. Well, why -- why would you then be
21 talking about six months? Because this was all -- what you're
22 telling me was all known at that time.

23 A So I don't -- I don't know -- I don't -- again,
24 you know, this is, you know, 5 1/2 years later. I can't
25 recall the specifics of the conversation that informed these

1 notes. But in looking at these notes, it talks about CDC
2 getting samples for all the positives identified during that
3 six-month window, and doing very, you know, active tracking of
4 those patients in that period when we had transmission.

5 You know, obviously when you're notifying 50,000
6 patients, keeping your arms around all of them and doing
7 active tracking and getting blood on all of them is just not a
8 feasible thing to do. So, you know, but again, I'm trying to
9 interpret notes from, you know, several years ago.

10 Q Okay. But they're -- they're yours.

11 A From 5 1/2 years ago.

12 Q Okay.

13 A Right.

14 Q I mean, I presume you can know better than I,
15 but it looks like from July 1 to present as first possible; is
16 that -- on five days in question?

17 A So this would have been in -- while we were
18 still in --

19 Q Potential to expand to years before.

20 A So this looks like, if the dating on here is
21 correct, this would have been on the 16th, so we would have
22 still been in Las Vegas.

23 Q Okay.

24 A So I think, you know, the investigation is still
25 going on as far as the prevalence of this practice. I haven't

1 spoken to Mr. Lakeman yet, so.

2 Q Okay.

3 A That's the best I can do to interpret.

4 Q And this is a final, Linda Hubbard, okay?

5 A Okay.

6 Q She would be in the multi -- multi patient use

7 of single use vial category of my two hypotheticals, correct?

8 A Yes.

9 Q And so she would be not best practices, but

10 totally aseptic and safe?

11 A Well, she wasn't aseptic. She didn't have --

12 Q Oh, right. She had --

13 A -- hand hygiene.

14 Q She had the glove problem.

15 A She didn't perform hand hygiene. She had the

16 meds in the patient care area. So she was not aseptic.

17 Q Yeah, you're right. But I mean, her -- she was

18 not reusing. She was solely multi using the vials, correct?

19 A She was not reusing needles and syringes to

20 re-enter vials.

21 Q Right.

22 A She was reusing vials for multiple patients.

23 Q So she wasn't double dipping?

24 A Correct.

25 Q Okay. Thank you.

1 THE COURT: All right. Mr. Staudaher, redirect.

2 MR. STAUDAHER: Yes. And I know it's close to lunch,
3 so I will try to be as brief as possible.

4 REDIRECT EXAMINATION

5 BY MR. STAUDAHER:

6 Q In your -- let's take off with where Mr. Wright
7 just left off, Ms. Hubbard. You were asked about her
8 practices, correct, whether they were aseptic or not, and you
9 said they weren't?

10 A Correct.

11 Q And even in your notes, and if you have to refer
12 to those, that's fine too, beside the fact that she was doing
13 the glove thing, was there other thing -- or were there other
14 things that you observed her doing that -- the state of her
15 back table where the medications were being housed, how she
16 handled the syringes in certain situations with the patients
17 that caused you some concern?

18 A Yes. So, you know, obviously there were, as
19 I've stated previously, multiple open vials of propofol, so
20 she was pooling vials of propofol. And there were instances,
21 and I have to look at the notes, but where she would -- let me
22 refer just to...

23 I'm sorry. It's going to take one second. Do you
24 have --

25 Q It's near the back.

1 A Okay. Right. So multiple -- she also at
2 certain points had multiple syringes of propofol left on the
3 table between cases, during cases. So if -- and I never saw
4 this happen, but if, you know, you gave some propofol to a
5 patient and set the syringe down next to other clean syringes
6 that you had pre-drawn and weren't paying attention and
7 grabbed the wrong one, there's the potential, you know, for
8 using a used syringe on a patient. I didn't see that happen
9 with her.

10 Q So you didn't actually see her grab a used
11 syringe and use it on a new patient, but she was mixing the
12 area where they were with used and new syringes?

13 A Yes.

14 Q So we have --

15 A Or she would set down the used syringe and --

16 Q That's what I meant.

17 A Right.

18 Q Okay. So we got multiple bottles of open
19 propofol, we've got syringes that are filled, we have syringes
20 that have been used dropped near or put near areas where
21 syringes that hadn't been used were being kept; is that fair?

22 A Correct.

23 Q And then the general state of clutter or lack
24 thereof of her station or the area that she was working, did
25 that give you any concern?

1 A Again, just for, you know, for -- yes, for if
2 you grab the wrong thing and get mixed up. And as I said, you
3 know, I had concerns of her coughing into her hands and not
4 doing hand hygiene, doing these prep of meds in a patient care
5 area.

6 Q So at least the potential, based on what you saw
7 directly in front of you with Ms. Hubbard, of really a breach
8 coming if circumstances arose?

9 A Right. Correct.

10 Q Now overlay that, and counsel asked you about
11 specific things where you were, you know, you eliminated the
12 scopes for whatever reason, then you eliminated this and you
13 eliminated that as far as mechanisms of transmission, correct?

14 A Yes.

15 Q You were left with the one that you actually
16 observed and saw and had people admit to you that they did it?

17 A Yes.

18 Q One of the things you were asked specifically by
19 Mr. Wright was regarding speed, speed and isolation; meaning
20 speed of procedures and isolation, I think you said, didn't
21 necessarily have an impact, correct?

22 A Yes.

23 Q Overlay speed of the turnover though, which is
24 what you said it doesn't -- I think you used -- caveated that
25 by saying it wasn't turnover, correct --

1 A I don't recall.

2 Q -- that you were considering?

3 A Well, I'm sorry. Can you -- I don't --

4 Q Bad question. The speed of the turnover;
5 meaning patient rolling in, patient rolling out, patient
6 rolling in, patient rolling out.

7 A Yes.

8 Q Overlay that with what you saw in Ms. Hubbard's
9 situation.

10 A I just think it can up the chances of making a
11 mistake, but assuming you don't make -- anyway, yes.

12 Q Go ahead.

13 A No, it -- the faster you're doing something, you
14 know, I'd be concerned that you can miss a step or something
15 can happen and you can make a mistake.

16 Q Okay. So overlay the speed to a degree that it
17 taxes the employee, the person doing the -- the healthcare
18 provider to such a degree that they are having trouble keeping
19 up; would that be also a problem overlaying these other things
20 that you saw?

21 A Sure, that could be a concern.

22 Q So when you bring -- when you talked about
23 totality of the circumstances --

24 MR. WRIGHT: Objection. Objection. We didn't talk
25 about totality of the circumstances. This isn't a tort case.

1 THE COURT: Well --

2 MR. STAUDAHER: I think -- did you use that word?

3 THE WITNESS: I thought I did, but...

4 THE COURT: I think -- okay. I think she did.

5 MR. STAUDAHER: That's why I was asking it. It came
6 up on cross.

7 THE COURT: That's fine. It's overruled.

8 THE WITNESS: Because we were asking that
9 isolation --

10 THE COURT: I believe that that was her phrase, so
11 you can ask her what she means or whatever. So Mr. Staudaher,
12 go ahead and state your question.

13 MR. STAUDAHER: Thank you, Your Honor.

14 BY MR. STAUDAHER:

15 Q When you said totality of the circumstances, I
16 mean, were you looking at like speed and isolation, or this in
17 isolation, or were you looking at everything that you
18 investigated?

19 A We're looking at the totality of care, of all
20 these factors together.

21 Q Mr. Wright also used the word multiple times
22 absolutely safe, you know, when he was describing those
23 practices. In those settings, overlaying the speed, the
24 clutter, the open bottles, all that kind of stuff, even if you
25 were following those practices, do you think it's absolutely

1 safe under those conditions to perform the acts like Mr.
2 Wright described?

3 A Well, I think as I said to Mr. Wright, CDC
4 doesn't recommend those practices for a reason, so I don't
5 think that they're absolutely safe.

6 Q There is a risk?

7 A Yeah.

8 Q Now, in fact, with Mr. Lakeman, he acknowledged,
9 did he not, that there was a risk and that he just took steps
10 to minimize that risk?

11 A Yes.

12 Q So this isn't a question about whether or not
13 people perceive or don't perceive something as being risky or
14 not risky, you have admissions to that effect?

15 MR. WRIGHT: Objection.

16 THE COURT: Yeah. That's sustained. I'm not sure
17 why either, but --

18 MR. WRIGHT: And it --

19 THE COURT: Mr. Wright, I sustained your objection,
20 so that's enough.

21 MR. WRIGHT: Oh, sorry.

22 THE COURT: Mr. Staudaher, can you rephrase the
23 question --

24 MR. STAUDAHER: I'll move on.

25 THE COURT: -- or move on.

1 BY MR. STAUDAHER:

2 Q And clearly safety and risk are something that
3 you look at every day, correct?

4 A It's something I consider in these
5 investigations and with the work I do at CDC, yes.

6 Q And as you said, CDC has the practices in place,
7 the best practices for a reason?

8 A Right.

9 Q In a situation -- well, strike that.
10 I'm going to go to your article for just a minute.

11 A Which one?

12 Q Now I'm talking -- and let's get to the right
13 article.

14 MR. STAUDAHER: And I move for admission -- I didn't
15 hear what the --

16 THE COURT: And I believe Mr. Wright wants you to
17 have --

18 MR. WRIGHT: Objection.

19 THE COURT: -- a chance to read the article. Do you
20 have any objection?

21 MR. WRIGHT: Yes.

22 THE COURT: Okay.

23 MR. STAUDAHER: The article that he questioned?
24 Okay. I'm sorry.

25 THE COURT: No. I thought you were talking about the

1 article from yesterday.

2 MR. STAUDAHER: No. I'm talking about the one today,
3 the --

4 THE COURT: Oh, I'm sorry.

5 MR. WRIGHT: Yes. I --

6 THE COURT: That one was admitted, correct, or no,
7 you didn't want that admitted?

8 MR. WRIGHT: No.

9 THE COURT: Okay. That's not admitted and that
10 hasn't been --

11 MR. WRIGHT: She simply --

12 THE COURT: It hasn't been marked. That's fine.
13 Okay.

14 MR. STAUDAHER: Okay. I would like to --

15 THE COURT: Just so we're clear. I was confused
16 about which article you were asking.

17 BY MR. STAUDAHER:

18 Q I'm talking about the one entitled "Infection
19 control assessment of ambulatory surgical centers," and it
20 appears to be published in JAMA, the Journal of the American
21 Medical Association?

22 A Yes.

23 MR. STAUDAHER: And I would move for at least it to
24 be a court's exhibit before we're done today, so we have that.

25

1 BY MR. STAUDAHER:

2 Q But in this article, is JAMA a peer reviewed
3 journal?

4 A Yes.

5 Q I mean scientifically accepted in the public and
6 the like?

7 A Yes.

8 Q The journal you referred to yesterday and
9 somewhat today, the Clinical Infectious Disease journal, is
10 that likewise a peer reviewed journal that's accepted and used
11 and relied upon in the medical community?

12 A Yes.

13 Q In this particular instance, is it important
14 when you do studies to -- I mean a sample size, if you are
15 looking at a population study, important?

16 A Yes.

17 Q The smaller the sample size or larger the sample
18 size, does it have an effect?

19 A It can, yes.

20 Q In this particular case you said that there were
21 three states involved --

22 A Yes.

23 Q -- in the pilot study.

24 And those states were what again?

25 A It was Maryland, Oklahoma and North Carolina.

1 Q And if I see the information here, it says there
2 were 32 centers in Maryland, 16 in North Carolina and 20 in
3 Oklahoma that were reviewed?

4 A Yes.

5 Q So of those three states, those 60 -- what is
6 it, 63 centers?

7 A Sixty-eight.

8 Q Sixty-eight. Sorry. My math's bad today.
9 Sixty-eight centers is your sample size?

10 A Yes.

11 Q Nationwide, correct? I mean, that's how -- I
12 mean, if we talked about all surgical centers across the
13 nation and you only looked at 68 in this particular instance?

14 A In three states.

15 Q Right. So you said over and over again this is
16 not -- you can't extrapolate to the nation based on this
17 limited sample size?

18 A We make a statement in the article that the
19 pilot was conducted in a very -- in a small number, and that
20 the findings may not be generalizable among -- beyond those 68
21 ambulatory surgical centers that were piloted, yes, we say
22 that.

23 Q And if you would go to Table 2, the one that you
24 referred to specifically under injection safety, handling of
25 medications, that section.

1 A Yes.

2 Q You said, and I'm looking at the numbers here
3 myself now, that you did not observe the practices that were
4 admitted to or observed by CDC in Nevada; is that correct, at
5 any of those locations, except for the propofol being used
6 from patient to patient?

7 A So we saw single dose, or the group who did
8 this, so, you know, including the surveyors did see single
9 dose vials being reused, but didn't see the reuse of syringe
10 component that we saw in Las Vegas.

11 Q Okay. So needles and syringes used, didn't see
12 that -- reused?

13 A Needles and syringes used for more than one
14 patient, none of the three states reported that.

15 Q Okay. And then there was also on a section that
16 says, new needle, new syringe not used to enter medication
17 vials for more than one patient?

18 A Yes. And that was not observed in any of the
19 three pilot states.

20 Q Now, those are in the three pilot states, and
21 the total number that you saw out of the, and it's got 64
22 here, 18 of 64 --

23 A Yeah. So I'm sorry, where -- oh, for the single
24 dose vial?

25 Q Under where it says single dose medication.

1 A Yeah. So the denominator, meaning the 64, there
2 may be instances where the surveyor didn't complete that
3 question. So that was why it's not 60. There were probably
4 four instances where, you know, they didn't observe it or
5 didn't, you know, document. They left it blank or something.

6 Q So of all the centers that we're looking at, 16
7 of them were reusing propofol or the medication vials from
8 patient to patient?

9 A So 18 of the facilities were using single dose
10 vials --

11 Q Eighteen. Sorry.

12 A -- not necessarily propofol, but single dose
13 vials.

14 Q Something.

15 A Something. A medication labeled as single dose
16 for more than one patient.

17 Q Does that make it okay?

18 A No.

19 Q In fact, it goes against the recommendations
20 you've talked about, correct?

21 A Yes. Which is -- yes.

22 Q Now, you said the purpose of this study was to
23 develop an infection control sheet for people that went in to
24 look at these clinics, or these ambulatory care centers so
25 that they would know what to look for.

1 A Right. So we developed it and this was piloting
2 it so that it could be used more widespread beyond these three
3 states.

4 Q So is it fair to say that prior to that the
5 agencies that did that didn't necessarily have a road map to
6 follow as to what to look for when they went to inspect?

7 A So I don't want to speak for Medicare's process
8 other than to say I think we both agreed that having a
9 standardized tool focusing on encouraging surveyors to
10 actually do observations of practices in a standardized manner
11 was necessary and important.

12 Q And that was the purpose of this?

13 A Yes.

14 Q Mr. Wright asked you the question about by doing
15 what you're talking about with the patients, or what he was
16 talking about with the patients with, you know, reusing a
17 syringe on one patient with one vial and then throwing the
18 whole set away; do you remember that?

19 A Mm-hmm.

20 Q That if you follow that practice, and it's not
21 the recommendation clearly, but if you follow that practice
22 you didn't see how that would create some sort of infection in
23 the next patient, or at least a --

24 A Well, the vial wouldn't be used on the next
25 patient. Their syringe and needle wouldn't be used on the

1 next patient, so there is no next patient, so there can't be
2 transmission because you've thrown it all away for his
3 scenario [indicating].

4 Q So that's in a setting where you've got the time
5 to do those things appropriately, correct?

6 A It's -- again, I can't say the setting, but if
7 it's the practice that you are throwing everything away.

8 Q Would you consider that still acting safely and
9 prudently and economically to do it that way?

10 A It's not recommended by CDC, so that's all I can
11 say.

12 Q Now, when you were here in Las Vegas and
13 subsequently going back for the initial part of the sort of
14 communications that Mr. Wright was talking to you about, were
15 you aware of any instances where propofol had been reported as
16 having been moved from room to room by CRNAs?

17 A So when I was in Las Vegas doing the field
18 investigation, was I aware of reports of propofol moving room
19 to room, no.

20 Q So if that was information that you had, would
21 that have undermined, made no difference, or supported your
22 ultimate conclusions in this case?

23 A Well, keeping in mind we didn't have room
24 assignments for patients to know, you know, they could have
25 all been in the same room, but yes, that -- that supports our

1 conclusions.

2 Q I mean, if -- and I'm saying when I ask that
3 question, I'm assuming at this point, and we've got actually
4 the evidence now, that there's been a way to determine the
5 rooms of the patients.

6 A Right.

7 Q And that there was evidence that propofol moved
8 from room to room.

9 A And there's evidence, I think, from the exhibit
10 yesterday that there were cases in both rooms; is that --

11 Q Correct.

12 A So yes, propofol moving room to room would
13 strengthen our conclusions about propofol, contaminated
14 propofol being the vector.

15 Q Last question for you. All the pieces of
16 information, things that you've been shown in court, the --
17 looking back on hindsight, all the experience you have now,
18 everything that you know, is there anything that one would
19 have done differently or that you feel has come to light that
20 would change or alter your ultimate conclusion that this
21 infection outbreak occurred through unsafe injection
22 practices, the types that you observed and heard about and saw
23 here?

24 A My conclusion is still that I think this
25 outbreak occurred from unsafe injection practices through the

1 reuse of syringes to enter propofol vials and then using those
2 vials for multiple patients.

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

4 THE COURT: All right. Mr. Santacroce, any recross?

5 MR. SANTACROCE: Yes. Can you read the juror
6 questions, because I wanted to follow up on one of those?

7 THE COURT: Oh, okay. All right. We have some juror
8 questions up here, and I'll just ask them at this point. A
9 juror had asked -- and I think you may have already covered
10 this after the question came in, but I'll just ask you anyway.
11 Did you ever witness Linda Hubbard double-dip with the
12 propofol to re-dose a patient while she was pooling the vials?

13 THE WITNESS: I did not.

14 THE COURT: All right. Was Dr. Fischer Langley also
15 in training during the time that you were inspecting the
16 Endoscopy Center of Southern Nevada?

17 THE WITNESS: Yes, she was.

18 THE COURT: During your inspection of the endoscopy
19 center, you had six months of CDC experience. You now have
20 five additional years of CDC experience. In hindsight, would
21 you have done anything differently during the inspection or
22 looked more deeply into other areas of the clinic now that
23 you're a more experienced investigator?

24 THE WITNESS: No.

25 THE COURT: Is it part of the CDC mission to disclose

1 unsafe practices to local authorities who have enforcement
2 authority over healthcare facilities that you inspect?

3 THE WITNESS: So I would need a little bit more
4 context for that. Is that like assuming that a report comes
5 directly to CDC about an unsafe practice, or something that we
6 identify during like an Epi-Aid investigation like this?

7 THE COURT: Either way.

8 THE WITNESS: So --

9 THE COURT: Let's say you learn of an --

10 THE WITNESS: Do you want me to do --

11 THE COURT: Yeah, do both, how that works.

12 THE WITNESS: So if we are in -- so doing this
13 investigation, we're there at the invitation of the health
14 department, right. So we're sharing with them what we're
15 finding, and then the health department has authority to
16 either take whatever action in their jurisdiction. So they're
17 aware.

18 If CDC gets an independent report coming in through
19 email or something of something unsafe, we're going to connect
20 that reporter with the health department to do appropriate
21 follow up, because again, as I've said, we can't just go into
22 a state on our own and do whatever we want.

23 So we do our best. If we get a report of an unsafe
24 practice that isn't anonymous, that can be tracked somewhere.
25 If it's anonymous, we'll write back and say you should let the

1 health department know, this is bad, you should, you know,
2 whatever, do XY or Z. But if we can, you know, make the
3 connection, we try to do that so it can be followed up.

4 THE COURT: And then if the health department of
5 whatever state wants to invite the CDC to assist the
6 investigation, they can do that, right?

7 THE WITNESS: They can do that, yes.

8 THE COURT: And then do you make enforcement
9 recommendations to state authorities such as, you know, close
10 the clinic or, you know, whatever?

11 THE WITNESS: You know, I don't know how to answer
12 that. You know, we will talk to them and maybe make
13 recommendations about have you engaged the licensing board for
14 the physician or nurse, you know, have you -- have you engaged
15 the regulatory folks to come in and do an assessment. So
16 there is some of that discussion going on depending on the
17 scenario and if it's warranted.

18 THE COURT: Okay. Mr. Santacroce.

19 MR. SANTACROCE: Thank you.

20 RECROSS-EXAMINATION

21 BY MR. SANTACROCE:

22 Q I wanted to follow up on that one question that
23 asked you if you would, as you looked back in hindsight, if
24 you would have done anything different. Okay?

25 A Okay.

1 Q As I understand it, you left Nevada, you being
2 the investigative team, left Nevada in mid January 2008,
3 correct?

4 A Yes.

5 Q And you left a preliminary findings report when
6 you left, correct?

7 A Yes.

8 Q And that finding was what you stated here, that
9 you believed the transmission was through propofol?

10 A Yes.

11 Q And that opinion has never changed, correct?

12 A That is still my opinion, yes.

13 Q And then when you got back to Atlanta after the
14 middle of January, did you do any follow-up investigation?

15 A Can you be more specific? Talking to Mr.
16 Lakeman or --

17 Q Whatever.

18 A Yeah. I mean, I called Mr. Lakeman as part of
19 that investigation. And then I need you to be more specific,
20 because I --

21 Q Let's talk about Mr. Lakeman. When you got back
22 to Atlanta, you talked to Mr. Lakeman on the telephone?

23 A I did.

24 Q And one of the things he told you which you had
25 not observed was that biopsy equipment was being reused?

1 A Correct. That's what he stated.

2 Q Did you follow up on that portion of the
3 investigation?

4 A So when we left, the investigation is still
5 going on through the Southern Nevada Health District folks,
6 right. So that was communicated to them and they continued to
7 do the ground investigation to look at, I believe, purchase
8 records or whatever else. But going back again, we still --
9 it ultimately hasn't changed my conclusion because not all of
10 our patients got biopsies.

11 Q I'm not asking you that, ma'am. I'm asking you
12 if you did a follow-up regarding the reuse of the biopsy
13 equipment.

14 A So I believe the Southern Nevada Health District
15 was doing that.

16 Q What did they do?

17 A I can't speak to -- they'd have to answer that.
18 I think they looked at purchase records, but I'm not --

19 Q Well, how do you base your opinion that the
20 Southern Nevada Health District followed up on that?

21 A Because I believe there were conversations and
22 I've seen previously they have a report I haven't -- you know,
23 addressing some of that. I didn't specifically review that
24 whole report for this testimony, and so I -- that's all I can
25 say.

1 Q When you got back to Atlanta, you knew that the
2 source patient on July 25, 2007 and the infected patient, the
3 only one that day that's been reported to us both had
4 biopsies, correct?

5 A Correct.

6 Q And now you had information from Mr. Lakeman
7 that biopsy equipment had been reused, correct?

8 A Correct.

9 Q What did you do to follow up on that possible,
10 which you've already indicated was a possible means of
11 transmission? Did you do any further investigation regarding
12 the source patient, Mr. Washington, and the reuse of the
13 biopsy equipment?

14 A Well, so while we were on site, biopsy equipment
15 was not being reused, so I was not so concerned about going
16 back to them and saying stop doing something I didn't observe
17 you doing in the first place. But Southern -- I did not
18 independently do anything further about the biopsy equipment.
19 That was communicated back to the health department for follow
20 up.

21 Q Ma'am, by your own admission in your report, you
22 noted that the investigation took place five months after the
23 infection dates, and you had concerns that the practices
24 weren't the same as they occurred on the transmission dates.
25 You noted that in your findings and on the last page of your

1 report, that it was a concern to you.

2 A We noted in the --

3 MR. STAUDAHER: Is there a question?

4 MR. SANTACROCE: Yes.

5 THE COURT: True or yes.

6 MR. SANTACROCE: That is the question.

7 THE COURT: Okay. Is that correct?

8 THE WITNESS: So we noted in the limitations of our
9 study that we were not present in July and September to
10 observe the practices, but by our observation or, I'm sorry,
11 Dr. Langley's observation, syringe reuse was happening even
12 while we were there and was not a new practice, and by my
13 interview with Mr. Lakeman the same thing.

14 BY MR. SANTACROCE:

15 Q So the fact that you didn't observe it didn't
16 mean that it didn't happen, because you had new evidence, new
17 testimony, new information that biopsy equipment had been
18 reused, and that the two people in question on one of the
19 infection dates both had biopsies, correct?

20 A Yes.

21 Q You also became aware that you had some
22 incorrect information on your trip report, specifically the
23 table, specifically that Mr. Lakeman had started both heplocks
24 on July 25, 2007, when that wasn't true?

25 A I became aware of that yesterday, yes.

1 Q That's the first time?

2 A I believe so, yes.

3 Q And did you become aware of this fact yesterday,
4 that the one RN had started heplocks on one, two, three, four,
5 five, six, seven of the infected patients on September 21,
6 2007?

7 A Yes.

8 Q Okay. Is that the first time, yesterday?

9 A That you pointed out that, yes.

10 Q So there was -- there has been no interview
11 prior to yesterday of Lynette Campbell, who started those
12 heplocks?

13 A By us? I don't recall who we interviewed at the
14 facility. We may have talked to Ms. Campbell. I don't
15 recall.

16 Q Do you recall if she was even working there when
17 you were there?

18 A I don't recall.

19 Q The interview with Mr. Lakeman, when he talked
20 about double dipping procedure -- or double dipping, he
21 emphatically told you that he never reused the same needle and
22 syringe on multiple patients; isn't that correct?

23 A From patient to patient, correct, he did say
24 that.

25 Q Now, Mr. Wright had asked you about the changing

1 procedures over the years of recommendations from CDC. All of
2 the CRNAs that you interviewed were all trained in the '60s
3 and '70s; isn't that true?

4 A I don't know.

5 Q Well, they're much older than you are, aren't
6 they?

7 A They are older than I am, yes.

8 Q And the testimony has been in this courtroom
9 that most of them were trained in the '60s and '70s. Do you
10 know what the procedures were in the '60s and '70s for the
11 reuse of multiple dose vials of medication?

12 A I can't answer that. I wasn't practicing in the
13 '60s or '70s.

14 Q Were you practicing in 1985, when propofol came
15 out?

16 A No.

17 Q You don't know what the procedures were for
18 these trained CRNAs in 1985, when propofol came out; isn't
19 that correct?

20 A I don't know what the procedure for these four
21 were, no.

22 Q But we do know that all of the CRNAs at the
23 facilities were using the same procedures, weren't they?

24 A No, that's not correct.

25 Q Okay. Tell me how they were different.

1 A Ms. Hubbard was not reusing needles and syringes
2 to enter the propofol vials, nor was, I believe, one of the
3 Vinnies that you spoke to. Mr. Mathahs and Mr. Lakeman were
4 the only two that I'm aware of that were reusing needles and
5 syringes to go back into the propofol vials for multiple
6 patients.

7 Q That you were aware of?

8 A Correct.

9 Q So if there were other testimony in this
10 courtroom that you weren't aware of, you would have no
11 knowledge of that, correct?

12 A Correct.

13 Q And the fact of the matter is --

14 MR. STAUDAHNER: Your Honor, I'm going to object to
15 that. I think it mischaracterizes the testimony that has
16 come in, in this case.

17 MR. SANTACROCE: The Court has already instructed the
18 jury numerous times about the recollection.

19 THE COURT: That's sustained. But again, ladies and
20 gentlemen, it's your recollection. I don't recall that,
21 but...

22 BY MR. SANTACROCE:

23 Q All of the CRNAs were reusing propofol, correct?

24 A For multiple patients, yes.

25 Q So they all had that in common?

1 A Yes.

2 Q Now, Mr. Staudaher asked you about propofol
3 moving from room to room and you said, oh, that would support
4 my conclusion, correct?

5 A If there are cases in separate rooms, yes.

6 Q Wouldn't there have to be proof that those cases
7 in separate rooms, the propofol had been moved from room to
8 room? Looking at this chart again, remember we went over this
9 yesterday, two rooms?

10 A Yes.

11 Q One, two, three people infected in Room 1, one,
12 two, three people infected in Room 2?

13 A Mm-hmm.

14 Q Wouldn't there have to be some evidence that
15 propofol actually went from Room 1 to Room 2 at or near the
16 same time that these people were infected?

17 MR. STAUDAHER: Objection. Calls for a legal
18 conclusion and it belies the testimony and the evidence.

19 MR. SANTACROCE: It does not.

20 THE COURT: Well, no, I think it doesn't call for a
21 legal conclusion. You can make a -- she can make a factual
22 conclusion, if that would call for some transfer from one room
23 to the other. Assuming that, you know, the chart indicates
24 that the top people are one room and the bottom people are a
25 second different room.

1 THE WITNESS: Okay. So assuming -- assuming that,
2 and that we have this orange is the source patient, then for
3 these green patients in another room to be infected, yes, the
4 propofol, contaminated propofol vial or vector would have at
5 some point prior to these people's procedure have to have gone
6 into another room.

7 BY MR. SANTACROCE:

8 Q The infected bottle would have had to go into
9 that room, correct?

10 A An infected vial, whether it was an original one
11 or whether the contamination was perpetuated to other vials
12 somehow, the virus would have had to go from this room to that
13 other room before these patients' procedures, yes.

14 Q And when you did your investigation, you didn't
15 even know what room these patients were in, did you?

16 A No.

17 Q And in fact, when Mr. Staudaher told you that
18 propofol was moving from room to room, and again, this is my
19 recollection of the testimony, the jury can recollect their
20 own, but the evidence has been that it only moved from room to
21 room in the late afternoon during the last procedures. Okay.
22 Knowing those facts, would it change your opinion?

23 A Well, we were told that propofol didn't move
24 from room to room. You're saying that it did.

25 Q No, I'm not saying that. Mr. Staudaher told you

1 that. And I'm saying that what the evidence suggested so far,
2 that it did move from room to room except in the late
3 afternoon when they were closing down.

4 MR. STAUDAHNER: That actually is incorrect based on
5 Mr. -- that we have a box of stuff that goes from room to room
6 that we had testimony of that had --

7 THE COURT: All right.

8 MR. SANTACROCE: And you have not identified that
9 propofol went in this box from room to room.

10 THE COURT: Okay. Ask them -- okay. Again,
11 obviously it's the jury's recollection. That's disputed, what
12 the evidence and the inferences are. Mr. Santacroce, ask your
13 question is --

14 MR. SANTACROCE: Would that change --

15 THE COURT: -- if the evidence were, or if your
16 understanding was that the propofol moved at the end of the
17 day, would that affect your opinion or...

18 MR. SANTACROCE: What she said.

19 THE WITNESS: Thank you. So if the vector of
20 transmission, the contaminated vial, whatever, moved to the
21 room after these patients' procedures, that would have an
22 impact on, you know, my conclusion that that's how
23 transmission could have occurred.

24 MR. SANTACROCE: Very good. Thank you, ma'am.

25 THE COURT: Mr. Wright.

1 MR. WRIGHT: Yep.

2 THE COURT: Any recross?

3 MR. WRIGHT: Recross and regular cross. I forgot
4 something.

5 THE COURT: Oh, okay.

6 RECROSS-EXAMINATION

7 BY MR. WRIGHT:

8 Q On the totality of care, you were out there
9 looking for hygiene problems, any kind of problems you
10 observed that were inconsistent with best practices you would
11 bring to their attention, correct?

12 A We would try to get addressed, yes.

13 Q Okay. That's -- that was the totality of the
14 care you were looking at; is that fair?

15 A I mean, what we're looking at is not limited to
16 just infection control. I mean, we're looking at order of
17 patients. We're looking at --

18 Q Okay.

19 A -- you know, all -- so that's the totality of
20 care, the general practices in the facility.

21 Q Okay. And anywhere in your trip report does it
22 talk about the likelihood of transmission of hepatitis C
23 because of the speed of the procedure?

24 A It does not.

25 Q Okay. Because that was not a concern at all,

1 correct?

2 A You know, we noted that they did a high volume
3 of procedures with quick turnover. And so when you do quick
4 turnaround of rooms through procedures, there is a possibility
5 of making mistakes, as opposed to if you're taking a long
6 time.

7 Q Okay. Where's that noted in there?

8 A It's not in the report -- well, in the report
9 actually, hold on. I don't think it's explicitly noted in the
10 report. What I was looking for is I think we mentioned the
11 volume of patients seen for a two-room facility, but we did
12 not explicitly --

13 Q Right. You said they do 50 to 60 procedures a
14 day.

15 A Yes.

16 Q That's what they reported and that's what they
17 were doing and that's what they did on the dates in question,
18 correct?

19 A Yes.

20 Q And there's nowhere that that raised any
21 concerns about gee, maybe that's why hepatitis C was the
22 method of transmission, correct?

23 A Yeah. We didn't address that in the report,
24 correct.

25 Q Okay. Because it wasn't, correct? Do you think

1 that was the method of transmission?

2 A I think the reuse of syringes in the medication
3 vials that they used is the method of transmission, and why
4 that happened is not what you're -- what I'm --

5 Q Right. And you don't deal with anything at all
6 in your epidemiological study regarding knowledge, intent,
7 risk, the mental component that the criminal law deals with,
8 right?

9 A We don't do criminal investigation, but
10 obviously we do ask, you know, why was this practice going on.
11 I mean, Mr. Lakeman indicated, you know, that he thought he
12 was being safe by doing it holding the plunger down. So
13 again, it's getting at the mechanism of why would you think
14 this is okay.

15 Q Okay. But you find -- you're looking for what
16 happened regardless of accident. It makes no difference at
17 all, you want to stop what happened. Whether it's mistaken
18 belief, whether it's misunderstanding, misapprehension, you
19 want to stop it, correct?

20 A I do, but I also want to try to learn why it
21 happened so that I can -- we can educate others about taking
22 those factors out of play.

23 Q Okay.

24 A But yes, you're right. I want to stop it from
25 happening.

1 Q Okay. But there isn't anything in your report
2 regarding whether it was accidental through misunderstanding,
3 through miseducation, or whether it was intentional or
4 knowing, absolutely knowing exactly what the rules are and
5 turning a blind eye to them, none of that is addressed in your
6 findings and conclusions, correct?

7 A We do not address the intent in the report.
8 But --

9 Q Correct.

10 A Okay. Correct.

11 Q You don't in any report. You're not a criminal
12 investigator, are you?

13 A I am not.

14 Q Okay. Have you seen this before?

15 A I don't think I have. I don't think so. Oh,
16 yes. I think I have seen this before, but this is from --

17 Q 2006.

18 A -- several years ago. Yeah.

19 Q Okay. And what is that?

20 A So it's a provider education from California
21 about Medicare Part B.

22 Q And that's CMS stuff?

23 A Yes.

24 Q Okay. And it's talking about what -- as far as
25 CMS arm of the federal government, what a single use vial is,

1 correct?

2 A Yes.

3 Q Okay. And that's in -- the date on it is 2006.

4 A Okay.

5 Q And I'd asked you about did they change things
6 in 2009, do you recall?

7 A Well, so they have issued, you know, a different
8 policy related to this, but I can't tell you the date that
9 policy came about.

10 Q Okay. This is an old one.

11 A This is old.

12 MR. WRIGHT: Okay. I'd move its admission.

13 MR. STAUDAHER: No objection.

14 THE COURT: All right. There being no objection, and
15 for the record that's exhibit what, Mr. Wright?

16 MR. WRIGHT: N-1.

17 THE COURT: Exhibit N-1 will be admitted.

18 (Defendant's Exhibit N-1 admitted.)

19 MR. WRIGHT: You're going to get a clean copy
20 [inaudible].

21 THE COURT: Okay. Because that's your highlighting.
22 May I see counsel at the bench, please.

23 (Off-record bench conference.)

24 THE COURT: I'm told that lunch is not too far off,
25 so. Everybody okay? No?

1 JUROR NO. 13: I said okay.

2 THE COURT: Oh, okay. I was hoping you were saying
3 no, I'm not okay, I'm hungry, we need to go to lunch.

4 JUROR NO. 14: Well, my stomach's growling.

5 THE COURT: All right. We'll finish up here soon and
6 that way the witness who's from out of state will be free to
7 leave. Mr. Wright, go ahead.

8 BY MR. WRIGHT:

9 Q This N-1 is a provider education bulletin
10 article for wastage of drugs in single dose vials, correct?

11 A Correct.

12 Q Article text, I'm looking -- uh-oh. "Questions
13 have arisen regarding Medicare coverage for wastage of drugs
14 from single use vials that contain more medication than the
15 amount required by one or more patients. If a provider must
16 discard the remainder of a single use vial after administering
17 a portion to a Medicare patient or patients, Medicare will
18 cover the discarded drug along with the amount administered."

19 Single use vial, and this is a bulletin that pertains
20 to billing practices for clinics or CMS qualifying,
21 certifying, whatever, correct?

22 A You produced the bulletin, so I don't know. I
23 mean, I've seen the bulletin before, but I can't -- I
24 didn't -- I haven't looked -- I can't answer that.

25 Q Well, what are these bulletins generally for?

1 A I think they're for -- you said the title is a
2 provider education bulletin, so it's going to their provider
3 group, I guess.

4 Q And used for what?

5 A To inform. I mean, it does say below, Billing
6 for drug waste example, so I'm guessing it's for billing.

7 Q Okay. I don't want you to guess. I mean, you
8 work with --

9 A It says for billing for -- I don't work for CMS.
10 I didn't generate this document, so I, you know --

11 Q I understand you don't work --

12 MR. STAUDAHER: Well, to the extent that he's asking
13 her to interpret the document, I would object to that.

14 THE COURT: Right. That's fair.

15 MR. WRIGHT: I'm not asking her to interpret it.
16 It's in evidence and I'm reading it.

17 MR. STAUDAHER: I believe he asked what it means and
18 what it's for, so.

19 THE COURT: All right.

20 MR. WRIGHT: You're right.

21 THE COURT: If she -- if you don't know --

22 BY MR. WRIGHT:

23 Q I'm asking do you have knowledge --

24 A I've seen the document --

25 Q -- of what these provider education Medicare

1 Part B bulletins are sent out to the providers for?

2 A No.

3 Q "Single use vial. Medicare's definition of
4 single use vial is a vial that has a volume suitable for
5 administration to one or more patients. For example, a vial
6 of medication contains enough for three patients, and all
7 three patients are scheduled to come in for administration on
8 the same day, likely for the same reason. The manufacturer
9 states that after opening, the open vial is good for only 12
10 hours, at which time any remaining medication must be
11 discarded. Administering this medication to all three
12 patients within 12 hours of opening the container fits the
13 definition of single use. Medicare will cover reasonable
14 amounts of wasted drugs from single use."

15 Did I read that correctly?

16 A That is what it says.

17 Q Okay. Medicare is not following best practices,
18 right?

19 A Correct.

20 Q Okay. So this arm of the federal government
21 says if you have a 50, and it has a six hour time to use it,
22 and you have patients you can use it on within that period of
23 time, you can -- it is single use by definition, to use it on
24 all three of them, correct?

25 A That is what this document says.

1 Q One arm of the federal government doesn't listen
2 to -- are you part of the federal government, CDC?

3 A Yes.

4 MR. WRIGHT: No further questions.

5 THE COURT: All right. We have another juror
6 question up here. A juror wants to know if one time use bite
7 blocks were soaking in the first tub of disinfectant with
8 three to ten scopes being cleaned and soaked in the
9 disinfectant as well, if the tub containing the scopes, the
10 bite blocks and the disinfectant is all full of fecal matter,
11 can the hep C be transferred from one scope to another or from
12 a scope to a bite block or so forth?

13 THE WITNESS: So that's totally gross. And so I'm
14 just going to acknowledge that, as you all know. I'm just
15 going to put that out there. But that would not be an
16 efficient mechanism of transmission for the virus from one
17 patient to another.

18 THE COURT: And why? Can you explain for us why
19 that is?

20 THE WITNESS: So and, you know, I don't work in the
21 division of viral hepatitis. I think you'll be hearing
22 from -- well, I won't go there. But it's a blood-borne virus,
23 so it's really blood to blood. So when we, you know -- so
24 it's, you know, you've got your syringe that has blood that
25 introduces the blood to the vial and it goes directly into the

1 IV of the patient. But putting the scopes all into dirty
2 water together but not using that same scope, it's just --
3 it's not -- it's just not how you're going to see it
4 transmitted.

5 THE COURT: Now, you could potentially if, you know,
6 have hepatitis virus on a scope from blood of a patient onto
7 the scope, correct?

8 THE WITNESS: You could have -- yes, you could have
9 virus on the scope following the procedure, yes.

10 THE COURT: Okay. But it's not likely the -- if I
11 understand you --

12 THE WITNESS: It's going to -- the virus is going to
13 jump through the water and swim onto another scope and then go
14 to the patient; that just wouldn't be an efficient way for it
15 to transmit.

16 THE COURT: Is it a possible method, or is that
17 beyond your expertise?

18 THE WITNESS: I don't -- I think that's -- it's a
19 little bit -- I'm going to say it's beyond my expertise, but I
20 don't -- I don't see that as a way to do it.

21 THE COURT: Okay. And then the same question -- the
22 next question is sort of related. If let's just -- if a
23 virally infected scope or bite block went from solution to the
24 water, would that potentially then put the virus into the
25 water solution, or the water, the rinse?

1 THE WITNESS: I mean, so like if you've got virus on
2 a piece of equipment and put it into the water, I mean,
3 theoretically I guess it could, you know.

4 THE COURT: Okay. Follow up, State?

5 FURTHER REDIRECT EXAMINATION

6 BY MR. STAUDAHER:

7 Q Just on the one diagram or the item that you
8 were shown, the exhibit by defense counsel, that was from
9 California, correct, not Nevada?

10 A It said California. Well, it was a --

11 Q And it was from 2006, not 2000 -- late 2007,
12 correct?

13 A Correct.

14 Q Is that right?

15 A That's what -- based on what I saw in the
16 report, yes.

17 MR. STAUDAHER: Nothing further, Your Honor.

18 THE COURT: Mr. Santacroce.

19 MR. SANTACROCE: I just have a follow-up to that
20 juror's question.

21 FURTHER RECROSS-EXAMINATION

22 BY MR. SANTACROCE:

23 Q Do you know how long hep C virus lasts outside
24 of the body?

25 A So I think there have been studies showing on

1 surfaces anywhere from 16 hours, but not beyond four days, I
2 think, is what I'm aware of in the literature.

3 Q So it's -- and I think that substantiates one of
4 the experts that was here. It can live from 16 hours to days?

5 A Correct. That is my understanding from the
6 literature.

7 Q And it could live in that water for that amount
8 of time?

9 A It can live on surfaces. I don't know if they
10 looked within water or solution, but at least the virus can
11 survive outside of the body for that length of time, yes.

12 MR. SANTACROCE: Thank you.

13 THE COURT: Mr. Wright.

14 MR. WRIGHT: I just want to be clear.

15 FURTHER RECROSS-EXAMINATION

16 BY MR. WRIGHT:

17 Q Medicare is a federal program, correct?

18 A It is, yes.

19 Q I mean, this isn't State of California. This is
20 a California provider bulletin --

21 A Correct.

22 Q -- for Medicare, the federal program, defining
23 single use as you can use it for more than one patient,
24 correct?

25 A Yes.

1 MR. WRIGHT: Thank you.

2 THE COURT: Mr. Staudaher.

3 MR. STAUDAHER: Nothing.

4 THE COURT: Any additional juror questions for the
5 witness? All right. No additional juror questions. Ladies
6 and gentlemen, we're going to take our lunch break. We'll be
7 in recess for an hour, which puts us at 1:45.

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

15 Notepads in your chairs. Follow the officer through
16 the rear door.

17 (Jurors recessed at 12:43 p.m.)

18 THE COURT: And ma'am, don't discuss your testimony
19 with anyone else who may be a witness in this case.

20 THE WITNESS: Am I excused --

21 THE COURT: You're excused.

22 THE WITNESS: -- so I can catch my flight?

23 THE COURT: Exactly. She's free to leave. You're
24 excused and --

25 THE WITNESS: And so I can discuss with --

1 THE COURT: Well, you can't discuss with like the CDC
2 people who are going to testify --

3 THE WITNESS: Okay. But if my supervisor asks, you
4 know, did you go --

5 THE COURT: Yes, that's fine. You can tell them, you
6 know, you testified, you were here for a long time. But what
7 we don't want --

8 THE WITNESS: I obviously won't talk to other
9 witnesses like --

10 THE COURT: Right. Like here's what --

11 THE WITNESS: Okay. Not a problem.

12 THE COURT: -- they asked me and here's what the
13 jurors wanted to know and here's what I said, that's what we
14 don't want you doing --

15 THE WITNESS: No, not a problem. Thank you for
16 clarifying.

17 THE COURT: -- with anybody else who may be a
18 witness.

19 THE WITNESS: Thank you for clarifying.

20 THE COURT: Okay. Thank you.

21 And you all can go to lunch.

22 (Court recessed at 12:45 p.m. until 1:53 p.m.)

23 (Jurors reconvene at 1:53 p.m.)

24 THE COURT: Court is now back in session, and the
25 State may call its next witness.

1 MS. WECKERLY: Gayle Fischer Langley.

2 GAYLE LANGLEY, STATE'S WITNESS, SWORN

3 THE CLERK: Please state and spell your first and
4 last name for the record.

5 THE WITNESS: My first name is Gayle, G-a-y-l-e.
6 Last name is Langley, L-a-n-g-l-e-y.

7 THE COURT: Thank you. Ms. Weckerly.

8 DIRECT EXAMINATION

9 BY MS. WECKERLY:

10 Q How are you employed?

11 A With the Centers for Disease Control and
12 Prevention in Atlanta.

13 Q And what is your -- what is your job with the
14 CDC?

15 A I'm currently a medical epidemiologist.

16 Q Medical epidemiologist?

17 A Correct.

18 Q Can you describe your educational background,
19 please.

20 A Sure. I received my bachelor's degree in
21 business, and I then went to public health school at the
22 University of Michigan, and then I attended medical school at
23 the University of Rochester in New York. And then I started
24 a -- and then I practiced in pediatrics for four years, and
25 then I joined the CDC through their epidemic intelligence

1 service, which is a fellow -- a training fellowship program.

2 Q And describe the process that you went through
3 to join the CDC in that training fellowship for epidemiology;
4 is that what you said?

5 A Correct. So it's a fellowship program. You
6 have to apply. You have to write essays and submit your
7 background information, and it's a selective process in that
8 there are applicants and they pick a certain number for
9 interviews and then a certain number receive the fellowship.

10 Q And hence you were obviously selected. Once
11 you're selected, do you through the CDC get additional
12 training in epidemiology?

13 A I received training in epidemiology when I was
14 in public health school, but then I received additional
15 training through the program the first two months, or
16 training -- additional training in epidemiology, and then we
17 do applied training through our assignments over the two
18 years.

19 Q And where were you assigned initially, I guess?

20 A The division of viral hepatitis.

21 Q And did that division of viral hepatitis
22 encompass all, like hepatitis A, B and C?

23 A Correct.

24 Q And so you have expertise in all of those areas?

25 A I was trained in all those areas, correct.

1 Q Okay. Is that where you were working in January
2 of 2008?

3 A Yes.

4 Q And you've since moved to a different division;
5 is that --

6 A Correct.

7 Q How long did you stay in that fellowship in the
8 division of the hepatitis?

9 A I was in the fellowship for two years, and
10 throughout my fellowship I stayed in the division of viral
11 hepatitis. And then I moved to another division after I
12 completed my fellowship, but remained within CDC.

13 Q In early January of 2008, did you come out to
14 Las Vegas to investigate a hepatitis C outbreak?

15 A I did.

16 Q And did you come with your colleague, Dr.
17 Schaefer?

18 A I did.

19 Q Can you just describe how it was that you came
20 to be assigned to investigate this outbreak?

21 A So we received the initial call. The initial
22 call came to the division of viral hepatitis on, I believe it
23 was January 2, 2008, and they were -- the state health
24 department was concerned about two cases of hepatitis, of
25 hepatitis C that occurred in patients who had recently had

1 procedures done at an endoscopy clinic, and then a third was
2 identified the following day.

3 And it was a number that was unusually high, and also
4 they had this common -- they had this procedure at a common
5 location, so they were concerned about it. So I was not on
6 that initial call, but my supervisor who is the branch chief
7 of the division of viral hepatitis was concerned about it and
8 started involving me.

9 We typically -- if there's any type of outbreak
10 investigation, they typically involve EIS officers, and I was
11 the one who was selected for this assignment.

12 Q And what's EIS?

13 A I'm sorry. The epidemic intelligence service,
14 which is the fellowship.

15 Q Okay. And is it typical for the CDC to respond
16 with two investigators, as you did in this particular case?

17 A It is common and the reason why I went, I was
18 coming again, out of the division of viral hepatitis, and then
19 Dr. Schaefer was coming from the infection control side of
20 CDC, which is the division that she's in. And it is very
21 common to have at least two people come.

22 Q And were you two selected because of your
23 various specialties, yours in hepatitis C and then hers in the
24 sort of ambulatory care type setting or hospital setting?

25 A Right. General infection control, yes. That's

1 correct.

2 Q Now, when you arrived in Las Vegas, who did you
3 make contact with?

4 A I made contact with Brian Labus, who was the
5 senior epidemiologist in the local health department.

6 Q And after you and I assume Dr. Schaefer was with
7 you, after you met with Mr. Labus, did you all go over to the
8 facility, the endoscopy center?

9 A That's correct.

10 Q And do you recall how long you were there on the
11 first, the first day?

12 A I recall we first had a meeting at the local
13 health department for a couple hours, just an introductory
14 meeting. We went over some issues about -- or some
15 description of what hepatitis is with the local health
16 department, and they provided some information about what they
17 knew so far. And then we walked over to the clinic, as I
18 recall, either late that morning or later that afternoon, and
19 spent a few hours at the clinic that day.

20 Q Now, between yourself and Dr. Schaefer and the
21 other officials, did you discuss or plan how the investigation
22 was going to work or what steps you were going to take in the
23 investigation?

24 A Yes, in that initial meeting as well.

25 Q And what --

1 A Just general.

2 Q What were you generally, what was the plan of
3 action?

4 A Generally, with outbreak investigations in
5 general, the first thing we do is make sure the evidence is
6 there that there is an outbreak, and then we do what's called
7 case findings. So we determine if there were other patients
8 that were potentially infected.

9 And the reason why we want to know how many or who
10 was infected is because then we start looking for patterns of
11 whether -- of how we can explain why people, if they were
12 infected at a location, why they were infected. And then we
13 have -- we also reviewed what we generally look for in terms
14 of the way that the infection can be transmitted.

15 So we look at infection control practices in general.
16 So in this case that included injection practices, the
17 colonoscopy practices, and then just general overall
18 cleanliness and the atmosphere in the clinic.

19 Q So and part of what you did was verify that the
20 cases that they had reported were, in your opinion, acute
21 cases of hepatitis C infection?

22 A Correct.

23 Q And then after that, I mean, did you review
24 charts or records at the center to see if you could determine
25 some sort of commonality or some sort of reason why those

1 cases presented?

2 A Are you talking at the endoscopy clinic or at
3 the health -- what records the health department had?

4 Q At the endoscopy clinic.

5 A Yes, we did. We just initially -- I mean, that
6 was certainly part of the investigation. Initially we were
7 just looking at their charts in general to get a sense from
8 the patients that we knew were infected, to get a sense of the
9 procedures, of how they were laid out and who had done the
10 procedures. But eventually we did a comprehensive chart
11 review.

12 Q Now, how long were you at or in Las Vegas doing
13 this investigation?

14 A We were there for ten days, and we started on
15 January 9, I believe.

16 Q With your expertise in hepatitis C, when you
17 came to investigate this type of outbreak, did you have ideas
18 in your head based on your training of what possible
19 mechanisms of transmission would exist at this type of a
20 clinic?

21 A Sure. So hepatitis C is spread through the
22 blood when it gets into skin or other -- or what's called
23 mucosal service -- surfaces. So in this type of clinic, any
24 of the injection practices were our number one concern.
25 That's been in our experience the most likely cause of the --

1 of these type of outbreaks or transmissions. And then we did
2 also consider the endoscopic procedure itself or the endoscope
3 itself.

4 Q In your investigation, did you review or observe
5 the various parts of the clinic; meaning the preop area, the
6 procedure room and the recovery area?

7 A We did. We did -- we first had a just tour of
8 the general facility. I think that was either the first or
9 second day. But then we spent a great deal of time observing
10 every part of the clinic. We observed the intake area. We
11 observed actually the placement of IVs or intravenous
12 catheters. We observed patients being escorted into the room.

13 We observed the technicians taking the endoscopes out
14 of the room, or the colonoscopes out of the room or into the
15 room. We observed the actual proceed -- we observed the
16 anesthetists actually administering the anesthesia. We
17 observed the actual endoscopic procedure and everything after
18 the endoscopic procedure, as well as the patients being
19 escorted to the recovery area.

20 Q When you observed the IVs being placed or the
21 preop area, did you personally observe anything that caused
22 you concern in that part of the facility?

23 A There was nothing that we observed that was of
24 any concern, no.

25 Q And as -- well, in your training and as a

1 doctor, have you seen IVs placed and then a saline flush put
2 through the IV?

3 A Yes. That's generally done if they're not going
4 to administer the medication right away.

5 Q That's the reason for the flush?

6 A Yes.

7 Q To keep the line open?

8 A Make sure it's open and keep it open, yeah.

9 Q Have you seen lines flushed more than once, or
10 is it typical that it's only flushed one time?

11 A I guess it depends on the situation. But in
12 this situation they didn't flush it more than once.

13 Q You only saw it flushed one time?

14 A Correct.

15 Q So nothing -- based on your observations of the
16 preop area, did that give you any indication of how the
17 hepatitis transmission took place in this instance?

18 A We couldn't find reason in this instance. And I
19 guess the other thing I left out we also asked about, which
20 had been implicated in previous outbreaks, was the use of
21 glucose monitors, sharing of glucose monitors. But they don't
22 actually check blood glucose at the clinic, so we ruled that
23 out in the preop and postop area as well.

24 Q Okay. How about in the procedure rooms, what
25 did you observe in that part of the clinic?

1 A So we observed again, when the endoscopes or
2 colonoscopes were brought out, and we observed the
3 anesthetists actually administering the medication.

4 Q And what were your observations of the methods
5 or the practices of the anesthetists?

6 A So I observed the anesthetists a couple times,
7 and the first time I observed -- well, actually, I
8 shouldn't -- I don't recall if it was the first time, but the
9 most striking thing was I observed an anesthetist reuse a
10 syringe on a patient.

11 Q And describe what you saw. What did this
12 anesthetist do?

13 A So the -- to initiate the anesthesia he had
14 taken out a syringe, put it into -- it was prefilled with, I
15 believe, 1 cc of lidocaine. He put it into a bottle of
16 propofol, which was the anesthesia that they were using. He
17 drew it up, injected it into the IV line.

18 Then the patient needed additional propofol, so he --
19 and he had removed the syringe from the line. He took it out
20 and took the needle off the syringe, and then replaced that
21 same syringe with a new needle and went back into the propofol
22 bottle.

23 Q And why did that catch your attention, or why
24 did that cause you concern?

25 A Because we know that use of -- reuse of syringes

1 can infect the actual bottle of propofol or whatever
2 medication is being used, because if a patient has hepatitis
3 C, the act of putting the needle with the syringe into the IV
4 can cause pushback, and the virus can get in that way, or when
5 you take off the needle it causes negative pressure and it can
6 push back into the syringe.

7 So if you then have a syringe that's infected, you
8 can then infect a bottle of medication, whatever it is,
9 propofol or whatever.

10 Q And when you saw this, did this immediately
11 catch your attention?

12 A Absolutely, yes.

13 Q Is it a pretty -- I mean, is it a big error?

14 A Yes.

15 Q And what did you do when you saw it?

16 A The procedure ended and then I did speak with
17 the anesthetist after the procedure ended.

18 Q And why did you feel you had to intervene at
19 that point?

20 A Because it was such a breach that it had to
21 be -- somebody had to be notified, and so -- I actually did
22 also call my -- we have supervisors who help us through the
23 investigations, and I called him as well.

24 Q Who was the anesthetist that you observed?

25 A It was Mr. Mathahs.

1 Q And after you -- you discussed the breach with
2 him?

3 A I did.

4 Q Okay. Did you -- did you have the opportunity
5 while you were there to observe other CRNAs?

6 A I did.

7 Q And did you ever see them engaging in this same
8 practice of removing the needle on a syringe and reusing the
9 syringe?

10 A I did not.

11 Q How about the use of propofol vials on multiple
12 patients, did you observe that?

13 A I did that -- I did observe that, yes.

14 Q With other CRNAs?

15 A With other CRNAs.

16 Q Now, given what you observed with Mr. Mathahs in
17 combination with your observations of the multi-use of the
18 propofol, I mean, what did you -- what conclusions did you
19 draw from those two observations?

20 A That that can result in the transmission of the
21 virus to other people.

22 Q And is that because of what you just explained
23 about when you go back in the vial it sucks the --

24 A Correct. Once you infect the vial and then you
25 use it on another patient, there's a potential for infecting

1 other patients.

2 Q When you talked to Mr. Mathahs, did you speak to
3 any other employees at the endoscopy center to explain what
4 you had observed him doing?

5 A I just spoke to Mr. Mathahs. We interviewed all
6 the CRNAs, and that was part of my interview with him and
7 education, educational exchange, I guess, with him. But then
8 we also spoke with physician and, I believe, other staff
9 members. So a small number of people, each day we informed
10 them what we observed and we of course told them about what
11 happened.

12 Q Okay. And you -- do you remember how far into
13 your investigation that you saw this breach?

14 A It was pretty early. I don't recall the exact
15 day, but it was definitely the first week. It was maybe two
16 or three days into the investigation.

17 Q And although you had seen this, you know, breach
18 where you felt like you had to just step in, in between
19 patients, did you continue to make observations at the clinic
20 to see if there were any other breaches or concerns with
21 regard to a hepatitis C outbreak?

22 A I mean, we did. We -- I don't recall if it
23 was -- I think it was after the -- we had observed this,
24 because that again, was our primary concern was the injection
25 practices. But we did observe the way they cleaned the

1 colonoscopies as well as, you know, as I described, we looked
2 at the preop area and the postop area.

3 Q In terms of cleaning the scopes themselves, did
4 you personally note any deficiencies in the way the clinic was
5 doing that?

6 A The only deficiency we noted was scopes were
7 generally cleaned -- or dipped in solution and cleaned with a
8 brush, and then they're cleaned through an automated process.
9 And the only thing that we noted was that when they initially
10 cleaned the scopes, they kept the solution for two scopes and
11 they were supposed to change it after every scope.

12 But really the most important part in terms of
13 disinfection is the automated process, and we didn't find any
14 deficiencies in that. We didn't think the first deficiency
15 was deficient.

16 Q And based on what you saw with the, you know,
17 that deficiency that you just described with the scope
18 cleaning, in your opinion could that have been a mechanism for
19 this transmission of hepatitis C?

20 A I don't think so. Very little likelihood, yeah.
21 Again, I think the cleaning after that, the automated cleaning
22 is more important than the initial stuff.

23 Q Based on -- well, further on in your
24 investigation or at some point in your investigation did
25 yourself and other investigators want to rule out the

1 possibility of an employee transfer of the virus to the
2 victims?

3 A Correct. So we interviewed all the employees
4 that were available, and we also requested that they give a
5 blood specimen to see if they were infected.

6 Q And was that ruled out as a source?

7 A It was ruled out a source in combination of two
8 things. First we had -- there was some time until we got
9 those results back, and nobody tested positive for hepatitis
10 C. And the other thing that made it less likely was that we
11 had patients who had different virus types, the different
12 genotypes, two different genotypes.

13 And it was unlikely or it was not -- not likely at
14 all that if somebody was infected with hepatitis C and then
15 infected patients that you'd have two different viruses, two
16 different clusters of viruses. So it just didn't make sense.

17 Q And the two genotypes were on July 25 and then
18 September the 21st?

19 A Correct.

20 Q At some point maybe -- I don't think you were
21 still at the clinic then, but at some point there was genetic
22 testing or phylogenic testing done from the, I guess, thought
23 to be source patients and the people that got infected on
24 those two days, correct?

25 A Correct.

1 Q And can you explain what that is?

2 A So I'm not a microbiologist or a laboratorian,
3 but basically hepatitis C mutates, or there are errors in the
4 virus that happen pretty frequently. So if viruses are close
5 together, their -- the -- their genetic sequence is very
6 similar. But the fact that it changes so frequently, if it
7 changes so frequently you can tell when they -- they're not
8 the same virus.

9 So we tested what we thought was a source patient, so
10 somebody who came before those who were infected in the
11 procedure logs as best as we found, and we found one patient
12 who matched the genetic fingerprint of one of the patients
13 that were infected on one of the days of July, the July 25th
14 day. And then for the September 21st date, again we found a
15 patient who we knew had hepatitis C whose -- the genetic
16 fingerprint of the virus matched the other.

17 Q The other infected people?

18 A The other seven that we found on that day --

19 Q Based --

20 A -- or eight, or seven.

21 Q I'm sorry. I didn't --

22 A I'm sorry. Seven, seven patients.

23 Q So seven. Based on your observations and your
24 knowledge of hepatitis C and your interviews, did yourself and
25 your colleagues reach a conclusion regarding the mechanism of

1 transmission in this instance?

2 A We thought the most likely scenario was the
3 reuse of syringe in combinations with the use of the vials on
4 multiple patients caused the outbreak or the transmission of
5 the virus.

6 Q And as you sit here now several years later, is
7 your conclusion any different than what you had made back in
8 2008?

9 A It is no different.

10 Q Thank you.

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

12 THE COURT: All right. Cross.

13 CROSS-EXAMINATION

14 BY MR. WRIGHT:

15 Q Hello.

16 A Hi.

17 Q My name is Richard Wright, and I represent
18 Mr. -- Dr. Desai. Your training before your current position,
19 you're a physician?

20 A Correct.

21 Q Okay. And you are a pediatrician?

22 A Correct.

23 Q Practiced for four years, and then joined the
24 CDC?

25 A [No audible response.]

1 Q Okay. And the way you joined, you joined as
2 a -- on a fellowship program?

3 A Correct.

4 Q Okay. And how long -- when did you start your
5 program?

6 A I started the program July 2006.

7 Q Okay. So you had -- you were 18 months into the
8 program?

9 A That's correct.

10 Q Okay. And this -- what do you call this, a
11 field trip, a field investigation, where you're assigned?

12 A Field investigation, or sometimes we call it an
13 Epi-Aid.

14 Q Okay.

15 A Or an epidemiologic aid.

16 Q And you had done a number of those?

17 A I had done before that, I had done two others.

18 Q Okay. And what type were those?

19 A I did an investigation of hepatitis A in
20 adoptees from foreign countries. And I did one in hepatitis
21 B, or the perinatal, where transmission of hepatitis B from
22 mother to child in a state in the United States.

23 Q Those two weren't outbreak investigation?

24 A They were outbreak investigations, yes.

25 Q They were?

1 A They were considered outbreak investigations or
2 Epi-Aids.

3 Q Okay. What's an outbreak?

4 A So an outbreak basically means there are more
5 cases than you usually have in very --

6 Q Okay. The A one was investigating transmission
7 from who?

8 A Hepatitis A in international adoptees.

9 Q Okay. And how is that transmitted?

10 A That's transmitted from hand to mouth, so a
11 different -- different from hepatitis C.

12 Q And then the other, hepatitis B?

13 A Correct.

14 Q That's transmitted how?

15 A That is transmitted in the same way that
16 hepatitis C is, but in this case it was an investigation
17 looking at mother to child transmission, so through the
18 birthing process. So it's again a blood transmission, but
19 it's a different way than what was in this case.

20 Q Okay. Now, when you came -- I'm going to go to
21 January 2008, and we know you arrived with Melissa. I can't
22 remember her --

23 A Dr. Schaefer, yes.

24 Q Dr. Schaefer. Okay. On January 9, okay.

25 A Correct.

1 Q And your -- you had been called -- when I'm
2 saying you, I'm talking about CDC had been called to help the
3 Southern Nevada Health District --

4 A Correct.

5 Q -- the local agency, health agency, and that was
6 because they had no experience in doing this?

7 A Correct. I mean, they have a lot of outbreak,
8 general outbreak experience, but specifically with one that
9 includes infection control practices they had limited
10 experience.

11 Q Okay. And so when you came and you had your
12 first meeting at the Southern Nevada Health District on
13 Wednesday the 9th, what took place at that first meeting? Did
14 you educate them?

15 A We did a little bit about hepatitis. I mean, we
16 have the luxury of focusing on one type of infection, and
17 they're dealing with multiple, multiple infections. So we
18 just made sure everybody understood a little bit about
19 hepatitis C itself. They were very experienced with outbreak
20 investigations, but again, had limited experience with this
21 type of investigation.

22 So we went over what you generally look for, as I
23 described before, which was generally the infection control
24 practices, including the injection practices as well as the
25 endoscopes and colonoscopes.

1 Q Okay. I had access to your notes which you
2 brought, and in the beginning it -- the beginning notes in
3 chronological order, where you are discussing various methods
4 of transmission, et cetera, historically and what to look for,
5 that would have been from the first meeting with the health
6 district?

7 A I don't recall if that's -- if that was the
8 notes for that particular meeting. I'd have to look at the
9 date, if you -- I mean, the date of that meeting was the 9th.

10 Q Okay. Well, did you bring them with you?

11 A I did not.

12 Q Okay. The -- I'm going to hand you a set of my
13 copy.

14 A Sure. Okay.

15 Q I numbered them myself. I mean those weren't
16 your numbers, but I just numbered them all the way through.

17 A Okay.

18 Q Okay. And would those -- you tell me, starting
19 with like the beginning just look at them. Would the
20 beginning of the notes be back in Atlanta?

21 A Yes.

22 Q Okay. And you were planning your trip --

23 A Correct.

24 Q -- is that right?

25 A Correct.

1 Q I mean, the notes represent all you were doing
2 to set up everything, how you were going to get the samples,
3 ship them back, labeling, all the stuff you do in preparation;
4 is that correct?

5 A I guess it depends on what pages you're
6 referring to, but yes, that's the general --

7 Q Okay. Well, you tell -- I was trying to just do
8 it a little more quickly, but if you want to go page by
9 page...

10 A Sure. No, that's the general, right, the first
11 three pages.

12 Q I don't want to mischaracterize it either. If
13 I'm saying something wrong --

14 A It's accurate.

15 Q -- cut me off or correct me.

16 Tell me -- just go ahead and flip. I'm looking for
17 like the --

18 A I'm sorry. What are you looking for?

19 Q -- first meeting with Southern Nevada Health
20 District.

21 A Oh. Well, that -- well, I can look to see if I
22 have anything.

23 Q I'm looking -- 1/9/08 looks like page 13.

24 A Thank you. Yes. I see that.

25 Q I'm doing this, Dr. Langley, because it was a

1 number of years ago, so I want you to look at that and refresh
2 your recollection.

3 A Sure.

4 Q I hope I don't -- and does that appear to be
5 your notes of the first meeting with the health district?

6 A It is. I can't say that it's -- I don't know.
7 I mean, it is. It's labeled 1/9 and it has some notes. I
8 can't say that it's comprehensive of what was discussed during
9 that meeting, but...

10 Q Okay. But it has a whole list, Brian Labus,
11 Patricia --

12 A Correct.

13 Q Stephen, do you know what that says?

14 A I think it's Bethel. Or Stephanie Bethel
15 [phonetic], I think, is the name.

16 Q And a number of people at the first meeting,
17 correct?

18 A Correct.

19 Q And where it has objectives, would that be you
20 explaining the objectives?

21 A It's just an outline of what -- yes.

22 Q Okay. Like what are the objectives?

23 A Notify facility. Investigate. And then it
24 says, Investigation, looking for source, identify people at
25 risk and notify. And then it says in parentheses, Testing.

1 And then four, it says, Publicize findings.

2 Q Okay. So that's just a really overall general
3 description, correct?

4 A Yes. Correct.

5 Q Okay. Now, do you remember how long that
6 meeting went of you educating them?

7 A I would -- if I had to guess, it would be a two
8 hour. I mean, that would be typical for those type of
9 meetings, but I don't recall specifically.

10 Q And then you all went over to the clinic for the
11 first time, correct?

12 A Correct.

13 Q And it's your understanding that that was the
14 first time the clinic received notice?

15 A I believe so. I can't remember if Brian Labus
16 had contacted them just ahead of us coming. But it was
17 shortly -- it was in a very short period of time.

18 Q Okay. Right. And that's what I meant. I mean,
19 you didn't just walk in the door?

20 A No, no.

21 Q You may have called them, but they hadn't known
22 of this --

23 A Correct.

24 Q -- from the 2nd of January?

25 A They had not known, correct.

1 Q Okay. And when you arrived, do you recall who
2 you met with?

3 A I believe it was Dr. Carrol, and I believe it
4 was their office manager whose name I don't -- Tonya. I don't
5 remember her last name.

6 Q Okay.

7 A I think one of the charge nurses was present,
8 but I don't remember. I believe it was a male. I don't
9 remember his name.

10 Q Okay. And I presume you -- do you remember who
11 did most of the talking?

12 A Brian Labus did.

13 Q Okay. And was that to brief them on the
14 discovery, the suspicions, that's my word, the fact that it's
15 tied to that clinic, and to tell them an investigation is to
16 take place?

17 A Yes.

18 Q Okay. So it -- all that you knew, and I think
19 there were three known --

20 A At that point there were three known cases,
21 correct.

22 Q Okay. And one was on one date, two were on the
23 same date, all acute hepatitis C, all from that clinic, all of
24 this was disclosed?

25 A Correct.

1 Q Okay. There wasn't any like go in and we're not
2 going to tell you why we're here or anything?

3 A Absolutely not, no.

4 Q Okay. And so full disclosure on your part,
5 meaning the CDC --

6 A Correct.

7 Q -- the authorities there, and then you were
8 seeking their cooperation and full disclosure on their part?

9 A Correct.

10 Q Okay. And when -- do you recall the reaction of
11 Dr. Carrol or the charge nurse or Tonya Rushing, the clinic
12 side when it was disclosed to them?

13 A They were surprised and concerned and wanted to
14 assist trying to figure it out.

15 Q Okay. And the first -- and I think you
16 indicated and I've looked at your interview with the police
17 and the grand jury testimony. So essentially first day, as
18 best you recall, introductory meeting and a plan to come back
19 and take a brief tour of the facility, get the lay of the land
20 to understood [sic] the procedures in the rooms, correct?

21 A Correct. Yes.

22 Q And it seems that the next day, returning would
23 have mainly been devoted to chart review?

24 A There was chart review and I can't -- as I
25 recall, I cannot remember which day we started the actual

1 observations, but yes, I think we started with chart review,
2 correct.

3 Q Okay. And the chart review, the way you were
4 starting out, you were getting all of the patient charts for
5 both days, the July date and the September date?

6 A Correct.

7 Q So we get -- and there was like 126 patients or
8 procedures, and so you have all of the charts and you had your
9 abstraction, your forms pre-prepared to which you could look
10 at everything and as part of your investigation see if
11 anything jumps out?

12 A Correct.

13 Q And at some point you start your observations,
14 and this is your -- the way you do this is you're going to on
15 site firsthand personally aside from interviews, you're going
16 to look at everything that's theoretically involved in the
17 procedures and possible transmission?

18 A Correct.

19 Q Okay. And look at it more than once?

20 A Correct.

21 Q Okay. And you did that over the ten-day period?

22 A Right. I don't remember how many days we spent
23 on observation.

24 Q Oh, okay.

25 A There was more -- there was probably more work

1 on the chart review because of the volume of the --

2 Q Okay. And when -- and going to the
3 observations, the -- you looked at preop area, looked at
4 saline, because it's a multi-use vial or bottle?

5 A I think, yes.

6 Q And on those you would observe the practices
7 taking place that day?

8 A Correct.

9 Q And you're presuming that the practices would
10 have been the same six months earlier?

11 A That is correct.

12 Q And I mean, you can go ahead and fill out any
13 answer. You also asked the people? I mean, is this the way
14 you always do it?

15 A Yes. That's the way we always do it, and then
16 the other evidence we have is from charts, is looking at
17 charts.

18 Q Okay. The -- but the -- you don't -- like
19 you're not -- you may or may not be looking at the same nurses
20 on July -- pardon me, January 10 that were working on
21 September 21?

22 A That's correct.

23 Q Okay.

24 A We -- I guess we used, you know, our
25 observations. And then in the chart, one of the patients who

1 became infected had their IV catheter placed by an anesthetist
2 as opposed to one of the nurses who were doing it in the preop
3 area, so we again thought it was unlikely that it happened in
4 the preop.

5 Q Okay. And the -- and you didn't see anything in
6 observations like re-dosing, reflushing a heplock?

7 A Correct. And we asked about that also, whether
8 that was commonly done, and they said it generally doesn't
9 have to be done because they go pretty quickly into the
10 procedure room, which is what we observed.

11 Q Okay. And if there were times where patients
12 backed up and they were there for like 30 minutes in the preop
13 room and there may have been reflushing?

14 A That's possible.

15 Q Okay. And but as far as observations go, you
16 didn't see anything that went, whoops, red flag?

17 A No. We did not.

18 Q Okay. In the preop room?

19 A Correct.

20 Q Okay. Then you go into the procedure room and
21 how many CRNAs do you believe you observed?

22 A I believe I observed two.

23 Q Okay. And we know one's Mr. Mathahs.

24 A Correct.

25 Q And do we know the other?

1 A Mr. -- as I recall, Mr. Mione, I believe his
2 name is, or Mione.

3 Q Okay. The -- and same day, different days, do
4 you know?

5 A I don't recall that.

6 Q Okay. The -- and any other CRNA's observation?

7 A I don't recall. We had broken up into groups,
8 so Dr. Schaefer and Mr. Labus, we were all observing different
9 people at different times. So if one person observed
10 somebody, we didn't necessarily -- another person didn't
11 necessarily repeat that.

12 Q Okay. And Mr. Mione, you didn't observe any
13 reuse of syringes by anyone other than Mr. Mathahs?

14 A Correct.

15 Q So Mr. Mione obviously didn't reuse syringe?

16 A Correct. I interviewed him also and asked him
17 about it and he said, I didn't observe it, and he denied ever
18 doing that.

19 Q Okay. So it was I didn't -- I don't reuse
20 syringes?

21 A Correct.

22 Q Okay. But he acknowledged multiple -- using
23 propofol on more than one patient, do you know?

24 A I don't recall whether he said he did or didn't
25 on that. But I think that was commonly done in the practice,

1 that they were using it as a multi-use vial, so but I don't
2 know what he said.

3 Q Okay. And you weren't conducting a criminal
4 investigation, correct?

5 A No.

6 Q Okay. And so like when you interviewed Mr.
7 Mione or Mr. Mathahs, you didn't prepare like a report of it
8 or a record -- tape-record it, correct?

9 A No. Correct. We didn't do that.

10 Q And so like on Mr. Mione, I mean, do you recall
11 from observation he wasn't reusing, right --

12 A Correct.

13 Q -- the syringes?

14 A Correct.

15 Q And is it fair to say -- do you like actually
16 remember watching Mr. Mione, or it's just you know you did and
17 you know there was no other reuse of syringes?

18 A I mean, I just did not see him reuse syringe. I
19 observed him and I did not see him reuse a syringe. I mean, I
20 was looking for that obviously, and so.

21 Q Okay. But what I'm asking is do you remember
22 Mr. Mione?

23 A I do, yes.

24 Q Okay. What's he look like?

25 A I believe he had gray hair that was pulled back

1 in a ponytail, as I recall.

2 Q How old?

3 A I think maybe in his 50s, 60s. I don't recall
4 exactly.

5 Q Okay. I was just trying to make sure which
6 Vinnie it was.

7 A Okay.

8 Q Did you know Mr. Sagendorf?

9 A I don't recall that name, no.

10 Q Okay. Was Mr. Mione clean shaven?

11 A I don't recall. I think so. I don't think he
12 had a beard.

13 Q Okay. But in any event, he didn't -- Mr. Mione,
14 as you recall -- and there's no notes or anything of this,
15 correct?

16 A I don't recall seeing anything in my notes about
17 it.

18 Q I didn't either, but I --

19 A I don't recall seeing...

20 Q Okay. But Mr. Mione, no syringe reuse. We
21 don't know if he acknowledged multiple use of propofol vial,
22 but it was clear to you from the clinic that they were using
23 propofol vials, multi -- with multi patient, correct?

24 A Correct.

25 Q Okay. Now, your observation of Mr. Mathahs, as

1 I understand it, he -- you observed that he initially dosed
2 the patient with lidocaine, propofol first injection. The
3 patient needed an additional dose, and so Mr. Mathahs had the
4 same needle and syringe which he had removed from the IV, and
5 he took off the needle, threw it in the sharps container, I
6 guess, I don't know.

7 A Correct.

8 Q Got out a new sterile one, put it on the same
9 syringe, and then went back into the same propofol vial?

10 A That's correct..

11 Q And then re-dosed the -- gave another dose to
12 the patient?

13 A That's correct.

14 Q Okay. And the -- did he -- did he then reuse
15 that vial? You stepped in?

16 A That I don't -- no, I didn't step in right --
17 the procedure ended actually, and I actually don't know if
18 that vial was reused or whether it was finished or not.

19 Q Okay. So as far as what he did, there would
20 have been no method of transmission unless he was multi-using
21 propofol vials?

22 A That's correct. It has to be a combination of
23 the syringe and the reuse.

24 Q So what you saw was one-half of the necessary
25 combination?

1 A One piece of the puzzle, correct.

2 Q And so seeing that, procedure over, you
3 interviewed him?

4 A Correct.

5 Q Okay. And I think it was like 10 to 20 minute
6 interview was your -- is what I read.

7 A Correct.

8 Q And you told -- tell us as best you recall the
9 exchange.

10 A I told him -- I mean, it was a -- it was a
11 comprehensive interview, but I believe I started with what I
12 had observed, which was the reuse of syringe. And his
13 reaction was that he didn't think that was improper, that he
14 had -- that he thought as long as he didn't reuse the needle,
15 that that was okay to reuse the syringe. And so I explained
16 to him that it wasn't, especially in combination with using
17 the same -- using a single dose vial on multiple patients.

18 Q Okay. And he -- do you recall that he said, I
19 wouldn't -- I would never reuse a needle?

20 A Correct. That's what he said.

21 Q Okay. And he said, I am putting on a new
22 sterile needle?

23 A Correct.

24 Q And his misapprehension was that that was safe?

25 A Correct. That was my -- he didn't say that, but

1 he basically said that he thought that it was okay to reuse
2 the syringe as long as the needle was not reused.

3 Q Okay. And that you were -- you were there
4 engaged in the conversation. Did Mr. Mathahs appear sincere
5 and genuine about it?

6 A I had no reason to doubt him.

7 Q Okay. And so as far as he understood he was
8 engaging in a safe practice, but in fact it was not under --

9 A Correct. That was my -- that was my
10 interpretation. He didn't use the word "safe," but he thought
11 it was okay.

12 Q Okay. And to put it a different way, he didn't
13 recognize that he was engaged in any risky behavior?

14 MS. WECKERLY: Objection.

15 THE COURT: Sustained. Re-ask that question a
16 different way. And that wasn't conveyed to you, correct?

17 THE WITNESS: I'm sorry?

18 THE COURT: That wasn't conveyed to you in --

19 THE WITNESS: That he used that word, risk?

20 THE COURT: Right.

21 THE WITNESS: Correct. That was not conveyed.

22 BY MR. WRIGHT:

23 Q Okay. He believed -- all through your entire
24 interchange with him, you believed that he simply
25 misunderstood the risks that were involved?

1 A That was my interpretation, yes.

2 Q Okay. And he also said, I won't do it anymore?

3 A He did say that, yes.

4 Q Okay. And the -- you, knowing this information,

5 then went to, I think you called your supervisor in Atlanta?

6 A I did.

7 Q Okay. And then you had a meeting with Dr.

8 Carrol, Tonya Rushing, and do you recall who else?

9 A Again, it was that charge nurse. I don't

10 recall --

11 Q Male or a female?

12 A I think it was a male.

13 Q Jeff Krueger?

14 A I really don't recall the name.

15 Q Okay. Male charge nurse.

16 A But I believe those were the people who were in

17 the room.

18 Q Okay. And these meetings, throughout this

19 process you would have summary meetings like daily with the

20 clinic?

21 A That's correct.

22 Q Okay. Whatever transgressions were found or

23 corrections, hygiene, anything, whether it's hepatitis C

24 transmission related or not, these things need to be

25 corrected --

1 A That's correct.

2 Q -- so they're brought to their attention?

3 A That's correct.

4 Q Okay. And so you immediately -- I don't know if
5 it was immediately. But you had such a meeting with Dr.

6 Carrol, male charge nurse and Tonya Rushing, and told them
7 what you had observed and what Keith Mathahs explained to you?

8 A Correct.

9 Q Okay. And what was their response?

10 A As I recall, I think there was surprise that he
11 was reusing the syringes, but...

12 Q Okay. Let me show you your interview with the
13 police department.

14 A Okay.

15 Q This is simply a -- do you happen to have it?

16 A I don't.

17 Q Okay. Page 21. Page 21, and more if you need
18 to read it --

19 A Sure.

20 Q -- to refresh your recollection.

21 A So did you want me to --

22 Q No, no. Read it to yourself.

23 A Oh, okay. It looks similar to what I just said.

24 Q Right. Look at page 8, eight. I'm looking at
25 the index here.

1 A Okay. Again, it looks similar to what I just
2 said, that they were surprised.

3 Q Okay. Did you state that they were surprised by
4 the syringe reuse?

5 A Correct.

6 Q Okay. And they stated --

7 MS. WECKERLY: Objection. Hearsay.

8 MR. WRIGHT: Pardon?

9 MS. WECKERLY: Hearsay.

10 THE COURT: That's sustained.

11 MR. WRIGHT: All of these witnesses are going to
12 testify here.

13 THE COURT: Well, then they can testify.

14 MR. WRIGHT: Okay.

15 BY MR. WRIGHT:

16 Q What was your understanding regarding the use of
17 propofol?

18 A I'm not sure I understand the question.

19 Q From the meeting with them.

20 A What was my understanding of --

21 Q Right.

22 A -- of the use of propofol?

23 Q Right. In the meeting.

24 THE COURT: Do you mean how it was used?

25 THE WITNESS: Yeah. I don't know.

1 MR. WRIGHT: No. She goes to a meeting and the
2 State --

3 THE COURT: Well, no. I was --

4 MR. WRIGHT: The State doesn't want it revealed what
5 Dr. Carrol said.

6 THE COURT: Okay. I think that --

7 MR. WRIGHT: Even though he's testifying here.

8 THE COURT: Mr. Wright, I think the witness didn't
9 understand the question. I wasn't sure of the question, so I
10 attempted to clarify it. That's not what you meant, so
11 perhaps you can state your question or ask your question or
12 clarify your question so that the witness knows what you mean.
13 BY MR. WRIGHT:

14 Q Did you go to have a meeting with them to report
15 two transgressions?

16 A Correct.

17 Q Okay. And it would be syringe reuse Mr.
18 Mathahs?

19 A Correct.

20 Q And propofol multi-patient use?

21 A Correct.

22 Q Okay. And what was the response?

23 A My interpretation was that they were surprised,
24 and they said that they would --

25 MS. WECKERLY: Objection. Hearsay.

1 THE WITNESS: -- stop doing it.

2 MR. WRIGHT: I'm not offering it for the truth of the
3 matter. I'm offering it to show what they then did or what
4 transpired.

5 THE COURT: All right. Well, then I guess the
6 question's based on their reaction what did you do next, or is
7 that -- is that where you're going?

8 MR. WRIGHT: Yeah, what did they say.

9 THE WITNESS: What did they say? They said that they
10 would --

11 THE COURT: Yeah, that --

12 MS. WECKERLY: My objection is hearsay again.

13 THE COURT: I'll see counsel --

14 MR. WRIGHT: I said I'm not offering it for the
15 truth --

16 THE COURT: Mr. Wright.

17 MR. WRIGHT: -- of the matter.

18 THE COURT: Mr. Wright.

19 MR. WRIGHT: I learned this --

20 THE COURT: Mr. Wright, I'll see you at the bench --

21 MR. WRIGHT: Sorry.

22 THE COURT: -- because I'm failing to see what the
23 relevance is if you're not offering it for the truth, but you
24 can explain it up here.

25 (Off-record bench conference.)

1 THE COURT: Mr. Wright, rephrase your question.

2 BY MR. WRIGHT:

3 Q Without revealing what you stated to the grand
4 jury, you tell me, were you -- did you perceive that they,
5 Dr. Carrol, Tonya Rushing and the male charge nurse, did you
6 believe that they were surprised by reuse of syringes?

7 A Yes.

8 Q Okay. Did you believe they were -- same people
9 were surprised by reuse of -- multi-patient use of propofol?

10 A No, I didn't perceive it. They didn't know
11 that -- or they stated they didn't know what was wrong with
12 that.

13 Q Okay. Now, the propofol that was being used at
14 the clinic was labeled single patient, single use, single
15 patient use, something like that --

16 A Correct.

17 Q -- correct?

18 A That's correct.

19 Q And this propofol was being the standard of
20 practice in the clinic was multiple patient use of the single
21 use vial, correct?

22 A That's correct.

23 Q And do you know why it's single use?

24 A Some of it is for, what I understand, infection
25 control purposes, and it's also a relatively short half-life,

1 or the medicine doesn't stay fresh very long.

2 Q Okay. Meaning propofol doesn't have like a
3 preservative in it --

4 A Correct, as far as I know.

5 Q -- to make it last a long time?

6 A Correct. It only lasts a certain amount of
7 time, correct.

8 Q And so it's your understanding that part of the
9 multi-use designation of the propofol is because once I open
10 it for the first time, it has a number of hours within which
11 it needs to be used or there's a risk for bacterial growth?

12 A Correct. And then also the again, not using it
13 on more than one patient. Both those reasons were...

14 Q Okay. But the not using it on more than one
15 patient becomes a problem only if I'm reusing syringe,
16 correct?

17 A Correct. In this case, yes. In the
18 transmission of hepatitis C, yes, that's correct, both things
19 have to happen.

20 Q Because if I am using a 50 c -- a 50 vial of
21 propofol, I can draw it up for five patients with five clean
22 brand new syringes, wipe the top off, I can use that one vial
23 for five different patients and that is totally clean,
24 non-hepatitis C, non-contamination proper behavior?

25 A From a hepatitis C point of view that's correct.

1 You may get high risk of bacterial contamination. But that's
2 correct from a hepatitis C point of view, yes.

3 Q Okay. But if I -- if they send it to me with a
4 little spike on it, do you know what a spike is on a hepatitis
5 [sic] vial?

6 A On a propofol --

7 THE COURT: I mean -- well, that was a Freudian slip.

8 I guess I have a question though. When you say
9 bacterial contamination, would that be as a result of airborne
10 bacteria that could get on the little rubber stopper thing?

11 THE WITNESS: Well, I think it's just -- yeah, and
12 some people will wipe it off with an antibacterial. But each
13 time you go into a vial there's a chance of that.

14 THE COURT: Because of stuff that's in the air and --

15 THE WITNESS: If the needle isn't clean, for other
16 reasons, yeah. But from a hepatitis point of view, correct.

17 BY MR. WRIGHT:

18 Q Okay. But on even the bacterial point of view,
19 I mean, if I'm using the device that comes with it -- instead
20 of putting a needle in you put this device on top. They've
21 called it a spike here in the courtroom. And it's a device
22 you put on top of a propofol vial, then you take the syringe
23 without a needle and fill it up, and you take the next four,
24 one, two, three, four, five, you filled it up completely, no
25 needles whatsoever, then you put a clean needle on each one.

1 A I'm just not familiar with that. I don't know.

2 Q Okay. Well, can you -- accepting that scenario,
3 any way that's improper for bacterial --

4 A I don't know.

5 Q Okay. It's just basically -- never mind.
6 Strike that.

7 At the end of that meeting, did the practices -- that
8 meeting with Dr. Carrol, when you brought to their attention
9 the reuse of syringes and multi-patient use of propofol, did
10 the practices then change?

11 A I believe so.

12 Q Okay. I mean as you understood?

13 A As I understood, yes.

14 Q And from your observations there going forward,
15 there was no more of that?

16 A I don't recall whether we did more observations
17 or whether we then focused on the charts.

18 Q Okay.

19 A But I'm not aware of whether they went back or
20 not.

21 Q Now, in your observations and interviews, there
22 was no propofol moving room to room, correct?

23 A Not that we observed, no.

24 Q Okay. And according to the interview?

25 A Correct. What they had told us is that people

1 may change rooms, but the propofol didn't. That's what they
2 told us.

3 Q Okay. And the -- when they changed rooms, I
4 mean, you testified as to what they told you, any room change
5 would have been at lunch breaks?

6 A That's what they had told us.

7 Q Right. And is that what you observed?

8 A That's what we observed on the days we were
9 there, correct.

10 Q While you were there, did they have a Saturday
11 retraining session for everyone in the clinic?

12 A Yes.

13 Q And that was a Saturday after these events had
14 come to light and retraining was going on?

15 A That's correct as I recall, yes.

16 Q Now, you concluded epidemiologically; is that
17 correct?

18 A Epidemiologically, yes, that's correct.

19 Q Okay. That the most likely mode of transmission
20 was reuse of syringe coupled with multiple patient use of
21 propofol vial?

22 A That's correct.

23 Q Okay. And you did not rule out scopes as a
24 method of transmission, but believed it was less likely?

25 A Well, from everything we observed and from our

1 chart review, we thought it was a very low likelihood.

2 Q Okay. The -- in the grand jury, did you
3 testify, We thought that was less likely, we didn't rule that
4 out, but we didn't think that was as likely again, because of
5 the way this virus spreads?

6 A I suppose that's what I said, but I basically
7 said or what I think is it's very low likelihood that it would
8 have been. And part of it was because again, this is a
9 blood-borne infection, and the only really bloody part to the
10 procedure is a biopsy, and there were multiple patients who
11 were infected who did not receive a biopsy.

12 Q So as soon as you saw Mr. Mathahs, that ended as
13 far as you were concerned?

14 A No. We still actually -- we still observed the
15 scopes. As I recall, our observation of the scope cleaning
16 happened after our -- since our number one theory was the
17 injection practices, we did that first as I recall. But we
18 definitely still observed the endoscopic procedures and the
19 cleaning, and we questioned them about the biopsy equipment
20 itself and how it was disposed of and whether it was reused
21 and so forth.

22 Q When you said you couldn't rule it out to the
23 grand jury, what does that mean?

24 A Well, to me that means couldn't rule it out with
25 100 percent certainty.

1 Q Okay. What about the saline?

2 A The part of it, you know, in the observation on
3 the days of observations we didn't observe anything irregular,
4 but I think more importantly than that, when we actually went
5 back and looked at the chart reviews, at least one of the
6 patients did not have an IV inserted by a nurse in the preop
7 area, but it was done in the procedure room by a nurse
8 anesthetist.

9 Q Okay. And so what does that mean?

10 A So there was no saline flush that was done, so.

11 Q Okay. Did you observe -- you were there on --
12 you weren't there on the days of the events, right?

13 A No, of course not. But we asked them when --
14 when the anesthetists would put in an IV, then the propofol
15 was administered, there was generally not an IV flush. And
16 that's what we were told anyway. We did not observe that.

17 Q Okay. Were you told that there were occasions
18 when there was a problem putting the IV in so the CRNAs would
19 do it because the nurse had missed the veins twice or
20 something?

21 A I don't recall whether they said that. I mean,
22 that would seem reasonable, but I don't recall asking about
23 that or them telling me.

24 Q Were you told about the saline use in the
25 procedure room to push the propofol and where they drew that

1 now?

2 A I don't recall.

3 Q Okay. So when you said I can't rule out like
4 saline --

5 A I don't think I said I can't rule out saline. I
6 don't -- I don't know.

7 Q Did you rule out saline?

8 A We did -- again, we didn't think that was a
9 likely cause after our observations, and also the fact that
10 one of the IVs were placed by a nurse anesthetist.

11 Q Okay. The bottom line, the most likely cause is
12 the propofol syringe reuse?

13 A Correct.

14 MR. WRIGHT: The Court's indulgence.

15 THE COURT: Mm-hmm.

16 MR. WRIGHT: No further questions.

17 THE COURT: All right. Mr. Santacroce.

18 CROSS-EXAMINATION

19 BY MR. SANTACROCE:

20 Q Good afternoon.

21 A Good afternoon.

22 Q I represent Mr. Lakeman in this case. You had
23 testified that your background was as a pediatrician; is that
24 correct?

25 A That's correct.

1 Q And then in January of 2008, you had been at the
2 CDC for a year and a half?

3 A That's correct.

4 Q And I believe you testified that you had done
5 two other investigations during that time period?

6 A That's correct.

7 Q And those investigations were hepatitis B for
8 foreign adoptions and then transfer from mother to baby?

9 A Of hepatitis B, correct.

10 Q Since that time how many investigations have you
11 done?

12 A I am no longer in the hepatitis group. I
13 finished my fellowship and went on to another group. So I've
14 done investigations with respiratory diseases, a non-related
15 area.

16 Q Okay. So how many hepatitis C investigations
17 have you done while you were at the CDC?

18 A That was the one. I have done other studies on
19 hepatitis C, but not outbreak investigations. I've done
20 analyses of data.

21 Q So the only outbreak investigation was the one
22 that we're here for today?

23 A Correct. And so part of our training, it's not
24 just outbreak investigations. There are other parts of
25 epidemiology that we cover, so that's just a piece of our

1 training.

2 Q Okay. But I'm talking about the nuts and bolts
3 of investigating the hep C outbreak, this was it?

4 A That's correct. That's correct.

5 Q So it was kind of like on-the-job training?

6 A I wouldn't call it that per se, but if you want
7 to.

8 Q No, you didn't. I did.

9 A Yeah. That's right.

10 Q Would that be fair or not?

11 A Sure.

12 Q I mean, you're learning as you're going, right?
13 I mean, I'm learning today.

14 A Sure.

15 Q And I've been doing this for a long time.

16 A Sure.

17 Q Okay. When you came here, you had some -- I
18 guess some ideas as to what you thought the method of
19 transmission was?

20 A Correct.

21 Q And the ideas you had is that it was through
22 unsafe use of medicine, propofol --

23 A Correct.

24 Q -- correct?

25 A Yes.

1 Q So you came out here with that idea in your
2 head, not only you, but I mean, I guess your colleague, Dr.
3 Schaefer, too?

4 A That was our number one concern.

5 Q Number one concern.

6 A Yes.

7 Q So when you set out on your investigation, you
8 specifically set out to sort of validate that theory; isn't
9 that -- wouldn't that be fair?

10 A I would say we came out to look at that as one
11 piece, but we also looked at other things.

12 Q And I'm not saying you weren't objective. I'm
13 just saying that you come out with an idea, you seek to
14 validate that idea?

15 A Correct. But we also looked at other things as
16 well.

17 Q Now, when you came out here, I believe you
18 testified if not here, in the grand jury, that you started out
19 by doing some chart reviews.

20 A Correct.

21 Q And when I say started out, I'm not talking
22 about the meeting. I'm talking about really getting into the
23 facility and -- is that correct?

24 A That's correct.

25 Q And how long did you spend on the chart reviews?

1 A As I recall, it was maybe a half a day or so.
2 We just wanted to see, get some idea of what we would be
3 looking for when we did our observations.

4 Q And there was around 60 patients on each
5 infected day?

6 A That's correct.

7 Q So you looked at 120 patient charts?

8 A Not on that first day, no.

9 Q Did you ever look at all the patient charts?

10 A We looked at all the patient charts from those
11 two days.

12 Q Okay. At some point during the investigation?

13 A At some point, correct.

14 Q But it wasn't the first day?

15 A No, it was not the first day.

16 Q So when you say you spent a half a day on chart
17 review, tell me what you did for that half-day.

18 A We were just looking -- well, we looked first at
19 the patients, I believe, that were infected, and we looked at
20 just the procedure logs to see how they were laid out and get
21 an idea of who was involved with the procedures, how long they
22 lasted, and just to get an understanding of how the procedures
23 were being done.

24 Q And why was that information important to you?

25 A It would help us figure out how -- who to talk

1 to, what to observe. But we were constantly going back and
2 forth between looking at the charts and doing the observations
3 so that we could put the pieces together.

4 Q Would there be a certain amount of time you
5 spent in observation then come back to the charts, or...

6 A It depended on what we found.

7 Q Okay. Can you tell me whether information you
8 gleaned from the patient charts, that was important to you in
9 determining the likelihood of an outbreak or a mechanism for
10 an outbreak?

11 A We were looking at the amount of -- well, what
12 procedure was done, what anesthesia was used, how much
13 anesthesia was used, who administered the anesthesia. What
14 the procedure was, so was it upper endoscopy, lower endoscopy,
15 whether there was a biopsy done during the procedure, and if
16 there were any complications during the procedure.

17 Q And you relied on the information in that chart,
18 correct?

19 A There were, I -- as I recall, there were sort of
20 three -- there was one patient chart, but it had three parts
21 to it. It was the health history, the anesthetist's record,
22 and then the nurses also kept a record.

23 Q And again, my question is: You relied on the
24 information --

25 A Oh, I'm sorry. Yes.

1 Q -- in those charts --

2 A I did, yes.

3 Q -- correct?

4 A Correct. That's correct.

5 Q And you were asked a question in the grand jury
6 that what if you found out later that some of those things
7 weren't accurate. Do you remember how you answered that?

8 A I don't recall, no.

9 Q I'm going to show you grand jury transcript on
10 page 51. See if this refreshes your recollection. And all of
11 the scribbling stuff is mine. It's not yours, so. If you'd
12 just take a look at this part here.

13 A Yeah. I just replied --

14 MR. STAUDAHNER: Page 51, Counsel?

15 MR. SANTACROCE: Oh, maybe I gave you the -- I'm
16 sorry. Page 24. A few numbers off.

17 THE WITNESS: So I'm sorry. Can you ask me my
18 question, the question again?

19 BY MR. SANTACROCE:

20 Q Yes. I'm saying the question asked by the grand
21 jury is, What if you found out later that some of this
22 information was not correct, how would it affect your
23 analysis, and what was your reply?

24 A I replied it would make it -- yes, it would make
25 it sort -- I can't read where the scribbles, but sort out the

1 line of transmission difficult to figure out.

2 Q So if the information that you relied on was not
3 accurate or possibly changed subsequently, it would make, in
4 your words, the line of transmission difficult to figure out;
5 is that correct?

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

7 Q Now, one of the areas that you looked at was the
8 saline injections in the preop area, correct?

9 A That's correct.

10 Q And I believe you said that you ruled that out
11 because you noticed that one of the heplocks on one of the
12 infection dates was started by a CRNA?

13 A That's correct.

14 Q I'm just looking for some evidence when I'm
15 turning my back on you.

16 (Telephone interruption.)

17 THE MARSHAL: Everybody just make sure that your
18 phones are off.

19 BY MR. SANTACROCE:

20 Q You did a trip report regarding this case,
21 correct?

22 A That's correct.

23 Q And you were the lead author of that?

24 A That is correct.

25 Q Do you have a copy of that with you?

1 A I don't.

2 Q I'm referring to Bates exhibit -- State's
3 Exhibit 92. If you look on your screen, I'm going to put
4 something up there. Can you see that okay?

5 A I can see that, yes.

6 Q On the IV start column, do you see that?

7 A Yes.

8 Q And I'd ask you to go to 7/25 date.

9 A Okay.

10 Q See that, CRNA 4, Case 1 started at; is that
11 correct?

12 A Yes.

13 Q And then if you go down to the source patient
14 7/25, your report says CRNA No. 4 started that?

15 A That's correct.

16 Q Did you rely on that information in coming to
17 the conclusion you did that possibly the saline preop area was
18 not an infection concern?

19 A We relied on that in combination with what we
20 observed and what the nurses told us about the fact that they
21 rarely if ever used the saline flush more than once.

22 Q Okay. We'll talk about that in a second. I can
23 save a lot of time here by telling you that with your
24 colleague, we showed her the medical records of this Patient
25 No. 1, Michael Washington, and it shows that a nurse with the

1 initials LC actually started the heplock for that patient,
2 then your colleague acknowledged that it was a mistake.

3 A Okay.

4 Q Do you have any reason to doubt that, or do you
5 want me to show you the record?

6 A No. I have no reason to doubt it.

7 Q So that was an error?

8 A Correct.

9 Q There were some other errors on the report in
10 that you've identified on 7/21, the IV starts for those days
11 with RN 1, 2, 3 and 5, and the records from the evidence shows
12 that there was only two RNs that started those heplocks on
13 those days. Do you have an explanation as to why those errors
14 appeared in there?

15 A I don't.

16 Q But this was information you relied upon,
17 correct?

18 A That's correct.

19 Q I'm going to show you State's Exhibit No. 166.
20 On September 21 -- can you see that?

21 A Yes, I can.

22 Q Do you want me to zoom in, or is that okay?

23 A No. That's fine.

24 Q September 21, source patient Kenneth Rubino,
25 heplock was started by Lynette Campbell. Infected patient

1 Rodolfo Meana, heplock started by Lynette Campbell. Infected
2 patient Sonia Orellano, heplock started by Lynette Campbell.
3 Infected patient Gwendolyn Martin, heplock started by Lynette
4 Campbell. The next patient could not be genetically linked to
5 the cluster, but the heplock was started by Lynette Campbell.
6 Do you see that?

7 A Yes.

8 Q That was in Room 1, and I'll represent to you
9 that the CRNA in that room was Keith Mathahs. Room 2, CRNA
10 Mr. Lakeman. Infected patient Patty Aspinwall, heplock
11 started by Lynette Campbell. Carole Grueskin, heplock started
12 by Lynette Campbell. My question to you is: Did you have
13 this information when you ruled out the possibility or
14 likelihood that transmission could have been started by
15 saline?

16 A We had all the information from whatever was
17 written in the chart.

18 Q Did you know that there was a commonality in the
19 heplock?

20 A I gather from the report that we put out, no,
21 there was -- it looked like we put down there were different
22 people who started the saline.

23 Q So that was a mistake on your part as to the
24 what you relied on, correct?

25 A I guess you can call it that. I don't know.

1 I'd have to look at the charts again.

2 Q Now, also on this chart, the other person who
3 started heplocks on that day who shared the same preop room --
4 and you noticed, you observed that the saline being used was
5 multi dosed, correct?

6 A The vials were labeled as multi dose. We never
7 saw them being as multi -- used as multi dose, but they are
8 labeled as multi dose.

9 Q And if there was testimony, and again, this is
10 my recollection of the testimony, that multi-dose vials of
11 saline were used in the preop area during infection dates, you
12 would have no reason to dispute that, would you?

13 A I have no reason to dispute they would be used.
14 How they -- whether they would be used on the same patient
15 multiple times, that I don't know. I wasn't there.

16 Q Okay. Jeff Krueger started the heplock for
17 Stacy Hutchison and another patient who cannot genetically be
18 linked to the cluster, same day, same preop room and same
19 vials of saline. Did you consider this information when you
20 dismissed the likelihood that transmission could have started
21 in the saline preop area?

22 A Again, we had evidence that there were different
23 people. We didn't -- I don't believe we knew what preop area
24 they were in. And from our observations and the fact that
25 they only usually flush -- in talking to the nurses, that they

1 only usually flush once, we did not think that was a likely
2 cause.

3 Q Well, let's talk about that for a moment. You
4 talked about observing the preop area, correct?

5 A Correct.

6 Q And you talked about how sometimes patients
7 would wait in the preop area for a little bit of time. They
8 weren't automatically taken into the procedure room, correct?

9 A I don't recall that. I don't know how long -- I
10 don't know how long they would stay in the preop area.

11 Q Directing your attention, Counsel, I think it's
12 page 32 of the grand jury transcript.

13 I'm going to show you this and see if this refreshes
14 your recollection. Page 32, if you'd just read this portion
15 here.

16 A The patient may stay in the waiting area --

17 Q You can read it to yourself.

18 A Oh, I'm sorry.

19 Q That's okay.

20 A I just said that they were in the waiting room
21 for some period. I don't know.

22 Q Okay. And that had to do with the -- after the
23 IV was placed in their arm?

24 A Correct.

25 Q So they would be waiting with a heplock placed

1 in their arm in that preop area, or as you call it, the
2 waiting room for a period of time before going into the
3 procedure room?

4 A Correct.

5 Q Now, what happens to an IV that's been sitting
6 for any length of time? What's the possibilities of what
7 could happen?

8 A It could get clogged for -- if it's sitting for
9 a period of time.

10 Q Getting clogged, clotted?

11 A Clotted, yes.

12 Q Okay. And that clot would have to be re-opened,
13 correct, before the medication of propofol was inserted?

14 A Correct. It doesn't happen immediately, but it
15 can happen.

16 Q So there would be a need for reflushing in those
17 instances?

18 A It would depend on how long they were sitting.

19 Q Well, how long would it usually require
20 reflushing?

21 A I don't know what the -- I don't know what the
22 length of time is.

23 Q So we move now from the preop area into the
24 procedure room, and I want to talk to you a little bit about
25 the propofol and what you observed as to the beginning of the

1 day. Okay. How did the propofol get from Room 1 to -- in
2 Room 2?

3 A In the beginning of the day they would -- as I
4 recall, they would open a cabinet and the nurse anesthetist
5 would receive a certain amount of propofol, and they would
6 take it with them into their -- whatever room they were
7 assigned.

8 Q And that propofol would stay in that individual
9 room; isn't that correct?

10 A That's what we observed.

11 Q And you never observed propofol moving from room
12 to room?

13 A We did not observe that.

14 Q And you didn't observe that even when they took
15 a lunch break and one of the CRNAs relieved the other one;
16 isn't that correct?

17 A That's correct.

18 Q One of the problems I believe that you said you
19 had was that you couldn't identify which room the patients
20 were being treated in; isn't that correct?

21 A That's correct.

22 Q So when you left Las Vegas and you had issued
23 your preliminary report as to the mechanism of transmission,
24 you didn't know which room which patient had their procedure
25 done in; isn't that correct?

1 A That's correct. But we based -- we based some
2 of it on what times we could get from the --

3 Q Based on what?

4 A The times we could get from the chart.

5 Q Okay. I'm going to show you State's Exhibit
6 156, and I'm going to -- it's not going to all fit in here, so
7 I'm going to kind of move it over so you can see the top
8 columns. Let me know when you've had a chance -- you know,
9 better yet, I'm going to let you look at this.

10 A Okay.

11 Q You got it?

12 A I have a general sense of it. I don't know
13 that --

14 Q If you have any questions, just let me know.

15 A Okay.

16 Q And the jury's heard this a million times, so
17 I'm sorry I have to go back over it, but I do. I'm going to
18 represent to you this is the State's evidence. The State
19 compiled this information. I'm going to go to the big screen.
20 You can look over there, okay?

21 A Okay.

22 Q The orange stripe represents source patient.
23 The yellow stripe indicates people that have got hep but can't
24 be genetically linked. The green stripes are people that
25 allegedly got the hepatitis from the source patient. Okay.

1 Any questions about that?

2 A No.

3 Q Okay. So if we start off up here on the first
4 orange line, source patient Kenneth Rubino, correct?

5 A I can't quite make it out, but --

6 Q Or do I have that wrong? What's that?

7 A It's a little -- I can't really see the names.
8 It's a little small, but...

9 Q Tell me when you can see it.

10 A Okay. That's better.

11 Q Got it?

12 A Yes.

13 Q Kenneth Rubino source patient, correct?

14 A Yes.

15 Q Okay. Do you see the numbers next to the
16 propofol in the second column, where it says propofol?

17 A Oh, 50, 50, those numbers, I guess?

18 Q Yeah.

19 A Yes.

20 Q What does that indicate to you?

21 A I gather that's the quantity of propofol they
22 received.

23 Q Okay. And when you observed the procedures
24 going on, I believe you testified that you never saw more than
25 two patients use one bottle; is that correct?

1 A That I did not see? Say that again. I'm sorry.

2 Q That you saw -- you didn't see more than two
3 patients use -- one bottle used on more than two patients?

4 A No. The vials we saw that were used that day
5 were 20 cc vials, so no, we did not.

6 Q Okay. Were there any 50s used that day?

7 A Not the days we observed.

8 Q So with the 20s you never saw more than two
9 patients used in the same vial, correct?

10 A That's correct.

11 Q So the amounts of propofol for Kenneth Rubino
12 are reflected there, and that procedure was done by Mr.
13 Mathahs in Room 1, correct, at least according to the
14 information on the chart?

15 A Correct.

16 Q Then he does another procedure with Patient 55C,
17 and then he does Rodolfo Meana. And then he does one, two,
18 three, four, five patients, and then he does another patient
19 who becomes infected. Then he does another patient who hasn't
20 reported infection. Then he does another patient who's
21 infected. This is all in Mathahs's room, correct?

22 A That's what it indicates, yes.

23 Q Okay. Now, you didn't have this information
24 when you formulated your opinion, correct?

25 A We had -- I'm not sure what information

1 specifically you're referring to.

2 Q The rooms that the people were in.

3 A That's correct. We did not have the rooms.

4 Q Now going down to Room 2, do you see that?

5 A Yes.

6 Q Mr. Lakeman's room same day. He starts his
7 procedure at -- with this Patient No. 7, at 7:00 a.m. And
8 then if you look down to this patient here, Stacy Hutchison,
9 see that?

10 A Yes.

11 Q She purports to be the first infected patient in
12 Mr. Lakeman's room. Okay?

13 A Yes.

14 Q Now I want you to go back up to Kenneth Rubino.
15 What time did Mr. Rubino's procedure start?

16 A I can't see it on the screen.

17 THE COURT: You have to move it down so we can
18 see it.

19 MR. SANTACROCE: Oh, sorry. I always do that.

20 THE WITNESS: It says 9:45.

21 BY MR. SANTACROCE:

22 Q And then Mr. Mathahs did another procedure at
23 what time?

24 A 10:00 o'clock.

25 Q And if we go back to Stacy Hutchison, her

1 procedure started at 9:55, correct?

2 A That's correct.

3 Q When you observed the clinic, you testified that
4 you never saw a CRNA leave a room in the middle of a
5 procedure; isn't that correct?

6 A That was -- we did not observe that, correct.

7 Q So the CRNA would stay in their room until the
8 procedure was done?

9 A That's what we observed.

10 Q And that's what -- when you did your interviews,
11 that was confirmed; isn't that correct?

12 A That's what was stated.

13 Q Okay. Now, you didn't have this information
14 about the timing, the rooms, the infections when you concluded
15 the mechanism for transmission, did you?

16 A We did -- we did have the times. The only thing
17 we didn't have was the room number.

18 Q And that would be an important factor, wouldn't
19 it?

20 A It might.

21 Q Well, in view of this, in view of what you've
22 just seen here, in view of the times that the source patient
23 was started in a different room by a different CRNA and the
24 fact that other procedures were going on at the same time that
25 Ms. Hutchison allegedly got contaminated by the same source

1 patient, does that not give you pause for concern as to the
2 mechanism for transmission?

3 A No. I think something else would happen, which
4 would be that the vials would have to be exchanged in some
5 way.

6 Q So there would have to be an exchange of bottles
7 from room to room; in other words, from --

8 A Somehow the infected vial would have to be
9 moved, correct.

10 Q Otherwise it couldn't happen, could it?

11 A No.

12 Q And as you testified, you never saw propofol go
13 from room to room?

14 A Not on the days that we were there. But the
15 other thing we did observe were, you know, multiple vials open
16 at a time.

17 Q Okay. I'm going --

18 A But again, it would have to be one vial.

19 Q I'm sorry. Were you done?

20 A Now I'm done.

21 Q No?

22 A I am done.

23 Q All right. July 25, 2007, same kind of chart,
24 same color coding if you will. Okay. In this particular case
25 the blue stripe is the source patient. Okay?

1 A Yes.

2 Q And this is Mr. Lakeman's room. The only
3 reported infection on that day was Mr. Washington. Mr.
4 Lakeman does the source patient at what time, 7:05?

5 A Correct.

6 Q He does one, two, three patients in between,
7 does Mr. Washington. Mr. Washington gets hep C.

8 A Correct.

9 Q Did you have this information when you --

10 A We did.

11 Q -- made your preliminary determination?

12 A We did.

13 Q What other information did you have regarding
14 the source patient, Mr. Washington?

15 A I'm not sure what specifically you're asking.

16 Q What procedures did they have?

17 A I don't recall. I'd have to look at the record.
18 You mean what --

19 Q What type procedures --

20 A -- whether they had an endoscopy or a -- an
21 upper endoscopy versus a lower endoscopy; is that what you're
22 asking?

23 Q [No audible response.]

24 A I don't know. I'd have to look at the record.

25 Q Do you know if either one had a biopsy?

1 A I believe on -- I don't recall, but I mean, we
2 recorded that information, but I don't recall if we --

3 Q Would it surprise you to learn that both of
4 those individuals had biopsies?

5 A That wouldn't surprise me, no.

6 Q What did you learn in your investigation
7 regarding the reuse of biopsy equipment?

8 A We did not observe that, and when interviewed
9 nobody said that that was done.

10 Q Did you come to information after you returned
11 to Atlanta that suggested that biopsy equipment was reused?

12 A Not that I'm aware of.

13 Q If biopsy equipment had been reused -- well,
14 first of all let me ask you this: Did you observe any
15 cleaning of biopsy equipment when you were there?

16 A Just disposal of the actual biopsy.

17 Q So at the time you were there the disposal
18 was -- or it was a one-time use?

19 A Correct.

20 Q Had it been a multi use on the infection date of
21 July 25, you would be concerned about the cleaning procedure,
22 would you not?

23 A I don't know that it was done. I don't know.

24 Q But biopsy equipment can be a mechanism for
25 transmission of hep C; isn't that correct?

1 A I think it could be in theory, but on the other
2 days there were multiple patients that didn't have biopsies.

3 Q I'm not talking about multiple days.

4 A Okay.

5 Q I want to break this down individually, because
6 these infections happened on two days.

7 A Correct.

8 Q Months apart.

9 A Correct.

10 Q So I want to talk about the 25th. We already
11 talked about the 21st, and you've said that there would have
12 to be an exchange of infected contaminated propofol.

13 A Correct.

14 Q So now we're focusing on this day.

15 A Okay.

16 Q Biopsy.

17 A Okay.

18 Q Biopsy equipment, cleaning of that. In your
19 grand jury testimony you talked about biopsies and the
20 potential for transmission of hep C through that equipment;
21 isn't that correct?

22 A It's possible and we looked at that, yes.

23 Q Okay. And that's because that biopsy is a blood
24 to blood pathogen, correct?

25 A Hepatitis C is a blood -- is a blood pathogen.

1 Q But I mean the mechanism for transmission in a
2 biopsy is that they take out a piece of what do you call it,
3 mucous membrane or for the lay person like I am?

4 A Sure. Tissue, sure.

5 Q And that scope is then potentially contaminated
6 if a person had hep C?

7 A Sure. Yes.

8 Q And if that biopsy is used -- equipment is used
9 again on a subsequent patient, it's not out of the realm of
10 possibility that the hep C could spread to the subsequent
11 patient; isn't that correct?

12 A Correct.

13 Q In fact, you're a hep C expert; isn't that true?

14 A I am not an expert. I didn't claim to be an
15 expert.

16 Q Okay. But in your -- you were assigned to the
17 hep C investigative team.

18 A Correct.

19 Q So you have a special knowledge in that area.

20 A Correct. I do.

21 Q How long does hep C virus last outside of the
22 body?

23 A Hours to days.

24 Q Your colleague testified 16 hours to four days;
25 is that --

1 A That's correct.

2 Q -- what you understand?

3 A Correct.

4 Q So the mechanism for transmission through
5 uncleaned biopsy equipment is a real possibility?

6 A It is.

7 Q I'm going to show you what's been marked as
8 State's Exhibit 165.

9 A Yes.

10 Q Do you recognize that?

11 A I do.

12 Q What is it?

13 A It's a paper that we wrote about this outbreak
14 in a journal called CID.

15 Q And you were the lead author in that?

16 A I was.

17 Q I'm going to show you page 272, and I'd ask you
18 just to review that paragraph.

19 A [Complies.]

20 Q Do you recall that?

21 A I do, sure.

22 Q What did you say regarding your conclusions as
23 to mechanism of transmission in this particular outbreak?

24 A That it was a combination of reuse of syringes
25 and the use of single use vials on multiple patients.

1 Q Okay. And did you -- did you talk about a
2 particular caution regarding that conclusion?

3 A The fact that the investigation occurred several
4 months after the actual transmission date, if that's what
5 you're referring to.

6 Q Okay. So that was a concern, that was a
7 caution?

8 A Sure.

9 Q And you also said the observations and
10 interviews were potentially subjected to changed practices; so
11 that's a caveat with regard to what you concluded, correct?

12 A That's correct.

13 MR. SANTACROCE: I'm almost done.

14 THE COURT: Okay. Some of the jurors need a break,
15 but if you have just one or two more questions.

16 MR. SANTACROCE: I just have one or two more
17 questions.

18 BY MR. SANTACROCE:

19 Q And also you said that it was -- could be
20 diminished because of recall bias; isn't that correct?

21 A That's correct.

22 Q So you had all these caveats to your conclusion?

23 A Right. Correct, which is standard.

24 Q Now, in all fairness to you guys, at the time
25 you did this investigation, you weren't conducting a criminal

1 investigation.

2 A That's correct.

3 Q You weren't anticipating that your conclusion or
4 your information were going to be subjected to the scrutiny of
5 the Metropolitan Police Department, the district attorney's
6 office, criminal defense attorneys, judges, juries, that
7 didn't even enter your mind, did it?

8 A Absolutely not.

9 Q Had you ever testified in a criminal trial
10 regarding hep C outbreak before?

11 A I have not.

12 Q This is your first experience?

13 A Correct.

14 Q Hopefully your last.

15 MR. SANTACROCE: Thank you.

16 THE COURT: All right. Ladies and gentlemen, we're
17 going to go ahead and take a quick approximately 10 minute
18 break. During the break you're reminded you're not to discuss
19 the case or anything relating to the case with each other or
20 with anyone else, read, watch or listen to any reports of or
21 commentaries on anything relating to the case. Please don't
22 form or express an opinion on the trial.

23 Notepads in your chairs. Follow the bailiff through
24 the rear door.

25 (Jurors recessed at 3:41 p.m.)

1 THE COURT: And ma'am, during the break, please don't
2 discuss your testimony with anyone.

3 THE WITNESS: Is it okay if I use --

4 THE COURT: You can use the restroom. Feel free to
5 go out, but just don't talk about your testimony.

6 THE WITNESS: Okay. Thank you.

7 (Court recessed at 3:42 p.m. until 3:56 p.m.)

8 (Outside the presence of the jury.)

9 THE COURT: If we finish with this witness before
10 5:00, do you have somebody else?

11 MS. WECKERLY: We do.

12 MR. STAUDAHER: We do, if the Court wants to start.
13 That witness will not finish --

14 MS. WECKERLY: That's a long witness.

15 MR. STAUDAHER: -- before 5:00 o'clock. So we just
16 didn't want to have a hole at the end of the day, so whatever
17 the Court wants to do.

18 THE COURT: We'll see. I mean, we'll probably -- I
19 mean, if it's five minutes, obviously not. But if it's like
20 15 or so, we'll get started with the preliminary stuff.

21 MS. STANISH: I do have a motion in limine though, on
22 that upcoming witness.

23 MS. WECKERLY: That's fine. We just want to finish
24 this witness.

25 MS. STANISH: But we could -- yeah, I know. Yeah,

1 sure, absolutely.

2 THE COURT: I was going to say, then I'm thinking we
3 won't get to the other witness today.

4 MS. STANISH: Yeah, just for the timing purposes, I
5 understand you want to get this gal on a plane.

6 MR. WRIGHT: You're not anxious, are you?

7 MS. STANISH: Yeah.

8 MS. WECKERLY: She's already been here a day longer
9 than --

10 THE COURT: I was going to say, you guys thought this
11 was a one-day event?

12 THE WITNESS: Correct.

13 MR. WRIGHT: I feel like a voyeur reading your notes.
14 I noticed you're trying to decide which hotel, and it had
15 Summerlin okay and it said, Downtown sketchy.

16 THE WITNESS: Did I really write that?

17 THE COURT: Have you been downtown? Do you --

18 MR. WRIGHT: I wouldn't bring that out --

19 THE WITNESS: I'll just say improved.

20 THE COURT: Do you still feel that way about
21 downtown? Actually, downtown isn't bad. I mean, there's --

22 MS. STANISH: Well, certain parts are.

23 THE COURT: Well, the Golden --

24 MS. STANISH: Some parts are sketchy.

25 THE COURT: Yeah, yeah. No, the Golden Nugget is

1 nice. That's about it.

2 (Jurors reconvene at 3:58 p.m.)

3 THE COURT: All right. Court is now back in session.
4 And Ms. Weckerly, we're ready to proceed with your redirect.

5 MS. WECKERLY: Yes.

6 REDIRECT EXAMINATION

7 BY MS. WECKERLY:

8 Q Dr. Langley, Mr. Santacroce asked you about the
9 caveats that you noted at the end of your article that
10 concluded what caused the hepatitis outbreak at the clinic,
11 and you said that those caveats were standard. What do you
12 mean by that?

13 A Whenever you're writing up a manuscript, there's
14 always limitations or caveats to what you're presenting so
15 that people understand you took that into account.

16 Q And you're rarely, or have you ever been there
17 witnessing a transmission of disease like hepatitis C?

18 A I'm sorry?

19 Q I mean, have you ever witnessed it firsthand?

20 A Not to my knowledge, no.

21 Q In fact, you had to stop Mr. Mathahs, right,
22 because the practice he was engaging in was so egregious that
23 you couldn't -- you wouldn't have let him use that vial on a
24 subsequent patient, would you?

25 A Well, the procedure stopped, but that's correct,

1 it was --

2 Q But if there had been another patient, given
3 what you had observed him doing, would you have let him use a
4 vial on another patient?

5 A No.

6 Q You were asked about biopsy equipment and
7 whether that could be the cause of the outbreak in this
8 instance. And do you know whether or not the same biopsy
9 equipment is used for an endoscopy versus a colonoscopy?

10 A There -- I don't -- I don't recall that the
11 biopsy equipment, the scopes themselves are different from an
12 upper and a lower endoscopy, but I'm not sure about the actual
13 needle.

14 Q I'm putting on the overhead State's 157. Can
15 you see that on your screen --

16 A Yes, I can.

17 Q -- or do you want it closer?

18 Are you good?

19 A I think that's fine. Yes, thank you.

20 Q Okay. And so we actually -- we've named the
21 source patient for -- this is July 25, and it's Mr. Ziyad. If
22 you knew that Patient 4 here had a biopsy and isn't one of the
23 reported genetically linked cases, I mean, how would you
24 interpret that as to whether or not biopsy equipment was
25 causing the infection? Because presumably that patient would

1 have had the equipment used before Mr. Washington, correct?

2 A That's correct. I don't -- I don't know if I
3 would have an explanation.

4 Q And this is State's Exhibit 1, Bates No. 1918.
5 This is the medical record of Mr. Ziyad. And this would have
6 been one of the charts that you reviewed, correct, looking at
7 the --

8 A Correct.

9 Q -- top here for the endoscopy center?

10 A Correct. The date -- right.

11 Q And our date here is July 25, and it's Mr.
12 Ziyad's record, and it says his IV was started by RL, correct?

13 A Correct.

14 Q And those are the initials of Ronald Lakeman?

15 A Correct, as far as I know.

16 Q Now, you were asked about the trajectory of the
17 disease and you were questioned or shown your grand jury
18 testimony by Mr. Santacroce, where you talked about the times
19 of the procedures and this -- in this instance. And did you
20 notice or when you were doing the charting in this case, did
21 you notice anything unusual about the charts or the records of
22 times?

23 A Yeah. We noticed there was overlap in some of
24 the times between what was recorded in the anesthetist's
25 record and the nurse's record.

1 Q And how would the overlap, I mean, what would it
2 make it look like?

3 A Well, we couldn't tell which patient came first
4 or second or third or -- so they would have a time that --
5 times that were inclusive of each other even though the same
6 people were involved in the procedure, so it was hard to tell.

7 Q So it looks sometimes like someone was in the
8 same place at -- or two places at the same time?

9 A Correct.

10 Q When you were -- well, let me ask you this: The
11 two source patients, I believe you said on direct and on
12 cross-examination that both of those individuals received more
13 than one dose of propofol?

14 A I don't know that I was questioned, but that's
15 correct. Yes.

16 Q And was that -- I mean, was that a factor that
17 led to your conclusions?

18 A Yeah. Again, in order to propagate the virus,
19 it has to -- you had to have infected the vial in order for
20 the virus to move to the next patient, so that would require
21 going in more than -- into the vial more than once.

22 Q And if they hadn't, if they had only received
23 one, one shot or one syringe full of propofol, that would make
24 this mechanism not possible, correct?

25 A Correct.

1 Q When you were in the endoscopy center, did you
2 ever see anyone get more than one saline flush?

3 A No, we did not.

4 Q And that was like during the whole time you were
5 there?

6 A Of all the observations that we made in the
7 preop area, and we also asked the nurses who were doing it.

8 Q Now, because of the timing issues that you
9 noticed with the charts, was it hard for you to delineate an
10 exact order of patients for the day?

11 A Correct.

12 Q Mr. Santacroce asked you if you came out with
13 the idea that unsafe injection practices had caused this
14 outbreak, and you said, well, to a certain extent you came out
15 with that idea. Is part of that based on the nature of the
16 infection and how it's transmitted?

17 A Part of it is that and part of it is previous
18 investigations that people have done, that's been the number
19 one finding that they have had as well.

20 Q I mean, but it's blood borne, correct?

21 A Correct. It's blood borne.

22 Q So you've got to find somewhere where --

23 A Correct.

24 Q -- there's a blood transfer?

25 A Correct.

1 Q When you were talking to the CRNAs, did any of
2 them say that they were using propofol with a saline push as a
3 practice to enhance the use of propofol?

4 A I don't recall any of them saying that, no.

5 Q And do you recall if you observed that at the
6 time you were there in January of 2008?

7 A No, I don't recall --

8 Q Did any of them even mention that this was a
9 past practice?

10 A Not that I recall, no.

11 Q As you sit here today, do you believe that this
12 outbreak was caused by improper cleaning of scopes?

13 A No. I don't believe so.

14 Q Do you believe it was caused by reuse of biopsy
15 equipment?

16 A No. I don't believe so.

17 Q Do you believe it was caused by contamination of
18 saline?

19 A No.

20 Q What do you believe caused this outbreak?

21 A I believe it was the reuse of syringes in
22 combination with the use of single use vials on multiple
23 patients.

24 Q Thank you.

25 THE COURT: Recross, Mr. Wright?

1 MR. WRIGHT: Yeah. Did I leave my -- your interview,
2 my copy of your interview?

3 THE WITNESS: Sure.

4 RECROSS-EXAMINATION

5 BY MR. WRIGHT:

6 Q This practice of Mr. Mathahs that you observed,
7 the -- that was violating the best practices of the CDC,
8 correct?

9 A Correct.

10 Q And the -- you being a CDC fellow inspector
11 observer standing there, it was apparent to you, correct?

12 A Correct.

13 Q It was not apparent to him, correct?

14 A Correct.

15 Q And in fact, you even pointed out to the police
16 when you were interviewed that not only did he state he was
17 surprised and didn't know it, but the very fact that he was
18 doing it right in your presence standing there reinforced to
19 you that he didn't recognize that he couldn't do that,
20 correct?

21 A Yes.

22 Q Okay. Because you're an observer from some
23 health agency standing there watching the employers during a
24 hepatitis investigation, and you would anticipate that if
25 someone knows they are doing something wrong, they're not

1 going to do it in front of you standing there with your badge
2 around your neck, correct?

3 A I would assume so, yes.

4 Q Thank you.

5 THE COURT: Mr. Santacroce.

6 MR. SANTACROCE: I have nothing further.

7 THE COURT: Ms. Weckerly, anything else?

8 MS. WECKERLY: No, Your Honor.

9 THE COURT: Any juror questions for this witness?

10 All right. Ma'am, there are no additional questions.
11 Please don't discuss your testimony with anyone else who may
12 be a witness in this case. You are excused.

13 THE WITNESS: Thank you.

14 THE COURT: State, call your next witness.

15 MR. STAUDAHER: The State calls Nancy Sampson to the
16 stage, or -- to the stage -- to the stand, Your Honor.

17 NANCY SAMPSON, STATE'S WITNESS, SWORN

18 THE CLERK: Will you please state and spell your
19 first and last name for the record.

20 THE WITNESS: My name is Nancy, N-a-n-c-y, Sampson,
21 S-a-m-p-s-o-n.

22 THE COURT: Mr. Staudaher.

23 DIRECT EXAMINATION

24 BY MR. STAUDAHER:

25 Q Ms. Sampson, I'm going to take you back in time

1 a little bit to 2007, 2008. Were you working for the
2 Metropolitan Police Department at that time?

3 A Yes, I was.

4 Q And what was your duties? What was your job?

5 A My title was analyst, and I was assigned to the
6 intelligence section at Metro, and I -- I tracked money on
7 financial cases. I did other kinds of analytical work. I
8 prepared charts. I organized documents for cases.

9 Q Are you a commissioned police officer, or were
10 you at that time?

11 A I was a civilian employee, but I had been a
12 commissioned officer in Arizona.

13 Q But here in Las Vegas, for the Las Vegas
14 Metropolitan Police Department you were an analyst; is that
15 right?

16 A Yes.

17 Q Now, you mentioned the types of things that you
18 analyzed were what?

19 A I worked on criminal cases.

20 Q So criminal cases, but the types of records that
21 you would review, what were those?

22 A Bank records. Property records. In this case I
23 analyzed the procedure records from the patients. I organized
24 all of the evidence from this case. I would do that on other
25 cases as well.

1 Q So let's talk about this case. Now, you know
2 why you're here today, it's about the Endoscopy case, correct?

3 A That's correct.

4 Q Are you still working for the Las Vegas
5 Metropolitan Police Department?

6 A No.

7 Q And when did you separate from the department?

8 A I retired from Metro in 2010.

9 Q So that was after the investigation?

10 A Yes.

11 Q Now, during the investigation, were you involved
12 in any of the searches or anything like that that took place?

13 A Yes. I was on the search warrants.

14 Q When you went to those locations, were you
15 actively involved, or were you a standby person on the
16 sidelines watching? How did it go?

17 A I was actively involved to the extent that I
18 wrote a general inventory of all the items that were taken in
19 each box. I made sure that the people who had searched the
20 rooms had signed off on the -- on the sheet that was posted on
21 the doors. I did some reviews, you know, cursory reviews of
22 the offices that were searched to make sure that there was
23 nothing that was missed.

24 Q Once the information is obtained, meaning the
25 search warrant's complete, they recover certain things, did

1 you then step into a more active role of reviewing and
2 analyzing that information?

3 A I did.

4 Q Can you tell us a little bit about your
5 background and training before you got to that point in your
6 career?

7 A I was a commissioned police officer in Arizona
8 for nine years with the Arizona Attorney General's Office. I
9 have a degree in criminal justice from Arizona State
10 University. I came to Metro in '94. I came to Metro. I was
11 hired as their financial investigator, so I reviewed the
12 financial statements and did the background, the
13 investigations on liquor and gaming applications for special
14 privilege licenses.

15 So I'm very familiar with records. I've been using
16 Excel for 30 years, so I put every -- all of my work on Excel
17 spreadsheets so I can find the information again, I can sort
18 it, and I can do any analysis based on the Excel.

19 Q We have some charts here that you may or may not
20 be familiar with. I'm just going to put them up here just
21 generally to give you an idea, but do you see these kinds of
22 records? This is Exhibit 50 -- 156. Do you see this?

23 A Yes.

24 Q And the next one is a companion one, but a
25 different color. But do you see that one as well, similar

1 format?

2 A Yes.

3 Q Are you familiar with those records?

4 A Yes. I prepared those charts.

5 Q And when you say you prepared the charts, how
6 was it that you did that?

7 A I had the procedure files from the two days of
8 the infections. So I set up the spreadsheet and I entered the
9 information so that I could sort it. And I took the
10 information from the green procedure files.

11 Q So when you -- and we'll get to the specifics
12 about that in just a moment. But when you're at the -- I
13 mean, do you take this back to the location where you actually
14 are going to do the analysis to do this work, or do you do it
15 on site where the search warrants took place?

16 A No. We were busy taking records during the
17 search warrant. So everything was boxed up and it was taken
18 back to the Metropolitan Police Department to the office where
19 I worked. The evidence was put into a room we call the vault,
20 and that is a secure room with only people who work in that
21 section have access to.

22 So the records were all maintained in there. If I
23 needed to do a spreadsheet, I would either do it on my
24 computer at my desk, or I'd take a laptop into the vault and
25 work in there.

1 Q Was this the kind of thing where you went
2 through like page by page, paper by paper the things, like
3 that?

4 A Yes, I did.

5 Q Okay. And we're going to get into the details
6 of your actual analysis, but as you're going through this, I
7 mean, is anybody helping you with it, or are you primarily
8 doing it yourself?

9 A I did it myself.

10 Q So you weren't relying on other people to do
11 some portion of the analysis or some compilation of data kind
12 of thing, you actually put that together?

13 A I did, but I had people proof my work.

14 Q Okay. So you did it and then somebody else
15 would look at it to check your work?

16 A Yes.

17 Q Okay. So how -- I mean, did it go through that
18 checks and balances kinds of thing on a regular basis for most
19 of what you did?

20 A When I finished the procedure files and I made
21 those two charts that you showed me, I had one of our
22 secretaries go through the patient records and proof those
23 charts with me.

24 Q Now, the location where the search warrants
25 occurred that you obtained information that eventually make it

1 into the charts, and I know I showed you two, but you've made
2 some other charts as well, correct?

3 A That's correct.

4 Q And you see all of this box -- or these boxes of
5 material that are actually in the courtroom today; is that
6 right?

7 A Yes.

8 Q Did they form, at least those, are those some of
9 the source documents for by which you made some of these
10 records?

11 A Yes, those are the source documents.

12 Q And when I say the records, I'm talking about
13 the charts that we're going to see.

14 A Yes.

15 Q So those are the hard records that you put into
16 those summary documents, being the graphs and the charts that
17 you made; is that correct?

18 A That's correct.

19 Q When you are in the process of putting those
20 together, you said that they came from these various searches.
21 Where were the locations?

22 A There was an office and a clinic on Shadow.
23 There was Shadow Lane.

24 Q That's 700 Shadow Lane?

25 A 700 Shadow Lane. There was another one on

1 Burnham. There was an office on Tenaya. There was one, I
2 believe, on Horizon Ridge. There was one on West Lake Mead.
3 I believe there were seven locations, but I don't remember all
4 of them individually right now.

5 Q Were there endoscopy clinics in that group?

6 A There were three clinics. One was located at
7 Burnham and one was at Shadow, and the third one was on -- in
8 the southwest part of the city.

9 Q Was -- is it fair to say rather, that the
10 records that you put in table form and the like came from the
11 endoscopy clinics?

12 A That's correct.

13 Q So even though the records were gleaned from
14 other sources, those were the focus of your sort of
15 compilation of data?

16 A That's where I started with, yes.

17 Q So let's talk about that. How did you get
18 involved in this case in the first place?

19 A The health district did a presentation to Metro
20 on a Monday, and I had Mondays off, so I was not at that
21 presentation. But when I came to work on Tuesday, I found out
22 that I was going to be assigned to it because the section that
23 I worked in had the case and I was the only analyst in that
24 section.

25 Q When you say a Monday, do you recall the actual

1 day, or was it --

2 A I don't.

3 Q Do you know the month at least?

4 A I don't. It was at the beginning of -- of the
5 year, of 2008.

6 Q So let's walk through that. You get that
7 information. When in relation to that sort of initial you're
8 going to be assigned this matter do you actually start coming
9 into contact with records, how long thereafter?

10 A When we did the search warrant is when I got the
11 records.

12 Q Do you know when that was?

13 A That was in March.

14 Q So the search warrants weren't until March?

15 A I believe.

16 Q Once you actually do the -- get the records,
17 you've got them all back in your place, tell me how you
18 decide -- I assume it's a lot of stuff; is that correct?

19 A It was a lot of stuff, yes.

20 Q More than what's in the court today?

21 A Oh, yes.

22 Q So this is the basis of what the charts are, but
23 there's actually much more than just that?

24 A That's correct.

25 Q When you went through that material, I mean, how

1 did you decide what to start with, I mean, what were you
2 looking at?

3 A When the records were taken, they were put into
4 three storage units to remove them from the search warrant
5 sites and to gather them in one place. And from those three
6 storage units, then the patient files were turned over to a
7 company that was hired to alphabetize the patient files to
8 respond to the patient requests that we'd been getting.

9 Once those records were taken out and segregated, I
10 had boxes of other records. I went through each box. I set
11 up an Excel spreadsheet to inventory the information in the
12 boxes. So for example, I would -- if they were employee
13 files, I would just type in the name of the employee, and I
14 did that so that we could go back and find the specific box
15 that those records were located in.

16 I went through all of the boxes. I determined which
17 ones were going to be pertinent to my analysis. I had
18 Detective Whitely, who was the lead detective on the case, and
19 another detective, Levy Hancock, go through the boxes that I
20 determined could go into evidence, be stored in evidence. If
21 they agreed, they got shipped over to evidence. If we kept
22 them, we kept them in the vault.

23 I kept boxes that had sample equipment. I kept boxes
24 that had employee files. I kept boxes that had vendor
25 information, bank information. So I kept a number of boxes in

1 the vault, but the rest of them went to the evidence vault.
2 And the ones that had the patient files were -- they were --
3 the patient files were removed and stored in a location in the
4 same building I worked at, and they were alphabetized.

5 Q Now, you knew, I assume, at some point that
6 there were a couple of incident days that you were focusing
7 on?

8 A That's correct.

9 Q Did you limit your investigation to just those
10 two days?

11 A Yes.

12 Q Did you look at records, financial, medical
13 supplies, things like that beyond those two days?

14 A Yes.

15 Q Now, you mentioned two different areas. You
16 mentioned you looked at bank records and also vendor files; is
17 that correct?

18 A That's correct.

19 Q And I know you looked at patient files too, but
20 we're going to get to those a little bit later. But tell us
21 what it was about -- or what you did related to the banking
22 records first of all. What was the purpose of that, what did
23 you do?

24 A The banking records I looked at to determine the
25 three doctors who had worked on those two days that we were

1 focusing on, how much they made from their employment at the
2 endoscopy center.

3 Q Okay. So you looked at that part, sort of the
4 flow of money?

5 A Yes.

6 Q When you were doing your investigation, was
7 there some time that you came across a file or files that
8 piqued your attention?

9 A The bank -- the bank records were in files that
10 were labeled. There was one file that was labeled CRNA that
11 turned out to have bank records also.

12 Q When you saw that CRNA file, what did you do?

13 A Well, I thought it would pertain to the -- when
14 I saw it was bank records in the file labeled CRNA, I thought
15 it pertained to the money that was paid to the CRNAs. But
16 none of the CRNAs were paid out of that bank account. Just
17 doctors were paid out of that bank account.

18 Q Who was the signatory on the bank account?

19 A Dr. Desai.

20 Q Anybody else?

21 A I don't believe so.

22 Q Now, the bank records that you had that you
23 looked at that were from the clinic itself, or the clinics and
24 this one that was from the CRNA account, were they different
25 banks?

1 A Yes.

2 Q So different bank, sole signatory; did it
3 indicate to you that there was any kind of authority granted
4 or given to anybody else to run that account beside Dr. Desai?

5 A Not from those records, no.

6 Q Did you see where if there were disbursements
7 out of that account?

8 A I did.

9 Q And where did those disbursements go?

10 A They went to three -- well, I only looked at the
11 three doctors that were working that day, so those were the
12 only amounts that I focused on.

13 Q Now, there's an actually admitted exhibit. It
14 was a financial losses.

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

16 THE COURT: You may.

17 MR. STAUDAHER: I'm showing you, it's a large set of
18 documents here. If you would, just glance through that and
19 tell me if that -- if you're familiar with that document.

20 MR. SANTACROCE: What's the exhibit number?

21 MR. STAUDAHER: Oh, I'm sorry.

22 THE WITNESS: It's 158.

23 MR. STAUDAHER: One fifty-eight.

24 BY MR. STAUDAHER:

25 Q And if you could just generally flip through it

1 just to see if you're familiar with it is all I'm really
2 asking about right now.

3 A [Complies.]

4 Q Does that look familiar to you?

5 A Yes.

6 Q What is that?

7 A This is the financial analysis I prepared on --
8 I used eight bank accounts to analyze, and it was for 2007. I
9 took the checks that were paid out of these bank accounts to
10 Dr. Desai, Dr. Carrol and Dr. Carrera. I scheduled them on
11 schedules, and those are attached in here.

12 I added them up and I determined that two of the bank
13 accounts received money from the other bank account, so I
14 didn't count those as -- when the money was withdrawn from
15 that, I didn't count that as extra money because it was the
16 same money that I had counted before. And I added up the
17 amounts that each doctor was paid.

18 Q And just to -- but in general, is that the
19 analysis, at least the financial analysis that you did in the
20 case?

21 A Yes.

22 Q And it's a combination of bank records and the
23 like; is that correct?

24 A It's just bank records.

25 Q Just bank records. Now, did you use any of

1 those records in relation to the other part that you
2 mentioned, which was the vendor side of things?

3 A I didn't use any of the records in this
4 financial analysis in the vendor side, no.

5 Q So this is completely separate from the vendor
6 analysis that you did?

7 A That's correct.

8 Q Can you go ahead and put that back together
9 again, so we don't get it lost or mixed up. But if you need
10 to look at this during your testimony at any time, just let me
11 know and I'll bring it back to you, okay?

12 A Okay..

13 Q Now, beside this analysis, the vendor analysis,
14 talk to us about that.

15 A Vendor analysis?

16 Q Yes.

17 A I call that a medical supply analysis.

18 Q Oh, medical supply analysis.

19 A Right.

20 Q Okay. Sorry about that.

21 A That's okay. When I was going through all of
22 the documents that we took, I made a note of the vendor files
23 and then I went back to do my analysis. And I pulled the
24 vendor files and I inventoried those, and I paid attention to
25 what supplies the vendor files contained.

1 For example, if a vendor sold them alcohol pads or
2 syringes, or if they were an insurance company or a government
3 agency they might have paid taxes or something to. So I put
4 all of those in an Excel spreadsheet and I marked that those
5 were vendor files from the search warrant.

6 Q Okay. So you had gotten records from the search
7 warrant?

8 A Mm-hmm.

9 Q And I'm talking about the vendor type records,
10 not the financial ones we just talked about. The vendor
11 records, and you put those into a spreadsheet; is that right?

12 A Yes.

13 Q Okay. What did you do with those? Was that
14 what you worked with?

15 A I could sort them by vendor name. I wanted to
16 make sure, because I was going to use these records to look at
17 the syringe orders, the bite block orders and the propofol
18 vial orders. I wanted to make sure that I had every source
19 identified.

20 So after I went through the search warrant, I went
21 back through the bank records to identify checks that were
22 paid to vendors, and I put those, those vendors also in my
23 spreadsheet, and I marked another column that that information
24 was from the bank records.

25 Q Did you find anything when you did that work --

1 and I assume you're using the bank records just to find out
2 the vendors then; is that correct?

3 A That's correct.

4 Q So when you did that work, did you pick up any
5 additional vendors that you may not have had during the
6 original sort of review of the search warrant materials that
7 were recovered?

8 A I don't recall offhand if I did or not.

9 Q But it was a double sort of check; is that
10 right?

11 A Right. Right.

12 Q So after you have the total -- I mean, you've
13 looked at everything and you've got what you believe the
14 vendor list is, what do you do?

15 A I was very worried that I would have missed
16 something, so I got a subpoena for the custodian of records
17 for the endoscopy center. It was Mr. Charles Kelly, and I
18 asked him to provide a vendor list and he did. And on that,
19 off of his list I also included those vendors in my schedule.

20 Q So now you've got the custodian of records of
21 the clinic, the clinic records recovered in the search
22 warrant, and the actual ones you got out of checks and things
23 that were paid to vendors; is that right?

24 A That's correct.

25 Q After you gather all that together, did you feel

1 that you had a complete list of the vendors that were used by
2 the clinic?

3 A I did.

4 Q And what was the -- why would you want a
5 complete list? What was the issue?

6 A I didn't want to have a source of propofol out
7 there that I didn't know about.

8 Q You mean that there may have been a place where
9 propofol was purchased from and product in the facility that
10 you wouldn't be tallying up?

11 A That's correct.

12 Q Did that go for the other things you've talked
13 about, like the alcohol pads and the bite blocks and the like?

14 A I specifically looked at the propofol, the
15 syringes and the bite blocks.

16 Q Those were the three items that you specifically
17 looked at?

18 A Those were the three items, yes.

19 Q So what did you do in relation to those items?

20 A Once I identified the vendors, I got subpoenas
21 to get their records of the supplies they had sold at the
22 clinics.

23 Q And what do you do with that information?

24 A I set up another spreadsheet and I put the
25 information on a spreadsheet that I'd prepared for that.

1 Q Now, did anybody double-check any of the stuff
2 that you were doing, or was there some way to determine that
3 the entries that you were making were in fact accurate?

4 A I double-checked those. I didn't have anyone
5 else double-checking the numbers.

6 Q But you put them in and then you went back and
7 checked them again?

8 A Right. I checked them against the vendor
9 information that had been sent.

10 Q Tell us how that goes, and what do you develop
11 as a result of doing those kinds of compilations of data?

12 A I sorted them. I entered the dates that they
13 had ordered the supplies. I ordered what -- I sorted what
14 kind of supply it was. So I had spreadsheets for the bite
15 blocks, spreadsheets for the syringes, and spreadsheets for
16 the propofol. I had who the vendor was on the spreadsheet, so
17 I could sort by all of those different topics.

18 I sorted -- they also had on the vendors' information
19 what clinic it had been sent to, so whether it was the Burnham
20 clinic or the Shadow clinic. So I sorted by date. I sorted
21 it by clinic. I sorted it by vendor, I believe. And then
22 because I had the dates, I was able to tell how much went to
23 each clinic for a particular year. I looked at 2006, 2007 and
24 2008.

25 Q Well, wasn't it possible that there could have

1 been some -- you said you looked at 2007 specifically,
2 correct?

3 A Mm-hmm. Yes.

4 Q Did you look at 2006?

5 A Yes, I did.

6 Q What was the purpose of that?

7 A I wanted to see if there was any existing
8 inventory that could have been applied to 2007.

9 Q Are you talking about leftover propofol and
10 syringes and bite blocks and the like from 2006 that may have
11 actually been in inventory in 2007?

12 A I did.

13 Q What did you find?

14 A That they didn't have enough of propofol, bite
15 blocks or syringes to apply to 2007 if they had used each item
16 for each patient. And what I mean by that is one propofol
17 vial per patient, one bite block per upper endoscopy
18 procedure, one syringe per injection.

19 Q So you end up starting off with 2007 with what,
20 and there was no prior inventory?

21 A Well, I determined they didn't have -- they
22 couldn't have had anything left over if they had used -- if
23 they had used it appropriately.

24 Q So you end up then looking at 2007?

25 A Right.

1 Q Did you know how many patients they went through
2 in the year and how many things they ordered and what they
3 used or documented that they used, that kind of thing?

4 A I did know how many patients they had, because I
5 counted them out of their logbook.

6 Q You actually counted them?

7 A I sat and counted them.

8 Q And we're talking about these, these green books
9 over here; is that right, or is there some other [inaudible]?

10 A No, those were the books I used.

11 Q And we've got a couple of cases of those books
12 over there. Is that all of them, or are there more?

13 A I'm not sure if you have all of them in here,
14 but I had all of them from the clinics.

15 Q So when you went through and you counted each
16 one of those, what kind of information were you taking off of
17 them to put into your spreadsheets to come -- to compile this
18 information?

19 A I took the dates of the page, that was written
20 on the page. I took how many upper endoscopy procedures were
21 performed, how many colonoscopy procedures, because those were
22 marked in the books with an E or a C. I noted how many other
23 procedures there were, because those were also marked. And I
24 also noted the totals at the top of the page that the clinic
25 had written in there.

1 Q Did you double-check those numbers with what you
2 were coming up with?

3 A They were generally off, but I had someone proof
4 my work.

5 Q So you have somebody else actually looking over
6 this part of it; is that correct?

7 A Yes. They looked over my spreadsheet.

8 Q When I say looking over, I said that they're
9 looking over your work that -- the inputted work that you've
10 done?

11 A That's correct.

12 Q Okay. So you go through all of that. Did that
13 take a while to do?

14 A Yes.

15 Q When you get to the end of the year of 2007, did
16 you have a total number of patients?

17 A Yes.

18 Q Do you know what that number was?

19 A Not off the top of my head.

20 Q Do we have -- is that part of the compilation of
21 data that you used at some point?

22 A Yes.

23 Q Okay. We'll get to that in just a second. So
24 you at least came up with a number?

25 A Yes.

1 Q Did you do the same thing for the amount of
2 propofol that was ordered and documented as being used?

3 A I did it for the propofol that was ordered. I
4 did it for the two days of the propofol vials that were
5 checked out from the propofol logs.

6 Q When you say checked out, does that mean checked
7 out and not returned?

8 A Well, the propofol logs had how many vials of
9 propofol were checked out, how many were returned for each day
10 and who checked them out. So I used those logs that were
11 maintained by the clinic.

12 Q And this binder here, it has controlled
13 substances records, and it's 45 --

14 MR. STAUDAHER: May I approach again, Your Honor?

15 THE COURT: Mm-hmm.

16 BY MR. STAUDAHER:

17 Q Forty-five A, can you tell us what that is?

18 A This is their records for their controlled
19 substances, including propofol, for their daily sign-out logs.

20 Q So it includes other drugs, but propofol is
21 included in this as well?

22 A Yes.

23 Q So is this one of the things that you looked at
24 in addition?

25 A Yes.

1 Q Did that make it into your analysis at some
2 point?

3 A Yes.

4 Q With regard to the bite blocks and so forth,
5 where did that information specifically come from?

6 A Once I identified the vendors from the vendor
7 files who had provided bite blocks, I subpoenaed their records
8 so that they would tell me how many they sent to the clinics.
9 And that was compiled the same way I did the syringes and the
10 propofol.

11 Q Now, when you're -- let's move to the other
12 aspect. I'm going to leave the vendor files for a moment and
13 go to the third category, which I think you said were patient
14 files.

15 A Okay.

16 Q Tell us about those. What did you do with
17 those? How did you analyze them?

18 A I took the patient files from the two days of
19 the infections and I scheduled them. I set up an Excel
20 spreadsheet and I took the information from the green
21 procedure files and entered that in categories on my
22 spreadsheets, and those are the ones that you showed me.

23 Q Okay. Let's go to those as we -- as we talk
24 about this. I'm going to start off with -- actually, let's
25 start off chronologically. We'll go with the 25th of July.

1 I'm showing you what's been admitted as State's 157. And I
2 can zoom in on that a little bit if you need to, but for right
3 now I just want to get more of a perspective. As I slide this
4 across on the top, there are various columns that have
5 headings. Do you see those?

6 A Yes.

7 Q I'm going to go back to the beginning of this
8 now, and I want you to tell me what those mean across the top
9 starting from left to right, if you would.

10 A Okay.

11 Q And you know that you can write on this screen,
12 correct?

13 A No, I didn't know that.

14 Q Let me show you. If you need to, you can draw
15 on the screen with your fingernail, then you can just tap it
16 down here to clear it, okay?

17 A Okay.

18 Q So walk us through what we're looking at
19 specifically as the headings. And are they the same for both
20 sheets, both --

21 A Yes.

22 Q Okay. So if we know it for this, we have at
23 least the general outline for the next one; is that correct?

24 A Yes, that's correct.

25 Q Okay. So walk us through what we're -- what

1 we're looking at here.

2 A Okay. The first -- the first one -- oops.

3 Q And I'm going to zoom in on it just since we're
4 going to go across, just the top of this for a moment.

5 A The first column, patient number, is just a
6 numbering system so we would know how many patients there were
7 that day. So you can see that they go down to the end. The
8 patient file number here relates to the patient file number
9 from the procedure file, and each procedure file was filed by
10 this number.

11 Q Is this the clinic's number?

12 A This is the clinic's number, and then the
13 patient's name.

14 Q Now, I want to ask you a question about that.
15 As you can see, there's a designation that says Patient 1, 3,
16 5, 7. It goes in sort of an order here. Do you see that?

17 A Yes.

18 Q When you produced this chart originally, and
19 I'll represent to you that it's been redacted, did it actually
20 contain the names of the patients off of those files?

21 A Yes, it did.

22 Q So that's -- this is not the way it looked when
23 you actually produced this chart, that is the difference; is
24 that correct?

25 A That's correct.

1 Q So as we go across, and if you can just clear
2 that screen again.

3 A The next column says Hep C, and if it was marked
4 on the patient file, the procedure file that the patient had
5 hepatitis C, I marked that in here.

6 Q What about for a patient that turned out to be,
7 well, infected or genetically matched, did you mark that
8 person also?

9 A No.

10 Q Now I'm going to go down and show you at least
11 along those lines, because I want to make sure that this isn't
12 a change that has been made to the thing as well. Do you see
13 the name here, Ziyad, Sharrieff and Michael Washington?

14 A I do.

15 Q And you know Michael Washington is a genetically
16 linked patient?

17 A Right.

18 Q And do you see that box that's marked under hep
19 C?

20 A I do.

21 Q Is that something that you put on this record,
22 or do you think that that may have been a change as well? I'm
23 just trying to make sure we don't have anything different than
24 what you originally did.

25 A You know, I don't know if I put that on or not.

1 I may have.

2 Q Well, in this case, at least the highlighted
3 lined versions, all of them indicated [inaudible]; is that
4 correct?

5 A That's correct.

6 Q [Inaudible] get down to the very last one?

7 A Yeah.

8 Q So all of those are hep C positive?

9 A If -- when we look at the next chart, if there's
10 X's on that, I probably did those.

11 Q Okay. So let's move over. So we've got the
12 next thing that says Medicine, and I want to spend just a
13 minute with that particular column. First of all, can you
14 tell us what it is?

15 A Yes. I put down the medication that they used,
16 which was propofol. And I marked off of the anesthesia
17 records, that's where this column came from, the doses that
18 they had written.

19 Q So when we look and see propofol and then we see
20 a Number 100, what does that indicate?

21 A That was the first injection.

22 Q So 100 milligrams of propofol?

23 A Milligrams, yes.

24 Q And then there's a slash and it says 40. What
25 does that mean?

1 A That would be the second injection, the 40
2 milligrams.

3 Q So according to the record you're looking at, if
4 I understand you correctly, this shows two separate injections
5 according to the record?

6 A That's correct.

7 Q Now, what record did you glean that information
8 from?

9 A From the anesthesia record.

10 Q And I notice it's just on the ones that are
11 visible on the screen here, that they vary. Some are a
12 single -- it looks like a single injection of 100, some are
13 three separate injections, some are two, and it varies as it
14 goes down this sheet, correct?

15 A That's correct.

16 Q Again, the information that is contained in this
17 spreadsheet, where does that come from?

18 A It comes from the green patient procedure files.

19 Q So directly out of the files themselves?

20 A That's correct.

21 Q To the best of your ability, did you
22 double-check these numbers when you were putting them in?

23 A I did and I had someone else proof them with me.

24 Q So the numbers themselves, are they accurate to
25 what is contained in the actual chart itself?

1 A Yes.

2 Q Does that mean that the information that's in
3 the chart is accurate?

4 A I wouldn't know about that.

5 Q In fact, was that an issue for you when you were
6 doing your analysis?

7 A Yes, it was.

8 Q We'll get to that in a little bit. Now, as we
9 move across, the next category, if you can tell us for the
10 next column, can you tell us what that is?

11 A On the anesthesia chart, they had the chart
12 procedure time written in and the chart ending time. And
13 these, these times were taken from those charts.

14 Q So is this actually something that was on the
15 chart? And I'm talking about -- I'm pointing to the
16 highlighted yellow column. Was that on the chart, or was that
17 something that you calculated yourself on the spreadsheet
18 program or whatever from the information that you put in
19 pertaining to the anesthesia record?

20 A I calculated that.

21 Q So this is something that was not contained on
22 the chart?

23 A That's correct.

24 Q As we move across, and if you could just clear
25 that one more time. The next category here, p-r-o-c, what is

1 that?

2 A That stands for procedure.

3 Q Various -- there's various letter designations.
4 They all appear to be either C's or E's. Do you know what
5 those mean?

6 A The E's are an upper endoscopy procedure. The C
7 is a colonoscopy.

8 Q Again, was that gleaned off the charts
9 themselves?

10 A Yes.

11 Q Did you -- beside the calculated columns that as
12 we get to them, did you put any information of your own sort
13 of that you just kind of guessed at on these records, or did
14 they come directly from the patient files?

15 A There's a column at the end, it says comments.

16 Q Actually, that column is gone. We haven't
17 gotten to that one yet, but that's another place that I was
18 going to talk to you about a change.

19 A Okay.

20 Q But beside that one, anything else on here that
21 you may have changed or [inaudible]?

22 A No, other than the calculations.

23 Q So the next column?

24 A Lists the doctor who performed the procedure.

25 Q And that was according to the record, correct?

1 A That's correct.

2 Q Next one?

3 A The nurse.

4 Q And when we say nurse, what kind of nurse are we
5 talking about?

6 A I'm not real positive.

7 Q Was it on the procedure record itself?

8 A Yes.

9 Q Okay. So you don't know what kind of nurse they
10 were, but it was on that record that you took the information
11 from?

12 A That's correct.

13 Q The next one is -- it looks like the technician;
14 is that correct?

15 A Technician, yes.

16 Q Again, same information, just who was appearing
17 on the record itself?

18 A That's correct.

19 Q The next one?

20 A The CRNA.

21 Q The next one?

22 A The nurse logged procedure start time. There
23 was a nurse log in the patient file.

24 Q Okay. And so you took the -- is there -- it
25 says end time for the next column; is that right?

1 A That's correct.

2 Q So where did that come from? Did it come from
3 that actual record in the file?

4 A Yes.

5 Q And this yellow column, is this another thing
6 that you calculated?

7 A Yes. That's one I entered formulas in and
8 calculated.

9 Q So it's the difference between these numbers
10 here in the start time and the stop time column?

11 A That's correct.

12 Q And moving across to the next column, right
13 here, what is this?

14 A They made a note of what scope was used in the
15 procedure, so I included that also.

16 Q And then there's a line that has nothing in it
17 right next to it, just a spacer line, but then the next thing
18 with anything in it appears to be something that says
19 [unintelligible] bed, what is that?

20 A That's the physician at bedside, and that's from
21 the -- one of the forms also, and they would mark the time.

22 Q Okay. And then the discharge time?

23 A The same thing.

24 Q And then is this your calculation, all these
25 30-minute windows?

1 A That is my calculation.

2 Q Of those two times?

3 A Yes.

4 Q Patient [sic] at bedside discharge time?

5 A Yes.

6 Q Or excuse me, physician at bedside. I misspoke.
7 Coming across, the next column, what is this?

8 A The nurse who signed off on the form, and I
9 don't know if I -- I don't remember if it was the discharge
10 time. I can't remember from this view.

11 Q You mean the nurse who would sign the discharge
12 form? If you saw the record, if I -- and I'll show one to you
13 later, would that refresh your memory?

14 A Yes, that would help.

15 Q Okay. But at least this came from the medical
16 record of the patient?

17 A Yes.

18 Q And the next one, there's two different ones
19 here and I've got both of them on the screen. One says, Tape
20 read 1, both start and end time, and the next one says,
21 Monitor read 2, both start and end time. Can you tell us what
22 the difference is between these two?

23 A There were two -- two things that were printed
24 off and taped or stapled to a piece of paper. One looked like
25 a tape and one looked like a monitor, and so that's what I

1 labeled them as.

2 Q So the monitor one, did that contain like a
3 tracing of an EKG, like a heart rate thing?

4 A I don't -- I would have to see it.

5 Q Okay. And as a matter of fact, before I go any
6 further I need to show you, I will, this draft over here. I'm
7 going to show you Ziyad, Sharrieff's file. This is Exhibit
8 No. 1.

9 MR. STAUDAHER: Can I come up, Your Honor?

10 THE COURT: [No audible response.]

11 BY MR. STAUDAHER:

12 Q As we go through this, get to the page, and do
13 you see this page 6?

14 A Yes.

15 Q Okay. I'm going to show this to you now on the
16 screen, because I just wanted to go through that. But there
17 are two -- we may not be able to get the whole thing on in
18 this without me zooming back in and making everybody sick, but
19 do you see that there appears to be a strip with what appears
20 to be a heart tracing on it?

21 A Yes.

22 Q And then there's one that is just a -- whoops.
23 I guess I got it upside down. Just a sort of a tape -- I know
24 this is photocopied onto this page; is that correct, or the
25 tapes were put on and then a photocopy made?

1 A Yes.

2 Q And then another strip here?

3 A Yes.

4 Q Which one is the one with the heart tracing on
5 it?

6 A This is the monitor.

7 Q So the one that's over here that says monitor?

8 A Yes.

9 Q And the other one that I showed on that exhibit,
10 which was the tape or what appears to be just a tape without a
11 trace on it is which one, the other one?

12 A The tape, yes.

13 Q Now, tell us again when you say start and stop
14 time, is that directly off of the machine read recording,
15 where it says start, where it has the different increments
16 listed?

17 A If you could show me that again? I'm pretty
18 sure it is, but I -- but I don't know if it was handwritten or
19 if it was printed off there. Yes. Okay. It's right off
20 the -- it's right off the tapes.

21 Q And then the next one?

22 A Yes.

23 Q Okay. So those numbers came off of the actual
24 machine readout, correct? Is that right?

25 A That's correct.

1 Q All of these are listed in sort of a descending,
2 or at least it looks to be chronological based on that,
3 correct?

4 A Yes.

5 Q Both columns?

6 A Yes.

7 Q And then these yellow columns for both the read
8 tape, which would be we understand is the recovery room just
9 so we can keep it straight for us, and the procedure room over
10 here. Do you see that?

11 A Yes.

12 Q And so your calculations of this column here
13 come from these tapes, tape Read 2, end time tape, or end tape
14 Read 2 start time?

15 A Yes. I put that column in and did the
16 calculations.

17 Q When we move over to the last columns --

18 MR. STAUDAHER: And I believe as soon as I get done
19 with this, Your Honor, it might be -- that might be a good
20 place, but...

21 THE COURT: Okay.

22 BY MR. STAUDAHER:

23 Q We've got one last set of columns here which
24 says report time or report. Can you tell us what that is?

25 A There was a report prepared that was a

1 computerized report. I believe that's what this is from. And
2 I would have calculated the minutes from those start and end
3 times.

4 Q And just so we are clear on that, I'm going to
5 show you page 1880 of Exhibit No. 1, and do you see this
6 record? I'll zoom out on it now so we can have a better piece
7 for it. The very first page of that record, and it shows some
8 actual, some pictures of -- snapshots during the procedure?

9 A Yes.

10 Q And then we go to the second page, a
11 continuation of that, but it also has some times down here.

12 A That's correct.

13 Q Is that where this came from?

14 A Yes.

15 Q So on the section here where it says, Report
16 time, the record we just looked at is what generated those
17 times --

18 A Yes.

19 Q -- those time differences; is that right?

20 A Yes, that's correct.

21 Q Now, I notice in this column again, it looks
22 like it's a calculation based on the differences between the
23 start and stop times; is that right?

24 A That's right.

25 Q Now, you mentioned that the very last column was

1 a comments column that you put some comments into, right?

2 A Yes.

3 Q I'll represent to you that that's been removed
4 from this and as you can see, what it's been replaced is just
5 the patient numbers like they are the other side of the chart.

6 A Yes.

7 Q Okay. And the last thing before we stop for the
8 day, the next one of these, which is the September 22 chart,
9 it appears to be laid out in the same way; is that correct?

10 A That's correct.

11 Q Same way with the comments side on this end
12 being changed to the patient numbers?

13 A Yes.

14 Q And on this side you asked about the -- I think
15 it was the hepatitis portion right here, do you see that?

16 A Yes.

17 Q And in this case it says Y or N. Do you see
18 those?

19 A Yes.

20 Q One last thing on that. Do you see some of
21 those say N and some of them say Yes?

22 A Yes.

23 Q Is that something you put on there, or was that
24 something different?

25 A No. I would have done those.

1 MR. STAUDAHER: Okay. Your Honor, this may be a good
2 time to stop.

3 THE COURT: Okay. We'll go ahead, ladies and
4 gentlemen, take our evening recess. We'll reconvene tomorrow
5 morning at 11:00 a.m.

6 During the evening recess, you're reminded that
7 you're not to discuss the case or anything relating to the
8 case with each other or with anyone else. You're not to read,
9 watch or listen to any reports of or commentaries on the case,
10 person or subject matter relating to the case. Don't do any
11 independent research by way of the Internet or any other
12 medium. Please don't form or express an opinion on the trial.

13 Notepads in your chairs, and follow the bailiff
14 through the rear door.

15 (Jurors recessed at 4:56 p.m.)

16 THE COURT: And ma'am, please don't discuss your
17 testimony with any other witnesses during the break.

18 Lawyers, 9:00 o'clock.

19 MS. STANISH: Pardon me?

20 THE COURT: 9:00.

21 MS. STANISH: Okay.

22 THE COURT: All right.

23 (Court recessed for the evening at 4:57 p.m.)
24
25

CERTIFICATION

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

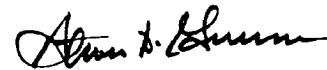
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KIMBERLY LAWSON

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CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
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| | | |
|------------------------------|---|----------------------|
| 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 30

THURSDAY, JUNE 6, 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, THURSDAY, JUNE 6, 2013, 9:07 A.M.

2 * * * * *

3 (Outside the presence of the jury.)

4 THE COURT: All right. Is your first witness ready,
5 State?

6 MR. STAUDAHER: I believe so, yes, Your Honor. It
7 will be William Lathrop.

8 THE COURT: Sir, just come on up here right by me,
9 please, and then face this lady right there.

10 WILLIAM LATHROP, STATE'S WITNESS, SWORN

11 THE CLERK: Thank you. Please be seated. Please
12 state and spell your first and last name for the record.

13 THE WITNESS: William J. Lathrop, L-a-t-h-r-o-p.

14 THE COURT: And J, just J-a-y or J initial?

15 THE WITNESS: J initial.

16 THE COURT: Initial. Okay. Go ahead, Mr.
17 Staudaher.

18 DIRECT EXAMINATION

19 BY MR. STAUDAHER:

20 Q Sir, I understand you're hard of hearing; is
21 that correct?

22 A Slightly, yeah.

23 Q Okay. I'll try to speak up and if I don't -- if
24 you don't hear me --

25 THE COURT: Can you not hear, Mr. Wright?

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1 MR. WRIGHT: No. Who is it?

2 THE COURT: William J. Lathrop. And you have --
3 we'll give you a headset and that -- do you have hearing aides
4 in?

5 THE WITNESS: No, I don't have any.

6 THE COURT: Okay. Well, that works good because we
7 have a headset and it picks up the microphone, so I'm going to
8 have you then put that on. What's that?

9 THE WITNESS: That's great.

10 THE COURT: And then everyone who wears it says it
11 helps them, so we'll see if it helps you. Okay? And if you
12 don't have hearing aides, that's even better because it won't
13 interfere with the hearing aides because sometimes it makes a
14 noise, you know, from the hearing aides. Can you hear better?

15 THE WITNESS: Oh, yes.

16 THE COURT: Okay. And then Mr. Wright, we don't have
17 a headset for you; however, if you have trouble hearing the
18 witness -- oh, we do have a headset.

19 MR. WRIGHT: I don't know if it will work with my
20 hearing aides. I'm going to try it one of these times.

21 THE COURT: Okay. If not, we have a handheld
22 microphone that we can give the witness. Okay? But for right
23 now let's just try with this.

24 BY MR. STAUDAHER:

25 Q And you also have a very soft voice, so if you

1 could speak as close to that microphone as possible --

2 A Oh, yes.

3 Q -- that might help. Okay?

4 A Okay.

5 Q You had -- did you have a wife by the name of
6 Carol Lathrop?

7 A I most certainly did.

8 Q When did -- is she still with us?

9 A No, she's passed.

10 Q And when did she die?

11 A 10/10/10.

12 Q Now, I'm going to take you back in time a little
13 bit to September of 2006. Were you -- do you live here in Las
14 Vegas, first of all?

15 A I live in Pahrump.

16 Q Were you in Las Vegas on that date with your
17 wife?

18 A I most certainly was.

19 MS. STANISH: Judge, can I sit up closer if you don't
20 mind so I can take notes?

21 THE COURT: That's fine.

22 BY MR. STAUDAHER:

23 Q And what was the purpose of you coming to Las
24 Vegas with your wife on that day?

25 A Emergency. Not that day we're talking about.

1 Q We're talking about coming to Las Vegas.

2 A Coming to -- yeah, well, I think the health plan
3 that we were with, they advised her to get a -- her and I both
4 actually to get these exams done. And it really wasn't
5 necessary. She was in good health up to that point, but they
6 make it in their so-called plans of prolonging life exams were
7 necessary.

8 Q So a screening type examination?

9 A Yes --

10 THE COURT: Were these --

11 A -- and that's how it became involved getting
12 into this outfit.

13 BY MR. STAUDAHNER:

14 Q And what kind of exams were these?

15 A A colon -- what do they call them,
16 colonoscopy --

17 Q Is that --

18 A -- exam.

19 Q Where they put the -- the scope or the tube up
20 your bottom?

21 A Exactly.

22 Q Okay. So you were -- were you having a
23 procedure done also or was this just your wife at this time?

24 A No, I had it done previously in California. She
25 was going through it for the first time.

1 Q Okay. So she goes to where for this procedure?

2 A Shadow Lane.

3 Q So the endoscopy center there?

4 A Exactly.

5 Q And when she got in to the facility, were you
6 with her at the time?

7 A I certainly was.

8 Q Can you talk to us about what you remember
9 experiencing at the facility?

10 A It was a little wait to get in there. Then a
11 nurse came and took her in and she was in there and the same
12 nurse came out when she was discharged.

13 Q Now, when you were -- or when you and she left
14 or before you left, rather, what kind of instructions -- or
15 did they say anything had happened --

16 A Yes.

17 Q -- any problems?

18 A Yes. They said that the exam required air to be
19 put into her because of difficulty and --

20 MS. STANISH: Excuse me. Can we have a foundation?
21 I'm not sure if we're dealing with hearsay or firsthand
22 knowledge here.

23 THE COURT: Okay. Let me ask you this. Did you --
24 I'm assuming the nurse came and got your wife out of the
25 waiting room; is that correct?

1 THE WITNESS: Yes.

2 THE COURT: How long did you and your wife sit in the
3 waiting room before the nurse came and got your wife?

4 THE WITNESS: Oh, I'd say roughly a half hour.

5 THE COURT: Okay. And then, where did you see your
6 wife again? Was she like lying on a gurney or did she come
7 back out into the waiting room or when -- when -- when did you
8 see your wife after the procedure for the first --

9 THE WITNESS: They sent her out very groggy.

10 THE COURT: Okay. Into the waiting room where all
11 the other people are sitting?

12 THE WITNESS: Yes.

13 THE COURT: Okay. And did the nurse walk out with
14 her?

15 THE WITNESS: Very -- yeah, right about the same
16 time.

17 THE COURT: Okay. And then, who told you about the
18 air in -- in the procedure?

19 THE WITNESS: This nurse.

20 THE COURT: This nurse. So is the nurse talking to
21 you there when you're sitting in the waiting room or standing
22 in the waiting room in front of all the other people that are
23 sitting there?

24 THE WITNESS: Pretty close, yeah.

25 THE COURT: Okay. Did they pull you aside to a

1 private area or anything like that?

2 THE WITNESS: No.

3 THE COURT: Okay. Go on, Mr. Staudaher.

4 BY MR. STAUDAHER:

5 Q So when -- after you get this information, did
6 they tell you what she needed to do because of the air and so
7 forth?

8 A Yes. Get Gas-X if she had a problem, which she
9 certainly had it at the time from leaving there.

10 Q So they said Gas-X was how she should take care
11 of this problem?

12 A Yes.

13 Q And what kind of problem was she experiencing
14 when she left the facility?

15 A Pain.

16 Q And was this in her abdomen or where was it?

17 A I'm sure it was in her abdomen. She was
18 complaining that way, yes.

19 Q And for the record you -- you took your hand and
20 put it onto your stomach area; is that correct?

21 A Yeah.

22 Q When you just -- just a moment ago when you were
23 describing it.

24 A Yes, uh-huh.

25 Q So did you talk to a doctor at all right there

1 in the clinic or just the nurse?

2 A It was the first time I saw him was here.

3 Q Was where?

4 A Right here.

5 Q Okay. So you never saw -- and you've kind of in
6 the Court motioned toward the table. Are we talking about a
7 specific physician or a person?

8 A I can't remember that part. It was too much
9 trauma going on at that time to mess up my mind --

10 THE COURT: That's okay. On that first day when the
11 nurse, you know, your wife went in for the colonoscopy, did
12 you at any time meet a physician, a doctor? Did a doctor ever
13 come and talk to you?

14 THE WITNESS: No.

15 THE COURT: So you only saw the nurse that day?

16 THE WITNESS: That's right.

17 THE COURT: Okay. Do you remember anything about
18 that nurse? Was it a woman or a man?

19 THE WITNESS: A man.

20 THE COURT: It was a man?

21 THE WITNESS: Uh-huh.

22 THE COURT: Okay. Did -- did you -- did he introduce
23 himself or give you his name or anything?

24 THE WITNESS: I'm sure he did, but --

25 THE COURT: But you don't remember it?

1 THE WITNESS: No.

2 THE COURT: Well, that's fine. Okay, go on Mr.
3 Staudaher.

4 BY MR. STAUDAHER:

5 Q So after -- so I assume you left at that point
6 with your wife?

7 A Yes.

8 Q At this stage, other than this air, did you
9 think that there was anything wrong or did you -- you and your
10 wife contemplate there being a problem?

11 A We did think things were wrong but who are we,
12 you know? They said everything was going to be fine, she may
13 experience pain with the gas. That was it.

14 Q Beside the -- the Gas-X that you described, did
15 they say anything else about what you should do in the event
16 something takes, you know, something untoward happens or how
17 to treat it further than just Gas-X?

18 A I -- I don't ever recall anything like that,
19 just the gas comes straight to the mind.

20 Q So did you go home after that?

21 A Yes.

22 Q Kind of walk us through what happens next, if
23 you would?

24 A She complained all the time, so I went and got
25 the Gas-X and nothing worked. Pain increased until it got

1 really intense, the whole bit. But I think there was
2 telephone calls made to this place and they said if something
3 happened, got worse, then we should go to the doctor. There's
4 a local doctor there, which we did the next morning.

5 THE COURT: Did you go to the doctor in Pahrump or
6 did you have to drive back in to Las Vegas?

7 THE WITNESS: No, in Pahrump we --

8 THE COURT: In Pahrump, you had a doctor there?

9 THE WITNESS: And that's when the nurse -- it was a
10 doctor's assistant that took her and had an exam and he said
11 that there was a great injustice done.

12 BY MR. STAUDAHER:

13 Q So when -- as far as your interaction with --
14 you said that you made some phone calls or there were some
15 phone calls made around this time when your wife is having
16 trouble?

17 A Oh, yes.

18 Q Is this back to the clinic that you --

19 A Yes.

20 Q -- actually had dealt with?

21 A Right.

22 Q Do you remember who you spoke with there?

23 A No, not exactly.

24 Q Do you remember at one point giving a report or
25 sending a report in to the State Medical Board, a complaint?

1 A Yes, I did. It was -- I should have wrote it
2 much different I'm sure, but thinking now what I should have
3 done. But anyway, yes, I complained about -- after we found
4 this out that she had to have a CT-scan and everything done at
5 the local hospital up there. And then they proceeded to have
6 her -- an ambulance to Spring Valley Hospital to have her
7 [indiscernible] where she was punctured. They -- it was very
8 traumatic.

9 Q So -- and I'm sorry, sir, I don't mean to -- to
10 upset you. But when you brought her -- or when she came to
11 the hospital, did she have to have any kind of surgery or
12 anything like that to correct this puncture?

13 A They most certainly did. It was -- it was an
14 emergency in the middle of the night.

15 Q What kind of surgery did she have to have, if
16 you know?

17 A They had to repair the puncture and she was --
18 ended up with a colonoscopy bag for better than a year, which
19 I had to tend to myself along with the nurse that come in --

20 THE COURT: So she had to actually have a colostomy
21 as a result of --

22 THE WITNESS: Yes.

23 THE COURT: -- that? And then was that eventually
24 reversed before she passed away?

25 THE WITNESS: Yes. It took about a year.

1 THE COURT: About a year that she had the bag?

2 THE WITNESS: Yes.

3 THE COURT: Okay. And you had to help with the
4 cleaning and all that stuff?

5 THE WITNESS: Exactly.

6 THE COURT: Okay. Did you file a medical malpractice
7 lawsuit?

8 THE WITNESS: No. I tried dealing with the man -- I
9 had a mutual insurance company, which I understand later I
10 found out he was part ownership of this.

11 THE COURT: Dr. Desai?

12 THE WITNESS: Yes. And anyways, they walked us
13 around for a year. I didn't want to -- I never believed in
14 lawyers and I still don't. But anyways, we -- we decided we'd
15 try to get some compensation for gasoline and the expenses
16 that were caused by this thing and they walked us around.
17 They had a so-called nurse that runs the mutual insurance
18 company. She managed -- she knew that -- which we didn't know
19 about the time limit, it was going to run out. They walked us
20 all around that for a year.

21 THE COURT: So you never got any money?

22 THE WITNESS: Never got a thing. They -- and they
23 just said whatever, the insurance company, they should have --
24 we sent a complaint in there that they should not have been
25 charged at all and Medicare should have never been charged at

1 all.

2 THE COURT: Okay. So --

3 THE WITNESS: All went to deaf ears.

4 THE COURT: Did you -- did you ever consult with a
5 plaintiff's lawyer but -- or you just don't like lawsuits and
6 you didn't --

7 THE WITNESS: Well, then there was -- yes, we got in
8 on what they call a --

9 THE COURT: Class action?

10 THE WITNESS: Class action. That was the only deal
11 we ever dealt with, yes.

12 THE COURT: Did you get any money out of that?

13 THE WITNESS: No.

14 THE COURT: Nothing?

15 THE WITNESS: Nothing.

16 THE COURT: And that's all over? There's nothing --
17 I'm assuming that would be all over or still pending or do you
18 know?

19 THE WITNESS: I don't -- what do you mean by over?

20 THE COURT: Is it -- is the case over, that class --

21 THE WITNESS: Well, I never heard a thing, so.

22 THE COURT: You never heard a thing after that?

23 THE WITNESS: No.

24 THE COURT: Okay.

25 THE WITNESS: No.

1 BY MR. STAUDAHER:

2 Q Back in November of 2006, did you file a
3 complaint with the State Medical Board related to what had
4 happened?

5 A Yes, but I think [indiscernible] now we're
6 looking at it. I got a copy of it. Yes, I did file it. She
7 -- my wife is the one that started on page one or so with --
8 and then I ended up put the remarks on the last page, if you
9 read that.

10 Q So there's a series of documents that you -- and
11 medical records that you filed with the complaint to the
12 Medical Board?

13 A Yes. Yes, we have them.

14 MR. STAUDAHER: Your Honor, may I approach?

15 THE COURT: You may.

16 BY MR. STAUDAHER:

17 Q Now, sir, you had said that you --

18 MS. STANISH: Excuse me. Can I see what you're
19 showing him?

20 MR. STAUDAHER: Oh, I'm sorry. This is Bates number
21 648 or 6846, 6847 and 6848.

22 MS. STANISH: Thank you.

23 MR. STAUDAHER: May I come up with the -- with this,
24 Your Honor?

25 THE COURT: Sure.

1 BY MR. STAUDAHER:

2 Q Sir, I'm showing -- showing you these documents
3 here.

4 A Yes.

5 Q And I want to ask you a couple questions. First
6 of all, there's a signature on -- on 6847. Do you recognize
7 that signature?

8 A That's mine.

9 Q Okay.

10 A Yes.

11 Q And the writing on this --

12 A These are all my printing, yes.

13 Q So this is all of your --

14 A Yes. But she states on here -- over here. I
15 thought it read that she was making the complaint. Maybe I'm
16 wrong.

17 Q Well, does it say your name William Lathrop and
18 the complaint form --

19 A Yes.

20 Q -- to the Nevada State Board of Medical
21 Examiners?

22 A Yes.

23 Q And there's a narrative portion over here where
24 it's -- where it's got some handwritten portions?

25 A Yeah.

1 Q Do you recall that?

2 A Yes, that's all mine.

3 Q That's yours?

4 A Yes.

5 Q So at the time you filed this complaint, this is
6 what you wrote?

7 A Yeah.

8 Q Now you said that you had some difficulty
9 remembering the name of the doctors or who you dealt with at
10 the clinic. Do you recall that?

11 A Yes.

12 Q Okay. Would it refresh your memory to look at
13 page 6848 and review that and then tell me who the physician
14 or physicians were that you dealt with?

15 MS. STANISH: I'm sorry. Could we have some
16 foundation on when and who you dealt with first or is this
17 from --

18 MR. STAUDAHER: That's to refresh his memory. I
19 asked him a question earlier so I'm asking him who he dealt
20 with.

21 THE COURT: I don't know if he dealt with anybody
22 personally.

23 MS. STANISH: It sounded -- this is what I'm trying
24 to say, Michael -- or sorry. Can we have some foundation?

25 THE COURT: Did you yourself ever talk to a doctor at

1 any time when your wife is going through all of this in any of
2 your calls or anything? Did you ever, to your knowledge,
3 speak with a physician?

4 THE WITNESS: No.

5 THE COURT: Okay. Who did you -- did you talk to a
6 nurse or --

7 THE WITNESS: There always seemed to be a nurse.
8 Well, many times as we're trying to get in down there to get a
9 call in, maybe -- it seemed like it was always somebody who
10 was like a spokesman for the outfit.

11 THE COURT: Okay. So you never actually got to talk
12 to a -- a doctor?

13 THE WITNESS: No.

14 THE COURT: You yourself?

15 THE WITNESS: Nope.

16 THE COURT: Okay. And do you know would that -- are
17 you refreshing his recollection as to who her physician was,
18 the wife's?

19 MR. STAUDAHER: Actually, that -- he actually went
20 and talked to a doctor.

21 THE COURT: Oh, okay.

22 THE WITNESS: His -- his name is on the --

23 THE COURT: Okay. Why don't you read that over to
24 yourself then quietly, just read it to yourself --

25 MR. STAUDAHER: Yeah, just read this -- read this.

1 THE COURT: -- and then Mr. Staudaher will ask you
2 some questions if that refreshes your memory.

3 THE WITNESS: Yeah, she made the call the next
4 morning.

5 BY MR. STAUDAHER:

6 Q Did that help a little bit?

7 A Yeah. As far as that goes, yes, uh-huh.

8 Q Okay. But did you actually say that you talked
9 to Dr. Desai in your -- in your handwritten statement?

10 A Never.

11 Q You never did?

12 A Never.

13 Q So when you say Dr. Desai here, who are you
14 referring to? Do you see where it says --

15 MS. STANISH: Your Honor, if I may interject an
16 objection here. My reading of this complaint is that it's
17 hearsay --

18 THE COURT: Well, let's --

19 MS. STANISH: -- that he's relating one --

20 THE COURT: -- this just a hearing out of the
21 presence of the jury to get to the bottom of things. So
22 let's --

23 MS. STANISH: Okay.

24 THE COURT: -- let's get to the bottom of what really
25 happened and then if -- obviously if he does --

1 MS. STANISH: All right.

2 THE COURT: -- testify, we'll exclude any hearsay.
3 But at this point it's not clear to me. You know, maybe he
4 did talk to somebody, I don't know.

5 BY MR. STAUDAHER:

6 Q When -- here where it's talking about your wife
7 and you, your wife called Dr. Desai that day?

8 A Yeah, she did all the talking.

9 Q Okay. So she was on the phone with him?

10 A Yes.

11 Q When -- were you present when she was making the
12 phone calls?

13 A Yes, definitely.

14 Q Okay. Was she talking to -- in -- based on what
15 you've written here and refreshed your memory with if you
16 have, was she talking with Dr. Desai, getting advice from him?

17 A I couldn't tell you that because whoever it was
18 -- but I take it that she did not. I remember her saying she
19 talked to a nurse or somebody, but I don't think she ever did
20 talk to him.

21 Q Okay. So at some point though you contact the
22 office and talk to somebody or your wife does?

23 A Oh, several times.

24 Q How many times did you actually call the office,
25 you or your wife, if you recall, to try to get information?

1 A I would say -- I would say two to three times.

2 Q When you made these phone calls, did you try to
3 get ahold of the doctor? I'm talking about Dr. Desai. Did
4 your wife speak with him?

5 A Well, I assume she was trying to get ahold of
6 the doctor, yes.

7 Q Well, you were there, were you not?

8 A I was there while she's making the call, yes.

9 Q So who was she trying to call?

10 A Anybody that could give her help with her
11 problem.

12 Q So the calls were going back to Dr. Desai's
13 clinic?

14 A Yes. I think they were relayed back and forth
15 to him or somebody there to -- but I don't believe she talked
16 to him either.

17 Q After this happened where she goes to the
18 hospital, did you have any further contact with the office?
19 Did you call them and tell them what happened? I mean, I know
20 you said you talked to the insurance company --

21 A Yeah.

22 Q -- but did you ever talk to the -- Dr. Desai's
23 office?

24 A I don't believe we ever called back there after.
25 The other places were taking care of her at Spring Valley

1 Hospital, Dr. Davis down there. And so we had no more
2 dealings with the -- after she was being taken care of.

3 Q Did -- was there ever any scheduled follow-up
4 visits with Dr. Desai or his clinic or anybody from his -- his
5 organization?

6 A No.

7 Q So she then is dealing with different doctors
8 after that?

9 A Yes.

10 MR. STAUDAHER: I have nothing further.

11 THE COURT: Let me -- let me ask you this. Okay.
12 The day after her procedure you and your wife go and see your
13 doctor in Pahrump, correct?

14 THE WITNESS: Yes.

15 THE COURT: Okay. Does he just send you home then or
16 does he send you to the hospital in Las Vegas?

17 THE WITNESS: Directly to the hospital.

18 THE COURT: Directly to the hospital.

19 THE WITNESS: Yes.

20 THE COURT: Did it -- were you transported by
21 ambulance?

22 THE WITNESS: Yes.

23 THE COURT: So an ambulance comes to the doctor and
24 transports your wife to Las Vegas. Is that what happened or
25 that --

1 THE WITNESS: Yes.

2 THE COURT: Okay.

3 THE WITNESS: Down to Spring Valley Hospital.

4 THE COURT: Okay. And then, did you ride -- I'm just
5 curious, did you ride with her in the ambulance or did you
6 follow in your car or --

7 THE WITNESS: She went on her own in a rainy night.

8 THE COURT: Okay. Did the ambulance pick her up at
9 your house or from the doctor's office in Pahrump, do you
10 remember?

11 THE WITNESS: From the hospital I believe.

12 THE COURT: Okay. Mr. Staudaher, do you have any
13 follow-up based on --

14 MR. STAUDAHER: Just one or two on that.

15 THE COURT: I'm a little confused.

16 BY MR. STAUDAHER:

17 Q After she goes to the hospital and she -- I know
18 she had to have this -- this colostomy bag, how did she do
19 after that? I mean, was -- was she -- beside having to deal
20 with the colostomy bag, was there any problem that she
21 continued to have because of this?

22 A Oh, yes. There was a rupture involved and an
23 operation after this. It just all went downhill from --

24 Q And do you recall how long it was after the
25 procedure -- the procedure was on the 6th of September and do

1 you remember how many days it was after that that she actually
2 had the operation?

3 A From his place?

4 Q From his place to the time that she actually
5 ends up in the hospital having the operation.

6 A The next day.

7 Q So the very next day?

8 A Yes.

9 Q And just so we're clear on this, when she left
10 his clinic that day she was experiencing problems.

11 A Oh, yes.

12 Q And they just told her to take Gas-X?

13 A Yes.

14 MR. STAUDAHER: Nothing further, Your Honor.

15 THE COURT: All right. Cross.

16 CROSS-EXAMINATION

17 BY MS. STANISH:

18 Q Mr. Lathrop, do you recall whether your wife
19 talked to a Dr. Sharma the day after her procedure?

20 A It's very possible. I didn't know who he was or
21 I don't know if she even knew.

22 Q Okay. As I understand it, you were standing
23 near your wife while she was talking to various people on the
24 phone, correct?

25 A Very close, yes.

1 Q And at what -- and in of these calls she talked
2 to someone named Dr. Sharma?

3 A You say so, I don't.

4 Q You don't know?

5 A No.

6 Q Okay. Fair enough. Your wife was directed by
7 someone on a phone call to get to a -- emergency clinic,
8 correct?

9 A I believe so, yes.

10 Q And thereafter, she was rushed to the hospital
11 for surgery to a perforation, correct?

12 A That's correct.

13 Q All right. Did -- did you ever acquire her
14 medical records from the gastro center?

15 A I'm sure she did. She collected everything.

16 Q Were you aware that she signed a document that
17 set forth the risk of a colonoscopy, including perforation?

18 A Don't you have to do that every time you go in
19 for any kind of a procedure? It's just a --

20 Q Okay. So --

21 A -- release to --

22 Q Did you see those records? I guess I should ask
23 you that.

24 A I'm sure I did.

25 Q Okay. Do you remember them? Do you remember

1 the records?

2 A That particular one?

3 Q Right.

4 A Not from memory right now.

5 Q Okay. Did -- did the district attorney or -- or
6 the Las Vegas Metropolitan Police ever ask you to turn over
7 medical records of your wife to them?

8 A I don't recall.

9 Q Do -- how -- by the way, sir, how old was your
10 wife at the time she had the colonoscopy?

11 A Can I contact my niece?

12 Q Oh. If you don't know, that's okay.

13 A Okay.

14 Q You know, it's all right. Were you ultimately
15 informed by the Medical Board of Examiners that they were not
16 going to take any action based on your complaint?

17 A I think it ran out or [indiscernible]
18 investigating. They done as far as they could or they went as
19 far as they could to help me. That's all I remember.

20 Q The Medical Board of Examiners, not -- I'm not
21 talking -- well, the Medical Board of Examiners, do you
22 remember who you talked to there?

23 A Not anymore.

24 Q Sure. All right. Do you remember getting a
25 letter from them saying that they were not going to take any

1 action on your complaint?

2 A I remember something like that, yes.

3 Q Do -- do you know who -- what doctor referred
4 your wife to the gastro clinic?

5 A I'm sure it was Tannoury [phonetic].

6 Q I'm sorry?

7 A A Dr. Tannoury.

8 Q Dr. Tannoury, he's your doctor in -- he's a --
9 the doctor in Pahrump?

10 A At the -- at the time he was.

11 THE COURT: In Pahrump? He was your doctor in
12 Pahrump?

13 THE WITNESS: Yes.

14 THE COURT: Okay.

15 BY MS. STANISH:

16 Q And, sir, if you recall, do you remember why he
17 wanted your wife to have a -- to go to the gastro center? Was
18 there a medical reason that he thought needed to be addressed?

19 A I think it was all directed from that, what is
20 it, the thing -- senior dimensions.

21 THE COURT: Was it just because she was a certain age
22 and over a certain age they tell you --

23 THE WITNESS: That is why, yes.

24 THE COURT: Is that what they told you?

25 THE WITNESS: They did, uh-huh. Yeah, it was no

1 medical emergency from Tannoury, that's for sure.

2 THE COURT: Had she ever had one before or was that
3 her first one?

4 THE WITNESS: Yes, that was the whole deal then.

5 BY MS. STANISH:

6 Q Was your wife experience -- before going to the
7 gastro center, before seeing a doctor there, was your wife
8 complaining about having stomach pain?

9 A No.

10 Q You had mentioned that -- you had heard that Dr.
11 Desai had an interest in the insurance company. Did you get
12 that from a newspaper?

13 A It came out someplace. I can't remember where
14 it came.

15 MS. STANISH: Okay. I have nothing further.

16 THE COURT: All right. Mr. Santacroce, do you have
17 any questions?

18 MR. SANTACROCE: No.

19 THE COURT: Anything else, Mr. Staudaher, for this
20 witness?

21 MR. STAUDAHER: Just for the purposes of this
22 hearing, I'd like to -- since counsel asked about this as
23 well, I'd like to mark and admit the -- the documents that
24 were submitted by [indiscernible].

25 THE COURT: Any object -- I mean, it's Court's

1 exhibit.

2 MS. STANISH: What I would like, Your Honor, is for
3 him to give you the whole story. So does that include the
4 Medical Board --

5 MR. STAUDAHER: It's -- it's all in the records.

6 MS. STANISH: Everything I got you're giving to the
7 Judge?

8 MR. STAUDAHER: Right.

9 MS. STANISH: Okay.

10 THE COURT: That's fine. All right. Sir, thank you
11 for being here and please don't discuss your testimony with
12 anyone else. All right. You are excused. Thank you.

13 THE WITNESS: Can I take these home with me?

14 THE COURT: No. All right. Mr. Staudaher, is the
15 next witness queued up on court call to me or do we have to
16 set it up?

17 MR. STAUDAHER: I believe so. I think we set it up
18 --

19 THE CLERK: I set it up.

20 THE COURT: Okay. Doesn't matter the order, so.

21 THE CLERK: Ms. Phelps, are you still there?

22 THE COURT: All right. Ms. Phelps, can you hear me?

23 THE WITNESS: Yes, I can.

24 THE COURT: All right, this is Judge -- this is Judge
25 Adair. And can you tell us where you are right now?

1 WITNESS: I am in [indiscernible] Arizona in my home.

2 THE COURT: I'm -- okay. We're having trouble
3 hearing you. Can you say that again?

4 THE WITNESS: I'm sorry. I had surgery two months
5 ago on my neck and I'm having a hard time with my voice. I
6 apologize.

7 THE COURT: No, no. We didn't -- we didn't have the
8 equipment turned up loud enough. Now we can hear you. And
9 you're in your home where?

10 THE WITNESS: I'm in my home in Littlefield, Arizona.

11 THE COURT: Okay. Ma'am, where you are, just stand
12 and raise your right hand and the clerk will administer the
13 oath to you.

14 THE WITNESS: Okay.

15 LISA PHELPS, STATE'S WITNESS, SWORN

16 THE CLERK: Thank you. Please state and spell your
17 first and last name for the record.

18 THE WITNESS: My name is Lisa Phelps.

19 MS. WECKERLY: Can you spell your name?

20 THE WITNESS: I'm sorry. Yes, it's L-i-s-a,
21 P-h-e-l-p-s.

22 THE COURT: All right. Thank you. Ms. Weckerly, you
23 may ask the witness your questions.

24 DIRECT EXAMINATION

25 BY MS. WECKERLY:

1 Q Thank you. Good morning, Ms. Phelps. I want to
2 direct your attention to July the 14th of 2000. On that date,
3 did you have a procedure at the Endoscopy Center of Southern
4 Nevada?

5 A This is Lisa Phelps. Yes, I did.

6 Q Okay. And who was the doctor that referred you
7 for your procedure?

8 A My family doctor, Dr. [indiscernible] did.

9 Q And what type of procedure did you have?

10 A I had a colonoscopy.

11 Q Now, do you remember the -- the street that the
12 facility was on or where it was?

13 A I -- I do not.

14 Q Okay. Tell us about what you remember about
15 when you arrived at the clinic.

16 A Okay. When I arrived at the clinic my husband
17 was with me. I -- as soon as I walked in the door, it was
18 really crowded, I checked in and we stood for a while before a
19 seat was available to us.

20 Q Okay. Had you --

21 A I don't remember --

22 Q Oh, I'm sorry. Had you had to do a prep or
23 drink some liquid the night before in preparation for your
24 procedure?

25 A Yes, I did.

1 Q Okay. And so you had done all that, right?

2 A Yes, I did.

3 Q Okay. And you -- you get to the waiting room
4 area and there's some people there?

5 A That's correct.

6 Q And do you remember how long you had to wait
7 before you were called back for your procedure?

8 A I don't remember. I know it was quite a while
9 though.

10 Q Okay. At some point you were called back,
11 correct?

12 A That is correct.

13 Q What do you remember after you were called back
14 to have your procedure done?

15 A Well, I remember them taking me back into the
16 dressing room to go ahead and put a gown on and then they put
17 me on a waiting bed and got an IV started.

18 Q Okay.

19 A And at that point, I don't remember how long I
20 had to wait, but they took me in to the room to do the
21 colonoscopy.

22 Q And when you got into the room to do the
23 colonoscopy, was there someone there who was going to
24 administer like sedative or sedation medication to you?

25 A Yes, there was. There was a nurse there with me

1 to administrate the sedative to me.

2 Q And do you remember if the nurse was male or
3 female or anything about the nurse at all?

4 A If I remember correctly it was a female nurse.

5 Q Okay. And did that person talk to you at all?

6 A I apologize. I didn't hear the question.

7 Q That's okay. Did that nurse -- the female talk
8 to you at all before the procedure?

9 A I don't remember if she did or not.

10 Q Okay. Tell us what you remember about once you
11 got into the procedure room.

12 A I remember that I had waited for a few minutes
13 before the doctor came in. And then he told the nurse to go
14 ahead and start with the medication and I was waiting and I
15 didn't feel anything. He said okay, we're going to go ahead
16 and we're going to start. And I told him at the time it was
17 hurting really bad. And I tried to turn and he told the
18 assistant to hold me down and make sure I didn't move. But
19 they didn't give me anymore medication so I was in constant
20 pain and I kept telling him that.

21 Q Okay. Let me back up just a little bit. Okay?

22 A Okay.

23 Q Someone did, at least from your observation,
24 administer some anesthesia to you, is that -- I mean, did it
25 look like something was injected into you?

1 A Yes.

2 Q Okay. And your -- if I'm understanding you
3 correctly, it didn't make you feel any different or drowsy or
4 make you fall asleep?

5 A No, it didn't. I was wide-awake.

6 THE COURT: Sometimes when they give -- can you hear
7 me -- anesthesia, they ask you to count down or they say
8 you're going to be relaxed. Did the nurse anesthetist say
9 anything like that to you? Have you count or do anything?

10 THE WITNESS: No, she did not.

11 THE COURT: Okay.

12 BY MS. WECKERLY:

13 Q And did you -- what did you say, if anything, to
14 let the -- the medical providers know that the anesthesia for
15 whatever reason hadn't worked?

16 A Well, I told them that I was still hurting
17 really bad and he just told me to just breathe and he just
18 told it -- told his assistants to hold me down.

19 Q And when you say he told you to just breathe,
20 who -- who are you referring to?

21 A Dr. Desai.

22 Q And when you were -- he told you directly to
23 breathe, did that help?

24 A No, it did not and I told him that.

25 Q And when the -- when he told the, I guess the

1 other people in the room to hold you down, how -- how did they
2 hold you, what -- what happened?

3 A They grabbed my hands and they held my hands
4 down and they made sure that I was completely still within the
5 top part of my body.

6 Q Did you say anything at that point?

7 A Yeah. I told them that I was uncomfortable and
8 I told them that it wasn't fair.

9 Q And what -- what did he do?

10 A He didn't do anything. He just told me that --
11 that I just needed to breathe.

12 Q And what, I mean, what happened after that? Did
13 the procedure continue or describe what happened.

14 A Yes. Dr. Desai continued the procedure until he
15 had it finished. I don't know how long it was, but I was in
16 pain until he was done with it. So he did not stop the
17 procedure when I told him I was hurting.

18 Q At -- at some point the procedure ended,
19 correct?

20 A Correct.

21 Q And what happened to you? Where did -- what --
22 were you still -- tell us what happened once the procedure
23 ended.

24 A Well, once the procedure ended I was taken into
25 a room, I think it was the recovery room, and they put me up

1 against the wall. I was -- I don't know how long I was in
2 there. I was in there by myself and I just laid there and
3 just -- I was upset so I started to cry. And Dr. Desai came
4 walking through and said, oh, you're finally sleeping. And
5 I'm like I'm not sleeping.

6 Q So he -- when you're in the recovery area, he
7 walked by and said that -- that you're finally sleeping?

8 A Yes.

9 Q And your -- what was your response?

10 A I looked at him, I said, no, I'm not sleeping.

11 Q And did he, I mean, check you over or see if you
12 were okay or do any kind of medical stuff to you at that
13 point?

14 A No, he did not. He just walked right by me.

15 Q Okay. What happened after that?

16 A A nurse came in and told me to go in the
17 dressing room and to get dressed. And as I was getting
18 dressed, my husband was allowed to come back and help me. And
19 he saw how upset I was and I told him what happened.

20 Q When you -- when you were speaking to your
21 husband, when -- describe what your demeanor was.

22 A I was really upset. I was shaking and crying
23 and he didn't -- he was upset to the fact as well.

24 Q Do you -- eventually after you get dressed, talk
25 to anyone else at the clinic?

1 A I went out to make a -- a follow-up appointment.
2 That was the only time I talked to anybody else, then went
3 home.

4 Q Okay. And did you actually have a follow-up
5 appointment?

6 A I did have a follow-up appointment the following
7 week.

8 Q And you attended that?

9 A I did.

10 Q What happened at the follow-up appointment?

11 A Dr. Desai came in to talk to me and I told him I
12 had an appointment with his PA and that she was going to
13 explain everything to me. He says, well I just wanted to talk
14 to you and let you know what was going. And I was just so
15 upset. I told him I had an appointment with the PA and he
16 left the room and told me that Anita would explain things to
17 me.

18 Q So did he discuss the findings of your procedure
19 at all with you at that follow-up appointment?

20 A I think he did. He said that I had irritable
21 bowel syndrome from the colonoscopy, that he got back from the
22 test results.

23 Q Did you say anything to him about what you had
24 experienced during the procedure when you saw him at the
25 follow-up appointment?

1 A No, I did not. I didn't even want to talk to
2 him.

3 Q At -- at some point does the PA or physician's
4 assistant come in to the appointment room?

5 A She did.

6 Q And what did you -- what did you tell her or
7 him?

8 A I told her exactly what happened to me during
9 the colonoscopy and she apologized to me for it. She said I
10 can't believe something like that would happen to you. And I
11 told her that it did and she apologized to me for it.

12 Q At --

13 A And I -- and she realized that I was really
14 upset. I was shaking and -- and she tried to calm me down.

15 Q At some point after that, did you file a
16 complaint with the Medical Board?

17 A I did.

18 Q And was that a -- a letter that you wrote
19 describing what had happened during your procedure?

20 A It did.

21 Q And did you receive a response from the Medical
22 Board?

23 A I did.

24 Q And do you recall what their response was?

25 A They said that they found nothing wrong with

1 what Dr. Desai had done and that my case was closed.

2 Q Thank you, ma'am.

3 MS. WECKERLY: I'll pass the witness, Your Honor, but
4 I will be moving to admit her --

5 THE COURT: Complaint to the board?

6 MS. WECKERLY: -- complaint as well as the outcome.

7 THE COURT: Okay. Any -- no objection as long as the
8 complaint --

9 MS. STANISH: So long as it's complete, sure.

10 THE COURT: Okay.

11 MS. WECKERLY: It's complete.

12 THE COURT: All right.

13 MS. STANISH: Well, I trust you. Here, I've got it.
14 All right.

15 MS. WECKERLY: It's all of it.

16 MS. STANISH: Okay. Thank you.

17 THE COURT: All right. Ms. Stanish, you may question
18 the witness.

19 CROSS-EXAMINATION

20 BY MS. STANISH:

21 Q Good morning, Ms. Phelps.

22 A Good morning.

23 Q My name's Margaret Stanish and I represent Dr.
24 Desai. Did you ever obtain a copy of your medical records
25 from the gastro center?

1 A I did not.

2 Q Did you ever provide -- well, let me ask you
3 this, ma'am. Prior to the procedure, had you had any surgery,
4 previous surgery?

5 A Yes, I did. I had a hysterectomy in '99 and I
6 had my gallbladder removed in 2000. I think I remembered the
7 dates right. I don't remember the exact dates.

8 Q It's okay. And as I understand it, you were
9 referred by your primary doctor to the gastro center because
10 you were having symptoms similar to -- indicating irritable
11 bowel syndrome; is that correct?

12 A That is correct.

13 Q And were you aware that you were administered
14 conscious sedation as opposed to unconscious sedation?

15 A No, I was not. I remember that I was told that
16 I would be heavily sedated and I would need to have somebody
17 to -- there to take me home.

18 MS. STANISH: I have nothing further.

19 THE COURT: All right. Mr. Santacroce, any
20 questions?

21 MS. STANISH: Oh, I'm sorry. I did forget something.

22 THE COURT: Oh, that's fine. Go ahead, Ms. Stanish.

23 BY MS. STANISH:

24 Q I'm sorry. Ms. Phelps, did the metropolitan
25 police or the district attorney ever ask you to provide your

1 medical records?

2 A I -- I don't remember if they did or not.

3 Q Okay. Thank you, ma'am.

4 THE COURT: Ms. Weckerly, any --

5 MR. SANTACROCE: I have a couple.

6 THE COURT: Oh, I'm sorry. Yes.

7 CROSS-EXAMINATION

8 BY MR. SANTACROCE:

9 Q Do you remember what date the procedure was on?

10 A The date was July 14th, 2000.

11 Q And the -- the anesthetist was a female?

12 A That is correct.

13 Q Do you know how many people were in the
14 procedure room?

15 A I don't remember. I know there's Dr. Desai and
16 -- and the other nurse. I don't remember anybody else.

17 Q I'm sorry. How many people did you say?

18 A I said two as far as I can remember.

19 Q Okay, fine. Thank you.

20 A You're welcome.

21 THE COURT: Ms. Weckerly, any questions?

22 MS. WECKERLY: No, thank you.

23 THE COURT: I have a question, this is the Judge. On
24 the prior surgeries you've had, did you ever have a problem or
25 an allergy to anesthesia or anything like that?

1 THE WITNESS: No, I did not.

2 THE COURT: Okay. Any follow-up to the Court's last
3 question?

4 MS. WECKERLY: No, Your Honor.

5 THE COURT: Ms. Stanish, any follow-up?

6 MS. STANISH: No, Your Honor.

7 THE COURT: Mr. Santacroce?

8 MR. SANTACROCE: No, thank you.

9 THE COURT: All right, ma'am. Thank you for your
10 testimony. Please don't discuss your testimony with anyone
11 else at this point. And we're going to turn -- we're going to
12 end the call. Thank you.

13 THE WITNESS: Thank you very much for your time.

14 THE COURT: All right, Kenny. And, ma'am, you can
15 just go ahead and hang up.

16 THE WITNESS: Okay, thank you.

17 MS. STANISH: Your Honor, may I correct what I think
18 is an error in the record?

19 THE COURT: Okay.

20 MS. STANISH: I don't believe that from the limited
21 number of documents I have related to this case, I don't
22 believe this was a CRNA who was administering anesthesia, I
23 think it was an RN. This is in the year 2000, mind you. Ad
24 the -- and the records also show that this is not propofol
25 that's being administered, it's the -- oh, Versed -- it's

1 Demerol and Versed is my understanding. So this is a
2 different type of anesthesia than what we have at issue here,
3 it's unconscious sedation.

4 THE COURT: Right.

5 MS. STANISH: I'm sorry. It's conscious sedation,
6 not unconscious sedation.

7 THE COURT: Right. But isn't Versed -- isn't one of
8 the -- that's an amnesiac, isn't it? So if she had been
9 sedated, she shouldn't have remembered it; is that correct?

10 MR. STAUDAHER: It has amnestic properties. That's
11 not its only property, obviously, but that does -- yes, that's
12 one of the things it does.

13 THE COURT: I'm just saying, I understand that's a
14 different procedure --

15 MS. STANISH: Okay.

16 THE COURT: -- but that would be suggestive of the
17 fact whatever happened she didn't -- it didn't work on her,
18 she didn't get enough or -- and obviously the Demerol. The
19 point of that I'm assuming is so that you don't feel any pain
20 or discomfort and it relaxes you. All right. Can we get the
21 next person on the Court call?

22 MR. STAUDAHER: That would be Ms. Zimmerman.

23 THE COURT: Is anyone else on? Let's try her again
24 then. Maybe she got bored and hung up or -- because, you
25 know, it occurs to me she could be there, hello, hello and no

1 one's answering her and she might think she was disconnected
2 or something and have hung up so.

3 MR. STAUDAHER: And I talked to her yesterday and she
4 knew we [indiscernible]. Well, I have her number. I guess I
5 could call -- I could call her and have her do -- call the
6 number. Is that the way it works? Could I -- could I do
7 that, Your Honor?

8 THE COURT: Sure.

9 MR. STAUDAHER: And do you -- do you know what number
10 she's supposed to call, the Court call stuff?

11 THE CLERK: I'm assuming it would be the same number
12 we have.

13 MR. STAUDAHER: Which is what?

14 THE CLERK: 800-584-7439.

15 THE COURT: All right. Is everyone ready?

16 MR. STAUDAHER: Yes, Your Honor.

17 THE COURT: All right. Ma'am, where are you located?
18 Can she hear me?

19 MR. STAUDAHER: Can you hear, Ms. Zimmerman?

20 THE WITNESS: No, I can't.

21 THE COURT: Oh, okay. Would you ask Ms. Zimmerman
22 where she's located?

23 MR. STAUDAHER: Ms. Zimmerman, where are you located
24 at?

25 THE WITNESS: Pardon me?

1 MR. STAUDAHER: Yes. Where -- where are you
2 physically located right now?

3 THE WITNESS: Belvidere, Illinois.

4 THE COURT: Okay. Ma'am, this is Judge Adair. Can
5 you hear me?

6 THE WITNESS: Yes.

7 THE COURT: All right. I need you just to stand and
8 raise your right hand and the clerk here in Court will
9 administer the oath to you. Okay?

10 THE WITNESS: All right.

11 THE COURT: All right.

12 86MARILYN ZIMMERMAN, STATE'S WITNESS, SWORN

13 THE CLERK: Thank you. Please state your first and
14 last name and please spell it for the record.

15 THE WITNESS: Marilyn Zimmerman, M-a-r-i-l-y-n,
16 Z-i-m-m-e-r-m-a-n.

17 THE COURT: All right. Thank you. Mr. Staudaher,
18 you may proceed.

19 DIRECT EXAMINATION

20 BY MR. STAUDAHER:

21 Q Ms. Zimmerman, do you have some sort of physical
22 or mental -- excuse me, physical or medical condition that
23 prevents you from physically coming to Court today?

24 A Yes.

25 Q And can you just -- without getting into the

1 details of -- of completely what it is, can you just give us a
2 brief idea of what we're talking about?

3 A I have a deteriorating bone disease of the
4 joints and the discs in my back.

5 Q Are you able to walk and stand and do those
6 kinds of things very well?

7 A Right.

8 Q You are or are not?

9 A I cannot.

10 Q Okay. I want to direct your attention back a
11 little bit to December of 2003, the very, very end of the
12 year, December 31st of 2003.

13 A Yes.

14 Q Did you have any kind of a procedure done in Las
15 Vegas at an endoscopy clinic?

16 A Yes, I had a colonoscopy.

17 Q Okay. And was that on December 31st of 2003?

18 A I think so, yes.

19 Q Okay. Can you tell us with regard to that
20 procedure, and I think you had more than one procedure; is
21 that right?

22 A Right. I had another one the first part of
23 January where they took a camera and went down my throat into
24 my stomach.

25 Q Okay. We're going to talk about the colonoscopy

1 first. Okay?

2 A Okay.

3 Q Can you tell us, do you remember the actual --
4 this may be a stretch, but do you remember the address of the
5 -- or the -- the location of the place where you had that
6 procedure done?

7 A No, I don't.

8 Q Was it here in Las Vegas?

9 A Yes.

10 Q Was it on Shadow Lane, if you recall?

11 A Right, right.

12 Q Okay. So you have your procedure. When you go
13 in to the procedure or to have that done, can you describe for
14 us what you remember, you know, happened as far as when you
15 went in, what you saw, who you dealt with, that kind of thing?

16 A When the procedure was being done I -- he did
17 not give me the anesthetic until after about 20 to 25 seconds
18 after the procedure started.

19 Q Okay. But -- we'll get to that in one minute.
20 But can you -- when you first walk into the clinic, I mean,
21 did you -- I assume you were in like a waiting room or
22 something; is that right?

23 A Right.

24 Q Can you just --

25 A Right.

1 Q -- can you describe for us what you -- what you
2 experienced out there? I mean, how crowded was it, how long
3 did you have to wait, that kind of thing.

4 A I don't remember.

5 Q You don't remember how long you had to wait
6 before you went back?

7 A No, no.

8 Q Okay. Can you tell me the first part of it that
9 you do remember? I mean, obviously you go back to a procedure
10 room. Do you remember anything before getting into the
11 procedure room?

12 A No, I don't remember. All I remember is the
13 procedure.

14 Q Okay. So let's talk about that then. So when
15 you were in the procedure room, do you remember who was in
16 there?

17 A I think there was a nurse and then the doctor.

18 Q And which doctor was this?

19 A I don't remember his name.

20 Q Was he the one who had the clinic? Was it Dr.
21 Desai?

22 A I think that was his name, yes.

23 Q So when you have the procedure done, was there a
24 nurse that put you to sleep at all during that or tried to?

25 A I think it was him that put it -- put you to

1 sleep. I can't remember.

2 Q Okay. So tell us, just walk us through what you
3 do remember as in -- in as much detail as you can give us
4 about what happened in the procedure room.

5 A I don't understand what it is you want.

6 Q I'm sorry. Can you tell us in -- in the -- to
7 the best of your recollection what happened when you were in
8 the procedure room?

9 A All I remember is that the colonoscopy was
10 started for about 20 to some 25 seconds before I was given any
11 anesthetic.

12 Q Did you say anything to anybody when that was
13 happening to let them know that you weren't asleep?

14 A I think I was hollering and screaming. I can't
15 remember.

16 Q Okay. But what you recall -- do you recall
17 actually kind of hollering or yelling out at all?

18 A Yes.

19 Q Okay. And did that -- did they stop or did they
20 keep going on?

21 A They kept going.

22 Q So you said eventually you do fall asleep
23 though, is that right?

24 A Yes.

25 Q After the procedure was done, do you -- do you

1 remember seeing the doctor or anybody else after that?

2 A No, I don't.

3 Q Now, was somebody there to pick you up or to
4 take you home that day?

5 A I think my girlfriend was with me and she's the
6 one that brought me.

7 Q So --

8 A And took me home.

9 Q Now you mentioned that there -- you had a second
10 procedure done at the beginning of January. And if I said
11 that it was around January 2nd, would that be -- would that --

12 A Right.

13 Q That sounds about right?

14 A Right.

15 Q Okay. So January 2nd of 2004 you go back to the
16 same clinic?

17 A Right.

18 Q Did you go back to the same doctor?

19 A Yes.

20 Q And -- and do you believe that this was Dr.
21 Desai?

22 A Yes.

23 Q So tell us, do you remember anything about the
24 waiting room on that day?

25 A No, I don't.

1 Q What is -- what is the first memory you have of
2 that day?

3 A Was the procedure.

4 Q Okay. So let's go into the procedure room then.
5 Do you remember who was in the procedure room on that day?

6 A I think the nurse and the doctor.

7 Q Okay. And tell us how that went, what happened
8 in there?

9 A Well, they were putting that light and stuff
10 down into my throat and into my stomach and I think I was
11 hollering and yelling then. And after about 25 seconds, then
12 he finally gave me the anesthetic.

13 Q So the same thing that had happened to you a few
14 days earlier happened to you this day?

15 A Right.

16 Q And when you say that you were kind of hollering
17 and yelling, I mean, was it pretty clear that you were still
18 awake?

19 A Yes.

20 Q Did they keep going with the procedure or did
21 they stop it?

22 A No, they kept going.

23 Q Now, after that happened, what's the next memory
24 you have because you said -- because you did go to sleep at
25 some point there, right?

1 A Pardon me?

2 Q You did go to sleep at some point in that
3 procedure, correct?

4 A Yes, I went to sleep.

5 Q When you woke up, do you remember where you were
6 or who -- who talked to you if anybody did?

7 A I think a nurse did.

8 Q Do you remember what she talked to you about?

9 A No, I don't.

10 Q Do you remember if there was any biopsy or
11 anything like that performed on you either by being told or
12 your medical records or anything like that?

13 A No.

14 Q At some point after that procedure, do you go
15 home?

16 A Yes.

17 Q Can you tell us, did you follow up in the clinic
18 or with the doctor or anybody else after that?

19 A I can't remember.

20 Q Now at some point, did you -- because of these
21 two incidents, did you file a complaint with the State Medical
22 Board?

23 A Yes, I did.

24 Q And in that complaint, did you list the --
25 detail the kinds of things that you've testified about here

1 today?

2 A Right.

3 Q Now you said in that complaint that you -- that
4 you did have some prior surgeries; is that right?

5 A Yes, I've had lots of surgeries.

6 Q And you've had a lot of them. Is that fair?

7 A Pardon me?

8 Q You've had a lot of surgeries?

9 A Right, and also a brain aneurysm.

10 Q Okay. And was that a brain aneurysm that was
11 clipped or fixed by someone at some point?

12 A Yes, it -- no, I got over that on my own. I was
13 in the hospital I think about 13 days.

14 Q So it was a ruptured aneurysm then, it actually
15 broke?

16 A It bled some, it just leaked. It didn't really
17 bleed because if they bleed they'll kill ya.

18 Q Okay. Now, as far as your follow-up after that
19 day, you didn't see anybody at the clinic or you did or you
20 just don't remember?

21 A I don't remember.

22 Q The -- the complaint that you filed at the
23 Medical Board, did you get any kind of response from them as
24 -- as far as what, you know, what the outcome was?

25 A I don't remember that either.

1 Q Okay. As you are -- are being questioned here
2 today, is there any doubt in your mind that when on both your
3 colonoscopy and your upper procedure, your upper endoscopy
4 procedure, that you were awake and voiced the fact that you
5 were awake to the doctor?

6 A I don't understand what you're saying.

7 Q Bad question. During any -- either one of your
8 procedures, did you -- I just want to make sure that you said
9 that you told the doctor or tried to tell the doctor that you
10 were still awake and to stop.

11 A Right.

12 MR. STAUDAHER: Your Honor, I would -- I'll do the
13 same thing with the moving to admit these based on that, but I
14 will pass the witness at this point.

15 THE COURT: All right. And Ms. Stanish, you're fine
16 with the record, the complaint --

17 MS. STANISH: Well, can I see those, please?

18 THE COURT: -- just as long as it's complete?

19 MS. STANISH: Well, I'll look at these later just to
20 move it --

21 THE COURT: Okay.

22 MS. STANISH: It has documents that I -- I need to
23 study a bit more.

24 THE COURT: Okay. We can hold off on that.

25 CROSS-EXAMINATION

1 BY MS. STANISH:

2 Q Good morning, Ms. Zimmerman. Can you hear me?

3 A Yes.

4 Q My name's Margaret Stanish and I represent Dr.
5 Desai.

6 A Pardon me?

7 Q My name is Margaret Stanish and I'm the attorney
8 for Dr. Desai. I just have a few questions for you, ma'am.

9 A Okay.

10 Q All righty. Do you recall why you were referred
11 to the clinic?

12 A I think by Dr. Malone.

13 Q Okay. Do you know why Dr. Malone referred you
14 to the clinic?

15 A To have these tests done.

16 Q All right. The -- were you suffering from
17 certain gastro problems that you recall?

18 A I don't remember.

19 Q Fair enough. And when you were in the -- let's
20 talk first about the colonoscopy. Can you tell me who was
21 present in the room when you first got there? How many
22 people?

23 A No, I don't remember.

24 Q Do you remember what they -- each person was
25 doing when you got there?

1 A No.

2 Q Do you remember if somebody put a -- a little --
3 a needle in your -- well, did somebody put a needle in your
4 arm or hand?

5 A Yes, I remember that.

6 Q And tell us about what you remember with that.

7 A Nothing different.

8 Q Okay. Was it in your hand or was it in your
9 arm?

10 A If I remember right, I think it was in my arm.

11 Q Okay. And then am I right to assume that you
12 were laying on your left side with your arm above your head?

13 A Yes.

14 Q So your left arm that had the -- I'm going to
15 call it an IV. Okay? The left hand that had the IV in it was
16 above your head and you were laying on your left side. Am I
17 right in picturing that?

18 A Yes, vaguely.

19 Q Okay. And the -- do you remember if the nurse
20 -- you say you think Dr. Desai put the medicine into -- the
21 anesthesia in the -- in your IV?

22 A I think so.

23 Q Was there a nurse in the room assisting Dr.
24 Desai?

25 A Yes.

1 Q Was there somebody else -- do you --
2 A No, I don't remember anybody else.
3 Q Okay. So you think it was -- do you know if
4 that was a male or a female nurse?
5 A A female.
6 Q Do you know where that female nurse was
7 standing?
8 A I think to the right side of me down towards the
9 end by my legs or feet.
10 Q By the way, ma'am, do -- have you reviewed any
11 documentation prior to testifying today?
12 A Have I what?
13 Q Have you reviewed any records prior to
14 testifying today?
15 A No.
16 Q Do you have any records there in front of you?
17 A No.
18 Q All right. You just -- I assume you spoke to
19 one of the district attorneys before today to get ready for
20 your testimony, correct?
21 A Pardon me?
22 Q I assume -- am I right to assume you spoke to
23 one of the prosecutors to get ready for your testimony today?
24 A Uh-huh.
25 Q All right. And did anybody, the prosecutors or

1 a police officer, ask you to provide any medical records?

2 A Not that I know of.

3 Q Do you have your medical records from 2003?

4 A No, no.

5 Q It sounds like you have some pretty serious
6 health issues right now. Are you able to travel to Las Vegas
7 from Illinois?

8 A Could I travel to Las Vegas?

9 Q Yeah, get on an airplane and come to Las Vegas?

10 A No. The only way I could come out there would
11 be if my husband would drive me out there.

12 Q Okay.

13 MS. STANISH: I have nothing further, Your Honor.

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

16 MR. SANTACROCE: Before I pass on this witness I'd
17 just like the record to reflect that Mr. Lakeman was not the
18 CRNA for this individual.

19 MR. STAUDAHNER: I believe it was Mr. Mathahs.

20 THE COURT: Mr. Mathahs was the nurse anesthetist on
21 both procedures?

22 MR. SANTACROCE: Yes.

23 THE COURT: All right.

24 MR. SANTACROCE: So I pass --

25 THE COURT: No questions?

1 MR. SANTACROCE: -- I pass the witness.

2 THE COURT: All right. Any redirect?

3 MR. STAUDAHER: Oh, I'm sorry, Your Honor. No, no,
4 Your Honor.

5 THE COURT: All right. Ms. Zimmerman, thank you for
6 your testimony. Please don't discuss your testimony with
7 anyone else and that concludes your testimony for today so you
8 can go ahead and hang up.

9 THE WITNESS: So we're done?

10 THE COURT: We're done. That's it. That's all it
11 is.

12 THE WITNESS: Okay, bye-bye.

13 THE COURT: Okay, bye-bye. You might be hearing from
14 the DA's office later. All right. Is that it?

15 MR. STAUDAHER: That's all, Your Honor.

16 THE COURT: All right. And that's everybody?

17 MS. WECKERLY: Yes.

18 THE COURT: I don't know if anyone wants to make
19 argument or just submit it or?

20 MS. STANISH: Your Honor, if I may, I -- I would ask
21 -- I was -- we do have what appears to be some of the
22 discovery I have in these three cases. I'm not -- is there
23 anything in addition here?

24 MR. STAUDAHER: Well, the -- there is the entirety of
25 the -- this -- this information came from the State Medical