

1 this is the unit. I mean, I don't understand why we're here at
2 the eleventh and a half hour trying to figure out the math. I
3 mean, to me --

4 I know you didn't charge it, Ms. Weckerly.

5 I know you didn't charge the case, Mr. Staudaher.

6 I believe that was done by Mr. Mitchell. Is that --

7 MR. STAUDAHER: Actually, I was the one who was
8 primarily involved in charging the case.

9 THE COURT: Okay. So you are to blame.

10 I'm just --

11 MR. STAUDAHER: I just have to, you know, be honest.

12 THE COURT: I appreciate the honesty. You should've
13 just thrown David Roger under the bus since he doesn't work
14 there anymore.

15 But in all seriousness, I mean, I don't understand
16 why these calculations weren't done early on, why we're sitting
17 here now trying to figure it out. I'm not sure --

18 I mean, you can cross-examine her with what she has,
19 and see what she's got to say, and then maybe I'll strike all
20 of her testimony.

21 MR. SANTACROCE: I don't want to do that.

22 THE COURT: I mean, I don't know what she even knows.

23 MR. SANTACROCE: I'm not going down that road.

24 RICHARD WRIGHT: I don't think she knows anything.

25 MS. STANISH: Right. All she's been able to do is

1 read from the documents.

2 THE COURT: The lawyers may be wrong. I mean --

3 MS. WECKERLY: I think that's more likely. They're
4 not the regular lawyers on this case. They talked to a
5 paralegal. I don't think that's correct. I think the
6 witness --

7 THE COURT: Well, let's just bring her in for a
8 minute to see what's really going on.

9 Kenny, go get her.

10 MS. STANISH: And, Your Honor, if I may while they're
11 getting her. My issue is exactly what Your Honor was broaching
12 a moment ago that none of this was raised in the Grand Jury,
13 the conversion factor, anything like that. As Your Honor
14 noted, why wasn't this done in pretrial?

15 Because it was never on the radar screen of the
16 State. It was not on their radar screen during the Grand Jury.
17 It was not on their radar screen when they started trial
18 however long ago, and it only came on their radar screen when
19 we raised the issue, and now they're scrambling to investigate
20 the case. I think it should be stricken.

21 THE COURT: The witness is back.

22 Ma'am, just come on back here, and we are out of the
23 presence of the jury, but you are still under oath. Do you
24 understand that?

25 THE WITNESS: Yes, ma'am.

1 THE COURT: Okay. We're all a little confused here
2 after having some representations made by your lawyers or the
3 lawyers of the company. As you know, when we took a break, we
4 were going to look into getting --

5 I get confused on all these -- on all of these
6 initials, the CMS Codes or the CPT or what from the government.

7 THE WITNESS: Okay.

8 THE COURT: What are the initials again?

9 THE WITNESS: The website is the CMS website. It's
10 the Centers for Medicare and Medicaid Services.

11 THE COURT: Okay. The CMS website, and then you were
12 also, I believe, going to check into your rate schedule from
13 your company; is that correct?

14 THE WITNESS: Correct.

15 THE COURT: Okay. And then we took a break, and can
16 you tell me what you yourself did to further our goals of
17 obtaining this information for the defense who requested it?

18 THE WITNESS: Okay. I first looked at the CMS
19 website, and yes, I could find the codes in the website, the
20 CPT codes. Then I went through and I started contacting our
21 people at network management to pull the fee schedule for me.
22 I left three phone messages initially.

23 I received one phone call back who said that she was
24 not in the office right now but could have it to me by 5 a.m.
25 tomorrow morning.

1 Then I received -- so then we made a phone call then
2 to the United Healthcare legal secretaries and --
3 THE COURT: Now, whose idea was that?
4 THE WITNESS: That was -- I don't know who --
5 THE COURT: Did you do it?
6 THE WITNESS: -- initiated it, but it was not me.
7 THE COURT: Okay. Did you make the phone call, or
8 did the lawyers make the phone call?
9 THE WITNESS: The lawyers made the phone call to the
10 corporate legal office.
11 THE COURT: Okay.
12 THE WITNESS: I made the phone calls to network
13 management.
14 THE COURT: Okay. And then network management
15 because of the time difference and everything nobody was there?
16 THE WITNESS: Well, they're actually here in Nevada.
17 THE COURT: Oh, they're here. Okay.
18 THE WITNESS: Right. So one just happened to not be
19 in the office and couldn't pull the document.
20 THE COURT: Okay.
21 THE WITNESS: Then one was in a meeting, and one was
22 not answering her phone. It went straight to voicemail.
23 THE COURT: Okay.
24 THE WITNESS: So then after the attorneys contacted
25 UHC corporate legal secretary they began to work with network

1 management, reached out to them, and they started working
2 together. I was told they were taking care of it, and they
3 would get back to me after they found it.

4 THE COURT: Okay. Now, you rely on these codes and
5 everything to do fraud investigations, correct?

6 THE WITNESS: Correct.

7 THE COURT: Okay. And that's something you do in
8 your job?

9 THE WITNESS: Yep.

10 THE COURT: Okay. Now, do you have personal
11 knowledge as you sit here as to whether the anesthesia is
12 billed separately according to the time spent and the type of
13 procedure that's done?

14 THE WITNESS: I do not know off the top of my head.
15 I would have to look that up and research it.

16 THE COURT: Okay. And those are the fee schedules
17 you are trying to get?

18 THE WITNESS: Correct.

19 THE COURT: Okay. And those are -- you were told
20 that that would be available at 5 a.m. tomorrow morning?

21 THE WITNESS: Correct. And then our -- United
22 Healthcare's counsel received a call about the documents and
23 the fee schedule. They left the room, spoke with you guys,
24 came back out. I do not have any knowledge of what that phone
25 call entailed or what that conversation entailed.

1 THE COURT: Okay. Does anyone have any questions for
2 this witness on the topic that I've, you know, relating to
3 getting the fee schedule and what happened when we took the
4 break and all that stuff?

5 EXAMINATION

6 (Outside the presence of the jury.)

7 BY MS. STANISH:

8 Q Now, assuming we get a fee schedule from 2007, do you
9 have the -- are you qualified, do you have first-hand knowledge
10 to explain to the jury how the fee schedule, the formula for
11 anesthesia and the contracts how they all work together to
12 establish what the price tag is for anesthesia services?

13 A No, I do not have first-hand knowledge. All I can do
14 is read the fee schedule as it's written on the piece of paper,
15 but I don't first-hand work with applying those fees and
16 reimbursements.

17 Q Okay. Were you in -- prior to Grand Jury, were
18 these issues discussed with you?

19 A For this case?

20 Q Yes.

21 A No.

22 Q Prior to trial, you know, a month ago when you
23 were --

24 Were you interviewed pretrial, chatted with the
25 District Attorney to prepare your testimony today?

1 A Just last week.

2 Q Okay. Was there any discussion of what we are now
3 discussing with the rate schedule, et cetera?

4 A With the details, we did briefly discuss it, and I
5 said, With my department, the way we would figure out the cost
6 per unit would be to take --

7 Say that claim had 8 units, the 5 base units plus the
8 3 and divide it by the allowed amount, and then that would be
9 amount paid per unit.

10 Q But you don't know the allowed amount?

11 A Well, the allowed amount was \$312, and I believe 40
12 cents. Okay. So we -- in my area, we would just divide 8 into
13 that 3, 12, and that would be the cost per unit, but that's not
14 necessarily how the rate schedules, the fee schedules read.
15 They could read a bigger base value and a smaller amount for
16 each additional.

17 Q Right.

18 A So just because we looked at it that way just for
19 calculating a possible loss amount doesn't mean that that's the
20 way the fee schedule reads.

21 Q Okay. Was that explained to the District Attorney's
22 Office that you couldn't do that?

23 A I explained that it was my department's area, that we
24 did it this way.

25 MS. STANISH: Okay. Thank you.

1 THE COURT: Mr. Santacroce, do you have any questions
2 regarding this?
3 MR. SANTACROCE: No, Your Honor.
4 THE COURT: Mr. Staudaher, do you have any questions
5 regarding the issue of the documents?
6 MR. STAUDAHER: The fee schedule, no.
7 THE COURT: All right. Ma'am, thank you. I'm going
8 to go ask you and your counsel, Ms. Akridge to wait out in the
9 hallway, and then we'll give you further direction.
10 (Witness excused.)
11 THE WITNESS: Okay. Thank you.
12 MS. STANISH: I move to strike her testimony.
13 MR. SANTACROCE: Yes. I join.
14 THE COURT: State?
15 MR. STAUDAHER: Well, with regard to the issue of the
16 calculation, I mean, I don't have an issue with that. I mean,
17 obviously what she told us is what we relied upon. At this --
18 THE COURT: Well, and it still may be correct. The
19 problem is we're here at the eleventh hour hearing two
20 different things, and we don't know what's true.
21 MR. STAUDAHER: Well, she did not say at any time
22 that there was any global fee that was represented by the
23 attorneys that they -- that all of that was --
24 THE COURT: Yes. I think they are probably wrong,
25 but what do I know. I'm not a witness.

1 MR. STAUDAHER: So based on that I don't think that
2 it's different than what she testified to at the Grand Jury
3 regarding the documents. As far as they're concerned that
4 these are -- well, the anesthesia policy, the contract between
5 the clinic and so forth, the actual EOB Forms that were
6 submitted, that with those are part of the record that they
7 have, what was the actual HCFA Form that was submitted in
8 electronic form, what those delineations of the different boxes
9 are.

10 All of that is not changed at all by the fact that
11 she may or may not know, be accurate on what she believes the
12 actual unit value is. That's the part that we are having an
13 issue with. So I don't think that there's really a reason to
14 strike her testimony since she hasn't actually testified before
15 the jury as to -- well, let me finish -- that she hasn't
16 testified before the jury as to the unit value because that's
17 where we stopped her.

18 THE COURT: Well, she did testify as to the method of
19 calculation which is I think different from what the lawyers
20 are telling us.

21 MR. SANTACROCE: It's different from what she said.
22 Her department does it different, and then her department --
23 that her department does it for a loss purpose.

24 THE COURT: There's two ways we can -- well, there's
25 three ways we can do it. The Court can dismiss the entire

1 counts relating to this insurer.

2 The State can keep her here, and we can figure out
3 what's right and what's wrong, and she can be called for cross
4 tomorrow morning.

5 The Court can strike all or part of her testimony,
6 and the State can get the correct witness here since you've
7 apparently noticed -- luckily for the State -- the State's
8 noticed the correct witness. So there's not a notice issue.
9 You can get the correct witness here with the right documents
10 who can show those to the defense ahead of time.

11 That's what I see our three options as being. So if
12 she leaves today, we're striking her testimony because I'm not
13 making the cross -- the defense try to cross-examine her based
14 on incomplete information which is what they now have. So, you
15 know, to say well, we can strike part of it, and then to expect
16 the defense to cross-examine her without full knowledge I think
17 is fundamentally unfair, and I'm not going to make them do it.

18 So the choice for the State is you keep her here. We
19 get to the bottom of this, and she testifies, and we either
20 strike part of her testimony if she's off in left field
21 somewhere, or if she leaves, we strike all of her testimony and
22 get another witness here, and you start from ground zero on
23 that witness.

24 MR. STAUDAHER: Well, I think we would like to --

25 THE COURT: Keep her here?

1 MR. STAUDAHER: -- we're going to work on both
2 fronts --

3 THE COURT: Okay. So we keep her here. If it turns
4 out that somehow the lawyers have --

5 I don't know what arrangement you have since they
6 sent her away, I mean, the first time. It was my feeling that
7 she should come back at the company's expense. I don't know
8 what you worked out. Certainly if there was an issue now with
9 what the lawyers have done and gotten in the middle of this
10 they -- not the taxpayers which includes all of us -- should be
11 footing the bill for her, you know, having to stay here. If it
12 turns out that's not the case, then it's up to whatever your
13 office does.

14 So is that what the State would like to do, keep her
15 here another day, get to the bottom of this, get the documents
16 at 5 a.m. or whatever -- obviously we won't be reconvening at
17 5 a.m. -- and see what they are?

18 And then depending on what all we get, the three
19 options remain open for the defense like I said. If we don't
20 get the right witness here ever, to me the remedy is dismissal
21 of those counts relating to this provider -- or insurer.
22 Excuse me. I misspoke.

23 But as I said, I think it would be completely unfair
24 to ask the defense to proceed with cross-examination when we
25 don't even know -- we're getting two stories, one from the

1 witness and one from the lawyers.

2 It may just be that the lawyers -- it may just be the
3 lawyers don't know what's really going on in their company.
4 That happens a lot I'm afraid. If that's the case, then there
5 may not really be a big issue here, but there may be an issue
6 here in which case depending on how it all plays out we'll see
7 where we go.

8 MS. STANISH: Medical billing is complicated. You
9 can't just have a custodian of record.

10 THE COURT: So going forward, State, those are, in my
11 view, our options. What would you like to do?

12 MR. STAUDAHER: Just what I said. We're going to
13 proceed on both fronts, keep her here, try to get to the bottom
14 of it. On the same front we're going to try and -- we're going
15 to go ahead and see if there is, I mean, obviously get somebody
16 else here in case that falls apart so that we have at least
17 another person to go forward with.

18 THE COURT: It sounds like they've got the right
19 people just located right here in town at this office that she
20 tried to call today. So it may just be that they're flying
21 somebody in from Minnesota when the right person is just down
22 the street -- I don't know -- or around the corner or whatever.

23 So here's what we're going to do. I'm going to
24 excuse the jury because we don't have the tape cued up for the
25 Meana thing. We'll bring them in for part of the day tomorrow.

1 If any of the people you moved to Thursday since they
2 have to come in anyway want to come in tomorrow, let's try to
3 get them back for tomorrow.

4 Well, it is what it is.

5 MS. WECKERLY: I'll see if I can get them tonight.

6 THE COURT: This is unforeseen, and then we'll play
7 the Meana deposition and hopefully get some other witnesses
8 here for tomorrow.

9 MR. SANTACROCE: They're making fun of me because of
10 the Meana deposition.

11 You're supposed to be my BFF. You are supposed to
12 help me.

13 RICHARD WRIGHT: Do you want to hear
14 (unintelligible).

15 THE COURT: And you're stipulating to that,
16 Mr. Santacroce?

17 MR. SANTACROCE: With the BFF part?

18 THE COURT: No, the --

19 MR. SANTACROCE: Yeah, I'll stipulate to that.

20 THE COURT: All right. Bring the jury in, Kenny.

21 Ms. Weckerly, try really hard to get those other
22 witnesses here -- back here for tomorrow.

23 MS. WECKERLY: It may be Whiteley instead.

24 THE COURT: That's fine. Here's what I don't want to
25 have happen, have a really short day tomorrow and then it be

1 Friday or Thursday at 6, and we've got a ton of witnesses; do
2 you know what I mean? And we don't get that far on Thursday,
3 and then we're going into over next week for your case. I
4 really want the State to rest by Friday.

5 (Jury entering 5:05 p.m.)

6 THE COURT: All right. Ladies and gentlemen, we're
7 going to have to take our evening recess at this point in time.
8 Unfortunately, Kenny lied to you and we will have to be in
9 session tomorrow; however, it should be a relatively early day.
10 Again, we hope and are fairly confident that we will conclude
11 the trial by the end of the month, meaning the month of June,
12 not another month.

13 Before I excuse you for the evening recess, I must
14 remind you that you're not to discuss the case or anything
15 relating to the case with each other or with anyone else. You
16 are not to read, watch, listen to any reports of or
17 commentaries on the case, any person or subject matter relating
18 to the case. You are not to do any independent research by way
19 of the Internet or any other medium, and you are not to form or
20 express an opinion on the trial.

21 We will be reconvening tomorrow morning at 10:30 a.m.
22 If you would please place your notepads in your chairs and
23 follow the bailiff through the rear door.

24 (Jury recessed 5:06 p.m.)

25 MS. STANISH: Judge, did you say 10:30?

1 THE COURT: I really don't want to be in a position
2 on Friday where the State has not rested. So do what you can
3 to move some of these witnesses up, you know, back to Thursday
4 or if it's Detective Whiteley or whatever because we have the
5 time now in the middle of the week, and what I don't want to
6 have happen is save everything until Friday, and then we're
7 here Friday at 6, and the State's not prepared to rest, and
8 then we're going still with the State's case into next week.

9 Because I'm planning -- and hopefully what defense is
10 planning -- on beginning defense's case in chief on Monday so
11 that we can be doing closings in the middle of the week and get
12 it to the jury by no later than Friday, no later than hopefully
13 Thursday. So then that gives them Friday at least to
14 deliberate. If they're into the following with the
15 deliberations, I'm not worried about that.

16 I just want the trial portion to be done by the end
17 of June. So just be mindful of that. Like I said, the way
18 things are going I can see us having an easy pace tomorrow and
19 Thursday and then it being Friday at 6 o'clock, and we are not,
20 you know, close to the State resting yet.

21 MR. STAUDAHER: Do we have confidence that we're
22 going to have this audiovisual thing worked out for tomorrow?

23 THE COURT RECORDER: Yes.

24 MR. STAUDAHER: Because we can certainly do Meana's
25 deposition tomorrow.

1 THE COURT: I was going to say we could do Meana's
2 deposition first thing at 10:30 and make everybody -- I mean, I
3 frankly don't care if the other people from today have to
4 wait -- and then do them or whatever.

5 MR. STAUDAHER: Well, let's see what we can get.

6 THE COURT: That would be one way to ensure that we
7 are cued up.

8 So I'll let the State -- they're your witnesses --
9 I'll let you coordinate all of that. I'm just offering
10 suggestions here.

11 (Proceedings recessed 5:10 p.m.)

12

13

14

15

16

17

18

19

20

21

22

23

24

25

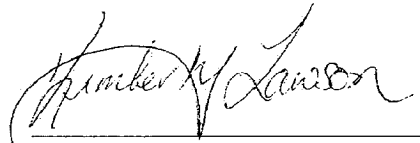
CERTIFICATION

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

AFFIRMATION

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

**KARR REPORTING, INC.
Aurora, Colorado**


KIMBERLY LAWSON

KARR Reporting, Inc.

1 today?

2 A Yes.

3 Q And what is this document exactly? What does it
4 entail?

5 A This is what a facility would've signed if they
6 wanted to be participating in our network, and it would've
7 then -- our members would then -- they would be listed in our
8 directory, and our members would go to this facility and be
9 reimbursed as in-network.

10 Q Now, on the very back of that document there's a
11 whole list of numbers. What are all those numbers?

12 A The facilities themselves are being paid based on
13 groupers. There's nine groupers, and each CPT code is based on
14 a procedure, and that tells them what kind of grouper it is.

15 Q What is a grouper?

16 A Medicare assigns nine different groupers, and then
17 there is reimbursement for each grouper. The groupers that
18 the -- the more intense a code is, the higher the reimbursement
19 is, and the least amount that it is then the lower the amount
20 is.

21 So Medicare assigns these numbers, and then we just
22 negotiate what each payment is.

23 Q So if there's -- in this particular claim you're
24 looking specifically at, it looks like a page that has --
25 that's entitled Anthem BlueCross BlueShield Participating

1 Preferred Ambulatory Care Center Agreement Attachment A --

2 A That's correct.

3 Q -- Reimbursement Schedule?

4 A Yes.

5 Q Now, the listings here from groups one through eight,
6 they have a number of dollar amounts listed there --

7 A Yes.

8 Q Are those something that you used in determining
9 billing and what reimbursement would be?

10 A Yes.

11 Q Explain what those mean, like for example what is
12 Group 1 if you will.

13 A Group 1 would be based on the schedule that's
14 following here. So it has a code. It has what group number it
15 is. So a Group 1 you would have, you know, 12020 would be a
16 Group 1. So each service that's being done would --

17 Medicare assigns a CPT code when a facility bills.
18 Then we take that code, and then we look at what group it would
19 have been, and that tells us what payment they would've gotten.

20 Q So in this particular case, you know you're here to
21 testify about endoscopic procedures, correct?

22 A Yes.

23 Q Colonoscopies and upper endoscopies and the like?

24 A Yes.

25 Q Are those listed in that table or not?

1 A Yes.

2 Q Can you go to that area where they're both listed,
3 the upper endoscopies and the colonoscopies, and tell us what
4 information is contained in this document.

5 A I would need the actual CPT code so that I can tell
6 you where it falls --

7 Q If the CPT code was 00810 for example?

8 A That's an anesthesia code and not --

9 Q Okay. So the anesthesia codes aren't contained in
10 this particular document?

11 A No. Because the CMS assigns anesthesia codes one
12 number, and they assign the actual procedure for the
13 colonoscopy a different procedure.

14 Q So this here, if I understand correctly, are the CPT
15 codes related to various procedures, not anesthesia?

16 A Yes.

17 Q Okay. Is there an attachment or addendum that
18 relates to anesthesia actual billing, or is it done by a
19 different method?

20 A This actual agreement here is for the facility. The
21 physicians would've billed under this agreement here.

22 Q Okay. So that one is proposed State's 237?

23 A Yes.

24 Q Can you open that up and do the same thing, tell us
25 first of all if it's familiar to you and what it is?

1 A Yes. It's the base agreement that the facility
2 would've signed when they became participating back in 1995.

3 Q Was -- so this was something they signed back in '95?

4 A Yes.

5 Q And then we are talking about the Endoscopy Center or
6 the Gastroenterology Center?

7 A This is the Gastroenterology Center of Nevada.

8 Q Okay. So are there codes associated with that
9 particular document?

10 A This is a generic base agreement. It's for any code
11 that is billed under this tax ID number.

12 Q I see. So is there --

13 A So there's no attachments that actually have the
14 codes.

15 Q Okay. But this is also an agreement that was signed
16 for that particular center, the Gastroenterology Center?

17 A They utilize -- the services were done at the center
18 but provided by the physicians.

19 Q Okay. Now, I'm going to show you the last of these
20 three documents, and these are all provider agreements; is that
21 correct?

22 A That is correct.

23 Q Proposed 238, what are we looking at there?

24 A The physician group ended up negotiating their
25 reimbursement. We actually lowered it in 2006 to a 24 percent

1 discount off of our maximum allowable.

2 Q So explain that to me. What are we talking about
3 with maximum allowable and a discount off of that?

4 A Yeah. Our maximum allowable is \$50.40, and then we
5 negotiated a discount, and then each unit of CPT code has units
6 that CMS gives.

7 So a 00810 which is a colonoscopy is a base of 5
8 units. So we would take those 5 units times the \$50.40. You
9 would either times it that way and then take a 24 percent
10 discount or people like me, we do it the opposite way. We take
11 the 50, 40. We times it by the 76 percent. We come out with
12 38, 30. That becomes a conversion factor. Then each CPT code
13 has units. Anesthesia has been time. So we add the time, and
14 then that becomes the allowed amount.

15 Q So if I understand you correctly, you take whatever
16 the total units are, the 5 base units and then the amount of
17 units added on for time --

18 A Yes.

19 Q -- and whatever that number of units is, that's what
20 you multiply your --

21 A Times the conversion factor. In this case 38, 30.

22 Q So \$38.30 is the conversion factor under this
23 contract for anesthesia billing?

24 A Or anybody that bills under this tax ID number
25 including anesthesia.

1 Q Okay. So not just other things. It would be --
2 But for anesthesia units, that's what you would bill?
3 A Yes. Anesthesia is where we add the time where a
4 physician itself would not get the time. They would just get
5 the units on the code that they would submit, and they would
6 submit a different code.
7 Q Okay. Now, this is entitled, this particular exhibit
8 Proposed State's 238 is entitled Amendment 3 to the prior
9 agreements; is that right.
10 A That is correct.
11 Q So is this again what was in place in 2007 at the
12 Endoscopy Center of Southern Nevada, the Gastroenterology
13 Center of Southern Nevada as well?
14 A Yes.
15 Q Okay. So at this point is there any other agreement
16 we need to look at to show what your agreements were with the
17 Centers?
18 A No.
19 MR. STAUDAHNER: Okay. I move for admission of these
20 particular documents since they are germane to anesthesia
21 billing, Your Honor, and they are 238, 237 and 236.
22 THE COURT: Any objection?
23 MS. STANISH: No, Your Honor.
24 MR. SANTACROCE: No, Your Honor.
25 THE COURT: All right. 236, 237, and 238, I think,

1 are all admitted.

2 (State's Exhibit Nos. 236, 237 and 238 admitted.)

3 BY MR. STAUDAHER:

4 Q Now, the next document is 218. Are you familiar with
5 that?

6 A Yes.

7 Q What is that document?

8 A That is our reimbursement policy for anesthesia.

9 Q Okay. So specifically your -- your company meaning
10 Anthem BlueCross BlueShield?

11 A Anthem BlueCross and BlueShield, yes.

12 Q Okay. So in this particular document, I mean,
13 obviously is this something you're familiar with? Have you
14 seen this before?

15 A Yes. Yes.

16 Q And does this delineate what you described earlier as
17 far as base units time, how that's calculated?

18 A Yes. This is where we tell the provider itself how
19 to bill. We tell them that the -- they have to bill a number
20 of minutes, not the units. For every 15 minutes it equals 1
21 unit. So if they bill -- they have to bill 15 minutes, and
22 it's in increments of 15 minutes. So if they bill 30, they
23 would get 2 units, but they have to bill 30 not 2.

24 Q Okay. Got it. So again is it a fair and accurate
25 representation of your policy, your anesthesia policy?

1 A Yes.

2 Q Reimbursement policy?

3 A Yes.

4 MR. STAUDAHER: Move for admission of State's 218.

5 THE COURT: Any objection?

6 MR. SANTACROCE: No.

7 MS. STANISH: No objection.

8 THE COURT: 218 is admitted.

9 (State's Exhibit No. 218 admitted.)

10 BY MR. STAUDAHER: .

11 Q Now, I'm going to show you a series of three
12 documents that are specific to I think members or whoever your
13 insured is, okay?

14 A Yes.

15 Q The first is 80P. Can you flip through that, and
16 tell me if you recognize those documents or that series of
17 documents?

18 A Yes.

19 Q Okay. Now, what is that, and who does it pertain to?

20 A The first page is a HCFA 1500 which is billed by an
21 anesthesiologist that provided a service at Endoscopy Center of
22 Nevada for one of our members.

23 Q And who's the member?

24 A The member is Kenneth Rubino [phonetic].

25 Q And again the next series of documents, what are we

1 looking at there?

2 A The next page is a breakdown of the information, the
3 dates of service, the diagnosis, the procedure itself, the
4 procedure numbers. They had a facility. They actually had the
5 physician and the anesthesia.

6 Q Okay. And so those are broken down in a sort of
7 table form?

8 A Yes.

9 Q Now, the last page, what is that?

10 A And the last page is the actual explanation of
11 benefits. That explains the, again, dates of service, the
12 procedure for the anesthesia, the charges, the allowed amount,
13 the, you know, if there was any other insurance, the primary
14 provider's liability which is the discount and the member's
15 responsibility, the payment itself and what we actually paid.

16 Q So this actually shows you paid money on this claim?

17 A Yes.

18 MR. STAUDAHER: Okay. Move for admission of State's
19 80P.

20 MS. STANISH: No --

21 THE COURT: Is that 8 -- 80.

22 MR. STAUDAHER: Eight, zero, P as in Paul.

23 THE COURT: Any objection?

24 MS. STANISH: No, Your Honor.

25 MR. SANTACROCE: No.

1 THE COURT: All right. 80P is admitted.

2 (State's Exhibit No. 80P admitted.)

3 BY MR. STAUDAHER:

4 Q Now, the next one is titled 80R as in Robert. Can
5 you look at that one and do the same thing that we just did
6 previously. Are you familiar with it first of all?

7 A Yes.

8 Q Does it contain the same type of documentation as the
9 first one did, the table and then a -- what did you call it?

10 A Yes. It's a HCFA 1500 which is the claim, the
11 explanation that's broken down on a table and then the
12 explanation of payment or benefits.

13 Q Okay. And again, who is this for?

14 A This is for Sharrieff Ziyad.

15 MR. STAUDAHER: At this time, Your Honor, I move for
16 admission of State's Proposed 80R.

17 THE COURT: Any objection to 80R?

18 MS. STANISH: No, Your Honor.

19 THE COURT: All right. 80R is admitted.

20 (State's Exhibit No. 80R admitted.)

21 BY MR. STAUDAHER:

22 Q Now, the last one of these -- of this series of
23 documents that I want to show you is 216B as in boy. Can you
24 go through that and tell us what -- if you're familiar with it
25 and what it is.

1 A Same thing, it's just a different order. It has the
2 explanation of benefits, and then it has the claim --

3 Q The HCFA Form?

4 A The HCFA which is the claim and then it has the
5 actual --

6 This is a secondary. Anthem is the secondary.
7 United is the primary. So it has United's EOB because on a
8 secondary claim they have to submit the primary's EOB because
9 we then just pay the member's responsibility.

10 Q So even though this is your record at Anthem
11 BlueCross BlueShield there is a record in there that indicates
12 United Healthcare as a separate insurance company?

13 A Because they're the primary, and we are the
14 secondary.

15 Q And so you require that document to pay?

16 A We require it so then we can then pay the member's
17 share as part of being this secondary insurance.

18 Q Okay. And again does the show that actual payment
19 was made on that particular claim?

20 A Yes.

21 MR. STAUDAHNER: Okay. I move for admission of
22 State's 216B at this time, Your Honor.

23 THE COURT: Any objection?

24 MS. STANISH: No, Your Honor.

25 THE COURT: All right. 216B is admitted.

1 (State's Exhibit No. 216B admitted.)

2 BY MR. STAUDAHNER:

3 Q Now, a couple of things, I'm just going to go through
4 these as we get them. On the contracts, I just want to go to
5 the third one which is 238. I'm going to display this for you
6 and ask you about the percentage that you were talking about.

7 You mentioned that there was a 24 percent -- what was
8 it, discount?

9 A Discount, uh-huh.

10 Q Can you explain what that means. What is a
11 24 percent discount in relation to a provider?

12 A When we negotiate with a provider, we have the
13 maximum benefit allowance. Our maximum benefit allowance
14 conversion factor is actually \$50.40. So we negotiate a
15 discount. That discount of 24 percent, you could either take
16 the 50, 40 then do times 24 percent to know what that discount
17 is, or you could do the opposite and just do the 76 percent
18 off. The 50, 40 then becomes 38, 30.

19 Q That's the per unit reimbursement?

20 A That's a conversion factor per unit, yes.

21 Q So if we move to the anesthesia policy which was 218,
22 is this the document that we talked about a moment ago?

23 A Yes.

24 Q And I specifically want to go to the second page of
25 that document and ask you -- I'm going to zoom out on that so

1 we can get the entirety of the page, and I hope you can still
2 read that. Are you --

3 A Yes.

4 Q Are you able to?

5 A Yes.

6 Q When we go across this, tell us what we're talking
7 about here as far as base unit value, time unit and time
8 reporting.

9 A For anesthesia the actual -- the original procedure
10 code itself is the base, and then they have to bill the time,
11 and it's telling them that we pay for every 15 minutes. It
12 equates to one unit. So --

13 Q And you actually give an example here?

14 A Yes, we give an example. 1 to 15 minutes equals 1
15 unit. 16 through 30 minutes equals 2 units. If you went 31
16 to -- the next 15 would be 3 units.

17 Q Okay. Up at the very top where it's talking about
18 the base units, does it not say that, A base unit value is the
19 number of relative value units assigned to code as published in
20 the American Society of Anesthesiologists ASA Relative Value
21 Guide?

22 A Yes.

23 Q Is that what you follow in your policy?

24 A Yes.

25 Q And what is the base unit value, only if you know,

1 for an endoscopic procedure like a colonoscopy or an upper
2 endoscopy?

3 A 5 units.

4 Q So that's what you start off with?

5 A Yes.

6 Q Now, what does that include as far as, I mean, what
7 is considered in the base unit value?

8 A Pretty much for doing the anesthesia for the actual
9 procedure.

10 Q Is it anything except for time?

11 A Yes.

12 Q Okay. So the time is billed separately?

13 A Correct.

14 Q Now, with regard to time of reporting, and I want
15 you --

16 I'm going to read this, this section here under this
17 category Time Reporting; do you see that?

18 A Uh-huh. Yes.

19 Q Anesthesia time begins when the anesthesiologist
20 begins to prepare the patient for the induction of anesthesia
21 in the operating room or in the equivalent area and ends when
22 the anesthesiologist is no longer in personal attendance. That
23 is when the patient may be safely placed under postoperative
24 supervision.

25 Anesthesia time units are defined as 1 unit of

1 service per 15 minutes. The provider should bill the total
2 number of minutes, not the units of service. For example, 46
3 minutes, not 3 units.

4 A That is correct.

5 Q Now, is that what you were talking about when you
6 indicated that units should be -- or excuse me -- minutes
7 should be billed and not units?

8 A Yes.

9 Q If somebody were to make a mistake, an error, and
10 bill units instead of minutes, I mean, clearly the units are
11 smaller than the minutes --

12 A Correct.

13 Q -- is that fair?

14 A Uh-huh.

15 Q What would your company reimburse based on if it was
16 clear that that was a mistake made on the record?

17 A We reimburse based on the number that's put in there
18 as minutes, and if the provider feels they made an error, they
19 would have to submit a corrected claim.

20 Q Now, this policy here, was this the one that was in
21 place in 2007?

22 A Yes.

23 Q So essentially personal attendance, face-to-face time
24 with the patient?

25 A That is correct.

1 Q If we go down to the bottom corner and we look at the
2 date of this particular document, does it not say 2007?

3 A Yes. It's also on the first page at the top.

4 Q On the first page at the top, effective date February
5 of -- February 1st of 2007?

6 A Correct.

7 Q Up here?

8 A Yes.

9 Q Now, moving to Exhibit No. 80P, P as in Paul, the
10 very first page of this document, do you see this?

11 A Yes. Right at the corner at the top it says 1500 --

12 Q Up here?

13 A -- which is the number -- yes. That is a physician
14 claim, a form that's billed mainly by a physician.

15 Q And is this line here that this is --

16 A That is the member's name.

17 Q And who is that?

18 A Kenneth Rubino.

19 Q Now, as we move down to this series of boxes down
20 here it looks like there is some information contained on this
21 line here, and this appears -- I know it's very small --

22 A Yes.

23 Q -- but I can read that as Box 24, and then there's A,
24 B, C, D and so forth going across; is that correct?

25 A That is correct.

1 Q Is this the general layout of all of these forms?

2 A Yes.

3 Q So under 24A, what is this here?

4 A That is the date of service.

5 Q When the procedure was actually completed?

6 A Correct.

7 Q And moving across we go to 24 under Box B, what is
8 that?

9 A That tells us where the services were done, and the
10 24 is a surgical center.

11 Q Okay. And then if we move across to, I think it's
12 24D as in dog, what are we looking at there?

13 A That's the anesthesia procedure codes.

14 Q Now, the next one is, it looks like a QZ and then Q
15 or -- I don't know if that's QS or P2. Do you see those are
16 all together?

17 A Right. Those are modifiers.

18 Q And what are those exactly?

19 A Modifiers tells us whether a member needed some
20 additional -- what kind of risk that they were having, if they
21 needed some additional -- anything that had like a P4 would get
22 an additional reimbursement, where a P1 and a P2 are just
23 normal.

24 Q And this one is listed as P2; is that correct?

25 A Uh-huh.

1 Q Now, moving across, what is this next section here
2 where it says 12, 34?

3 A Those are diagnosis procedures. That tells us what
4 the member was being -- their service.

5 Q Okay. And the amount of the actual charges that were
6 submitted to your company?

7 A That is correct.

8 Q And what is that?

9 A \$560. That's what the provider billed.

10 Q Okay. And over here?

11 A Those are where that -- even though it states on
12 there that it's units, for anesthesia they have to bill
13 minutes.

14 Q So this says days or units up here under G, and you
15 have -- because of your agreement if I understand you
16 correctly --

17 A Because of our reimbursement policy we tell them to
18 bill minutes.

19 Q Okay. So it doesn't say minutes, but that's what
20 it's supposed to be?

21 A Yes. 32 minutes.

22 Q So 32 minutes would be how many units of anesthesia
23 time according to your policy?

24 A 3.

25 Q And that would be reimbursed at this \$38.30 per unit?

1 A Correct. Plus the base.

2 Q Plus the base. But the time additional would be
3 based on --

4 Well, all the units are the same as far as
5 reimbursement?

6 A The base is the same plus the units.

7 Q Got it. Now, on the very bottom here under -- I
8 think it's 32, do you see that?

9 A Yes.

10 Q It says service facility location information, and
11 what is that?

12 A That is the place of service where the member had the
13 endoscopy or colonoscopy.

14 Q And the service provider?

15 A That is the physician's name.

16 Q Okay. And who is it in this particular case?

17 A Keith Mathahs.

18 Q Mathahs I believe?

19 A Yes, Mathahs.

20 Q Now going to the next page of this document, what are
21 we looking at here?

22 A That's a spreadsheet that was done to tell what
23 services were done on that date for that member.

24 Q Is that the 9/21 date?

25 A Yes.

1 Q Now, there's three listed here. What is the
2 difference between them?

3 A One is --

4 Q Do you want me to move it over?

5 A Yeah. The top one it says 490. That is a revenue
6 code which is for the actual surgical center. The second one
7 is for the actual procedure itself of the colonoscopy, and the
8 third one is for the anesthesia.

9 Q And it even says under description, Anesthesia, on
10 the third one?

11 A Yes.

12 Q And as we go across, again the P2 designation is
13 there?

14 A Yes.

15 Q And then we go across to the -- it says, Sum of bill.
16 The amount billed is \$560?

17 A Correct.

18 Q Now, the sum of -- what is that? I can't see it.

19 A Payment.

20 Q Payment, okay. Sum of payment, how much is listed
21 here?

22 A 2, 45, 12, that does not include the member's
23 responsibility.

24 Q So that's how much you actually paid on this claim?

25 A Yes.

1 Q And did that amount actually get paid?

2 A Yes. It should be on the next page that has the
3 explanation of payment.

4 Q That would be actually the second page after that; is
5 that correct?

6 A Yes.

7 Q And we're looking again at -- it looks like your
8 record; is that correct?

9 A Yes.

10 Q Tell us what we're looking at here.

11 A Again that's an explanation of payment. It tells you
12 the patient's name, the date that it was sent, who the provider
13 is, where it was sent to and the member's information, the date
14 of service.

15 And then down below it has the table that has the
16 dates of service, the procedure which was the anesthesia
17 procedure code, the bill charges to match that claim, the
18 allowed amount which is where, you know, we came up with the
19 base times the time, times the conversion factor to come up
20 with that amount, and then it has that this member does not
21 have other insurance according to our records.

22 They have the provider liability. It's a discount of
23 that 24 percent that we were talking about and then the
24 subscriber which is the member's liability and our payment.

25 Q So the payment is different than this allowed amount

1 on this form?

2 A Yes. You have to add the payment and the member
3 responsibility, the liability to come up with the allowed
4 amount.

5 Q That's this one here?

6 A Yes.

7 Q Okay. So the amount here finally paid is this --
8 this is what is out of your pocket, the insurance company?

9 A Yes.

10 Q Based on that claim?

11 A Yes.

12 Q Now, the next one is Exhibit 80R as in Robert. Let
13 me make sure I keep them straight.

14 Again, the first page of this document, is this the
15 same HCFA-type form?

16 A Yes. It's the HCFA 1500 which is a physician claim.

17 Q I want to go down here and ask you about this
18 particular line in question. The person --

19 Actually, let's get the person's name first of all.
20 What's his name?

21 A Sharieff Ziyad.

22 Q And if we go down to the line -- the 24 Box with all
23 the letter designations across --

24 A Yes. The date of service --

25 Q The date of service in this case?

1 A 7/25/07.

2 Q And if we come across here?

3 A The place of service was 24 which was at a surgical
4 center.

5 Q Now, this one has a different code?

6 A Yes.

7 Q It says 00740?

8 A Yes. 740 is for a gastro GI where the other one was
9 for a colonoscopy.

10 Q So when you say gastro, is that the upper side of
11 things?

12 A The upper, uh-huh.

13 Q And then the next thing, the same issues here with
14 the coding here, we see that there's also the designation P2?

15 A Right.

16 Q So no additional time or anything would've been
17 allowed?

18 A Correct.

19 Q Now, if we get across to this section, this is what I
20 want to ask you about. We've got a charge here which is the
21 same charge 5, 60 -- \$560 --

22 A Uh-huh.

23 Q As the one that we saw before --

24 A Right.

25 Q -- from the other record, and in that instance it had

1 30 -- well, let's just make sure we've got it here -- 32
2 minutes for 5, 60?

3 A Yes.

4 Q Now, in this particular instance --

5 Now, you said that was 8 units of anesthesia time
6 based on the record?

7 A It was 3 units of anesthesia and 5 for the base so a
8 total of 8.

9 Q 8 for anesthesia, I said time, but that's --

10 A Yes.

11 Q In this case we have the number 8 listed here. Tell
12 us about how this one would have been reimbursed.

13 A This one, the basic, even though it's a different
14 number the base is still 5. They happen to just have the same,
15 and we would've paid one additional unit because it's only 8
16 for the minutes because we consider those minutes. So it would
17 have been reimbursed at a total of 6 instead of a total of 8.

18 Q So even though the charge is \$560, the same as the 8
19 units, even though this says 8 --

20 A Yeah. We don't reimburse based on bill charges.

21 Q Okay. So you just based it on whatever is in this
22 box? Even though that says units you reimburse based on
23 minutes?

24 A Based on the code that's in D and based on the units
25 that are supposed to be minutes in G is what we reimburse based

1 on.

2 Q So this would've been reimbursed at 6 units then
3 total; is that right?

4 A Correct.

5 Q And again the location is the same?

6 A Yes.

7 Q And the provider is different in this one?

8 A Yes. Ron Lakeman.

9 Q Now, if we go to the next page of this document, that
10 table that you had designated before, is it the same layout?

11 A Yes.

12 Q If we move across for that same date 7/25/07, the
13 part that says anesthesia, do you see that?

14 A Right. It says on there that anesthesia is \$560, and
15 we paid 2, 0, 6, 82.

16 Q Okay. So that's the amount of money that came out of
17 your pocket?

18 A Correct.

19 Q You being the insurance company?

20 A Correct.

21 Q Now, this one is a little harder.

22 A Yes.

23 Q I know it's small. I may have to zoom in a little
24 bit so you can see it a little better, and I may have to move
25 it around, but it looks like a little bit different kind of

1 form, but what is it?

2 A It's an explanation of payment. It's just different
3 types of members have different systems that the EOBs come
4 from. So this was a -- still an EOB from Anthem, and it has
5 the information. It's just a different layout.

6 So it has anesthesia, the charge is that \$560. We
7 allowed -- I think it was 2, 29, 80.

8 Q I can zoom in one more time on that or twice.

9 A Yeah. It's 2, 29, 80.

10 MR. SANTACROCE: I'm sorry. Can I get some reference
11 as to who this is or a Bates number or something.

12 MR. STAUDAHER: It's the same individual. It's the
13 Grand Jury exhibit original number, and it's Ziyad Sharrieff.

14 BY MR. STAUDAHER:

15 Q This is the same document, correct?

16 A Yes.

17 Q We can go to the name right here. I think it is
18 Sharrieff Ziyad?

19 A Sharrieff Ziyad.

20 Q Okay. So we'll go down to the numbers again as we go
21 across. The 5, 60 charge --

22 A The charges, the plan allowance.

23 Q Okay. And then what is this where it says, Remark
24 Code 610?

25 A It gives an explanation of the code. So down below

1 you'll see the 610 that matches.

2 Q That's what this is, correct?

3 A Yes. And pretty much it will just say that, you
4 know, anything above the allowed amount is a write off.

5 Q Okay. And on this particular one the copay --

6 A The copayment was 22, 98.

7 Q And then --

8 A \$206.98.

9 Q Let me make sure we get that closer. And it looks --
10 all I can see, it looks like an 8.

11 A 8. Yeah.

12 Q It's a little bit difficult.

13 A 2, 0, 6, 82.

14 Q Okay. The amount you actually -- your company
15 actually paid?

16 A Yes.

17 Q The last one is on the one that you said -- I think
18 if I understood you correctly is the -- I think you are the
19 secondary payor?

20 A Yes.

21 Q Okay. So what are we looking at here on this first
22 page?

23 A That's the explanation of payment, and it has the --

24 Q This looks like a different -- this has a different
25 dollar amount up here?

1 A Right. It has a different billed amount.

2 Q Okay. And this is -- this is related to the
3 anesthesia or not on this particular one?

4 Do you need to see the document? Would that be
5 better?

6 A Yeah. Because I don't see a code on there.

7 Q Let me just bring it up to you. Because the one I'm
8 interested in is the one related to anesthesia. So just take a
9 look through that document and point to it if you would. It
10 may not be the first page.

11 A This one says anesthesia.

12 Q Okay. So the second page is the one related to
13 anesthesia; is that correct?

14 A Yes.

15 Q So showing you the second page. What are we looking
16 at here?

17 A It has the dates of service. It says 9/21/2007,
18 anesthesia billed amount \$560. It has patient savings of 2,
19 53, 60.

20 Q What is that?

21 A It would've been the discount amount.

22 Q Okay. And then if you keep going across?

23 A It has other insurance.

24 Q So that is what you're talking about when another
25 insurance paid?

1 A Yes.

2 Q And then you pay whatever remains?

3 A The member's responsibility, yes.

4 Q So when it says patient -- or payment amount over
5 here, it's a smaller dollar amount; is it not?

6 A Correct.

7 Q And what is that dollar amount if you can read it?
8 I'm zooming it in, too.

9 A I think it's 56, 30 -- 48.

10 Q Okay. And then let's make sure.

11 A Yes. 5, 6, 4, 8.

12 Q Okay. The amount that your company actually paid on
13 this particular claim?

14 A Yes.

15 Q Now, I am going to -- the same chart that we're
16 familiar with from the previous ones, is this also the --

17 A Yes. That's the claim form 1500.

18 Q And who is the individual?

19 A Patty Aspinwall.

20 Q And I didn't ask you on the previous documents. Were
21 those her documents as well?

22 A Yes. The name was on there.

23 Q Okay. So same person and if we get down to the date
24 of service for her --

25 A It's 9/21/07.

1 Q Okay. If we go across again?

2 A Place of service, 24 which is a surgical center.

3 Q And if we move across here -- actually, I think there

4 must be another one because it looks like this is not

5 anesthesia?

6 A Yeah. Because that -- see where it says SG, that's

7 for the surgical center. That's the modifier for the surgical

8 center.

9 Q Let me go to the next one then unless it's on a

10 different page. Let me grab that other form.

11 MR. STAUDAHER: Court's indulgence.

12 THE COURT: That's fine.

13 MR. STAUDAHER: I'm going to show her this document

14 because I think it's something more complete than the other one

15 is.

16 THE COURT: Okay.

17 BY MR. STAUDAHER:

18 Q This one is 80J as in jam. Take a look through that,

19 and tell me if it relates to the same claim on the same person.

20 Just flip through the different pages.

21 A Yes.

22 Q You had said before that that was -- this one

23 contains the HCFA Form specific to the anesthesia, correct?

24 A Correct.

25 MR. STAUDAHER: Your Honor, I'm going to ask that

1 this one be replaced, either added to or admitted, but I want
2 to be able to share a HCFA Form on this one.

3 THE COURT: Any objection to using 80 --

4 MR. SANTACROCE: Is the only difference the HCFA
5 Form?

6 MR. STAUDAHER: Essentially, yes.

7 MS. STANISH: No objection.

8 THE COURT: All right. So we'll just admit 80J then.

9 (State's Exhibit No. 80J admitted.)

10 BY MR. STAUDAHER:

11 Q Okay. I am showing you now the first page of this
12 document. What are we looking at there?

13 A It's the HCFA 1500 for Patty Aspinwall.

14 Q And the date?

15 A 9/21/07.

16 Q Okay. If we move across on this one, a couple of
17 things I want to ask you about on this particular form, do you
18 see that we have --

19 Well, let's look at each one of them individually.

20 A Right. Place of service, 24 which is the surgical
21 center.

22 Q Now, the next one is?

23 A The code 810, 00810 which is for a colonoscopy for
24 anesthesia.

25 Q Now, if we go across, this one is designated a P1 --

1 A P1.
2 Q -- would that be eligible for additional charges?
3 A No.
4 Q Okay. And we go across here?
5 A 5, 80 -- or 5, 60, I can't --
6 Q Let me show it to you.
7 A Yeah.
8 Q Would it be better. You can look at any of the
9 forms, too, because I know it's sort of --
10 A 5, 60.
11 Q 5, 60. And the minutes that were listed here?
12 A 31 minutes.
13 Q Now, one thing, I want to go back to this box here.
14 Do you see above this one?
15 A Yes.
16 Q There are time -- well, do you know what those are?
17 A It's the start and finish time.
18 Q Okay. Did your company require the start and finish
19 time?
20 A No.
21 Q So that's just on this particular form?
22 A Yes.
23 Q And it appears, does it not, that that adds up to 31
24 minutes?
25 A Yes.

1 Q What's depicted here for \$560?

2 A That is correct.

3 Q The location again, same location?

4 A Endoscopy Center of Southern Nevada.

5 Q 700 Shadow Lane?

6 A Yes.

7 Q And the provider?

8 A Ron Lakeman, CRNA.

9 Q I'm going to skip right to the last page of this

10 which I think it said that this had to include the primary's

11 information?

12 A With the claim because it's a secondary claim. They

13 put it on the claim itself that it's a secondary, and they

14 attached the explanation of benefits of the primary.

15 Q Okay. Is that what we are looking at on page 3 of

16 this document?

17 A Yes.

18 Q So when we get to the very back page of this

19 document, do you see the name again?

20 A Yes. Patty Aspinwall.

21 Q Is this the same date of service?

22 A Yes, 9/21/07.

23 Q And again I'm interested in the anesthesia charges

24 here. Does this appear to be your explanation of benefits for

25 the anesthesia?

1 A Yes.

2 Q And if we go across, the dollar amount?

3 A 56, 48.

4 Q Is that what you actually paid on this claim?

5 A Yes.

6 Q So even though another insurer may have paid, you
7 paid additionally on this same claim?

8 A Correct.

9 Q Now, with regard to these records, do you rely upon
10 them to be accurate when they're provided to you?

11 A Yes.

12 Q If they in fact are not accurate, will you pay on the
13 claim?

14 A We pay based on what is billed, yes.

15 Q If there is false information on the claim though,
16 would you process it and pay it?

17 A Yes.

18 Q You would pay it if there was false information on
19 the claim?

20 A We wouldn't -- the physician is attesting that it's
21 correct. So the only way that we would know that it's
22 incorrect is if we did an audit or if we asked for medical
23 records.

24 Q Let's just assume that you knew that there was false
25 information on the claim. Would you process it?

1 A Without asking for medical records or doing an audit,
2 we would process the claim as we received it.

3 Q Yes. But if you knew that it was false, if the
4 information contained in there was false --

5 MS. STANISH: Objection. Asked and answered.

6 THE COURT: Well, let her --

7 MR. STAUDAHER: I'll ask a different way, Your Honor.

8 THE COURT: You can ask this question again, and then
9 she'll answer it, and then you'll need to move along.

10 MR. STAUDAHER: Okay.

11 BY MR. STAUDAHER:

12 Q If your company knew that the claim itself had false
13 information in it, that you just knew that, would you process
14 the claim?

15 A We are obligated to process the claim based on what
16 is billed. So if we know it's wrong, we would then do an audit
17 or ask for medical records.

18 Q Okay.

19 A Otherwise we assume that it's correct.

20 Q Would that relate to payment from your company if you
21 did the audit and found out that it was wrong?

22 A If we had paid it in advance and then did an audit on
23 the back end, we would then do an adjustment. Otherwise we
24 just pay it based on what is billed.

25 MR. STAUDAHER: Fair enough.

1 Pass the witness, Your Honor.

2 THE COURT: All right. Who would like to go first?

3 CROSS-EXAMINATION

4 BY MS. STANISH:

5 Q Good afternoon, ma'am.

6 A Hello.

7 Q I just first wanted to start with the math, and in
8 particular I wanted to ensure that I understood your conversion
9 factor.

10 A Okay.

11 Q Well, I'm going to use my copy of your anesthesia
12 policy. Just disregard all of the yellow on it.

13 A Okay.

14 Q I don't want to write on the exhibit. Can you see
15 that okay?

16 A Yes.

17 Q As I understand it, you paid Ziyad's claim based on
18 an 8-minute increment, correct?

19 A Correct.

20 Q So you already explained that the base unit is 5,
21 right?

22 A Yes.

23 Q And then they get 1 point for having the time between
24 1 minute and 15 minutes; is that correct?

25 A Correct.

1 Q And so for a total of 6 units on Mr. Ziyad's claim,
2 correct?

3 A Correct.

4 Q And that equaled -- your testimony \$206.82; does that
5 sound right, or do you need the documents?

6 A That's what we paid. I don't know if that included
7 the member responsibility because the allowed amount includes
8 the member responsibility.

9 Q Okay. So that's where I was having trouble with your
10 math.

11 A 38, 30 times 6 is the allowed amount, and then we
12 paid 206 and the member had a portion of that.

13 Q Okay. Here's what I'm trying to get at, and maybe
14 you can help me with the math because I thought with your
15 conversion factor that, oh, great. This witness does know the
16 math and that if I have \$38.30 that I could just take that
17 figure and multiply it by the number of units --

18 A Yes.

19 Q But that will not necessarily give me the amount
20 that's on the check to the clinic, correct?

21 A That's correct. Because you need to account for the
22 member responsibility.

23 Q And so --

24 A On the explanation of benefits, it tells you both.
25 It tells you the allowed amount. It tells you the member

1 responsibility, and it tells you the paid amount.

2 Q All right. Then what I'm going to do is ask you to
3 figure it out for me.

4 MR. STAUDAHER: Margaret, I think it's there over
5 there.

6 MS. STANISH: It's over there?

7 MR. STAUDAHER: Yes.

8 MS. STANISH: All right. Thanks.

9 BY MS. STANISH:

10 Q What I'm trying to determine here is what is the
11 value of the anesthesia service that is ultimately paid to the
12 clinic, and we have the bottom lines for somebody, Mr. Ziyad
13 who was between -- paid at eight minutes for \$206.82, correct?

14 A Right. On the EOB, it tells you on the -- it tells
15 you the billed amount, and then it tells you the plan allowance
16 which is 229, 80. The member co-share is 22, 98, and we paid
17 the \$206.82.

18 Q All right.

19 A But you have to add the 22, 98 to come out with the
20 2, 29, 80. So 6 times 38, 30 is 2, 29, 80.

21 Q And that figure represents what again?

22 A The conversion factor of 38, 30 times the 6 equals 2,
23 29 and 80 cents.

24 Q Okay. What was the check that was paid to the
25 clinic?

1 A The check that was paid is less the member
2 responsibility which is the co-pay.

3 Q So \$206.82 is what BlueCross BlueShield sent to the
4 clinic, correct?

5 A Correct.

6 Q All right. And with respect to Mr. Rubino at 8
7 units, the \$245 and 12 minutes -- not 12 minutes -- 12 cents,
8 that's what was paid with respect to Mr. Rubino's claim?

9 A Yes. And the allowed amount is \$306.40. The member
10 responsibility is 61, 28, and we paid 245, 12. So if you add
11 2, 45, 12, 61, 28, it equals 3, 06, 40, and if you take 8 times
12 38, 30, it equals 3, 06, 40.

13 Q Now, I am going to ask you to do more math here, and
14 if you need it, I have a calculator. I want you to help me out
15 with filling in the blank here on my fancy chart. It wasn't
16 produced with taxpayer money on a number of computers.

17 If Mr. Rubino's anesthesia time was between 16 and 30
18 minutes, what amount of money would have been paid to the
19 clinic?

20 A It would have been the 7 times 38, 30, and that
21 would've been the allowed amount.

22 Q Yeah. So let's do it. So 38, point, 30 times 7
23 units --

24 A Uh-huh.

25 Q Is the allowed amount 2, 6, 8 and 10 cents, \$268.10?

1 A Correct.

2 Q And then you have to do more math to get the amount
3 that actually would've gone to the clinic?

4 A Right. And without knowing the member benefit, I
5 don't know if the coinsurance would've been the same or
6 different, but if you want to use the same amount --

7 Q Well, can you tell from Mr. Rubino's documentation?
8 Can you extrapolate from that what the fill-in-the-blank amount
9 would be?

10 A We always have the allowed amount minus the member
11 benefit, the coinsurance. The coinsurance is going to depend
12 on whether the member has a maximum out of pocket, whether
13 they've met their deductible. So without actually looking at
14 his benefits at that time I don't know whether it was
15 deductible, whether something was met. So I don't know. It's
16 not a straight 10 percent, 20 percent.

17 Q You can't tell from the EOB on Mr. Rubino?

18 A It just has an amount. It doesn't say what percent
19 or deductible. See, it just has 61, 28. It doesn't say --

20 Q Okay.

21 A -- if that's deductible or if that's a percentage.

22 Q All right. Suffice to say the amount --

23 If I want to fill in this blank, the amount would
24 have to be some figure between 206 -- or I'm sorry. The
25 number would have to be less than \$268.10?

1 A You have to take away the member responsibility, yes.
2 Q Right. Let me do some quick math here.
3 A Do you want to use the same amount? You can.
4 Q Yeah, let's do that.
5 A 61, 28. So you take 2, 68, 10 --
6 Q 2, 68, point, 10.
7 A Minus 61, 28.
8 Q Well, that's the same as Mr. Ziyad's, \$206.82?
9 A Because again that 206 -- the member responsibility
10 was probably different.
11 Q Okay. So there's a lot of math involved?
12 A Yes.
13 Q But basically if Mr. Rubino had an anesthesia time
14 between 16 and 30, it would be \$206.82?
15 MR. STAUDAHER: Objection, Your Honor.
16 THE WITNESS: With the member responsibility being
17 that amount that we used, yes.
18 MR. STAUDAHER: It mischaracterizes the state of the
19 evidence, Your Honor.
20 THE COURT: Well, she just answered the question. So
21 overruled.
22 BY MS. STANISH:
23 Q The anesthesia time includes the time that the CRNA
24 preps the patient?
25 A When the member goes back to the surgery center at

1 the actual surgical center, they start preparing for infusing
2 the anesthesia.

3 Q Does that include putting in that Hep-Lock? Do you
4 know what a Hep-Lock is?

5 A We don't specify like exactly what it is other than
6 what's on our reimbursement policy. It's a face-to-face. So
7 if they are facing the member, and they're in the preop, I
8 would say yes.

9 Q Did you have personal dealings with people who worked
10 for the clinic?

11 A The billing company, yes.

12 Q And do you recall the name of the billing company?

13 A No.

14 Q Would you describe your dealings with the billing
15 company one of confusion, that they had difficulties with
16 billing?

17 A From the facility standpoint, they used to bill on
18 the same HCFA 1500 where most facilities bill on a UB04, and
19 the CMS allows, which is Medicare, allows a provider or a
20 facility to bill on either form.

21 They have to put that modifier of SG saying it's a
22 facility because otherwise the physician bill and the
23 surgery-center bill looks exactly the same. So in a system
24 without that modifier it could look like it's a duplicate
25 claim. So the modifier is put in so it differentiates that one

1 is for the facility.

2 They refused to bill on a UB. So they had a lot of
3 issues because they were constantly forgetting in some cases to
4 put that modifier on the surgical center.

5 Q And did you have any other issues with the billing
6 company that you recall?

7 A No.

8 Q That you recall or you didn't have any other issues
9 other than that?

10 A Yeah. I mean, on an ongoing basis they would send us
11 spreadsheets of just reviewing whether we had received their
12 claims, and, you know, whether we had paid it, and, you know,
13 sometimes they would lose their explanation of benefits. We
14 would get copies for them, things like that.

15 Q And is that your experience with other clinics as
16 well? The billing personnel or the billing company has
17 difficulty understanding the requirements?

18 A No.

19 Q This is the only company you've ever had problems
20 with?

21 A Yes.

22 Q All right. And as far as BlueCross goes it sounds
23 like -- it looks like from these contracts that you had a
24 business relationship with the clinic that extends back to
25 1995?

1 A That's when they signed the contract, yes.

2 Q All right. Does BlueCross before entering a contract
3 or when renewing it, does BlueCross do any inspection of the
4 facility?

5 A The inspection of the facility -- we do credentialing
6 of the providers, and the credentialing is more that they have
7 a license. They have liability insurance, but we don't
8 physically go and visit the location.

9 Q Do you require them to have some kind of quality
10 assurance program?

11 A No.

12 Q Do you remember who you used to deal with when you
13 dealt with the billing company?

14 A No. Since it was back in, you know, prior -- '07 or
15 prior, technically between '97, you know, after that one of my
16 staff members, you know, dealt with them, but, you know, I was
17 overseeing everything. So I was aware, but I don't recall the
18 person's name.

19 MS. STANISH: Okay. Thank you.

20 THE COURT: All right. Mr. Santacroce.

21 CROSS-EXAMINATION

22 BY MR. SANTACROCE:

23 Q Ms. González, I can tell you one thing, we're not
24 going to be doing any math.

25 A I had just gotten good at it.

1 MS. STANISH: Yeah, you're a lot better than me.

2 BY MR. SANTACROCE:

3 Q This whole billing process seems like it requires
4 some knowledge and expertise; would you agree with that?

5 A I would agree.

6 Q So I'm not going to go into that area, but I am going
7 to ask you a couple of things about -- Ms. Stanish asked you
8 about the preop area, and whether a CRNA could bill for the
9 preop area?

10 A Uh-huh.

11 Q Okay. I want to ask you specifically about the
12 postop area, okay. And if you could direct me to this, is --

13 I'm looking at Exhibit 218 which you testified to.
14 If you can direct me in this exhibit as to where the anesthesia
15 billing is defined.

16 A (Unintelligible) and time reporting.

17 Q Okay. Time reporting, can you see that?

18 A Uh-huh.

19 Q It says, Anesthesia time begins when the
20 anesthesiologist begins to prepare the patient for induction of
21 the anesthesia in the operating room or any equivalent area and
22 ends when the anesthesiologist is no longer in personal
23 attendance. That is when the patient may be safely placed
24 under postoperative supervision.

25 What does that mean when the patient is safely under

1 postoperative supervision?

2 A Most often when a member has surgery, there is a
3 preop, and then there's the actual where the surgery takes
4 place, and then there is where they go and recover which is the
5 postop.

6 Q Okay. And does this apply to ambulatory surgical
7 centers?

8 A Yes.

9 Q And is it different than in a hospital setting?

10 A No. It's pretty much the same.

11 Q Well, in a hospital setting there is a specific
12 postoperative area where a doctor is in charge of that area; is
13 that correct?

14 A The physician that does the surgery or --

15 Q No. They hand off the patient to a postoperative
16 doctor?

17 MR. STAUDAHNER: Objection. Assumes facts not in
18 evidence, Your Honor.

19 MR. SANTACROCE: Well, I'm asking her if she knows.

20 THE COURT: I'm sorry. I was conferring with my JEA
21 on a matter relating to the trial.

22 So state your question again, Mr. Santacroce.

23 MR. SANTACROCE: Okay. I'll ask it a different way.

24 BY MR. SANTACROCE:

25 Q If the patient was in the postoperative area in the

1 ambulatory surgical center such as this, and the CRNA was
2 responsible for the care of that patient in that postoperative
3 area, could they bill for that?

4 A If they're still providing anesthesia, they can. If
5 they're not providing anesthesia, then they are not supposed to
6 if they're no longer face-to-face with that patient.

7 Q Okay. Well, that's not what the procedure says, and
8 that's why I'm confused. Let's look at that again. It says,
9 When the patient may be safely placed under postoperative
10 supervision, they can bill until that time, correct?

11 A If the medical records show that they are with the
12 patient, yes.

13 Q Okay. Where does it say with the patient on here?

14 A Right before that section it says on there, Personal
15 attendance.

16 Q Okay. That is when the patient may be safely placed
17 under postoperative supervision. In other words, my reading of
18 this is that you hand off the patient to somebody else's
19 responsibility. Do you have a differing opinion of that?

20 A Again I am just going by what it states, that it has
21 to be face-to-face, that they have to be in personal
22 attendance.

23 Q Okay. Fair enough. You represent Anthem BlueCross;
24 is that correct?

25 A Yes.

1 Q And the particular patients that you're here
2 testifying to are Kenneth Rubino, Sharrieff Ziyad and Patty
3 Aspinwall, correct?

4 A Correct.

5 Q Now, with regard to the HCFA Forms, who prepares
6 those forms in this particular case for the Endoscopy Center?

7 A Their billing company.

8 Q Okay. So the billing company prepares those forms
9 and puts information on those forms, and it is not the CRNA
10 that prepares the HCFA Form, correct?

11 MR. STAUDAHER: Objection. If she knows.

12 THE COURT: If she knows.

13 If you don't know, don't answer.

14 THE WITNESS: I really don't know, but normally they
15 don't.

16 BY MR. SANTACROCE:

17 Q Okay. And with regard to Sharrieff Ziyad you paid a
18 total of \$206.82 for that claim, correct?

19 A Yes.

20 Q And that check was written to whom?

21 A On the explanation on here, it's the member's
22 explanation, not the provider's.

23 Q Do you have a check, a copy of the check?

24 A No.

25 Q Would the payment have been made to the provider that

1 was under contract?

2 A Yes.

3 Q So if the provider was the Nevada Gastroenterology
4 Center, that's to who the check would have been made?

5 A Yes, it would have been to the Gastroenterology
6 Center.

7 Q It wouldn't have been made out to Ron Lakeman,
8 correct?

9 A No.

10 Q And with regard to Patty Aspinwall the total amount
11 that your company paid was 56, 48, \$56.48, correct?

12 A Correct.

13 Q And again that check would've been made out to the
14 contract provider and not Mr. Lakeman, correct?

15 A Correct.

16 MR. SANTACROCE: Nothing further.

17 THE COURT: All right.

18 Redirect.

19 REDIRECT EXAMINATION

20 BY MR. STAUDAHER:

21 Q I want to ask, and you know we've got to revisit
22 these forms. I want to make sure we are clear on this. When
23 counsel asked you about postop personal attendance and
24 face-to-face time, what does that mean to you?

25 A When the member is in surgery and having anesthesia,

1 and when they prepare them for the anesthesia and once they
2 remove them from the anesthesia.

3 Q Would they ever be allowed to bill for two patients
4 at the same time?

5 A If they're monitoring both patients at the same time
6 face-to-face.

7 Q You mean both patients are right there, and they
8 could monitor them both face-to-face. Could they bill for both
9 at the same time?

10 A Yes.

11 Q Would they have to be in personal attendance of those
12 individuals?

13 A Yes.

14 Q If they were doing a procedure in another procedure
15 room and that patient was out in the recovery area, could they
16 bill for that patient out in the recovery area?

17 A No.

18 Q So is that what you mean by face-to-face time?

19 A Yes.

20 Q Now, with regard to the time that you were asked
21 about --

22 A The claims are up here if you are looking for the
23 claims.

24 Q Oh, they are.

25 You were asked specifically --

1 Let's get Kenneth Rubino up here. I just want to be
2 clear on this. This is 80P as in Paul, and I'm going to go
3 across this just to make sure. The \$38 I think it was 30
4 cents, you said?

5 A 38, 30, yes.

6 Q That's what you would reimburse per unit?

7 A Per unit.

8 Q Okay. What number is that based on on this list?

9 A The allowed amount is the \$306.40.

10 Q Okay. So the allowed amount is 3, 0, 6, 40. Is that
11 what you used to come up with your calculation of 38, 30 times
12 the number of units?

13 A You would have to divide the 3, 0, 6, 40 by the 38 to
14 come up with the units. From this document here it doesn't
15 have the time. So you wouldn't be able to -- you could assume
16 the total units by doing the 3, 0, 6, 40 divided by the 38, 30,
17 but you would need the claim.

18 Q Let's just go to the claim form itself. Do you see
19 where it says 32 minutes here?

20 A Yes.

21 Q How many units?

22 A That's 3.

23 Q Total?

24 A It's 8 total because it's 5 for the base, plus 32, 3
25 units. So a total of 8.

1 Q 8, so if we take 8 times 38, 30, what number do we
2 come up with?

3 A The 3, 0, 6 and 46.

4 Q So that's the number you come up with multiplying
5 them?

6 A Yes.

7 Q Now, the amount you paid is less than that, correct?

8 A Is less the member's liability.

9 Q So whatever the member has to pay that's the part
10 that gets taken out, and you pay the remaining?

11 A Right. And each member has different benefits. Not
12 all the benefits are the same. It's based on what policy they
13 bought. They could have different deductibles. They could
14 have different copayments. Once their deductible is met, you
15 know, it depends on their benefits, what their liability is.

16 Q So this number over here, the 2, 45, 12 that you
17 indicated was the amount you paid, there is no multiple of the
18 38, 30 that gets you to that number, correct?

19 A No.

20 Q It's only this number over here, the 3, 0, 6 --

21 A The allowed amount.

22 Q -- 40. That's the amount that you're multiplying the
23 8 units by?

24 A Correct.

25 Q So this ends up being your payment over here, and

1 this ends up being the subscriber's liability for this
2 particular claim?

3 A Yes.

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

5 THE COURT: Okay.

6 MR. SANTACROCE: What did you do with 218?

7 MR. STAUDAHER: What was that?

8 MR. SANTACROCE: 218, where did you put it?

9 MR. STAUDAHER: It should --

10 THE COURT: Do you have any exhibits up there?

11 THE WITNESS: No. I gave it to him.

12 THE COURT: Oh, okay.

13 MR. SANTACROCE: You just used 218.

14 MR. STAUDAHER: It's right on top then.

15 RECROSS-EXAMINATION

16 BY MR. SANTACROCE:

17 Q I don't mean to belabor this point, but you keep
18 using the words face-to-face, and this document doesn't mention
19 face-to-face at least that I can see --

20 A It says that it begins when the anesthesiologist
21 begins to prepare for anesthesia in the operating room or an
22 equivalent area, and it says it ends when no longer in personal
23 attendance. That's what we consider face-to-face.

24 Q Okay. So you're using face-to-face in place of
25 personal attendance?

1 A It's just a reference of they have to be in personal
2 attendance.

3 Q Okay. But that's what you mean when you say
4 face-to-face?

5 A Yes.

6 Q Then you would agree that face-to-face does not
7 appear anywhere in this time reporting area?

8 A Correct.

9 Q Do you have the documents for Sharrieff Ziyad up
10 there?

11 A No. They went back over there.

12 MR. STAUDAHER: No. They're back over there.

13 BY MR. SANTACROCE:

14 Q I want you to take a look at this and tell me how
15 many minutes were billed for that procedure.

16 A Eight.

17 Q Eight minutes, so that would be 1 unit, correct?

18 A Correct.

19 Q So you didn't pay based on 30 or 31 minutes?

20 A No.

21 Q And finally the 56, 48 that you paid for Patty
22 Aspinwall, that was not based on any time at all, was it?

23 A It was based on the primary's -- the member's
24 responsibility from the primary's.

25 Q Okay. But that -- well, my question was , there was

1 no time calculation where you billed 56, 48 for the procedure?

2 A No.

3 Q That was the patient's share, and that's what you
4 paid?

5 A Correct.

6 MR. SANTACROCE: Nothing further. Thank you.

7 THE COURT: Ms. Stanish?

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

9 THE COURT: Mr. Staudaher, anything else?

10 MR. STAUDAHER: Nothing, Your Honor.

11 THE COURT: Any juror questions for the witness?

12 (No response.)

13 THE COURT: All right. Ma'am, thank you for your
14 testimony. Please don't discuss your testimony with anyone
15 else who may be a witness in this matter.

16 Thank you, ma'am, and you are excused.

17 THE WITNESS: Okay. Thank you.

18 THE COURT: May I see counsel at the bench, please.

19 (Conference at the bench not recorded.)

20 THE COURT: We need to take another quick break.
21 We're going to stay a little bit late tonight if that's okay
22 with everybody. If anybody has issues with that, just tell
23 Kenny.

24 He may or may not tell me. No, he'll tell me.

25 We'll work with that.

1 We're hoping -- I've been told the good news is we
2 should be finished by the end of the month. I know that we
3 told you that we would not be in session tomorrow.

4 That may still be the plan, but I can't tell you that
5 for sure. So having said that, we're going to take a quick
6 break.

7 I must remind you you're not to discuss the case or
8 anything relating to the case with each other, with anyone
9 else. You are not to read, watch or listen to any reports of
10 or commentaries on this case, person or subject matter relating
11 to the case, and please don't form or express an opinion on the
12 trial.

13 Notepads in your chairs. Follow Kenny through the
14 rear door.

15 (Jury recessed at 4:25 p.m.)

16 THE COURT: Why doesn't somebody get the last witness
17 and Ms. Akridge, and we'll figure out what they are talking
18 about because I don't understand this note.

19 Ms. Weckerly, did you move the two insurance people
20 to Thursday, or are they still up in the air?

21 MS. WECKERLY: I moved them to Thursday.

22 THE COURT: Okay.

23 MS. WECKERLY: So, okay. Yeah.

24 THE COURT: Could we move Detective Whiteley around?

25 MS. WECKERLY: He's doing some things on another

1 case. I can check with him.

2 THE COURT: Because here's my thinking. Because
3 well --

4 Where's the witness?

5 MR. STAUDAHER: They want to say something before she
6 brings her in.

7 THE COURT: Yes, ma'am. Ms. Akridge, did you want to
8 say something?

9 MS. AKRIDGE: Yes, Your Honor.

10 THE COURT: Okay. Come forward. We need to do this
11 on -- we're doing all of this -- this is all on the record.

12 MS. AKRIDGE: Okay.

13 THE COURT: And do you have her bar number already?

14 MS. AKRIDGE: 3353.

15 THE COURT: Yes?

16 MS. AKRIDGE: So, Your Honor, what we found out is
17 that the answer, the fee issue is contained within the
18 document. It's already, I believe, admitted.

19 THE COURT: Okay. And that is the contract?

20 MS. AKRIDGE: Yes.

21 THE COURT: Okay. And maybe you can show the lawyers
22 just kind of there together, or you can put it up here on the
23 monitor or something.

24 MR. STAUDAHER: We've got the documents. Which one,
25 the anesthesia policy or the contract?

1 THE COURT: What you're talking about.

2 MS. STANISH: It's in that table.

3 MR. STAUDAHER: This?

4 MS. STANISH: Which Grand Jury exhibit?

5 MS. AKRIDGE: 55A, page 24.

6 MS. STANISH: I don't have a page 24. Do you,
7 Michael?

8 MR. STAUDAHER: I'm just looking through the Grand
9 Jury exhibits right now.

10 THE COURT: And so just for the record, what you're
11 saying is the fee schedule we've all been trying to figure out,
12 how much the fees are for the units, it's in this chart right
13 there?

14 MS. WECKERLY: Well, it says -- is that the 2 percent
15 reduction? Is that what you're talking about?

16 MS. MAZIARZ: No. It's a chart that says, Outpatient
17 Procedure Grouper.

18 MS. AKRIDGE: Table 1A.

19 THE COURT: And that shows the anesthesia rates?

20 MS. MAZIARZ: No. The anesthesia was included in a
21 combined-case rate for the visit to the facility.

22 THE COURT: So you're saying the way this insurer
23 reimbursed there wasn't a separate reimbursement for
24 anesthesia?

25 MS. AKRIDGE: Right.

1 MS. MAZIARZ: As far as what we've been able to
2 gather from all of our phone calls.

3 THE COURT: That's inconsistent with what was
4 testified.

5 MS. STANISH: As well as what was in the Grand Jury.

6 MR. STAUDAHER: Why don't we bring her in here?

7 THE COURT: Yes. Let's bring her in here. She's
8 going to need to do this on the record. Because here's the
9 deal, the testimony as I heard it -- and correct me, Lawyers,
10 freely if you think I'm wrong -- was that it was different --
11 it was there -- the rate for the whatever, colonoscopy plus the
12 anesthesia. What you're saying is it's all together?

13 MS. MAZIARZ: That was the information that we
14 gathered.

15 THE COURT: Okay. Well, we need to get her in, and
16 she needs to explain.

17 MS. AKRIDGE: Except that she doesn't have any
18 knowledge about that --

19 MR. STAUDAHER: We've got an EOB --

20 THE COURT: Where did you get this information?

21 MR. STAUDAHER: -- that says Anesthesia Billing right
22 here. That's what the company submitted. In the explanation
23 of benefits it says for anesthesia, and it's a charge and a
24 payment. That's not included in the base agreement.

25 MS. MAZIARZ: We could go make some more phone calls,

1 but we had lots of phone calls, and this is what we were told.

2 THE COURT: Okay. Well --

3 MS. STANISH: My understanding --

4 I'm sorry, Judge.

5 THE COURT: No, Ms. Stanish, go ahead.

6 MS. STANISH: My understanding was that as I read
7 this contract that it dealt with the procedures, the
8 colonoscopy procedures and that there was something somehow
9 separate with respect to anesthesia.

10 By the way, what you referred to talks about
11 anesthesiologists at 2 percent. These are CRNAs.

12 MS. AKRIDGE: Okay.

13 MS. STANISH: I don't know if that makes a difference
14 to you.

15 THE COURT: Can we maybe have on the record exactly
16 where this information is coming from, and who spoke to who.

17 And, Ms. Akridge, did you speak to someone?

18 MS. AKRIDGE: I did not.

19 THE COURT: Did the witness speak to someone? Where
20 is this information coming from? Because the last I heard we
21 were going to try and find the CMS Codes and the fee schedule,
22 and she was going to contact her office to see about the fee
23 schedule relating to the anesthesia charges.

24 MS. AKRIDGE: Right.

25 THE COURT: And then apparently someone wanted to use

1 my court clerk's computer in the back, and she was amenable to
2 that.

3 MS. AKRIDGE: Right.

4 THE COURT: And now we learn that, oh, no. There is
5 no fee schedule. So can someone please clarify how this
6 information has been imparted to the two of you?

7 THE COURT RECORDER: And, ma'am, could you tell me
8 your name first?

9 MS. MAZIARZ: Sure. Jessica.

10 THE COURT: And are you an attorney as well?

11 MS. MAZIARZ: I'm an attorney as well. I'm not
12 licensed here in Nevada though.

13 THE COURT: Okay. And you're an employee of Holland
14 and Hart or no?

15 MS. MAZIARZ: No.

16 MS. AKRIDGE: No. She's with Bryan Cave.

17 THE COURT: I'm sorry?

18 MS. MAZIARZ: Bryan Cave.

19 THE COURT: Okay.

20 MS. MAZIARZ: In Phoenix.

21 THE COURT RECORDER: Can you spell your name, please.

22 MS. MAZIARZ: Sure. It's Maziarz. M-a-z-i-a-r-z.

23 THE COURT: And then can you tell us what you learned
24 and who you learned it from.

25 MS. MAZIARZ: I just had a conversation with a

1 paralegal at the legal department at United Healthcare, and she
2 was the one who called various people for us.

3 THE COURT: And she's located where, in Minnesota?

4 MS. MAZIARZ: No. I believe she's in California.

5 THE COURT: So do you know where she got this
6 information from? Because it seems to me -- and again,
7 Lawyers, correct me if I'm wrong, meaning the prosecutor and
8 the defense attorneys -- this seems inconsistent with the
9 information that the designated witness -- whom I'm assuming
10 was designated by the company -- to come here in response to a
11 subpoena issued by the State. So the company chose who we are
12 going to get and came in here.

13 What you're telling us now is inconsistent with the
14 information we had. So I'd like to know who at the company is
15 saying something inconsistent with what a witness told us on
16 the stand, and again, you know, the State --

17 State, right? You didn't choose this gal to come out
18 here. This was the witness that was the designated person
19 who -- after you subpoenaed; is that what happened?

20 MR. STAUDAHER: That's correct, Your Honor. That's
21 who testified at the Grand Jury.

22 THE COURT: So, I mean, they have to rely on the
23 company to designate the correct person to come out here, and,
24 I mean, I'd like to know -- I don't know if the lawyers care --
25 but I'd certainly like to know who's telling us something

1 different than what the witness who was designated, flown out
2 here at State expense has told us and everybody relied on.

3 MS. AKRIDGE: I agree, Your Honor. Let me just say I
4 think the subpoena actually had Katie Kalka's name on it as
5 opposed to a list of areas to designate a witness.

6 THE COURT: Okay. I apologize.

7 MS. AKRIDGE: Yeah. No worries.

8 THE COURT: I assumed it was COR, DP, blah, blah,
9 blah, blah records that they need.

10 MS. AKRIDGE: I don't think that's the case. I mean,
11 I think you --

12 THE COURT: Okay. I apologize. I made a false
13 assumption.

14 MS. STANISH: Then my question would be is whether
15 the State requested that individual. I mean, my experience
16 having done insurance fraud is I work with the fraud
17 investigator, and I'd like the State to answer the Court's
18 earlier question, Who selected this witness who's been depicted
19 as a custodian of record?

20 MR. STAUDAHER: We actually subpoenaed both, Your
21 Honor. We subpoenaed the custodian of records, person most
22 knowledgeable and specifically Katie Kalka. The reason Katie
23 Kalka was done is because she testified at the Grand Jury to
24 this very thing.

25 If she ended up not being a person still employed at

1 that location or with the company, then we wanted them to send
2 whoever was available, but because she previously testified to
3 these very records that's why she was specifically subpoenaed
4 in addition to the COR, slash, person most knowledgeable.

5 THE COURT: So did you issue three subpoenas, or did
6 you do Katie Crowley --

7 MR. STAUDAHER: One combined.

8 THE COURT: -- or what ever her name is -- I
9 apologize -- and/or PMK and/or COR? How did you subpoena --

10 MR. STAUDAHER: COR, slash, PMK and then a separate
11 one to Katie Kalka.

12 THE COURT: So two subpoenas?

13 MR. STAUDAHER: Right.

14 THE COURT: And in response to the two subpoenas the
15 company sent this one person?

16 MR. STAUDAHER: Yes. But we -- I -- our --

17 THE COURT: Do you then say she's --

18 MR. STAUDAHER: Our investigator or whoever that
19 actually does the process serving -- when I do the subpoena
20 request, I say, Look, this is the person that came out. If
21 that person can't do it or there's some problem, then they need
22 to send somebody else, but if this person is still available
23 and can come out, then that's the only person we would need.

24 So that's how it gets relayed to the investigator.
25 The investigator calls the company or whatever to find out if

1 that's the person that still needs to come out. If that's the
2 person that is still designated, that's the person --

3 What has happened in other instances is a person has
4 left the company and is no longer available, and the company
5 says, we don't have this person anymore. So then we get the
6 next person that can come in in that stead. So it's a combined
7 thing. Two separate subpoenas were what were originally
8 ordered by our office for, you know -- which ones actually got
9 to the company, I don't know.

10 THE COURT: Okay. And then I guess -- so in other
11 words, you two ladies don't know who at the company has now
12 said in contradiction to what we've heard in the past that, oh,
13 it's all some kind of combined charge; is that correct??

14 MS. MAZIARZ: That's correct.

15 THE COURT: And all you have is the name of a
16 paralegal. Is this an in-house paralegal?

17 MS. AKRIDGE: Yes.

18 MS. MAZIARZ: Yes.

19 THE COURT: Okay. Could we at least have that
20 person's name on the record?

21 MS. MAZIARZ: Her name is Christina Stecki.

22 THE COURT: Do you know how to spell that?

23 MS. MAZIARZ: Yes. It's C-h-r-i-s-t-i-n-a --

24 THE COURT: That part I knew.

25 MS. MAZIARZ: Well, sometimes it's C-r.

1 THE COURT: Okay.

2 MS. MAZIARZ: And then the last name is --

3 THE COURT: It could be a K, okay, to be fair to you.

4 MS. MAZIARZ: And then the last name is Stecki.

5 S-t-e-c-k-i.

6 THE COURT: Okay. I'm going to ask if you don't
7 mind, ladies, if you'd go back out, and then we're going to try
8 to -- I'm going to see what the lawyers say, and then decide
9 where we are going from here, and so go ahead and --

10 MS. AKRIDGE: Okay. Sure.

11 THE COURT: Does anyone have any questions for them
12 while they're here?

13 MR. STAUDAHER: Well, I just --

14 THE COURT: These two ladies.

15 MR. STAUDAHER: It just seems like we should bring
16 the witness in at some point and talk to her. Because I'm
17 looking at a record from their company --

18 THE COURT: Oh, no. She's not off the hook. Don't
19 put her on a plane.

20 MS. AKRIDGE: She's still out there.

21 THE COURT: Yes. Don't drive her to McCarran
22 whenever you do.

23 MR. STAUDAHER: -- it says anesthesia billing --

24 THE COURT: Don't send her off.

25 MR. STAUDAHER: That's what it specifically says in

1 the EOB is for anesthesia, not a global fee or anything like
2 that is delineated.

3 THE COURT: Yes. I'm really concerned. I mean,
4 frankly, I'm concerned that we're hearing from one part
5 apparently of the company, it's this, and we're hearing from
6 another part of the company -- oh, by the way, under oath and
7 before the Grand Jury -- that it's something else, and, you
8 know, the State relied on what was presented at the Grand Jury.
9 That's been --

10 Yes, Ms. Stanish.

11 MS. STANISH: If I could talk about what was
12 presented at the Grand Jury, I don't think the State should be
13 so surprised about this particular witness's lack of knowledge
14 and blame it on civil attorneys.

15 MR. STAUDAHER: I'm not trying to blame it on
16 anything. I just want to get the proper information.

17 MS. STANISH: Well, I just think the case should have
18 been investigated before trial.

19 THE COURT: Okay.

20 MS. STANISH: Okay. My point is -- Your Honor, I'm
21 sorry -- at the Grand Jury Mr. Staudaher asked the witness
22 whether she knew what the base unit was, and she said, No, I
23 don't know. I mean, it seemed to me to be indicated in the
24 Grand Jury that this witness didn't have the pertinent
25 knowledge so that we could put a value on the anesthesia

1 service.

2 THE COURT: Well, I'm more concerned -- and unless
3 I'm confused -- that we're hearing billing was done two
4 different ways for the anesthesia. Is that what everybody else
5 heard?

6 MS. WECKERLY: Well, yes. I mean, it sounds really
7 different. I think --

8 THE COURT: It sounds really different to me, and I'm
9 wondering why is the one company presenting two different views
10 of how this is done. That's why I'm concerned.

11 I mean, however it's done we need a fee schedule to
12 say a colonoscopy with 3 minutes of anesthesia is going to cost
13 this. A colonoscopy with 32 minutes of anesthesia is going to
14 cost this. A colonoscopy with 17 and a half minutes or
15 whatever the real number is is going to cost that.

16 That's what we need to know. And so is that record
17 going to answer that question, or is there some other record
18 out there that's going to answer that question? That's really
19 what the issue is.

20 Here's what it costs at this amount. An endoscopy
21 for 5 minutes, endoscopy for 32 minutes, endoscopy for 12
22 minutes, how much are those three things going to cost the
23 insurer? That's the issue here because it's insurance fraud
24 and theft, and so that's what we need to know.

25 Are you telling us that whatever the information is

1 that you've got has that answer or no?

2 MS. MAZIARZ: Your Honor, what I'd like to do is call
3 back in-house and go over this again with them to make sure
4 that --

5 THE COURT: Okay. We have a wonderful feature as
6 Ms. Akridge knows called Court Call, and we also just have a
7 good old-fashioned telephone and a microphone, and so, you
8 know, at some point I think somebody from the company, you
9 know -- I don't think they can slough it off on the two of
10 you -- I think we need somebody from the company to explain to
11 us what the situation is and why we apparently have the wrong
12 witness here, maybe the right witness and the wrong records or
13 the right records and the wrong witness or whatever's going on.

14 So I'm going to excuse you ladies, let you do that.
15 I'm going to talk to the lawyers.

16 MR. SANTACROCE: Your Honor, I'm going to object to
17 that. We are not in the investigatory stage of this case.

18 THE COURT: No. I know we're not. That's why I
19 said, Mr. Santacroce, I'm going to send them out.

20 There's two problems going on here. There is what
21 are we going to do with this trial going forward, number one,
22 and there is number two, you know, why is there the wrong
23 witness here telling us different things, one thing under oath.
24 Now, their lawyers are coming in here telling us something
25 different.

1 That's a different concern; wouldn't you agree?

2 MR. SANTACROCE: I agree with whatever you say, Your
3 Honor.

4 THE COURT: No. I mean, the Court's concerned. Why
5 do we rely and spend all this time based on what a witness has
6 told us under oath, and then the lawyers come in and say, oh,
7 no. That's something totally different. I'm wondering why we
8 wasted over an hour if it's wrong.

9 MR. SANTACROCE: I am, too.

10 THE COURT: I'm concerned about that.

11 MR. SANTACROCE: And I'm more concerned about the
12 proof issues with wrong testimony.

13 THE COURT: All right. Here's what I would suggest.
14 I don't know what everybody wants to do.

15 State, what do you want to do going forward?

16 Let me say what I suggest, and then I'll hear from
17 everybody since this is all a mess. We don't know what the
18 truth is. We don't know what we're going to do going forward.
19 I don't know how the defense can cross-examine her based on new
20 information that is coming from the attorneys.

21 I would say let's cue up the Meana deposition, and
22 deal with this later.

23 THE COURT RECORDER: I can't do it.

24 THE COURT: Oh.

25 THE COURT RECORDER: Jordan has to --

1 MR. STAUDAHER: We can do it. We can do it.
2 THE COURT RECORDER: No. There's no sound. There
3 won't be any sound coming out of anywhere.
4 MR. STAUDAHER: I can probably --
5 MR. SANTACROCE: Are we on the record?
6 THE COURT RECORDER: Yes.
7 THE COURT: Yes, this is all on the record.
8 MR. SANTACROCE: I just -- I need to renew my
9 objection regarding the Meana deposition very briefly.
10 THE COURT: Well --
11 MR. SANTACROCE: I'm objecting to this coming in
12 because I didn't have the right to confront Mr. Meana. I
13 didn't have a right to cross-examine him. I sat there for an
14 hour and a half --
15 THE COURT: Mr. Santacroce, here's the problem. You
16 keep objecting. Every few weeks you object again on the record
17 to the Meana deposition.
18 MR. SANTACROCE: I'm not sure where it is.
19 THE COURT: You've objected before. Your objection
20 has been overruled. You did it again recently, and then
21 finally the State stood up and said, Why are we relitigating
22 this issue? And I said, well, I've allowed Mr. Santacroce to
23 make a record again because I like to do that. I feel like you
24 should be given -- whether I agree with you or not -- I feel
25 like you should be given an opportunity to make a record.

1 At some point in time you've made your record. You
2 don't have to remake it --

3 MR. SANTACROCE: Okay, Judge.

4 THE COURT: -- every so often --

5 MR. SANTACROCE: Well, I obviously --

6 THE COURT: -- the record --

7 MR. SANTACROCE: I obviously think it's a very
8 important issue.

9 THE COURT: It is an important issue, and I don't
10 mean to minimize the issue, but you objected when they sought
11 to admit the deposition transcript. You objected again -- I
12 don't remember if it was a few weeks ago before we started the
13 trial. I think you objected again, and I entertained argument
14 again, and finally the State stood up -- I don't remember what
15 day it was -- the State stood up and said, Well, why are we --
16 it was Ms. Weckerly. She said, Why are we doing this again?
17 Hasn't this all been litigated?

18 Do you remember that, Ms. Weckerly?

19 MS. WECKERLY: I do.

20 THE COURT: And I said, Well, Ms. Weckerly, you are
21 correct, but I'm letting Mr. Santacroce make a record. So that
22 was the record. We don't have to remake a record every few
23 weeks.

24 MR. SANTACROCE: Well, you know, I have a short
25 memory, and someone once told me the third time is the charm.

1 So I was just going by that statement, Your Honor.

2 THE COURT: Well, it's not. I mean, I think you've
3 made your record, and we don't have to keep remaking the record
4 because, you know, for appellate purposes you can go back and
5 say we objected to this. I mean, your objection is again noted
6 for the record. For the record, it's noted --

7 MR. SANTACROCE: But --

8 THE COURT: -- but we don't have to keep rehearing
9 argument. Like I said, just because this is dragging on
10 forever doesn't mean you have to keep rearguing all the motions
11 from months ago.

12 MR. SANTACROCE: Well, I didn't mean this to be a
13 10-minute argument. All I wanted to do was put it on the
14 record so I would know where to find it if -- in case there was
15 an appeal.

16 RICHARD WRIGHT: That was a joint.

17 THE COURT: All right. So what are we going to do
18 going forward?

19 What is the State's suggestion at this point?

20 MS. WECKERLY: Well, my suggestion is they can cross
21 this witness to the extent of her knowledge. We've noticed an
22 expert, a designated expert. We'll get an expert here from
23 that company who can do it accurately.

24 MR. SANTACROCE: I move to strike her testimony.

25 RICHARD WRIGHT: Right. I'm worried I'm doing more

1 if we end up striking it.

2 MR. STAUDAHER: Well, her testimony is, I mean, there
3 is no indication other than from the lawyers that there's any
4 problem with her testimony regarding these documents. The
5 documents are what she testified to as far as her record. They
6 can cross her on those.

7 As far as the actual fee schedule that everybody is
8 at issue with, I mean, clearly if she doesn't have it, then the
9 company needs to provide somebody who does have the fee
10 schedule to talk about that issue. We designated a person most
11 knowledgeable or COR or designee for these issues, and that's
12 what we think that they need to provide.

13 Now, if she comes in here and testifies differently
14 than what her lawyers just came in and said the policy is --

15 What they're saying does not match up with the
16 records.

17 THE COURT: Absolutely. It doesn't match up with
18 what she said. I don't agree with the State that it's not a
19 big deal that a company's lawyers come in and say, oh, by the
20 way, this is wrong. It's this other answer based on a
21 paralegal. I don't know. I have a real problem with a witness
22 representing a company saying one thing, and the company's
23 lawyers coming in and telling us something different.

24 MS. WECKERLY: They are not the --

25 MR. SANTACROCE: But plus we already know -- we know

1 there's an issue. We know there's contradictory testimony or
2 evidence. For the State to now proffer this witness as having
3 knowledge of that is wrong. I mean it, it borders on
4 misconduct again.

5 THE COURT: No. I can't blame the State for this
6 mess.

7 MR. SANTACROCE: I'm not blaming the State for what
8 happened. I'm blaming the State for suggesting to go forward
9 with this witness knowing there is an issue. I'm not faulting
10 the State for what happened, but for us to go forward now with
11 a witness that we know is contradictory to what others have
12 told us would be improper.

13 THE COURT: When can you get this expert from --

14 MS. WECKERLY: Well, I have to make a, I mean --

15 THE COURT: Is this person coming in from Minnesota
16 or what?

17 MS. WECKERLY: Well, I mean, we've got to make a
18 phone call to see who we can get here because, I mean, this is
19 like five minutes ago. So, I mean, I don't know who it is or
20 where they're going to come from, but it's noticed that way.
21 So we can get someone here, and then I guess the Court can, you
22 know, hold in abeyance whether to strike the testimony or not.

23 THE COURT: I don't know. In the pretrial it seems
24 to me this should've been gone over. Like, okay, what are you
25 basing your figures on. It's simple arithmetic, you know, okay

1 MS. STANISH: This Wednesday?
2 THE COURT: What?
3 MS. STANISH: This Wednesday?
4 MR. WRIGHT: Tomorrow?
5 THE COURT: Yes.
6 MR. WRIGHT: No.
7 THE COURT: So what do we -- okay. So the State
8 should rest Friday, and we'll go as late Friday as we need to
9 finish essentially.
10 MS. WECKERLY: That's fine.
11 THE COURT: I mean, assuming -- oh, shoot. One of
12 the jurors who was losing her insurance or something has a
13 doctor's appointment. So we may only be able to --
14 That was inadvertent. Trust me.
15 Let me find out scheduling because we may only be
16 able to go until 4 on Friday.
17 MS. WECKERLY: I still -- unless they have a really
18 extensive cross of Olson and Meana's referring, I still think
19 we could finish.
20 THE COURT: Right.
21 MR. SANTACROCE: I don't see Meana's --I don't see it
22 being that long.
23 MS. WECKERLY: Right.
24 THE COURT: Yes.
25 MS. WECKERLY: So I think we might still be okay.

1 THE COURT: Okay. And then what do we have to look
2 forward to next week then? I know you don't want to tip your
3 hands, but, you know, it's getting kind of late in the game.

4 What are we looking at for closing? I mean, I've got
5 all these jurors, you know, trying to balance their vacations
6 and, you know, this and that. I need to know here for
7 scheduling.

8 MR. SANTACROCE: No more than a day or two, right?

9 MS. STANISH: A day or two.

10 THE COURT: Okay. For the defense case?

11 MS. STANISH: Right.

12 THE COURT: Okay.

13 MR. SANTACROCE: How about you?

14 MR. WRIGHT: Joint.

15 MR. SANTACROCE: Okay.

16 THE COURT: Okay. So --

17 MS. WECKERLY: Well, on Friday can we have some
18 indication if they're actually calling people because we've
19 pretty much given week by week, day by day --

20 THE COURT: No, I know.

21 MR. STAUDAHER: Yes.

22 THE COURT: That's what I'm saying. The time to show
23 your cards is really here because, I mean, I get it. You don't
24 have to do all this. The State's been, I mean, I say it again,
25 you know, I've yelled at Mr. Staudaher a few times, but you

1 know, you've got to give credit where it's due, and they have
2 been excellent in accommodating the defense in every way in
3 terms of disclosing witnesses and sending over statements and
4 information and getting whatever they've been asked to get. So
5 there is -- so a little courtesy going the other way might be
6 nice here, not just for them, but for the Court.

7 MR. SANTACROCE: I agree. I agree.

8 THE COURT: I know. And again, as you know, the
9 Court's getting the letters, and they are complaining to the
10 bailiff, and they've got a vacation, and they've got a this,
11 and they've got a that, and I'm trying to keep track of it all
12 and figure out, you know, when are these people likely to be
13 excused. So you know, Ms. Pomykal reported today she's feeling
14 weakness in her legs. You know, I'm balancing all of this
15 stuff. So I'm trying to -- I need to know.

16 MR. SANTACROCE: We are looking at a couple of days
17 next week. What, I don't know.

18 THE COURT: I'm not going to --

19 MR. SANTACROCE: You never know. We have to
20 reevaluate.

21 THE COURT: I'm not going to shoot you if you are
22 wrong.

23 MR. SANTACROCE: Okay. Well, I didn't -- I mean, I
24 don't want to tell them the whole load of witnesses, and then
25 we don't call them.

1 MS. WECKERLY: We just want to know Friday, right?

2 MR. SANTACROCE: No. We're bearing down, figuring
3 out what we already have in. We might add or detract by
4 putting someone else on.

5 MR. STAUDAHER: We have a list. We have eliminated a
6 number of witnesses here at the end, and we gave them the
7 latest version of what we sent to them indicating who we are
8 not calling that was originally in our lineup. So that's
9 pretty much it.

10 THE COURT: No. Like I said, I think the State has
11 been really great.

12 MS. STANISH: I did identify yesterday one of the
13 experts that we thought would testify in advance of the Friday.

14 THE COURT: So maybe you guys rest on the 25th. We
15 could do closings then and instructions maybe the 26th and the
16 27th which would give it to them on Friday of next week. Does
17 that sound realistic?

18 MS. WECKERLY: Yes.

19 THE COURT: Okay.

20 MS. STANISH: Your Honor?

21 THE COURT: Yes.

22 MS. STANISH: Sorry, another issue relating to
23 Government Exhibit 210A. I have to admit I looked at the first
24 page and thought this was just going to be regular computerized
25 claim information, but I see it has attached to it a report of

1 investigative activity from the Office of the Investigating
2 General. I caught it that the witness testified that OIG was
3 conducting an investigation, and therefore they provided this
4 spreadsheet, and to me this is going once again into 404(b)
5 evidence, and, you know, I get these exhibits, and I try to
6 look at them quickly, but this -- and it's my bad for not
7 catching this -- but this is a report of investigation of an
8 officer requesting the details of the VA claims data.

9 MR. SANTACROCE: What did you want out of that? I
10 mean, can we just remove part of that?

11 THE COURT: Yes. Maybe we could just pull out a page
12 or something?

13 MS. WECKERLY: Yes. I think it's the request for
14 this -- for this case. I think it's them saying we want -- or
15 their response to us.

16 THE COURT: Could we just take that page out if the
17 rest of it is what you want?

18 MS. WECKERLY: Can we just look at it and then
19 we'll --

20 THE COURT: Sure.

21 MS. WECKERLY: -- let you know.

22 THE COURT: Maybe you can work it out between the two
23 of you or both sides. If we can, great. If not --

24 So I'm thinking we'll be dark on the trial then
25 Wednesday.

1 MS. STANISH: Your witness testified about an OIG
2 investigation which is based on this and that.

3 MS. WECKERLY: I'm just going to confirm that the two
4 tomorrow can come Thursday or Friday.

5 THE COURT: Okay. Try to put them on for Thursday.

6 MS. WECKERLY: Okay.

7 THE COURT: When is that lady's -- the juror's --
8 doctor appointment?

9 THE MARSHAL: We have -- Ms. Mayo has one Friday at
10 4:30. She says she needs to be out by 3:45 to make it there on
11 time because it's across town, and then we have -- Mr. Billotte
12 has another one on June 24th at 1:30.

13 THE COURT: So maybe we could put them --

14 MS. WECKERLY: Thursday.

15 THE COURT: -- on Thursday. That would be better.

16 MS. WECKERLY: Thursday. Sure.

17 THE COURT: And you need to find out more about
18 Ms. Mayo.

19 All right. So we can all go to lunch then.

20 (Proceedings recessed 12:17 p.m. to 1:30 p.m.)

21 (Outside the presence of the jury.)

22 THE COURT: So I don't know if I made it clear before
23 the break, but we'll be dark tomorrow and then have everybody
24 for Thursday. Does that work?

25 MS. WECKERLY: I've called them. I think they'll be

1 Thursday or Friday, but how, you know, we said Thursday. I
2 just haven't --

3 THE COURT: Okay. If for some reason there's a
4 problem --

5 MS. WECKERLY: I'll really try to get them.

6 THE COURT: No. Well, I was going to say, I hate to
7 start really early, but maybe we'll have to then start at 8:30
8 or something on Friday just to make sure that we finish up.

9 (Discussion between attorneys.)

10 MS. WECKERLY: I'll be persuasive that it's Thursday.

11 THE COURT: Bring them in.

12 (Jury entering 1:34 p.m.)

13 THE COURT: All right. Court is now back in session.
14 And the State may call its next witness.

15 MR. STAUDAHER: State calls Katie Kalka to the stand,
16 Your Honor.

17 THE COURT: All right.
18 Face this lady right there.

19 (State's witness, Katie Kalka, sworn.)

20 THE CLERK: Please be seated, and please state and
21 spell your name.

22 THE WITNESS: Katie Kalka. K-a-t-i-e, K-a-l-k-a.

23 THE COURT: All right. Thank you.

24 Mr. Staudaher.

25 MR. STAUDAHER: Thank you, Your Honor.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DIRECT EXAMINATION

BY MR. STAUDAHER:

Q Ms. Kalka, what do you do for a living?

A I'm a fraud investigator with United Healthcare.

Q And what kinds of things do you do as a fraud investigator?

A We answer subpoenas and requests for information from law-enforcement agencies and regulatory agencies. We provide them with documents, claims data, that sort of stuff when it's asked for. We also file reports with state agencies and law enforcement for doctors and members who are suspected of committing health-insurance fraud.

Q So in your capacity as an investigator, do you have access to the records of your business?

A Yes, I do.

Q And when I say that, I mean the billing records, the contracts, things like that?

A Yes, sir.

Q Have you accessed those records in preparation for your testimony today?

A Yes, I have.

Q Have you provided records of your company in preparation for today?

A Yes, I have.

Q Now, are those records themselves kept in the

1 ordinary course of business?

2 A Yes, they are.

3 Q And the records that you provided, are they fair and
4 accurate representations of what's contained in your company
5 files, or computers, or the like?

6 A Correct. Yes.

7 MR. STAUDAHER: Your Honor, may I approach?

8 THE COURT: You may.

9 MR. STAUDAHER: And these have all been previously
10 shown to counsel.

11 BY MR. STAUDAHER:

12 Q We're going to go through a couple of documents here
13 that I believe may have come from you, but I want you to tell
14 me if they -- if you recognize them or not, and I'm going to
15 hand them to you one by one.

16 A Yes, sir.

17 Q The first one is marked as State's Proposed 216. Can
18 you tell me if you recognize that document and if so what it
19 is.

20 A I do. It's the electronic claim for Patty Aspinwall.

21 Q When you say an electronic claim, what do you mean by
22 that?

23 A It's the HCFA 1500 medical claim form, but it's filed
24 electronically within our system rather than a paper-claim form
25 being sent in.

1 Q We've had some other HCFA 1500 in paper form --

2 A Uh-huh.

3 Q -- and it looks a little different than that?

4 A Correct. Because it's an electronic entry instead of
5 a handwritten entry or a typed entry on a form.

6 Q Does it -- I mean, are there, like, number and box
7 designations on the form?

8 A There are. And they are the exact same as what's on
9 the paper HCFA 1500 Form.

10 Q Now, if you flip through that same document, if you
11 would go to the next couple of pages, I think there are some
12 other things in there as well.

13 A Correct. We have a copy of the check paid to Nevada
14 Gastroenterology Center.

15 Q Okay. And just for the record, if we refer to
16 certain pages, there'll be a number down here and in this
17 particular case it says GJ Desai and it's got a number 1191.
18 You don't have to use the first two zeros.

19 A Okay.

20 Q So that's the check?

21 A Correct.

22 Q Now, when you say check, is this something that came
23 from your company?

24 A Yes.

25 Q To where?

1 A To Nevada Gastroenterology Center.

2 Q Is that related to the claim that you're referring to
3 in the first part of this document?

4 A Yes.

5 Q Okay. And is there another page of this as well.

6 A There is. The explanation of benefits that was sent
7 to Patty Aspinwall which is a three -- two-page document
8 explaining the charges and what was paid and why it was paid,
9 and then also the last document -- the 1194 -- is the provider
10 explanation of benefits that was sent to the facility.

11 Q Okay. Can I have that back. I think that that one
12 got mixed up because it's BlueCross BlueShield.

13 Now, I want to show you some -- it looks like some
14 sort of agreements or the like. Can you tell us what they are
15 if you recognize them. This first one is designated as 80S as
16 in Sam. Tell us if you recognize that document and what it is.

17 A I do. This is the ancillary provider participation
18 agreement. So this is the contract between United Healthcare
19 of Nevada -- United Healthcare and the Endoscopic Center of
20 Nevada. This was the provider document that they were
21 contracted with us for to be a participating provider.

22 Q And on the very back of it is there a signature page
23 somewhere in this document?

24 A Yes.

25 Q And who is the signatory on that document, the

1 document provider?

2 A The provider was Dr. Desai.

3 MR. STAUDAHER: Your Honor, I'm not going to move to
4 admit this at this time.

5 THE COURT: That's fine.

6 MR. STAUDAHER: I just want to have it as a Court's
7 record of the contract that was provided by this witness.

8 THE COURT: Okay.

9 BY MR. STAUDAHER:

10 Q With regard to the next document which is 229, can
11 you tell us what that is?

12 A Yes. This is the anesthesia reimbursement policy.

13 Q That was -- I mean, was it in effect, this particular
14 one, was it in effect in 2007?

15 A It was, yes.

16 Q Okay. Is this the policy that your company uses to
17 determine reimbursement for anesthesia billing?

18 A Yes, sir.

19 MR. STAUDAHER: At this time, Your Honor, I would
20 move for admission of State's 229 and State's 216, and I will
21 obviously not move for admission of 80S at this time.

22 THE COURT: Any objection to those two exhibits?

23 Ms. Stanish?

24 MS. STANISH: If I may just voir dire the witness,
25 Your Honor?

1 THE COURT: Sure.

2 VOIR DIRE EXAMINATION

3 BY MS. STANISH:

4 Q Good afternoon.

5 A Good afternoon.

6 Q I just wanted --

7 MR. STAUDAHER: Margaret, do you need these?

8 BY MS. STANISH:

9 Q Well, let me start with this. How long have you been
10 employed at the United Healthcare Group?

11 A Eight and a half years.

12 Q And have you been so employed in the capacity of a
13 fraud investigator?

14 A Yes, ma'am.

15 Q All right. And with respect to the anesthesia policy
16 that is Government's Exhibit --

17 What's the number I'm at?

18 MR. STAUDAHER: It's right there.

19 MS. STANISH: All right.

20 BY MS. STANISH:

21 Q Government's Proposed Exhibit 229, that sets forth
22 the -- as I understand it -- the policy for reimbursing for
23 anesthesia services, correct?

24 A Correct.

25 Q Does it contain the conversion factor, the price that

1 is assigned to each of the units?

2 A No, it does not.

3 Q Do you have a document in your possession that tells
4 us what that amount is?

5 A No, I do not.

6 Q Is there -- do you -- is there a reason why you don't
7 have the document?

8 A I do not have the fee schedule with me, no. I was
9 not asked for the fee schedule.

10 Q Do you have access to the 2007 fee schedule?

11 A I would have to go to network management, and they
12 would have to pull it for me. I do not have access to the fee
13 schedule. I only have access to the contract, the blanket
14 contract.

15 Q And that blanket contract, does it actually address
16 anesthesia services in particular, or does it just relate to
17 the procedure side of the house?

18 A I would have to take another look at the contract in
19 order to determine that.

20 Q All right.

21 A I did not study it for that.

22 Q All right. Showing you proposed 80S. If there is
23 anything else we need to look at --

24 A Okay.

25 Q Is that it? Is that the only one?

1 A This is the only one.

2 Q All right.

3 THE CLERK: I'm sorry. What did you say?

4 MS. STANISH: 80S.

5 THE CLERK: Is that what that is?

6 THE WITNESS: 80S as in Sam, yes.

7 It does not appear that this directly speaks of the
8 anesthesia CPT codes.

9 BY MS. STANISH:

10 Q All right. So basically what you have is the claim
11 form, the amount of money that was actually paid but not the
12 fee schedule?

13 A Correct.

14 Q Does the -- do you know -- well, let me --

15 I know you're a fraud investigator, but do you also
16 have experience in calculating the value of anesthesia
17 services, or is that a billing coder specialist that does that?

18 A That's a claims processing specialist that would do
19 that.

20 Q All right. So you're basically the custodian of
21 records who is designated to work with law-enforcement folks?

22 A Correct.

23 MS. STANISH: All right. I understand.

24 May we approach, Your Honor?

25 THE COURT: Of course.

1 (Conference at the bench not recorded.)

2 MR. STAUDAHER: May I proceed, Your Honor?

3 THE COURT: Yes, please.

4 CONTINUED DIRECT EXAMINATION

5 BY MR. STAUDAHER:

6 Q Let me ask you a couple of questions about the
7 Exhibit 229, the anesthesia policy with your (unintelligible),
8 okay?

9 A Yes, sir.

10 Q Now, you said that this one -- and I'm displaying it
11 now, the first page of this document -- you said that this was
12 the one that was in effect in 2007; is that right?

13 A Correct, sir.

14 Q Now, as we move through this I want to go to a couple
15 of pages, specifically this section here. In -- first of all,
16 does it say that -- up here talk about the ASA Relative Value
17 Guide?

18 A Yes.

19 Q Is that some sort of benchmark, or how does that
20 incorporate into this document?

21 A Actually, if you go back to the first page I believe,
22 and if you go down to the overview, it states that the American
23 Society of Anesthesiology Relative Value Guidelines, the
24 Crosswalk Guide and the CMS Guidelines are all used to create
25 this policy.

1 Q So it's not just something you came up with on your
2 own? You incorporate other sort of policies along those lines
3 for this document?

4 A Correct.

5 Q Okay. Now, as we move to the next -- to that same
6 page that I was on, that paragraph, can you tell us what this
7 specific thing means.

8 A This means that the basic preoperative and
9 postoperative visits which means the interviews before when
10 they -- the anesthesiologist comes and meets with the patient
11 beforehand, the administration of the fluids, the monitoring of
12 the heart rate, the oxygen, the blood pressure are all basic
13 components. So they are included in the base value of the
14 anesthesia service.

15 Q What is a base value?

16 A The base value of five units, which is basic -- your
17 basic anesthesia --

18 MS. STANISH: Objection. Foundation.

19 THE COURT: Lay a foundation.

20 BY MR. STAUDAHER:

21 Q How do you know these things?

22 A I looked it up in the CPT Codebook and in our
23 policy --

24 Q Do you have access to that as part of your normal
25 business that you do?

1 A Yes, I do.

2 Q And do you use those things in the course of your
3 business to conduct your investigations?

4 A Yes, I do.

5 Q Is that something that you looked at that was related
6 to the 2007 time period that is in question?

7 A Yes.

8 Q So this isn't something that's a current CPT Code.
9 It was back then that you had access to, looked it up and
10 utilized it?

11 A Correct.

12 THE COURT: When did you -- I'm sorry.

13 When did you look this up in the CPT Codebook?

14 THE WITNESS: When I first looked up the documents
15 three years ago in 2010 --

16 THE COURT: Okay.

17 THE WITNESS: -- and we -- in our offices we keep
18 archived copies of all the CPT Codebooks so we can go back and
19 refer to them when necessary.

20 THE COURT: Okay. So you looked it up in 2010 --

21 THE WITNESS: Correct.

22 THE COURT: -- but then did you use a 2007 CPT
23 Codebook?

24 THE WITNESS: Yes.

25 THE COURT: And this is like these books, they're

1 actually physically books, bound, old-fashioned, good
2 old-fashioned books, and what are they, on a shelf somewhere in
3 your office?

4 THE WITNESS: Correct.

5 THE COURT: Okay. So you go and you look it up, and
6 now as you sit here today are you remembering from 2010 what
7 that number was?

8 THE WITNESS: I actually re-went through all my
9 notes, the books and everything in preparation for today.

10 THE COURT: Okay. And you would've done that I'm
11 guessing within the last week or two?

12 THE WITNESS: Correct.

13 THE COURT: So you didn't check the codebook again?

14 THE WITNESS: No.

15 THE COURT: You just looked at your notes?

16 THE WITNESS: Correct.

17 THE COURT: Okay. And did you bring any of that
18 stuff with you?

19 THE WITNESS: No, I did not.

20 THE COURT: Okay. So as you sit here today you are
21 testifying on your memory based on your notes, based on your
22 review of this CPT Codebook in 2010?

23 THE WITNESS: Correct.

24 THE COURT: Okay.

25 / / /

1 BY MR. STAUDAHER:

2 Q So when you say that those things are included --

3 MS. STANISH: Objection still, Your Honor. It's

4 hearsay.

5 THE COURT: Let me ask you --

6 MR. STAUDAHER: Well --

7 THE COURT: -- you didn't bring your notes today, and

8 the CPT Codebook, is that something that is there like an

9 electronic copy of that codebook or anything like that, or do

10 all you have is the physical codebooks or what?

11 THE WITNESS: No. You can actually go online to the

12 CMS website and put in the code and the year, and it will come

13 up with what -- the information you're looking for as well.

14 THE COURT: Okay. So you can do that, but you need

15 to be like a subscriber to the webpage or something?

16 THE WITNESS: Not for CMS, no.

17 THE COURT: Okay. Is it the same? The CMS website

18 would have the same information as the CPT codebook?

19 THE WITNESS: Yes.

20 THE COURT: Okay. And so what you physically consult

21 in your office, these good old-fashioned bound books, somebody

22 else with the proper code could look on the computer and get

23 that information?

24 THE WITNESS: Correct.

25 THE COURT: Okay.

1 Counsel, approach.

2 (Conference at the bench not recorded.)

3 THE COURT: Just to make sure I understood you. You
4 did not bring your notes with you when you came here to
5 testify; is that correct?

6 THE WITNESS: Correct.

7 THE COURT: You left those back in the office?

8 THE WITNESS: Correct.

9 THE COURT: Okay.

10 All right. Mr. Staudaher, go on.

11 BY MR. STAUDAHER:

12 Q So you were talking about this particular procedure
13 here, this particular set of items, the preoperative
14 evaluation, postoperative evaluation is contained within the
15 base unit according to your policy; is that correct?

16 A Correct.

17 Q When we go forward in this, specifically the next
18 section which is on page 4 of this 28 page document at the very
19 top, the area where it talks about CMS guidelines and
20 time-based anesthesia, what is that?

21 A That is CMS Guidelines that time-based anesthesia
22 must be reported in actual time, so many units. So if 30
23 minutes is performed, 30 minutes needs to be billed.

24 Q It actually even says in one minute increments that
25 it needs to be reported; is that correct?

1 A Correct.

2 Q And that's your policy of your company?

3 A Correct.

4 Q Is this policy disseminated to the providers when
5 they actually -- are they aware of it in some way when they
6 contract for services with you all?

7 A It is my understanding with credentialing that they
8 do.

9 MS. STANISH: Objection.

10 THE COURT: Sustained.

11 BY MR. STAUDAHER:

12 Q If you know, I mean, do you have first-hand knowledge
13 of this or not?

14 A No.

15 Q Okay. So this is again the policy of your company;
16 is that right?

17 A Correct.

18 Q Now, if we go down here where it talks about the
19 actual standard anesthesia maximum, do you see that?

20 A Yes.

21 Q Relate to us what we're looking at here.

22 A This is the formula that is used to determine what
23 the reimbursement amount would be.

24 Q Okay. And it says the standard anesthesia max, and
25 then there's also another one which is below that that also

1 says standard anesthesia max. What is the difference between
2 these?

3 A One is with a modifier AD. One is without modifier
4 AD.

5 Q Now, what does that mean, modifier AD versus not AD?

6 A I do not know what that modifier is off the top of my
7 head. I would have to look it up on our computer program.

8 Q Actually, is it contained in the definitions section
9 of this actual document if you go down to the bottom?

10 A Okay.

11 Q Do you see that?

12 A Yes. So medical supervision by a physician, more
13 than four concurrent anesthesia procedures.

14 Q Okay. Now, it says -- under AD it says that, but on
15 AA it says anesthesia services performed personally by the
16 anesthesiologist; do you see that?

17 A Yes.

18 Q Now, the next one CY, do you see that?

19 A QY?

20 Q Or QY. I'm sorry. QY, what does that say?

21 A That is medical direction of one certified registered
22 nurse anesthetist by an anesthesiologist.

23 Q So this is one where it's somebody being actually
24 supervised by another anesthesiologist?

25 MS. STANISH: Objection.

1 THE COURT: Sustained.

2 Rephrase your question

3 BY MR. STAUDAHER:

4 Q The document itself, your policy reads that it's a
5 CRNA being supervised by an anesthesiologist?

6 A Correct.

7 Q So when we look back up here again under the standard
8 conversion, does it not say --

9 MR. SANTACROCE: Your Honor, I have to object to that
10 last as vague and ambiguous.

11 THE COURT: Mr. Staudaher, if you're going to read
12 and quote from the record, then read and quote from the record
13 meaning read the record the way it's written. Don't put your
14 spin on it or change the words if she's only relying on the
15 record itself. Do you understand?

16 If she has personal knowledge, you can ask her
17 whatever you want using your own words, but if you're relying
18 solely on the record, then I think you need to quote directly
19 from the record --

20 MR. STAUDAHER: Certainly.

21 THE COURT: -- and not change it.

22 MR. STAUDAHER: I will go back and read it directly
23 from the record, Your Honor.

24 BY MR. STAUDAHER:

25 Q CY is medical direction --

1 THE COURT: I'm sorry. QY for the record.

2 MR. STAUDAHER: Excuse me.

3 BY MR. STAUDAHER:

4 Q QY, medical direction of one certified registered
5 nurse anesthetist, CRNA by an anesthesiologist; do you see
6 that?

7 A Yes.

8 Q And then under reimbursement allowed, it gives
9 percentage calculated as a modifier?

10 A Yes.

11 Q And it's got a 50 percent number in that situation,
12 correct?

13 A Yes.

14 Q Now, if we go back up to standard anesthesia max, see
15 where it says base unit or base value, plus time increments
16 plus modifying units, plus conversion factor, times modifier
17 percentage; do you see that?

18 A Yes.

19 Q Modifier percentage is delineated here on the same
20 page of this document; is it not?

21 A Yes.

22 Q Now, with regard to the asterisk which is contained
23 in the various items listed under anesthesia max it says refer
24 to the definitions section; do you see that?

25 A Yes.

1 Q We'll get to the definitions section in a moment, but
2 I want to go through a couple of other things. When we look on
3 the next page of this document at the bottom where it says QX
4 and QZ, do you see that?

5 A Yes.

6 Q CRNA service with medical direction by a physician --

7 A Yes.

8 Q -- 50 percent. CRNA service without medical
9 direction by a physician, 100 percent?

10 A Yes.

11 Q So that is the conversion percentage according to
12 this document, conversion -- or modifier percentage according
13 to this document, correct?

14 A Yes.

15 Q Going to page 7 of the 28 page document where it says
16 physical status modifier, P2 is described as a physical-status
17 modifier for a patient with mild systemic disease; do you see
18 that?

19 A Yes.

20 Q Zero units and that -- so I can pull this off just to
21 make sure you can read the whole thing -- says, additional
22 units added to the basic value; is that correct?

23 A Yes.

24 Q Now, under the definitions sections and it does say
25 definitions here, and this is on page 22, correct?

1 A Yes.

2 Q Under the definitions section talking about
3 anesthesia time specifically, are you able to read that, or
4 would you like me to zoom in on it for you?

5 A I can read it.

6 Q Can you read for us what this document -- your
7 company -- defines anesthesia time as.

8 A Begins when the anesthesiologist prepares the patient
9 for induction of anesthesia in the operating room or in an
10 equivalent area, i.e., a place adjacent to the operating room,
11 and ends when the anesthesiologist is no longer in personal
12 attendance and when the patient may safely be placed under
13 postoperative supervision.

14 Anesthesia time involves the continuous actual
15 presence of the anesthesiologist or medically directed
16 certified registered nurse anesthetist.

17 MR. SANTACROCE: Your Honor, I'm going to object.
18 I'm confused. Can we approach.

19 THE COURT: That's the confusion objection.

20 MR. SANTACROCE: Confusion.

21 THE COURT: That's NRS 48 --

22 MR. SANTACROCE: Yes.

23 THE COURT: Come on up.

24 RICHARD WRIGHT: I'll join.

25 (Conference at the bench not recorded.)

1 THE COURT: All right. Mr. Staudaher, you may
2 proceed or you may continue rather.

3 MR. STAUDAHER: Thank you, Your Honor.

4 BY MR. STAUDAHER:

5 Q Now, we had some discussion about the basic value,
6 and do you see the basic value defined there?

7 A Yes.

8 Q Will you read the basic value for us as well.

9 A The value of all usual anesthesia services except the
10 time actually spent in anesthesia care and the modifying
11 factors. The basic value, parentheses, base value includes
12 usual operative and postoperative visits, the administration of
13 fluids and/or blood incident to the anesthesia care, the
14 interpretation of noninvasive monitoring, parentheses, ECGs,
15 temperature, blood pressure, oximetry, capnography, mass
16 spectrometry, parentheses, placement of arterial central venous
17 and pulmonary artery catheters and use of transesophageal
18 echocardiography, parentheses, TEE are not included in the
19 basic value.

20 Note, any procedure around the head, neck or shoulder
21 girdle requiring field avoidance or any procedure requiring a
22 position other than supine or lithotomy has either a minimum
23 base value, parentheses, base value of 5.0 regardless of any
24 lesser basic value, parentheses, base value assigned to such
25 procedure in the relative value guide.

1 Q Okay. Now, when you were talking about the CPT Codes
2 and so forth and the time -- well, I guess I didn't ask you
3 about the time increments, but on the CPT Code issue can you
4 tell us how you deal with that in your determination of
5 anesthesia --

6 MS. STANISH: Objection.

7 MR. STAUDAHER: -- based on this record.

8 MS. STANISH: Objection. This -- lack of foundation.

9 THE COURT: Yes. Lay a little bit more foundation --

10 MR. STAUDAHER: I'll just read it then.

11 THE COURT -- and make it clear what you are asking.

12 BY MR. STAUDAHER:

13 Q You deal with the CPT Coding and so forth; is that
14 correct?

15 A I deal with looking at them and looking them up. I
16 do not deal with the processing of them.

17 Q But you deal with them as part of your
18 investigations; is that right?

19 A Yes.

20 Q The definition on this page 23 of 28 says, same five
21 digit CPT, slash, ASA code, correct?

22 A Correct.

23 Q And then it says same CPT Code, same ASA Code or same
24 Crosswalk Code?

25 A Yes.

1 Q Now, under time increments does it not say the
2 deviation of units based on -- or the derivation of units based
3 on time reported which is divided by a time increment of
4 generally 15 minutes?

5 A Correct.

6 Q So when we go back to the original page where we're
7 talking about standard anesthesia time, we defined the base
8 value, the time increments, the modifier percentage, the
9 conversion factor -- I don't think I looked that up, but I
10 will -- and the modifying units; do you see those?

11 A Yes.

12 Q Okay. So let me go back to that just to make sure we
13 have everything defined. Modifying units, and if we look here
14 I'm just going to read it.

15 Time units added for additional reimbursement allowed
16 as defined by the physical status modifier or qualifying
17 circumstances code reported, i.e, 1 additional unit to the base
18 value for a pending modifier P3. See Section 2B.

19 When we looked at Section 2B, did it not say that P2
20 and below was 0 units additional?

21 A Yes.

22 Q Now, that was in the modifying units. The modifier
23 percentage also on that same page says, The reduction in the
24 reimbursement allowed as defined by the modifier, i.e,
25 50 percent of the max of the fee max factor. For the modifier

1 QK see Section 2, slash, B, and we also looked at that; did we
2 not?

3 A Yes.

4 Q Just making sure we have every one of these defined.
5 Base value, time increments, modifying units and the last one I
6 think was conversion factor, and I don't recall if I've done
7 that one, but let me look at that.

8 Conversion factor, the incremental multiplier rate
9 defined by specific contracts or industry standards for
10 nonnetwork physicians the applied conversion factor is based on
11 a recognized national source.

12 So those -- this we have definitions for every item
13 contained in this portion that is entitled Standard Anesthesia
14 Max; is that correct?

15 A Yes.

16 Q Now, with regard to Exhibit 216 I want you to walk us
17 through what we are looking at here. Because these are your
18 records now, the ones that we are showing you, correct -- or
19 showing up on the screen; is that correct?

20 A Yes.

21 Q And if we need to zoom in on any portion of this, we
22 can do so, but who is this for?

23 A This page is for patient Patty Aspinwall.

24 Q Now, when you said that this was the HCFA 1500 Form
25 electronic equivalent, what are we talking about here? I see

1 that there are numbers. What do those correspond to?

2 A Okay. Those correspond with the boxes on the HCFA
3 1500 Form.

4 Q Okay. And so up here where it's in Box 2 it has
5 Patty Aspinwall?

6 A Correct.

7 Q And then different information I see in Box 7C. It
8 looks like the insurance provider is United Healthcare?

9 A Correct.

10 Q Is that your company?

11 A Yes.

12 Q Now, as far as the other things related here I am
13 going to go to the next page, and we see there appears to be in
14 Box 24 there appears to be some information in the form of A,
15 B, C, D and so forth; do you see those?

16 A Yes.

17 Q Now, as we go across this line here that I'm
18 referring to, the dates of service, what are they?

19 A That is the date that the procedure was done.

20 Q Okay. Do you know what the 24 is in Box B?

21 A 24 is our place-of-service code which is an ASC, an
22 ambulatory surgery center.

23 Q Okay. There is nothing in Box C. What about Box D,
24 the first portion where it says 00810; do you know what that
25 is?

1 A That's the CPT Code that corresponds with the
2 anesthesia service.

3 Q For a particular procedure or just anesthesia
4 service?

5 A Anesthesia service is my recollection.

6 Q Okay. Now, there are these QZ, QS, P1; do you see
7 those?

8 A Correct. Yes.

9 Q Do those relate to the items that were defined in the
10 anesthesia record, for example, nurse anesthetist for the P1
11 which is the -- what would allow an additional unit of time to
12 be added?

13 A Correct.

14 Q In this case P1 would not allow -- according to your
15 fee schedule that we just looked at -- would not allow for an
16 additional unit of anesthesia, correct?

17 A According to the reimbursement policy that is
18 correct.

19 Q Diagnosis code, what is that?

20 A 1000, that means it's related to Diagnosis Code 1
21 which is in Box 21.

22 Q Now, with regard to the charges under F, what are
23 they?

24 A That is the amount billed by the facility.

25 Q And what is the amount billed here?

1 A \$560.

2 Q Now, G looks like it's a category for units. There
3 is nothing indicated there?

4 A Correct.

5 Q Is that typical?

6 A For anesthesia that is my experience, yes.

7 Q Okay. We'll move over across to anesthesia time.
8 Where is that?

9 A 31.

10 Q Now, based on your fee schedule that we just looked
11 at a moment ago, how many units of time would that entail?

12 A Based on the reimbursement policy that is 3 units.

13 Q Above the base units value which we saw in the fee
14 schedule is 5; is that correct?

15 A The reimbursement policy, yes.

16 Q Okay. So a total of 8 based on the math of your fee
17 schedule?

18 A Correct.

19 Q Now, the rest of this as we go down, the total
20 charges under Box 28 the same \$560?

21 A Correct.

22 Q And then under the locations of the -- I think it's
23 Box 32 of the place where the service was done, what is that?

24 A That is the Endoscopic Center of Southern Nevada.

25 Q And what is the address?

1 A 700 Shadow Lane 16.

2 Q And when it says servicing physician supplier, who is
3 listed there?

4 A Ron Lakeman.

5 Q So this again is your electronic version?

6 A Correct.

7 Q I want to go to what is marked as GJ Desai 1191. Can
8 you tell us what we are looking at here?

9 A This is the check that was presented to
10 Gastroenterology Center of Nevada for payment on the claim for
11 Patty Aspinwall.

12 Q Does it look as though based on your review of this
13 record that this was actually negotiated based on the stamps
14 and so forth on the back of the check?

15 A Yes.

16 Q The dollar amount of the check was?

17 A \$249.92.

18 Q So on the claim that was originally submitted of \$560
19 this is the amount that your company paid?

20 A Correct.

21 Q Now going to the next page, do you see this?

22 A Yes.

23 Q Can you tell us what it is.

24 A This is the explanation of benefits that was sent to
25 Patty Aspinwall.

1 Q I'm going to zoom in on this. Just a moment.

2 So your company would've sent this document to Patty
3 Aspinwall?

4 A This is a copy of the letter that was sent to her,
5 yes.

6 Q Under services detail there is an item here listed;
7 what is that?

8 A Anesthesia.

9 Q If we go across, do we see the same numbers as we saw
10 on your previous form?

11 A Yep, the amount billed, the \$560.

12 Q And there is a discount rate. Do you know what that
13 is?

14 A Correct. That would be the amount that the provider
15 is discounted for being a participating provider.

16 Q And if you go across to the amount approved, it says
17 \$312.40?

18 A Correct.

19 Q And then based on your plan it says here according to
20 this record, Plan pays 80 percent?

21 A Correct.

22 Q Which was the total of 400 -- or of \$249.92?

23 A Correct.

24 Q Now, the amount -- the total balance left over, this
25 62.48, is that something that is the responsibility of the

1 patient so to speak?

2 A Yes.

3 Q Now, with regard to the per unit anesthesia charge,
4 do you know based on your review of your records of the
5 anesthesia policy how that is calculated?

6 A I do not know how that fee schedule is calculated.
7 It's based on a fee schedule.

8 Q So the fee schedule that we don't have with us; is
9 that correct?

10 A Correct.

11 Q Okay. Now, a couple of other questions for you. Is
12 it important that the information provided to you be accurate?

13 A Yes.

14 Q If you are -- if you have a claim submitted to you
15 that has any false information in it, knowingly false
16 information will you process that claim?

17 A No, we would not.

18 Q What would happen to the claim?

19 A The claim would be stopped and denied, and then the
20 provider would have the opportunity to either submit a
21 corrected claim or appeal the denial.

22 Q In this particular case are you aware that there was
23 ever any communication from the endoscopy -- in your review of
24 your records from the Endoscopy Center indicating that there
25 had been a mistake in the submission of the claim?

1 A No.

2 Q In the event that there is false information and a
3 claim is denied, does that mean that you don't have to actually
4 make payment?

5 A We stop the claim and deny payment until either a
6 corrected claim is submitted or the claim is appealed.

7 Q Do you rely on the representations of the provider
8 when processing your claims?

9 A Could you ask the question --

10 Q Do you rely on the accuracy to process your claims?

11 A Yes.

12 Q In this particular case since it's an electronic
13 form, what is the -- I mean, how does it actually move through
14 the system? Does somebody have to put their eyeballs on it, or
15 does it just roll through your system normally?

16 A It's my understanding that it's just processed
17 through the system unless it hits a flag or an alert, and then
18 it would be stopped and looked at by somebody.

19 Q Is that when you would be called potentially?

20 A Potentially.

21 Q Were you ever called on this particular claim prior
22 to your involvement with this particular case?

23 A No.

24 MR. SANTACROCE: Your Honor, I'm going to object to
25 that and move to strike. I don't want to make a speaking

1 objection.

2 THE COURT: Well, I'll see counsel up here. I'm not
3 sure what your objection is.

4 (Conference at the bench not recorded.)

5 THE COURT: Overruled. Go on.

6 MR. STAUDAHER: I pass the witness, Your Honor.

7 THE COURT: All right.

8 MS. STANISH: Judge, do you want us to wait until we
9 get additional documents? That would be my preference.

10 THE COURT: What was that again? I'm sorry. I'll
11 see counsel up here.

12 (Conference at the bench not recorded.)

13 THE COURT: Ladies and gentlemen, we're going to take
14 a quick recess until right around 2:35.

15 During this quick recess you are reminded that you
16 are not to discuss this case or anything relating to the case
17 with each other, with anyone else. You're not to read, watch,
18 listen to any reports of or commentaries on this case, any
19 person or subject matter relating to the case by any medium of
20 information. Please do not do any independent research.
21 Please do not form or express an opinion on the trial.

22 Notepads in your chairs, follow the bailiff through
23 the double doors.

24 (Jury recessed 2:21 p.m.)

25 THE COURT: Before we take our break and I let you

1 take your break, a couple of documents you mentioned in your
2 testimony that none of us have, the first was you mentioned
3 that you can just access the CMS Codes from 2007 online but
4 that you need a password, or you need to know something. Can
5 you tell us how to do that, how to access that online.

6 THE WITNESS: If you go to the CMS website --

7 THE COURT: Okay.

8 THE WITNESS: -- CMS.gov --

9 THE COURT: Okay. Hang on. Okay.

10 THE WITNESS: And what I do is I search, like, 2007
11 CPT Code and then the number, and it will come up with the
12 definition.

13 THE COURT: Okay. And what number would I use?

14 MR. STAUDAHER: 810.

15 THE WITNESS: 00810.

16 MR. STAUDAHER: 00810.

17 THE COURT: 00810?

18 MR. STAUDAHER: Yes.

19 THE COURT: And it says -- well, what came up for me
20 was HCPCS, general information, like articles.

21 THE WITNESS: Right. A lot of those are archived
22 into PDF articles.

23 THE COURT: Okay.

24 THE WITNESS: So it takes some digging around to find
25 the correct report.

1 THE COURT: Okay. So basically you've got to dig
2 through this stuff --

3 THE WITNESS: You do.

4 THE COURT: -- and find --

5 MR. STAUDAHER: I can just bring my iPad up there.

6 THE COURT: Okay.

7 THE WITNESS: Unfortunately, yes, you do.

8 THE COURT: Okay. And then the second thing that
9 they wanted to know about was you mentioned your notes that you
10 left, I'm assuming, back on your desk in Minnesota?

11 THE WITNESS: Yeah.

12 THE COURT: And I guess the question is is there any
13 way to transmit that to us here, e-mail or anything like that?

14 THE WITNESS: Not unless I go back and do it.

15 THE COURT: Okay.

16 MS. STANISH: Your Honor, I also have concern about
17 any attorney-client-privileged information that may be in those
18 notes.

19 THE COURT: Well, she said she can't do it. She just
20 said --

21 MS. STANISH: Okay.

22 THE COURT: I mean, I don't know if you were in the
23 room or Ms. Weckerly had gone out in the hallway. She said
24 that the notes were notes she made to herself because she
25 researched the CMS Codes or the CPT Codes to find out the unit

1 amounts or something like that in notes to herself.

2 MS. STANISH: Right. Right. I heard that, Your
3 Honor.

4 THE COURT: Obviously we don't want any privileged
5 information. So those are the only two things I recall that
6 she referred to in her testimony that we haven't seen.

7 Ms. Stanish, do you recall anything else that the
8 witness referred to in her testimony that we haven't seen?

9 MS. STANISH: Well, obviously the rate schedule.

10 THE COURT: I thought that was the CPT Codes.

11 MS. STANISH: No, it's not.

12 THE COURT: Oh, that's something different.

13 THE WITNESS: The fee schedule.

14 THE COURT: Fee schedule.

15 RICHARD WRIGHT: How we figured out how much the
16 claim is

17 THE COURT: I get it.

18 RICHARD WRIGHT: Something basic.

19 MS. STANISH: I think they referred to it as the
20 conversion factor which would be the price tag that you would
21 put on to each unit.

22 THE WITNESS: Which we call a fee schedule. So,
23 yeah.

24 MS. STANISH: That's what we are missing.

25 THE COURT: Is there any way to get that transmitted

1 here so that the defense can see it?

2 THE WITNESS: I can check in the system and see --

3 THE COURT: Okay.

4 THE WITNESS: -- and try to get ahold of somebody if

5 I cannot locate it.

6 MS. STANISH: From 2007.

7 THE WITNESS: Correct.

8 THE COURT: Right. That's the day --

9 THE WITNESS: Yes. It would be archived.

10 THE COURT: She gets it.

11 RICHARD WRIGHT: Get going.

12 THE WITNESS: So it would be archived.

13 THE COURT: All right. And then why don't you do

14 that. I'm going to take a break in the back.

15 THE WITNESS: Do you want me to do that right this

16 minute?

17 THE COURT: On the --

18 THE WITNESS: Because I would have to log into my

19 system at work to do that.

20 THE COURT: Okay. Can you do that? Did you bring a

21 computer with you, or maybe Ms. Akridge has a personal computer

22 that she would let you use if you feel --

23 THE WITNESS: I would have to use my company laptop

24 because of the firewall system within our --

25 THE COURT: I see. Did you bring that with you?

1 THE WITNESS: I do have it with me.

2 THE COURT: Okay. Then you can use that. I mean, we
3 don't want you to have to share any protected passwords with
4 any of us or anything like that. The defense just needs the
5 information. That's what were trying to get here.

6 MS. AKRIDGE: We have a couple of laptops she can --

7 THE COURT: She said that she didn't -- that's what I
8 asked. So she said she can't use your laptop because it might
9 not go into their system. So she has a laptop, and she's going
10 to use that. So we'll just take a break.

11 You can just do that in here if you can.

12 THE WITNESS: Okay.

13 THE COURT: If not, when I come back in, let me know.

14 THE COURT RECORDER: Ma'am, can I have your name.

15 MS. AKRIDGE: I'm sorry. Connie Akridge.

16 THE COURT RECORDER: A-c-k or --

17 MS. AKRIDGE: A-k-r-i-d-g-e.

18 THE COURT RECORDER: A-k-r --

19 MS. AKRIDGE: Ridge.

20 THE COURT RECORDER: Thank you.

21 (Proceedings recessed 2:26 p.m. to 2:54 p.m.)

22 (Outside the presence of the jury.)

23 THE COURT: Is everybody ready?

24 MR. STAUDAHER: I don't know. They were working on a
25 computer back there. So I don't know.

1 THE COURT: Ms. Weckerly?
2 MR. STAUDAHER: The witness.
3 THE COURT: Oh.
4 MR. STAUDAHER: They had to use a real computer.
5 THE COURT: Oh, I get it. Okay. I didn't know who
6 was back there.
7 MR. STAUDAHER: Well, we have the other witness who
8 is ready on all of those things.
9 THE COURT: Okay. So the next witness has
10 everything?
11 MR. STAUDAHER: Yes.
12 THE COURT: Can we maybe start with the next witness
13 and do the cross altogether?
14 MR. STAUDAHER: Doing the -- you mean the cross later
15 with this witness?
16 THE COURT: Of everybody at the same time if we have
17 to wait longer for these records.
18 How much longer?
19 THE MARSHAL: She doesn't know. She's got calls in
20 to people. She's doing her thing.
21 THE COURT: Can we do this --
22 RICHARD WRIGHT: Let's start the next witness.
23 THE COURT: Let's start the next one, cross that one,
24 and then cross this last gal. Everybody cool with that?
25 MR. STAUDAHER: Okay.

1 THE COURT: All right. Bring the jury in.

2 RICHARD WRIGHT: Hold on. This witness is on the
3 phone to her office.

4 THE COURT: This next witness?

5 RICHARD WRIGHT: Yes. With Weckerly and Stanish
6 getting some additional information.

7 (Jury entering 3:05 p.m.)

8 THE COURT: Court is now back in session.

9 Ladies and gentlemen, we're going to interrupt the
10 testimony of the last witness before we go into the
11 cross-examination, and the State is going to call their next
12 witness, and then at some later time the last witness will be
13 called, and the defense will have the opportunity to
14 cross-examine that witness.

15 As I've told you before and would like to remind you
16 again, the order in which the testimony comes in is immaterial,
17 but you have to keep an open mind until you've heard everything
18 in this trial.

19 So, Mr. Staudaher, call your next witness.

20 MR. STAUDAHER: State calls Patty -- or Patricia
21 Gonzalez.

22 THE COURT: All right.

23 (State's witness, Patricia Gonzalez, sworn.)

24 THE CLERK: Please be seated, and please state and
25 spell your name.

1 THE WITNESS: Patricia González. P-a-t-r-i-c-i-a,
2 G-o-n-z-a-l-e-z.

3 THE COURT: Thank you.

4 Mr. Staudaher.

5 MR. STAUDAHER: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MR. STAUDAHER:

8 Q Ms. Gonzalez, what do you do for a living?

9 A I am the director at Anthem BlueCross and BlueShield.

10 Q When you say director, what do you mean?

11 A I am the Provider Network Management Director. I
12 oversee the contracts, the network that providers and
13 physicians and hospitals do for the whole state but where the
14 members utilize our services.

15 Q Can you tell us a little bit of your background and
16 training that got you up to that point?

17 A Yeah. I started with the company pretty much doing
18 the physicians -- contracting with the physicians and then
19 moved on to be a manager and overseeing the staff that did the
20 physicians contracted with the hospitals and then currently
21 contracting with the hospitals and overseeing the network.

22 Q So how long have you been with the company?

23 A Since 1997.

24 Q Are you familiar with the policies and so forth
25 related to the areas that you're familiar with as far as your

1 job goes?

2 A Yes.

3 Q Have you been involved in those, I mean --

4 Can you walk us through the timeline of where you
5 were in the company from '99 to the present, meaning what you
6 started doing in '99, what you moved to at a different time,
7 changed sort of hats so to speak.

8 A Pretty much I've been in the same position since '99.
9 I moved pretty quickly when I came in in '97, then became a
10 director in pretty much in '98.

11 Q So when you talk about your interactions or the
12 physicians or whatever, what are you talking about exactly?
13 What do you do for them?

14 A Pretty much if a physician group wants their
15 contract -- or even the ones that are not contracted -- if a
16 claim comes in, if it -- they either call us up and find out if
17 the contract has been processed, if we've received it.

18 Sometimes if they don't feel it got paid
19 appropriately or if they have questions on how it got paid,
20 it's our responsibility in my department to answer any of those
21 questions.

22 Q So you deal with contracting and claims as well?

23 A Yes.

24 Q Okay. So tell me about that issue. If somebody --
25 if you have a claim that somebody has a question about, how do

1 you deal with that?

2 A Pretty much the first thing we ask them is their tax
3 ID number to make sure what contract they're calling about.
4 Once they contact us and they tell us their tax ID number we
5 look up their information to find out, you know, what their
6 contract did, how long, what we would have paid.

7 Then if they have a specific claim issue, we ask them
8 for the member ID. Then we look it up in the system based on
9 that member ID and their tax ID number, whether we've received
10 the claim or not.

11 Q So in your job do you have access to all these
12 records?

13 A Yes.

14 Q Do you access them regularly as a part of your job?

15 A Yes.

16 Q Are they all kept in the ordinary course of business?

17 A Yes.

18 Q Now, when you go online to access these different
19 documents, I mean --

20 You talked about claims, and you've talked about
21 contracts and the like. Do you sometimes have to deal with
22 multiple documents related to a single provider in order to
23 deal with a specific claim for example?

24 A Yes.

25 Q So you have to know the contract. You have to know

1 the claim, and is there anything else? I mean, are there any
2 policies that you go by to determine things?

3 A Yeah. We have provider manuals. We have
4 reimbursement policies.

5 Q Well, as far as reimbursement policies, do you have
6 any specifically for anesthesia billing?

7 A Yes.

8 Q Are you involved in at least dealing with those and
9 are familiar with them in dealing with these claims and
10 providers that you talked about?

11 A Yes. Uh-huh.

12 MR. STAUDAHER: Your Honor, may I approach?

13 THE COURT: You may.

14 BY MR. STAUDAHER:

15 Q I'm going to show you a few documents, and I want to
16 ask you about them one by one. First of all, I'm showing you
17 Proposed State's 236. Can you tell us what that is.

18 A This is the facility agreement for Endoscopy Center
19 of Nevada.

20 Q Okay. And just flip through it if you would to see
21 if you are familiar with the documents --

22 A Sure.

23 Q -- if you've seen them before.

24 A Yes.

25 Q Is this actually one that you provided for the court

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
SEP 02 2014 09:17 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

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

APPELLANT'S APPENDIX VOLUME 34

FRANNY A. FORSMAN, ESQ.
Nevada Bar No. 000014
P.O. Box 43401
Las Vegas, Nevada 89116
(702) 501-8728

RICHARD A. WRIGHT, ESQ.
Nevada Bar No. 000886
WRIGHT, STANISH & WINCKLER
300 S. Fourth Street, Suite 701
Las Vegas, Nevada 89101

Attorneys for Appellant

STEVEN S. OWENS
Chief Deputy District Attorney
Nevada Bar No. 004352
200 Lewis Avenue
Las Vegas, Nevada 89155
(702) 671-2750
Attorney for Respondent

INDEX TO APPENDIX VOLUMES 1 through 41

<u>DOCUMENT</u>	<u>VOL.</u>	<u>PAGE(S)</u>
Indictment	1	000001-000042
Amended Indictment	1	000043-000084
Court Minutes 7/21/10	1	000085
Court Minutes 2/08/11	1	000086
Finding of Competency	1	000087-000090
Recorder's Transcript - Hearing: Video Deposition Tuesday, March 20, 2012	1	000091-000129
Indictment (C-12-283381 - Consolidated Case)	1	000130-000133
Second Amended Indictment	1	000134-000176
Third Amended Indictment	1	000177-000212
Defendant Desai's Motion and Notice of Motion for Competency Evaluation	1	000213-000229
Recorder's Transcript - Hearing Re: Defendant Desai's Motion for Competency Evaluation Status Check: Experts/Trial Readiness (All) Tuesday, January 8, 2013	1	000230-000248
Fourth Amended Indictment	2	000249-000284
Notice of Motion and Motion to Use Reported Testimony	2	000285-000413
Reporter's Transcript Re: Status Check: Experts (All) Thursday, March 7, 2013	2	000414-000440

<u>DOCUMENT</u>	<u>VOL.</u>	<u>PAGE(S)</u>
Defendant Desai's Opposition to State's Motion to Admit Foreign Documents Relating to Rodolfo Meana	2	000441-000445
Order	2	000446-000449
Court Minutes 3/21/13	2	000450
Defendant Desai's Opposition to State's Motion to Use Reported Testimony	2	000451-000454
Court Minutes 3/26/13	2	000455
Independent Medical Evaluation, 4/14/13 Filed Under Seal - Separately	2	000456
Reporter's Transcript - Calendar Call (All) State's Motion to Admit Evidence of Other Crimes Tuesday, April 16, 2013	2	000457-000497
Fifth Amended Indictment	3	000498-000533
Reporter's Transcript - Jury Trial Day 7 Friday, May 3, 2013	3	000534-000622
Reporter's Transcript - Jury Trial Day 8 Monday, May 6, 2013	3 & 4	000623-000773
Reporter's Transcript - Jury Trial Day 9 Tuesday, May 7, 2013	4 & 5	000774-001016
Reporter's Transcript - Jury Trial Day 10 Wednesday, May 8, 2013	5	001017-001237
Reporter's Transcript - Jury Trial Day 11 Thursday, May 9, 2013	6 & 7	001238-001517

<u>DOCUMENT</u>	<u>VOL.</u>	<u>PAGE(S)</u>
Reporter's Transcript - Jury Trial Day 12 Friday, May 10, 2013	7 & 8	001518-001784
Reporter's Transcript - Jury Trial Day 13 Monday, May 13, 2013	8 & 9	001785-002061
Reporter's Transcript - Jury Trial Day 14 Tuesday, May 14, 2013	9 & 10	002062-00
Reporter's Transcript - Jury Trial Day 15 Wednesday, May 15, 2013	10 & 11	002303-002494
Reporter's Transcript - Jury Trial Day 16 Thursday, May 16, 2013	11 & 12	002495-002713
Reporter's Transcript - Jury Trial Day 17 Friday, May 17, 2013	12 & 13	002714-002984
Reporter's Transcript - Jury Trial Day 18 Monday, May 20, 2013	13 & 14	002985-003247
Reporter's Transcript - Jury Trial Day 19 Tuesday, May 21, 2013	14 & 15	003248-3565
Reporter's Transcript - Jury Trial Day 20 Wednesday, May 22, 2013	15 & 16	003566-003823
Reporter's Transcript - Jury Trial Day 21 Thursday, May 23, 2013	16 & 17	003824-004014
Reporter's Transcript - Jury Trial Day 22 Friday, May 24, 2013	17	004015-004185
Reporter's Transcript - Jury Trial Day 23 Tuesday, May 28, 2013	18	004186-004384

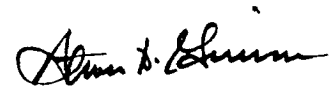
<u>DOCUMENT</u>	<u>VOL.</u>	<u>PAGE(S)</u>
Reporter's Transcript - Jury Trial Day 24 Petrocelli Hearing Wednesday, May 29, 2013	19	004385-004510
Reporter's Transcript - Jury Trial Day 24 Afternoon Session Wednesday, May 29, 2013	20	004511-004735
Reporter's Transcript - Jury Trial Day 25 Thursday, May 30, 2013	21	004736-004958
Reporter's Transcript - Jury Trial Day 26 Friday, May 31, 2013	22	004959-005126
Reporter's Transcript - Jury Trial Day 27 Friday, June 3, 2013	22 & 23	005127-005336
State's Exhibit 18 - Meana Death Certificate Admitted 6/3/13	23	005337-005345
Reporter's Transcript - Jury Trial Day 28 Tuesday, June 4, 2013	23 & 24	005346-005611
Reporter's Transcript - Jury Trial Day 29 Wednesday, June 5, 2013	24 & 25	005612-005885
Reporter's Transcript - Jury Trial Day 30 Thursday, June 6, 2013	25 & 26	005886-006148
Reporter's Transcript - Jury Trial Day 31 Friday, June 7, 2013	27 & 28	006149-006430
Reporter's Transcript - Jury Trial Day 32 Monday, June 10, 2013	28	006431-006641
Reporter's Transcript - Jury Trial Day 33 Tuesday, June 11, 2013	29 & 30	006642-006910

<u>DOCUMENT</u>	<u>VOL.</u>	<u>PAGE(S)</u>
Reporter's Transcript - Jury Trial Day 34 Wednesday, June 12, 2013	30 & 31	006911-007143
Reporter's Transcript - Jury Trial Day 35 Thursday, June 13, 2013	31	007144-007382
Reporter's Transcript - Jury Trial Day 36 Friday, June 14, 2013	32	007383-007619
Reporter's Transcript - Jury Trial Day 37 Monday, June 17, 2013	33	007620-007827
State's Exhibit 228 - Table 20-1 - Modes of Transmission and Sources of Infection Considered Admitted 7/17/13	33	007828
Reporter's Transcript - Jury Trial Day 38 Tuesday, June 18, 2013	34	007829-008038
Reporter's Transcript - Jury Trial Day 39 Wednesday, June 19, 2013	35	008039-008113
Reporter's Transcript - Jury Trial Day 40 Thursday, June 20, 2013	35 & 36	008114-008361
Reporter's Transcript - Jury Trial Day 41 Friday, June 21, 2013	36 & 37	008362-008537
Reporter's Transcript - Jury Trial Day 42 Monday, June 24, 2013	37 & 38	008538-008797
Reporter's Transcript - Jury Trial Day 43 Tuesday, June 25, 2013	38	008798-009017
Reporter's Transcript - Jury Trial Day 44 Wednesday, June 26, 2013	39	009018-009220

<u>DOCUMENT</u>	<u>VOL.</u>	<u>PAGE(S)</u>
Reporter's Transcript - Jury Trial Day 45 Wednesday, June 27, 2013	39 & 40	009221-009473
Defendant's Proposed Instruction No. 2	41	009474-009475
Defendant's Proposed Instruction No. 3	41	009476
Defendant's Proposed Instruction No. 4	41	009477
Defendant's Proposed Instruction No. 5	41	009478
Instructions to the Jury	41	009479-009551
Verdict	41	009552-009559
Reporter's Transcript - Sentencing Hearing Thursday, October 24, 2013	41	009560-009583
Judgment of Conviction	41	009584-009589
Amended Judgment of Conviction	41	009590-009595
Notice of Appeal	41	009596-009600

(COPY)

Electronically Filed
03/11/2014 01:12:16 PM



CLERK OF THE COURT

1 TRAN

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4 * * * * *

5
6 STATE OF NEVADA,) CASE NO. C265107-1,2
7 Plaintiff,) CASE NO. C283381-1,2
8 vs.) DEPT NO. XXI
9 DIPAK KANTILAL DESAI, RONALD)
E. LAKEMAN,)
10 Defendants.)
11

**TRANSCRIPT OF
PROCEEDING**

12 BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE

13 **JURY TRIAL - DAY 38**

14 TUESDAY, JUNE 18, 2013

15
16
17 APPEARANCES:

18 FOR THE STATE: MICHAEL V. STAUDAHN, ESQ.
19 PAMELA WECKERLY, ESQ.
Chief Deputy District Attorneys

20 FOR DEFENDANT DESAI: RICHARD A. WRIGHT, ESQ.
MARGARET M. STANISH, ESQ.
21 FOR DEFENDANT LAKEMAN: FREDERICK A. SANTACROCE, ESQ.

22
23
24 RECORDED BY JANIE OLSEN, COURT RECORDER
TRANSCRIBED BY: KARR Reporting, Inc.

25

KARR REPORTING, INC.

007829

INDEX OF WITNESSES

STATE'S WITNESSES:

PAGE

JOANNE SAMS

Direct Examination by Mr. Staudaher:	18
Voir Dire Examination by Ms. Stanish:	30
Cont. Direct Examination by Mr. Staudaher:	46
Cross-Examination by Ms. Stanish:	56
Redirect Examination by Mr. Staudaher:	58
Recross-Examination by Ms. Stanish:	60

KATIE KALKA

Direct Examination by Mr. Staudaher:	75
Voir Dire Examination by Ms. Stanish:	81
Cont. Direct Examination by Mr. Staudaher:	84
Examination outside the presence of the jury by Ms. Stanish:	199

PATRICIA GONZALEZ

Direct Examination by Mr. Staudaher:	115
Cross-Examination by Ms. Stanish:	154
Cross-Examination by Mr. Santacroce:	162
Redirect Examination by Mr. Staudaher:	167
Recross-Examination by Mr. Santacroce:	171

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX OF EXHIBITS

STATE'S EXHIBITS	OFFERED	ADMITTED
80J 1500 Form, Check, Explanation of Benefits for Patty Aspinwall	149	150
80P 1500 Form - Kenneth Rubino	127	128
80R 1500 Form - Sharrieff Ziyad	128	128
210A Anesthesia Insurance Billing Records - Washington/Source: Vista - Check for Insurance	45	46
210B Anesthesia Insurance Billing Records - Washington/Veteran Payment History	45	46
216B Anesthesia Insurance Billing Records - Aspinwall/Anthem Explanation of Benefits	129	129
218 Anthem BlueCross BlueShield Anesthesia Reimbursement Policy	126	126
236 Anthem BlueCross BlueShield Contracts - Provider Contract, Date Sheet - Endo Center West	124	125
237 Anthem BlueCross BlueShield Contracts - Gastro Center INS	124	125
238 Anthem BlueCross BlueShield Contracts - Gastro Center INS and HMO	124	125

1 LAS VEGAS, CLARK COUNTY, NEVADA, JUNE 18, 2013, 10:42 A.M.

2 (Outside the presence of the jury.)

3 THE COURT: Are we all worked out to start?

4 All right. Janie, are you on the record?

5 THE COURT RECORDER: I am.

6 THE COURT: All right. Out of the presence of the
7 jury.

8 Ms. Stanish, you indicated that before we brought the
9 jurors in you had a matter you needed to raise with the Court;
10 is that correct?

11 MS. STANISH: Yes, Your Honor. I wanted to alert the
12 Court to some issues that are still ongoing regarding the
13 insurance witnesses.

14 You had ordered that the State get with the various
15 witnesses to produce applicable contracts, and I understood the
16 rate schedule, and we have received some of the contracts none
17 of which answer the basic question as to is this a misdemeanor
18 or felony, and by that, Your Honor, I mean we are still lacking
19 the information which these witnesses will rely upon to
20 calculate the value of the anesthesia services.

21 I've received for instance the 2007 anesthesia policy
22 of United Healthcare Group, and it says that, you know, it has
23 that formula that Ms. Syler talked about where you should have
24 the base value plus the time increments plus modifying units,
25 add those three items up, multiply it by the conversion factor.

1 The conversion factor being the price per unit, and then
2 multiply all that by the modifier percentage.

3 And basically what I've got -- at least with this one
4 insurer -- is that's the formula we're going to apply, but as
5 Ms. Syler explains the -- how the insurance company measures
6 the time unit whether they use the CMS way or whether they use
7 a different measurement of time and whatever the conversion
8 factor is that that is determined by the contract or they
9 follow the CMS formula.

10 As I stand here today I can't answer those questions,
11 Your Honor. We haven't gotten that kind of information.

12 THE COURT: Well, I don't have it. So I need a
13 response from the State.

14 MR. STAUDAHER: I will give a response, Your Honor.

15 MS. STANISH: And I should clarify, Your Honor. You
16 had mentioned earlier, well, defense just get on the Internet
17 and figure it out.

18 THE COURT: No. I said that that may be --

19 I didn't say, Defense, you get on the Internet. I
20 said --

21 MS. STANISH: Well, we did.

22 THE COURT: Well, I may have said that, but what I
23 think what I said was it may be just available on the Internet,
24 and we may just be able to get on the Internet and find it, and
25 then I think I also said, but I don't know if it's the kind of

1 thing where you have to be a provider or insurer to access
2 that. A lot of these things you have to pay money to access,
3 and maybe just random people such as ourselves cannot do it.

4 MS. STANISH: Right. And as Ms. Syler explained in
5 her testimony, the Internet website for CMS only goes back to
6 2009. She couldn't even get the 2007 conversion factors and
7 the base unit assignments and nor could I, and I feel like if
8 the State is here today and that they didn't preserve the 2007
9 conversion factors or applicable contracts that specifically
10 address the anesthesia charges, then there is a failure to
11 preserve the evidence, and these charges should be dismissed.

12 THE COURT: Well, I don't know that that's something
13 the State would've had and failed to preserve. I mean, it
14 would be something the insurer had and may or may not have
15 preserved, and the State may or may not have asked for it back
16 when they had it. I think that's more, you know, it's not
17 evidence they had that they discarded or something like that as
18 I understand it.

19 Mr. Staudaher?

20 MR. STAUDAHER: Up to this point we have been
21 forwarding -- and your clerk has gotten everything we've been
22 forwarding on -- as well as -- not your clerk, your JEA. I'm
23 sorry.

24 THE COURT: Right.

25 MR. STAUDAHER: So we're trying to be as open as we

1 possibly can. We have received documents from the VA
2 Hospital -- or VA Hospital -- from the VA which also indicates
3 that the latest information is that they use CMS for their
4 anesthesia calculations.

5 So that's the very first witness today. They have a
6 contract between the VA and the Endoscopy Center signed by
7 Dr. Desai. So that's the contract as well as the way that they
8 calculate their anesthesia or what they use for their
9 anesthesia. So I think it's been provided for that witness.

10 Katie Kalka who is the United Healthcare
11 representative before she even was going to testify and was
12 admitted at the Grand Jury the provider agreements were there
13 signed by Dr. Desai. So they were provided, the actual
14 contracts themselves as well as the anesthesia policy; however,
15 the anesthesia policy that they had originally provided was the
16 2010 version. We subsequently received the 2007 version, and
17 we provided that to counsel. So they have those for that
18 witness who is our -- I believe to be our second witness if she
19 gets on the ground and gets here because she is arriving by
20 plane.

21 The third was Patty Schibona -- excuse me, Patricia
22 Gonzalez who supplied us with all of the contracts that they
23 had with the Endoscopy Center, with the Gastroenterology Center
24 all signed by Dr. Desai as well as the information regarding
25 how they calculate their anesthesia billing.

1 Now, I know Ms. Wright is looking for a conversion
2 factor that she says is not --

3 THE COURT: Mr. Staudaher just married you off.

4 MS. STANISH: I know.

5 MR. STAUDAHER: I'm sorry.

6 MS. STANISH: It happens when you work with someone
7 who represented --

8 MR. STAUDAHER: In that regard there is the issue of
9 we believe that they have been responsive, that they have
10 provided what they use as far as their basis whether it's an
11 ASA -- the American Association -- or Society of
12 Anesthesiologists -- whether it's CMS, whether it's their own
13 internal. Before we left last time we actually had the
14 BlueCross BlueShield representative's anesthesia policy, and
15 that is Patty Gonzalez who is also a scheduled witness for
16 today.

17 So from my view -- at least the three witnesses that
18 we have today -- all of the documents that have been responsive
19 to what the Court's order was, what counsel was requesting have
20 been provided in advance, and as far as the other witnesses the
21 one that we received today, and I have not gone through it
22 completely, was from Culinary. There were about three or four
23 documents that came from them that they believed were
24 responsive. Those have been provided.

25 So HPN documents came yesterday. They were provided.

1 We believe that those were responsive based on what the Court
2 had ordered, and they used the ASA relative-value scale or
3 relative-value guide for their determination of their
4 anesthesia billing. They provided the entire guide for 2007.
5 So it is the year that they had used those kinds of documents.

6 The only ones that are outstanding at this point from
7 our perspective are the witness who actually did testify who
8 was Patty Schibona from PacifiCare. We talked with their
9 attorney today. They are in the process of trying to get
10 whatever documents they have together regarding that. They
11 think that they will have them, or they are in the process of
12 doing them, and they believe that they can provide them.

13 Now, she obviously was not just the one testifying,
14 but she was the one who testified that she could determine what
15 the dollar amount was per unit by simply taking the dollar
16 amount of reimbursement and dividing that by the number of
17 units to get a dollar amount per unit. That's -- as far as a
18 conversion factor -- that's how she was able to determine that
19 with the existing documents that she had here.

20 Beyond that we are still trying to get those
21 documents. So I don't believe that there is any hiding the
22 ball. I don't think anybody's tried to, you know, do up
23 something improper or that there were lost documents that were
24 not ever provided.

25 Now, whether or not they have an internal computer

1 that does some sort of calculation based on things and whether
2 or not that is actually spelled out in a contract in hard
3 written form I don't know, but those people can certainly
4 testify about it if they know, and if not, they can provide the
5 calculations to what the unit costs were like Ms. Schibona did.

6 THE COURT: Here's all I would say. The only thing I
7 am hearing is there may be an issue with the CMS guidelines
8 because those may have been different in 2007. So what I would
9 say is if there are witnesses who are, you know, are going to
10 say we used the CMS guidelines, find out if they have the 2007
11 CMS guidelines or if they have personal knowledge as to whether
12 or not there were changes in the CMS guidelines from 2007 to
13 2009. Because a lot of times they may say I've been working
14 with this, and in terms of this, there was no change in the CMS
15 guidelines from 2007 to 2009 in which case you just look at the
16 2009 guidelines so long as they have personal knowledge having
17 worked with the guidelines. So --

18 MR. STAUDAHER: Now, that information has already
19 come in, Your Honor.

20 THE COURT: Okay. Well, I don't remember exactly.

21 MR. STAUDAHER: Well, when we had Joan Syler on the
22 stand and actually counsel went up to there and looked at them.
23 She had what she said was effective 2006 the CMS guidelines
24 pertaining to how anesthesia is calculated. It was a
25 transmittal. I think it was 13, 31, 16 or something like that

1 that she was referring to. I actually can get that document.
2 She testified to it and provided evidence of that in court.
3 The document itself did not come in, but that is the guideline
4 that was in effect at that time, and that's what she testified
5 about.

6 THE COURT: All I would submit --

7 Ms. Stanish is shaking her head. And candidly, I
8 don't remember exactly.

9 All I would say is -- so we're not up here arguing at
10 the bench all the time -- establish whether or not they have a
11 personal knowledge or if they're just a custodian of records
12 that really don't, establish what documents they are relying on
13 so we all see whether they have it or there's some other
14 document that they don't have that we can then say, well, where
15 is it. Did you maintain the document. Did you throw it away.

16 If there is a change in, like, the CMS document or
17 something like that, you know, what's the most -- latest
18 available document, and then again you would have to establish
19 personal knowledge that they were familiar with, you know, that
20 they worked with it enough in 2007 and again in 2009 so they
21 could say from 2007 to 2009 there was really no change in this
22 area of the CMS guidelines regarding how we were reimbursing
23 for anesthesia.

24 So I think if you do those things, we shouldn't have
25 a problem going forward. Just be mindful with whoever's

1 witness it is because there is some confusion in this regard.

2 So just kind of go painstakingly through, okay, what
3 are you relying on. What did you use to calculate this
4 reimbursement so we can make sure that we have all of the
5 documents that they would've relied upon, and it may be a
6 little plodding and boring, but just make sure you do it that
7 way so again we are not up here arguing a foundation objection
8 or something like that at the bench and then it will be clear
9 to the extent --

10 She's not here today, right, Ms. -- the gal, or is
11 she to finish up, the gal we interrupted?

12 MS. WECKERLY: No. She's still out of town.

13 THE COURT: So for her --

14 Oh, that's the one. We never dealt with that issue.

15 MS. WECKERLY: Well, with the woman who is out of
16 town, that was the young --

17 THE COURT: Right. That her lawyer told her to get
18 back on the plane and --

19 MS. WECKERLY: Oh, that's a different witness.

20 MR. STAUDAHER: Oh, no, no, no. She's --

21 MS. WECKERLY: We've got compliance with them.

22 MR. STAUDAHER: Yes. And those have been --

23 THE COURT: Okay. So nothing that the Court needs to
24 do?

25 MR. STAUDAHER: No.

1 MS. WECKERLY: No.

2 THE COURT: Okay.

3 MR. STAUDAHER: But I just want to be clear on this
4 as far as the CMS issue. Joan Syler testified that of the ones
5 that were in effect as of 2006 or that went over this time
6 period and those CMS guidelines, I mean, she had with her and
7 testified about them. So to the extent that they rely on --
8 the future witnesses rely on the CMS guidelines, the evidence
9 about what was in place at that time has already come in
10 through Joan Syler.

11 THE COURT: Well, what I would say is, you know,
12 first of all they haven't had an opportunity to cross-examine
13 Joan Syler yet.

14 MR. STAUDAHER: Oh, yes.

15 MS. WECKERLY: Yes.

16 MR. STAUDAHER: That was our billing expert.

17 THE COURT: Right. They did. I'm sorry. That's
18 right. They did.

19 What I would say is for each witness, you know,
20 before you get them to testify find out if they also have the
21 personal knowledge. If they don't, then you can argue well,
22 we're going to rely on other testimony, but I would -- as part
23 of laying my foundation if I were you -- ask them, is this
24 something you personally work with. Were you personally
25 familiar with the CMS guidelines as part of your work. If they

1 say no, then okay. They can't make a comparison between 2007
2 and 2009, but if they have been and they can say, yes, as part
3 of my work I've been working with the guidelines, and they've
4 been the same for decades, you know, or whatever they're going
5 to say, then I don't see a problem with the change or using
6 2009 guidelines.

7 Obviously if the witness can't say that, you know,
8 they don't know. They don't remember, whatever, then you're
9 going to have to rely on the testimony of other witnesses to
10 kind of tie that in.

11 MS. STANISH: So I think I -- just to articulate it
12 for the record, our objection is in large part a hearsay
13 objection which I think Your Honor recognizes and is requiring
14 them to set forth a solid foundation.

15 My second issue, Your Honor --

16 THE COURT: Right. As I'm -- essentially what I'm
17 saying is if the 2009 guidelines in relevant part have not
18 changed from 2007, I'm comfortable with the 2009 guidelines.

19 MS. STANISH: And I still think we may be lacking
20 some contractual agreement that specifies whether they're going
21 to apply CMS or just use the basic formula but tweak it to add
22 their own --

23 THE COURT: All right. Well, having not seen the
24 contracts I don't know what they specify or don't specify.

25 MS. STANISH: I don't either. I haven't seen it.

1 THE COURT: I mean, you're going to have to --
2 they're going to have to figure out --

3 Some of these insurers may say, all of our contracts
4 are the same, that we always use the CMS guidelines, or we
5 always use this formula; it doesn't matter who the provider is.
6 Okay.

7 Then they may not have separate things for each
8 provider. It seems like it should be spelled out in some
9 agreement so the provider knows.

10 MR. STAUDAHER: It should.

11 MS. STANISH: And real quick, the other issue, Your
12 Honor --

13 THE COURT: One second.

14 MS. STANISH: -- is we would object to the State
15 admitting into evidence copies of the billing, the Form 1500s
16 EOBs that relate to the procedures. We didn't object last time
17 when the first witness who was interrupted testified. I think
18 it's confusing, however, for the jury to put in all the other
19 claims as well as irrelevant given our discussions about
20 potential 404(b) Brady issues relating to the procedures.

21 THE COURT: Upcoding?

22 MS. STANISH: Yes.

23 THE COURT: State?

24 MR. STAUDAHER: Well, I don't think there is any
25 implication that there's upcoding. I don't necessarily have a

1 problem with providing to the jury that portion which we
2 actually have testimony about which is the anesthesia, but all
3 of those --

4 Part of the issue that we don't want to get into is
5 that, oh, there's not completeness here. I mean, there were
6 three different charges. Obviously there was a doctor charge,
7 a facility charge and an anesthesia charge. All of those are
8 part of the documentation that came in, and the part that we're
9 asking them about --

10 THE COURT: Is the anesthesia.

11 MR. STAUDAHNER: -- is the anesthesia. Now, you know,
12 at this point we've got the witnesses here. I mean, if the
13 Court wants us to parse out those pieces and admit those, I
14 don't have an issue with that, but I think it's a whole record.

15 THE COURT: Here's all I would say. Just try to make
16 it as unconfusing as possible. So having not seen the records,
17 you know, however you want to admit them as long as there's no
18 inference of upcoding or something like that.

19 I mean, I think it's fair for them to put the
20 anesthesia in some context that this was an endoscopy. This
21 was a colonoscopy or whatever. I think that's only fair that
22 the State be allowed to do that, and this was Dr. Carroll. I
23 mean, some of that stuff is going to be as I understand it on
24 the other billing. Maybe it's not. Maybe it just says
25 procedure, but I think the State is certainly entitled to show

1 what procedure it is that they're billing for and not just the
2 anesthesia. So to that extent I think the billing records
3 certainly would be relevant.

4 MS. STANISH: And that code is on the anesthesia
5 form.

6 THE COURT: Yes. But no one is going to remember,
7 oh, zero 42, that was a colonoscopy, and this one is an
8 endoscopy with a biopsy of a lesion.

9 MS. STANISH: Okay.

10 THE COURT: And this is a removed -- oh, a Code 65,
11 that meant there were three polyps. They're not going to know
12 that, and I know there was Code 45 or Code 49 or something we
13 heard about.

14 Bring them in, Kenny.

15 I think the other issues, we'll deal with as they
16 come up.

17 (Jury entering 11:00 a.m.)

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

23 And the State may call its next witness.

24 MR. STAUDAHER: State calls Joanne Sams.

25 (State's witness, Joanne Sams, sworn.)

1 THE CLERK: Please be seated, and please state and
2 spell your name.

3 THE WITNESS: Joanne Sams. J-o-a-n-n-e, S-a-m-s.

4 THE CLERK: I didn't hear your last name.

5 THE WITNESS: Sams. S-a-m-s.

6 THE COURT: All right. Thank you.

7 Mr. Staudaher, you may proceed.

8 MR. STAUDAHER: Thank you, Your Honor.

9 DIRECT EXAMINATION

10 BY MR. STAUDAHER:

11 Q Ms. Sams, what do you do for a living?

12 A I'm a certified medical coder for the Veterans
13 Administration here in Las Vegas.

14 Q Can you explain to us what that is.

15 A We take documentation -- medical documentation and we
16 convert it into codes for billing and reporting purposes.

17 Q Does that -- do you work with guidelines that are
18 considered -- called CMS guidelines?

19 A I work with CMS guidelines. I see the guidelines as
20 well, yes.

21 Q So the Veterans Administration uses those?

22 A Yes.

23 Q Now, what are the CMS guidelines? What are those
24 things?

25 A Well, they're the standards of how to code for

1 billing and reporting of medical services.

2 Q Does that include anesthesia-type charges?

3 A Yes, sir.

4 Q As part of the coding and things that you do, do you
5 deal with that kind of the charge as well, for anesthesia, for
6 procedures, for doctors, all of those?

7 A Yes.

8 Q Now, most of the questions I will have for you
9 pertain primarily to anesthesia, but I just want to lay some
10 foundation again for that. Now, I assume that they do change
11 over time; is that correct?

12 A That's correct.

13 Q As far as the anesthesia part of it, has that changed
14 appreciably over time; how it's calculated, that kind of thing?

15 A No, not really. It's been the same as long as I've
16 been doing it.

17 Q And how long have you been doing it?

18 A Over 20 years.

19 Q So unchanged as far as you know it from anesthesia
20 perspective?

21 THE COURT: We need both of you to speak up.

22 THE WITNESS: Okay. Sorry.

23 MR. STAUDAHER: Okay.

24 THE COURT: And see that black box right there?
25 That's the microphone. So make sure you speak into it so

1 everyone can hear you.

2 THE WITNESS: Yes, ma'am.

3 MR. STAUDAHER: Could I reiterate that then, Your
4 Honor, just so that you can hear it. I just want to reiterate
5 the question.

6 THE COURT: Okay. Go ahead, please.

7 BY MR. STAUDAHER:

8 Q I just want to be clear. You said that you had been
9 working with CMS and the anesthesia part of it for billing
10 purposes for the last 20 years or so?

11 A Right. That's correct.

12 Q Did I understand you correctly to say that those
13 guidelines for how anesthesia time, things like that have been
14 calculated has not appreciably changed over that time period?

15 A That's correct.

16 Q Clearly from 2007 to the present, has that changed in
17 any degree?

18 A No.

19 Q Now, as far as your contracts that you have with
20 providers, do you actually enter into some sort of agreement
21 with a new provider that might provide services for the VA?

22 A If the VA cannot provide the services in-house, they
23 will contract with a provider in the community.

24 Q Did the VA contract to your knowledge with the
25 Endoscopy Center of Southern Nevada to provide services?

1 A Yes, they did.

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

3 THE COURT: You may.

4 BY MR. STAUDAHER:

5 Q Showing you what has been marked as State's Proposed
6 230 and 231. I want you to tell me what each one of them is if
7 you would. First of all if you are familiar with them and then
8 what they are. Start with 230 if you would.

9 A 230 is the extension of the contract with the
10 Endoscopic Center and the Gastroenterology Center, and 231 is
11 the authority on how the VA pays for non-VA
12 professional-services providers.

13 THE COURT: Did everybody hear that?

14 MS. STANISH: No.

15 THE COURT: Okay. You need to say that again, and if
16 you're going to turn, just move that microphone. So just make
17 sure you keep that in front of you whichever way you're facing
18 so that we can hear you, okay, ma'am?

19 THE WITNESS: Yes, ma'am.

20 THE COURT: So start over, and tell us again what
21 everything is.

22 THE WITNESS: Okay.

23 MR. STAUDAHER: Speak up as loudly as you can.

24 THE WITNESS: 230 is an extension of the contract,
25 the initial contract with the Gastroenterology Center, the

1 Endoscopic Center, and 231 is the authority in which the VA
2 pays for non-VA physicians' services -- professional services.

3 BY MR. STAUDAHER:

4 Q Does that include anesthesia-type services?

5 A Yes, it does.

6 Q Was this provided -- this 231 provided to show how,
7 or how you would essentially use --

8 A How we arrived at our payment.

9 Q For anesthesia?

10 A Correct. Yes.

11 Q Now, with regard to 230 again, let's go back to that
12 before I move to admit it. Is this a contract signed by -- it
13 looks like Desai -- between the Endoscopy Center of Southern
14 Nevada in the Veterans Administration?

15 A Yes, it is.

16 Q Does it cover the time period in question that you've
17 been asked to testify about in 2007?

18 A Yes, it does.

19 MR. STAUDAHER: Okay. I move for admission of
20 State's 230 and 231 at this time.

21 THE COURT: Any objection?

22 MS. STANISH: I need to see those.

23 THE COURT: All right. Could you show counsel.

24 BY MR. STAUDAHER:

25 Q Now, as counsel looks at that before we go into it,

1 you told us about -- that you are a certified coder, and I'm
2 not sure if the jury heard what that is. So can you tell us
3 what that is again.

4 A We convert documentation -- medical documentation
5 into codes, five-digit codes for reporting and billing
6 purposes.

7 Q And what kind of medical documentation do you get in
8 to do those conversions?

9 A Operative reports, evaluation and management
10 encounters, any time a patient sees a physician that
11 documentation will be converted into codes.

12 Q Do you get documents that are termed HCFA 1500 Forms?

13 A Yes, we do.

14 Q Can you tell us what those are.

15 A A HCFA 1500 is a claim that professional services
16 will be billed on.

17 Q So is it a way for the provider to provide you with
18 what they did so that they can get paid?

19 A It's an itemized statement basically.

20 Q The individual that you've been asked to come testify
21 about, is that Michael Washington?

22 A Yes, it is.

23 Q Have you reviewed records at some point related to
24 his particular claims for service that took place in 2007?

25 A Yes, I have.

1 Q Specifically January 25th -- excuse me, July 25th of
2 2007?

3 A Yes.

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

5 THE COURT: You may.

6 BY MR. STAUDAHER:

7 Q And I'm showing you what has been marked as Proposed
8 State's 210 -- and I know this sticky on here is mine so I can
9 keep them straight -- but would you flip through that, and tell
10 me if you recognize those documents, and then we will talk
11 about what they are.

12 That's 210; do you recognize that?

13 A 210, I do not. This is -- it looks like it's the
14 provider's billing.

15 Q For that particular person?

16 A For -- yes.

17 Q Go ahead and look at the whole thing.

18 A Yeah. This is their document, their billing record.

19 Q The provider, do you mean the Endoscopy Center's?

20 A The Gastroenterology Center, yeah.

21 Q Does it relate to that billing for Michael
22 Washington?

23 A Yes, it does.

24 Q For a date of service that you were involved with?

25 A Yes.

1 Q And that is 210?

2 A 210A is our -- is the VA's payment history. This
3 shows that we were billed and that we were paid for the
4 services rendered.

5 Q Related to the claim in 210?

6 A Yes.

7 Q Okay.

8 A And this is a release of records, I think.

9 MR. SANTACROCE: I didn't hear that.

10 THE WITNESS: It's a release of information.

11 THE COURT: I'm sorry. Could you say that again.

12 THE WITNESS: There is also a request for medical
13 records, a release of information attached to that.

14 THE COURT: Okay.

15 THE WITNESS: And this is the facility charge -- the
16 Endoscopic Center of Nevada, their billing and our payment
17 history for their billing.

18 BY MR. STAUDAHER:

19 Q Related to the same claim?

20 A Yes.

21 Q Generally for 210?

22 A Yes. That's a duplicate. They sent a duplicate
23 entry of the same information.

24 Q Okay. Now, if we could go to 210B; what is that one?

25 A 210B is our payment history. This is what the VA has

1 in their computer system.

2 Q So this would show that you actually made
3 disbursements?

4 A That's correct.

5 Q And does this also relate to the same claim in 210?

6 A Yes.

7 Q And that's the first page. What are the following
8 pages?

9 A The second page is the operative report for that
10 procedure. The third page is a spreadsheet that I created with
11 the anesthesia code that they billed, the description and the
12 modifiers and their descriptions.

13 Q Okay.

14 A And the last page is the payment history again with
15 an expanded view that shows more detail than the first.

16 Q Okay. So these are documents at least that you are
17 familiar with, correct?

18 A Yes.

19 Q Relating to the claim that is pertained in 210; is
20 that correct?

21 A Right.

22 MR. STAUDAHNER: So at this time, Your Honor, I move
23 for admission of State's 210, 210A, 210B.

24 THE COURT: Any objection?

25 MS. STANISH: May I see it.

1 THE COURT: Would you show that to counsel, please.

2 MR. SANTACROCE: I'm going to object to 210, Your
3 Honor. She said she didn't recognize it. I don't know how she
4 can admit that. It's a document she'd never seen, doesn't
5 recognize it. No objection to A and B.

6 THE COURT: Lay a little better foundation for 210.

7 MR. STAUDAHER: I will, Your Honor.

8 BY MR. STAUDAHER:

9 Q With regard to 210, did you not say that that at
10 least the provider information relates to the same claim that's
11 in 210A and B?

12 A Right. I didn't recognize it because it's not VA
13 documentation. It's the provider's documentation, their
14 billing invoice.

15 Q Is it something -- is that the kind of thing that
16 would've come to the VA for payment?

17 A The information on that invoice would've been
18 converted onto a 1500 Form, a HCFA 1500 Form. So that the same
19 information would be provided on a 1500 Form, and that's
20 submitted to us.

21 Q Okay. So that's --

22 THE COURT: So where did you get that -- I'm sorry.
23 Was that record kept and maintained in your file, or where did
24 you get it?

25 THE WITNESS: That --

1 THE COURT: I'm sorry. Mr. Staudaher, maybe can make
2 it clear.

3 BY MR. STAUDAHER:

4 Q The very first document, you said that information
5 would have been contained on a 1500 Form that would've come to
6 you?

7 A Right.

8 Q Does the information that's contained in 210 reflect
9 the information that actually made it into your computer
10 system?

11 A Yes, it's the same information.

12 Q Same information just in a different form from the
13 provider?

14 A Right.

15 Q So when you get the forms, do you they come in in
16 paper form or electronic, or how do you actually get them to
17 populate your record?

18 A At that time they came in in paper form.

19 Q Okay. So the record -- the paper form would have
20 been -- how would that have been handled once they came to you?

21 A Well, they're distributed to the clerks for payment,
22 and then it's reviewed by the coders on the back end.

23 Q Now, again the record on 210, does the information
24 there reflect the actual information that is contained in your
25 computer system accurately?

1 A Yes, it is. It's just that we require a claim form,
2 and the documentation 210 is the provider's invoice. It's the
3 same information.

4 THE COURT: Is that submitted to you? Was 210 --
5 Exhibit 210 submitted to you, to the VA? Was that part of your
6 file? Where did that come from?

7 THE WITNESS: That's not part of --

8 THE COURT: Of your file?

9 THE WITNESS: No.

10 THE COURT: Where did you get that?

11 THE WITNESS: I didn't have that.

12 THE COURT: Oh, okay. That's the confusion here.

13 BY MR. STAUDAHER:

14 Q So anyway at least on 210A and 210B it reflects that
15 information came from the Endoscopy Center. And at least 210
16 itself is the information -- that is the same?

17 A Correct.

18 MR. STAUDAHER: With the caveat, Your Honor, 210A
19 certainly and 210B I would move for admission.

20 THE COURT: Yes. 210A and 210B are admitted. There
21 is no opposition to those.

22 MS. STANISH: Well, Your Honor --

23 THE COURT: There is?

24 MS. STANISH: I do have some opposition. May I
25 approach?

1 THE COURT: Sure.

2 (Conference at the bench not recorded.)

3 THE COURT: All right. Ms. Stanish, you wanted to
4 voir dire on Exhibits 210A and 210B; is that correct?

5 MS. STANISH: Yes, Your Honor.

6 THE COURT: All right. You may proceed.

7 VOIR DIRE EXAMINATION

8 BY MS. STANISH:

9 Q Ms. Sams is it?

10 A Yes, ma'am.

11 Q With respect to the Form 1500, that's the claim form,
12 correct?

13 A Correct.

14 Q Do you not have the claim form that was submitted in
15 this case?

16 A We do not have it on file.

17 Q And why is that?

18 A We had -- IT had purged information from our files.
19 They get scanned after they're processed. The batches are
20 scanned, and IT inadvertently deleted files.

21 Q And as I recall you did not have this in the year
22 2010 when you testified before the Grand Jury either?

23 A That's right.

24 Q You did have the document that the clinic sent
25 showing that a colonoscopy had been done, the operative report?

1 A Correct.

2 Q But even then you were missing the Form 1500.

3 A 1500 Form.

4 Q And do you know when it was purged?

5 A I do not.

6 Q You don't know. Let me ask you a few questions
7 relating to the foundation of the VA using the CMS system. I
8 understand you say that the CMS system hasn't changed for many
9 years --

10 A Uh-huh.

11 Q And by the way, how long have you worked at the VA?

12 A Seven years.

13 Q And -- when you -- do you know in the year 2007 what
14 the conversion rate was that the VA used to do this -- to pay
15 this particular claim?

16 A In 2007, the authority instructs us to -- when
17 there's no allowance for CMS --

18 The anesthesia is not provided on the Medicare
19 Physician Fee Schedule which is the schedule that the VA
20 initially started with, and because it's not on that fee
21 schedule -- it's a separate fee schedule through CMS -- we then
22 would default to if it's not on the Medicare Fee Schedule, then
23 it's either the bill charges or the VA fee schedule itself
24 which is a compilation of previous years' data, and it
25 calculates it at the 75th percentile and that would be the

1 payment for procedure codes.

2 So every October 1st we run a report of the previous
3 year -- fiscal year information, and that we use for the
4 current fiscal year as the VA fee schedule. So it defaults to
5 the lesser of CMS, VA fee schedule or bill charges.

6 Q In this particular case, what was the basis for the
7 payment in 2007?

8 A There was no fee-schedule amount for that procedure
9 as it stood with the procedure codes and the three modifiers as
10 it was billed. It wasn't -- it did not produce more than eight
11 occurrences. That's when it shows up on the fee schedule. So
12 there was no -- there was less than eight occurrences. So it
13 then came up as no fee schedule found, and therefore it was
14 paid at bill charges.

15 Q Which was what amount?

16 A A hundred dollars. So there was no conversion
17 factor. There was no base units in time.

18 Q Okay. So it had nothing to do with ultimately what I
19 understand you to say is --

20 A With the CMS.

21 Q -- the amount paid did not have anything to do with
22 the CMS formula?

23 A Correct.

24 Q It's a flat fee?

25 A It was a flat fee at that -- because -- because it

1 doesn't show up on the Medicare Fee Schedule.

2 Q I see.

3 A It starts at the Medicare Fee Schedule.

4 Q And this contract that is proposed in Government's

5 Exhibit 230, does that even have any application to anesthesia?

6 A No.

7 MR. SANTACROCE: What's that?

8 THE COURT: What's the answer?

9 THE WITNESS: No.

10 THE COURT: No. The answer is no.

11 BY MS. STANISH:

12 Q It's just a flat fee based on what's charged?

13 A For the anesthesia?

14 Q Correct.

15 A Yes.

16 Q Regardless --

17 THE COURT: So --

18 I'm sorry. Go on, Ms. Stanish.

19 BY MS. STANISH:

20 Q Regardless of whatever time?

21 A Regardless within that fiscal year. There is a flat

22 fee within that fiscal year.

23 Q So it didn't matter if the clinic billed 10 minutes

24 for anesthesia time, 31 minutes for anesthesia time. They were

25 going to get the flat fee of a hundred dollars?

1 A The time was still going to be a factor because it is
2 still entered into the system. The clerks still enter that
3 into the system. It's just not a part of the calculation for
4 the payment.

5 Q Okay. I think I understand what you just said.
6 Because you earlier said that part of your job as a billing
7 coder is to extract medical information, put it into a code,
8 and you use that information for both the billing purposes
9 and --

10 A Reporting purposes.

11 Q -- reporting purposes?

12 A Uh-huh.

13 Q So correct me if I'm wrong. In this particular case,
14 in the year 2007, a flat fee was paid?

15 A Uh-huh.

16 Q The time of anesthesia was not relevant to the amount
17 paid but may have been relevant to the medical reporting issue?

18 A That's correct.

19 Q And what is the medical reporting? What does that
20 involve?

21 A Well, that's statistics. Because this was a non-VA
22 provider that information is used for other parts of the VA.
23 So it's not a factor in their reimbursement, but it is a factor
24 in reviewing records at a different level.

25 MS. STANISH: I understand, I think, sort of.

1 Your Honor --

2 THE COURT: All right. You know what? I know we
3 haven't been in session very long, ladies and gentlemen, but
4 the Court actually needs a break. So we're going to take a
5 quick break and so like 11:35, 11:40 depending on how long you
6 folks need.

7 During the break you are reminded you are not to
8 discuss the case or anything relating to the case with each
9 other, with anyone else. You are not to read, watch, listen to
10 reports of or commentaries on this case, any person or subject
11 matter relating to the case. Please don't form or express an
12 opinion on the trial.

13 Notepads in your chairs. Follow the bailiff through
14 the rear door.

15 Ma'am, please don't discuss your testimony with
16 anybody else during the break, and if you would like a break,
17 please exit through the double doors, okay.

18 THE WITNESS: Thank you, ma'am.

19 (Jury recessed 11:24 a.m.)

20 THE COURT: I truly did need a break. So I think we
21 need to talk about this, what just happened, but let me take a
22 break first.

23 If any of you folks need to use the facilities,
24 please do that, and then we'll come back.

25 (Proceedings recessed 11:24 a.m. to 11:29 a.m.)

1 (Outside the presence of the jury.)

2 THE COURT: All right. On the record.

3 It appears from that last bit of testimony that the
4 dollar amount -- or the time amount, I misspoke -- the time
5 amount is irrelevant to the rate of compensation.

6 So, State, what do you want to do?

7 MR. STAUDAHER: Well, we're not done with the witness
8 clearly. Time on this witness was what this particular
9 provider, which was the VA, paid basically a flat rate --

10 THE COURT: Paid a flat rate.

11 MR. STAUDAHER: -- and that was because there were --
12 she went through the whole thing about --

13 THE COURT: Right. Who cares why.

14 MR. STAUDAHER: -- eight or fewer occurrences,
15 whatever. The fact of the matter is they would not have paid a
16 dime on this claim if they had submitted anything that was
17 false. That's the reason why there is an insurance charge in
18 this case. If there is any false information provided in an
19 insurance claim, one, that's a crime. Two, they don't have to
20 pay and wouldn't pay, and I bet if we ask her the question, she
21 will say that if there was information that was contained in
22 the record including the anesthesia time which was not relevant
23 for reimbursement purposes, the entire time would not have been
24 paid.

25 THE COURT: Don't you have to have the --

1 Isn't that reasoning a little bit circular?

2 MR. STAUDAHER: No.

3 THE COURT: Don't you have to have the intent to
4 defraud? So if you're getting the same amount, where is your
5 intent to defraud? I mean, how are you --

6 MR. STAUDAHER: The intent to defraud and is --

7 THE COURT: -- defrauding them?

8 Okay, I'm filling something out, and you wouldn't pay
9 me if you knew it was false, but where is your intent to
10 defraud by putting false information?

11 MR. STAUDAHER: Because every single anesthesia
12 submission regardless of whether it's the VA or PacifiCare or
13 BlueCross BlueShield, they are all the same. They intend to
14 put down false information. They submit every single claim the
15 same regardless.

16 THE COURT: I know, but where -- what's the intent to
17 defraud if you're getting the same amount of money whether you
18 put in 5 minutes or 10 hours. How are you defrauding them?
19 Where is your intent to defraud?

20 MR. STAUDAHER: The intent to defraud is that the
21 original document is submitted in the same way with everybody.

22 THE COURT: Yes. But they performed --

23 MR. STAUDAHER: You're not letting me finish.

24 THE COURT: -- anesthesia, Mr. Staudaher. Okay.
25 They performed anesthesia. There is no doubt about that.

1 These people had a procedure. There is no doubt about that.
2 They're getting infected. So we know they're -- according to
3 your theory -- they're pumping the drugs in with the dirty
4 drugs or whatever, okay. So they're entitled to compensation
5 at the flat rate. So it's not like they are saying they did a
6 procedure that they didn't do. Then it doesn't matter what the
7 rate is because they didn't do the procedure.

8 Let's say they didn't give anesthesia. It's one of
9 those people that says, gee, you know, I want to watch my colon
10 on the TV. I'm not going to get any anesthesia, and then they
11 say they were anesthetized. That's clearly fraud because they
12 didn't do any anesthesia.

13 So where is the intent to defraud here? If they're
14 going to -- if they've performed the service, they are entitled
15 to compensation for the service regardless of how long it took.
16 What's their intent to defraud?

17 MR. STAUDAHER: They're not entitled to compensation
18 if they submit an insurance record.

19 THE COURT: I know, but why are they submitting the
20 false claim?

21 MR. STAUDAHER: Because it's too hard to keep them
22 all straight. They submit every single one the same.

23 THE COURT: All right. I'm going to let you put on
24 the witness and finish with your testimony.

25 Defense, you can make a motion to dismiss at the

1 conclusion of the case based on this, and then we'll argue
2 about it later.

3 So put on the witness. Put on the testimony just
4 like you would, and then to me the remedy is at the conclusion
5 of the case if you don't think there's enough to give it to the
6 jury on the intent to defraud issue, you can make a motion post
7 trial on the VA stuff, and then you can argue your theory, and
8 if I think well, okay. We'll maybe let the jury decide on that
9 then, okay. If you want to say that it's part of their intent
10 to defraud --

11 Basically what you're saying, Mr. Staudaher, is they
12 had an intent to defraud other insurers, and so in order to
13 make it something that everybody could do and not mess up, they
14 had to put a false claim into all of their providers regardless
15 of the rate of compensation because they intended to defraud
16 Culinary, BlueCross BlueShield, PacifiCare. So in order to do
17 that they had to submit false records across the board
18 regardless of whether or not it affected the rate of
19 compensation from certain insurers such as the VA. That
20 essentially seems to be what your argument is, true?

21 MR. STAUDAHER: In a sense, but --

22 THE COURT: Okay.

23 MR. STAUDAHER: -- but you're --

24 THE COURT: I think my argument is better than
25 whatever the heck it is you're trying to say.

1 MR. STAUDAHER: You are missing the point that there
2 are two -- for each one of these individuals there are two
3 separate charges. There is the insurance --

4 THE COURT: I get it. There is the procedure, and
5 there's the anesthesia.

6 MR. STAUDAHER: Oh, no. No. There is an insurance
7 charge. There is a theft-related charge. The insurance
8 charge --

9 THE COURT: Right. You're not charging theft on
10 this. I get it. I just read over the Indictment --

11 MR. SANTACROCE: He is.

12 RICHARD WRIGHT: He is charging theft.

13 THE COURT: -- again.

14 MS. STANISH: He is.

15 RICHARD WRIGHT: It's in the theft count.

16 THE COURT: Okay. Here's the deal. You put in --

17 I got it. I know there's two charges for each claim.
18 Theft is a dollar amount. Insurance fraud isn't a dollar
19 amount. It's basic, Mr. Staudaher. I get it.

20 I think the way I articulated what I thought your
21 theory was made some sense. Whatever it is your stammering
22 around there trying to articulate isn't making any sense to me,
23 but hey, you know, we'll bring this up in a motion to dismiss
24 and you and Ms. Weckerly can put together whatever your theory
25 is, and maybe I won't grant their motion. Maybe they won't

1 make a motion. Maybe it's all going to start making sense.

2 Right now it's not making a lot of sense, and frankly
3 I don't know why you're handing her a document when the Court
4 says, Well, where did this document come from that you are
5 testifying about? Basically she says, I don't know. They gave
6 it to me. Since when do you hand a custodian of records
7 documents and try to slip them in that they don't even know
8 what they are testifying about? I mean, that's what I heard
9 from her.

10 Now, we can play it back or whatever. We are not
11 going to do that now. You finish up with your witness, and
12 then they are going to file post evidence, post State resting.
13 They're going to make whatever oral motions they want to make,
14 and we'll do all of this argument at a later time.

15 But I think that theory I stated, I think that makes
16 some sense. Now, maybe your theory is better, and you're
17 just -- I'm not getting it, or maybe you are not articulating
18 it or whatever. So put her on. Ask whatever you want, and
19 we'll see where we are.

20 But there are certain legal qualifications that you
21 have to meet before we can send this stuff to the jury. From
22 what I've heard right now, I ain't hearing it, but hey, you can
23 finish up with your witness, and maybe you can get it out in
24 such a way that it makes some sense as to what your theory is.
25 Let's wait and see.

1 Again, theft as we all know is a dollar amount.
2 Insurance fraud is not a dollar amount. If you're trying to
3 make it part of the global theory, I get it on the insurance
4 fraud. I don't get it on the theft where you are alleging a
5 dollar amount unless you -- I don't think that is where you're
6 going with this -- unless it is a patient who had a procedure
7 without anesthesia and they're billing for anesthesia. That's
8 different. That's a totally different thing, but that's not
9 what we have here.

10 So, Kenny, bring them back.

11 Mr. Staudaher, go get your witness.

12 MS. STANISH: Your Honor, I did want to object to
13 some of the exhibits.

14 THE COURT: Okay. Well, we have to wait for
15 Mr. Staudaher.

16 MS. STANISH: Okay. Sure. Just a heads up.

17 THE COURT: Ma'am, just have a seat.

18 And before we bring the jury in, what's your
19 objection to A and B?

20 MS. STANISH: Well, with respect to 210 of course,
21 that's not a business record of this person.

22 THE COURT: Right. That's not coming in based
23 with -- with this witness.

24 MS. STANISH: And just for the record I wanted to
25 preserve my objection to the lack of the Form 1500 on best

1 evidence and hearsay.

2 THE COURT: As I stated at the bench, I don't think
3 because, you know, as long as they transfer a record to a
4 computer record then that becomes a business record. There is
5 no requirement that they keep the paper backup, and in fact
6 given the way business records are maintained nowadays most
7 companies don't maintain the paper backup for extended periods.
8 So that objection is overruled.

9 MS. STANISH: Understood. And then with respect to
10 Exhibit 230, these are the contracts that do not relate to the
11 anesthesia services as I understand the witness's testimony.
12 These documents have nothing to do with it; therefore, I object
13 based on relevance.

14 THE COURT: What's the point of those documents,
15 Mr. Staudaher?

16 MR. STAUDAHER: Those were the documents that counsel
17 requested us bring in.

18 THE COURT: They requested. So do you care if --

19 MR. STAUDAHER: I don't care if they don't come in.

20 THE COURT: -- we withdraw them?

21 MR. STAUDAHER: That's fine.

22 THE COURT: All right. He's fine --

23 MS. STANISH: No. Just to be clear, I requested
24 contracts that support the anesthesia services. I don't want
25 this.

1 THE COURT: Well, I'm not going to, you know --

2 MR. STAUDAHER: That's what the contract is.

3 THE COURT: As you know, Ms. Stanish, I'm happy to
4 yell at Mr. Staudaher; however, I'm not going to yell at him
5 for trying to comply with defense counsel's request and being
6 overly broad, okay?

7 MS. STANISH: Fair enough.

8 THE COURT: He's trying to comply the best he can and
9 give you all the information. So I'm not going to fault him or
10 yell at him for doing more than he was required to do. So I
11 don't see an issue there.

12 MS. STANISH: At any rate then that's it, not going
13 to be admitted. Thank you.

14 The other document is Exhibit 231 which is a section
15 of the Code of Federal Regulations Section 17.56 which the
16 witness identified as the authority. I think this is confusing
17 to the jury as any CFR is, that this should not be admitted
18 either, and given what we learned on voir dire it's irrelevant.

19 THE COURT: State?

20 MR. STAUDAHER: Actually that comports exactly with
21 what she testified to. So I think it's not only appropriate,
22 it's what her testimony was about and based on. So if
23 that's --

24 THE COURT: All right. Let me see. Are you going to
25 ask to publish that in any way, that last exhibit?

1 MR. STAUDAHER: The last exhibit, no, not at this
2 time.

3 THE COURT: Okay. Let me look it over then before we
4 admit it.

5 MR. STAUDAHER: That's fine.

6 THE COURT: As long as you're not seeking to publish
7 it then I can have a few minutes to read it.

8 All right. Bring them in.

9 (Jury entering 11:40 a.m.)

10 THE COURT: All right. Court is now back in session.
11 And, Mr. Staudaher, you may resume your direct
12 examination of the witness.

13 MR. STAUDAHER: Thank you, Your Honor.

14 When we left off, there were two documents that I had
15 moved to admit which was 210A and 210B, and I am asking that
16 they be admitted into evidence at this time.

17 THE COURT: All right. Well, the Court needs to
18 review the documents.

19 MR. STAUDAHER: 210A and B, these two.

20 THE COURT: I'm sorry. 210A and B.

21 MR. STAUDAHER: Yes. The Court had reserved ruling.

22 THE COURT: Was there any objection?

23 MS. STANISH: I just want to make sure that --

24 Can I look at that, what you've got there?

25 These are their business records; is that --

1 THE COURT: Yes.

2 MS. STANISH: No objection, Your Honor.

3 THE COURT: Okay. A and B will be admitted.

4 (State's Exhibit Nos. 210A and 210B admitted.)

5 MR. STAUDAHER: May I publish, Your Honor?

6 THE COURT: You may.

7 CONTINUED DIRECT EXAMINATION

8 BY MR. STAUDAHER:

9 Q So walk us through if you would actually --

10 THE COURT: Oh, Kenny, you need to get the big
11 monitor.

12 MR. STAUDAHER: It's on.

13 THE COURT: Oh, it's on.

14 MR. SANTACROCE: It's not working over here.

15 THE COURT: It's still not working?

16 THE MARSHAL: It's still not. Everything is plugged
17 in.

18 THE COURT: Is there anything else we can do?

19 MR. STAUDAHER: Well, I can try and go through --
20 walk up there and go through the documents with her, and then
21 if we get it working, I will display it.

22 THE COURT: Okay. Some of you may have really great
23 eyesight and can see up there.

24 MR. STAUDAHER: Oh, was that up there? I didn't
25 even --

1 THE COURT: Yes, it was up on that one.

2 MR. STAUDAHER: Oh. Well, if I could at least try
3 that.

4 THE COURT: Yes. I mean, I can't see anything up
5 there but --

6 MR. STAUDAHER: Can you see? You don't have it on
7 your screen up there?

8 THE WITNESS: No, I don't.

9 THE COURT: Oh. That's weird.

10 Is it on defense counsels' screen and the State's
11 screen?

12 MS. STANISH: No.

13 THE COURT: Okay. Because it's up on that monitor,
14 and it's on my screen. It's something wrong with the system
15 because it's not showing on their screens, and it's not showing
16 on the witness's screen. They can't have all come unplugged.

17 Well, do what you can do, and the JAVS fellow is on
18 his way.

19 BY MR. STAUDAHER:

20 Q So on 210 -- and again the focus that I want to
21 emphasize is the anesthesia time. On the very first page of
22 this document, what is it telling us?

23 A It is telling us the --

24 You just want me to --

25 Q Walk through it with us if you will.

1 A Okay. Who the vendor is, their vendor ID, the date
2 of service, the CPT procedure code that they billed, the
3 modifier, the units, the batch number, the check number,
4 obligation number, the date of the check and the diagnosis.

5 Q Let's walk through that. So when you said units,
6 what were you referring to?

7 A The 8 in this field here represents the units which
8 is anesthesia time plus the base units.

9 Q So what -- can you explain to us what those mean.

10 A Every anesthesia procedure code has a unit value
11 assigned to it. This procedure code 00810 has a 5 base unit
12 assigned to it. To that we add the time units, and this
13 particular case was 31 minutes. So every 15 minutes is a unit
14 of time. So in this case we had 3 time units and 5 base units
15 totaling 8 units.

16 Q Okay. So the procedure code that you said is 00810?

17 A Uh-huh.

18 Q What -- do you know what that is for?

19 A It's for a colonoscopy. It's anesthesia for a
20 colonoscopy or lower gastroendoscopic procedures.

21 Q And the actual date of service?

22 A Is 7/25/2007.

23 Q And do we know who the patient is?

24 A Yes, the patient is Michael Washington.

25 Q And who is the provider that is actually submitting

1 this?

2 A The Gastroenterology Center of Nevada.

3 Q Okay. Now, with regard to the part over here you
4 said there were different numbers that followed the units
5 themselves?

6 A Uh-huh.

7 Q The units that aren't part of the base unit that are
8 part of time, do you know how those are broken down for
9 anesthesia?

10 A Every 15 minutes is a unit of time.

11 Q Okay. Does it matter what part of the 15 minutes
12 you're in to get the extra --

13 If it was 16 minutes, how many units is that going to
14 be?

15 A 16 minutes would be 2 units.

16 Q Okay. If you are just even a minute or two into the
17 next unit, you get the entire unit?

18 A You round it up to the entire -- yes.

19 Q So in this particular case, the number of units that
20 were billed for 800 -- or excuse me -- were 8?

21 A 8 total units.

22 Q Was there any kind of a dollar amount billed in this
23 particular charge, or was it just the units?

24 A No. A hundred dollars was charged.

25 Q So \$100 even?

1 A Yes.

2 Q Now, that's on this page here. What is the next page
3 that we are looking at, page 2 of that same document 210A?

4 A Page 2 is documentation from the Office of the
5 Inspector General when the Office of the Inspector General was
6 requesting documentation?

7 Q So there was a documentation request from the clinic?

8 A This is from the Office of the Inspector General.

9 Q So what were they requesting?

10 A They are requesting -- due to an investigation they
11 are requesting claims data.

12 Q And then what is -- there's a --

13 You said the next page was the release of medical
14 records form?

15 A Right.

16 Q And then the final page -- or actually not the final
17 page -- the second to last page --

18 And I think you said the next two are duplicates; is
19 that correct?

20 A Right.

21 Q Well, what are we looking at there?

22 A This is the payment history of the VA system.

23 Q For who?

24 A For Michael Washington.

25 Q So you can see all the charges that came with him?

1 A Yes.

2 Q Was there one in particular rated to this 7/25 event?

3 A Yes.

4 Q What does it show there?

5 A It shows that we paid the Gastroenterology Center
6 \$100 for anesthesia services.

7 Q Okay. Now, under 210B can you describe for us what
8 that is again.

9 A This is the payment history of the VA Vista System
10 where claims payments are made. So this is a record of our
11 payment history.

12 Q Does it document that actually money left the
13 Veterans Administration to go to the clinic?

14 A Yes. Yes, it does.

15 Q Okay. And how much again? Was it the same amount,
16 the hundred dollars?

17 A The hundred dollars.

18 Q Now, the next part was -- you said it was some sort
19 of medical record related to Michael Washington?

20 A Yes. This is the operative report for the procedure
21 performed on 7/25/2007?

22 Q And it relates to the same -- I mean, the procedure
23 that we are talking about the billing and the reimbursement
24 came from?

25 A This document validates these charges.

1 Q Is this required that this be submitted?

2 A Yes.

3 Q So you've got both of those. Now, the last -- or the
4 third page of this you said was a spreadsheet --

5 A Right.

6 Q -- that you actually put together?

7 A Correct.

8 Q Can you describe for us what we are looking at here
9 and why.

10 A Column 1 reflects the procedure code that was billed,
11 00810. Column 2 is the description of that procedure code and
12 the anesthesia base units for that procedure code which is
13 anesthesia for lower-intestinal endoscopic procedures and has a
14 unit value of 5. The next column, the third column is --
15 identifies the modifier that was billed which is a P3 which
16 means that the physical status -- is a physical status
17 indicator, patient with severe systematic disease.

18 Below that is other modifiers that were billed with
19 QS which means it was a monitored-anesthesia care and QZ meant
20 that the person billing the -- or rendering the services was a
21 certified nurse anesthetist without medical direction.

22 I also showed that the total units billed were 8.
23 The total anesthesia time was 31 minutes which breaks down to 3
24 anesthesia units.

25 Q For time?

1 A For time.

2 Q So 31 minutes was submitted to you, and 8 units were
3 charged?

4 A Correct.

5 Q Go on.

6 A Then I just indicated what the Q modifiers
7 identified. There are different Q modifiers identifying when
8 a -- when anesthesia is medically directed, and there's two to
9 four concurrent anesthetics. There is a specific modifier for
10 that, and then the modifier that was billed in this case was a
11 QZ which is used when I see an RA, a certified nurse
12 anesthetist bills for the services and without medical
13 direction. So I just wanted to show the difference between
14 those two modifiers.

15 Q Okay. Anything else on this particular spreadsheet?

16 A No.

17 Q And then the last page, what are we looking at there?

18 A This again is the payment history for veteran Michael
19 Washington, but it shows an expanded view of these services
20 showing that we paid the hundred dollars. We were billed the
21 hundred dollars. We paid a hundred dollars, and it shows the
22 clerk that processed it. It shows the date it was final. It
23 is more detail to the -- whether the patient was
24 service-connected, the actual time, 31 minutes of actual
25 anesthesia time, the check number, the procedure code again and

1 the modifiers that they billed with.

2 Q Now, with regard to the --

3 You said that you used this formula, that it was the
4 lesser of two amounts, either the billed charges or 75th
5 percentile of what?

6 A Of the previous year's services. In 1738 CFR 1756 in
7 Paragraph A and Paragraph C, it identifies how to pay
8 anesthesia services. It identifies -- it starts out with the
9 exception of anesthesia because we were using the CMS
10 calculation at that time.

11 Q You weren't, the VA was?

12 A The VA wasn't. So 1756 instructs us how to pay those
13 claims when we receive non-VA provider anesthesia claims. If
14 there's no fee schedule -- in which this case there was no fee
15 schedule for that particular code and those modifiers -- then
16 the clerk would default to the billed charges, the 75th
17 percentile rate which doesn't exist or the usual and customary,
18 whichever is the less. In this case it was the hundred dollars
19 that was billed was the lesser of.

20 Q So does it even matter what even shows up on the
21 anesthesia record? I mean, does it have to be accurate?

22 A Yes, it has to be accurate.

23 Q Why is that?

24 A Because otherwise it's fraud.

25 Q What would happen if you got --

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

2 THE COURT: Sustained.

3 BY MR. STAUDAHER:

4 Q What would happen if you got a record that you knew
5 contained false information? What would you do with that?

6 A We would not pay it.

7 Q So if it contained any false information, you
8 wouldn't be obligated to pay it at all?

9 A No, we wouldn't. If it contained false information,
10 we wouldn't -- if we knew it was false information, we wouldn't
11 pay the claim.

12 Q Now, is there any kind of -- is that inherent with
13 your contracts, your billing, the things that you do with your
14 providers, I mean, is it known generally that they are supposed
15 to be providing you with accurate, truthful information?

16 A Correct. Yes.

17 Q I mean, that they make good-faith claims, and you pay
18 amounts based on that?

19 A That's right.

20 Q So just so we are clear on this. I mean, even if the
21 anesthesia reimbursement is not going to change at all
22 regardless of what information is there, if any of the
23 information submitted in the insurance claim to you is
24 knowingly false, what results?

25 A There's none.

1 MR. SANTACROCE: I'm going to object just to asked
2 and answered. He can go over this 10 times. He could preface
3 it by saying I'm going to make it perfectly clear. It's been
4 asked and answered, Your Honor.

5 THE COURT: I think you're right, Mr. Santacroce.

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

7 THE COURT: All right.

8 May I see counsel up here.

9 (Conference at the bench not recorded.)

10 THE COURT: All right. Who would like to go first on
11 cross?

12 All right. Ms. Stanish, go ahead.

13 CROSS-EXAMINATION

14 BY MS. STANISH:

15 Q Ms. Sams, I think you already answered my questions
16 but just to clarify a few matters since we don't have the
17 screen --

18 MS. WECKERLY: Excuse me, Margaret, I think we do
19 now.

20 MS. STANISH: Oh, that's all right. I don't want to
21 mess with it.

22 BY MS. STANISH:

23 Q The amount claimed was \$100, the amount that the
24 clinic said, pay us a hundred dollars?

25 A That's correct.

1 Q And the VA paid a hundred dollars?

2 A That's correct.

3 Q In the VA system if there is an error in the Form
4 1500, do you have procedures by which the form can be
5 corrected?

6 A We cannot alter the form. The claim would be denied,
7 and we would request a clean claim, a new claim.

8 Q So it would have to be resubmitted with the correct
9 information?

10 A That's correct.

11 Q And as I understand the time formula that you
12 summarized in some detail, that is only used for statistical
13 purposes and nothing to do with the reimbursement of this
14 claim?

15 A At that time, yes.

16 MS. STANISH: I don't think I have anything further.
17 Thank you.

18 THE COURT: All right. Thank you.

19 Mr. Santacroce, do you have any cross?

20 MR. SANTACROCE: I have none. No cross, Your Honor.

21 THE COURT: Mr. Staudaher, do you have any
22 additional -- or I'm sorry. I misspoke. Do you have any
23 redirect?

24 / / /

25 / / /

1 REDIRECT EXAMINATION

2 BY MR. STAUDAHER:

3 Q To the extent that again -- and I don't mean to try
4 and draw an objection to this -- but to the extent that false
5 information is put into --

6 MS. STANISH: Objection.

7 MR. SANTACROCE: Objection.

8 MS. STANISH: Asked and answered.

9 MR. STAUDAHER: I haven't even gotten the question
10 out yet, Your Honor.

11 THE COURT: Ask the question, but just be mindful
12 that it has to --

13 MR. STAUDAHER: I will try.

14 THE COURT: It's redirect.

15 BY MR. STAUDAHER:

16 Q To the extent that any false information would deny
17 the claim, would the amount submitted to you in that false
18 setting exceed that which the provider would be allowed for the
19 service?

20 THE COURT: I don't --

21 Did you understand the question?

22 THE WITNESS: No, I didn't.

23 THE COURT: Me neither.

24 You can rephrase your question. I'm not sure what
25 the question was.

1 MR. STAUDAHER: I'll try to rephrase.

2 THE COURT: I'm sorry, Mr. Staudaher.

3 BY MR. STAUDAHER:

4 Q You testified that if there was anything knowingly
5 false on the claim that you would not pay it, correct?

6 A Correct. Right.

7 Q To the extent that if there was something false in a
8 claim that was submitted to you, would the amount submitted
9 regardless of what that was, the hundred dollars, \$20, \$2, a
10 thousand dollars, whatever, would that exceed what was
11 allowable for reimbursement because it was false?

12 MR. SANTACROCE: I'm going to object. Vague and
13 ambiguous.

14 THE COURT: Yes, that's sustained.

15 BY MR. STAUDAHER:

16 Q If the person was unable to get payment -- I mean,
17 not the person, but the entity, the VA Hospital or VA
18 administration rather was unable to get payment for whatever
19 reason, I mean, they can't get payment from a provider because
20 of false information -- well, let me -- strike that.

21 I'm trying to ask it in a different way. My question
22 basically is this: You wouldn't pay for any claim that was
23 knowingly false, correct?

24 A That's correct.

25 Q Would any amount submitted to you exceed that which

1 would be allowable then based on that claim?

2 THE COURT: I think what -- I'm sorry.

3 Is what you're asking, does the amount of the claim
4 matter if the information is false? Is that what you're
5 asking?

6 MR. STAUDAHER: Essentially.

7 THE WITNESS: No. If it's --

8 THE COURT: All right. So the answer is no.

9 THE WITNESS: -- a false claim --

10 THE COURT: Mr. Staudaher, did you have any
11 additional questions?

12 MR. STAUDAHER: No, Your Honor.

13 THE COURT: Does the jury have any questions for this
14 witness?

15 (No response.)

16 THE COURT: Ms. Stanish, do you have any recross
17 based on what Mr. Staudaher just asked?

18 RECROSS-EXAMINATION

19 BY MS. STANISH:

20 Q I want to talk to you about the information that's on
21 the 1500, give you a hypothetical. Let's say a patient --

22 Is a patient's age on the forms?

23 A No. His date of birth is.

24 Q Okay, date of birth. Let's say a patient lies about
25 their age. Are you not going to pay that claim?

1 A Well, the claim -- it's going to create an error if
2 the information on the claim form does not match the enrollment
3 information in our system. The claim is not going to be paid.

4 Q So something like that would get kicked out?

5 A Uh-huh. Absolutely.

6 Q Do you pay for services rendered by a provider? Let
7 me strike that.

8 Is the goal of the VA insurance coverage to
9 compensate providers for services rendered?

10 A Yes. We're not an insurance company. We are an
11 entitlement to veterans. So we are not insurance.

12 Q Okay. I guess that is a clarification. We want our
13 veterans to have medical care.

14 A Correct.

15 Q We, therefore the United States pays providers for
16 services rendered?

17 A Right. When unable to provide the services within
18 the VA's health system, we will fee them out to the community.

19 THE COURT: So the VA is the provider, but if you
20 can't perform the service, you get somebody else who does --

21 THE WITNESS: Repurchased care.

22 THE COURT: Okay. Who can do it?

23 THE WITNESS: Correct.

24 THE COURT: Okay.

25 BY MS. STANISH:

1 Q And then the goal is to fairly compensate the
2 provider for taking care of our veterans?

3 A That's correct.

4 MS. STANISH: I have nothing further.

5 THE COURT: Mr. Santacroce, anything else?

6 MR. SANTACROCE: No, Your Honor.

7 THE COURT: Mr. Staudaher, anything else?

8 MR. STAUDAHER: No, Your Honor.

9 THE COURT: Any juror questions before we excuse the
10 witness?

11 (No response.)

12 THE COURT: All right. Ma'am, thank you for your
13 testimony. Please don't discuss your testimony with anybody
14 else who may be a witness in this matter, and you are excused.

15 And the State may call its next witness.

16 MR. STAUDAHER: Your Honor, we have those witnesses
17 that are going to come in for the insurance. They're coming in
18 this afternoon after the lunch period. We could hook up and
19 play the video if the Court wishes us to do that, or we could
20 go to lunch, whatever the Court wants to do.

21 THE COURT RECORDER: The problem with the video is
22 that Jordan has to come back, and he went to lunch. He has to
23 come back and set up the sound.

24 THE COURT: Well, then I guess we'll go to lunch. I
25 can see the disappointment on the faces of the jurors having to

1 go to lunch, but we'll go ahead and do that.

2 Ladies and gentlemen, we'll be in recess for the
3 lunch break until 1:10.

4 During the lunch break you're reminded you are not to
5 discuss the case or anything relating to the case with each
6 other, with anyone else. You're not to read, watch, listen to
7 any reports of or commentaries on this case, any person or
8 subject matter relating to the case. Please don't do any
9 independent research, and do not form or express an opinion on
10 the trial.

11 Notepads in your chairs, follow the bailiff through
12 the double doors.

13 (Jury recessed 12:05 p.m.)

14 THE COURT: I'm assuming, State, that since we have
15 the insurance witnesses we won't be playing the Mr. Meana
16 deposition then this afternoon; is that correct?

17 MS. WECKERLY: Right. Our preference is to do the
18 witnesses next.

19 THE COURT: That's fine. I just need to know because
20 then we don't need Jordan.

21 MR. STAUDAHNER: Yes. And we do need him because we
22 think that they're not going to take the whole afternoon, those
23 two witnesses.

24 THE COURT: What time should we then have our JAVS
25 people ready to set it up for the Meana deposition?

1 MS. WECKERLY: Well, we have two more witnesses that
2 are insurance.

3 THE COURT: Okay.

4 MS. WECKERLY: So that's two we could get here
5 because, you know --

6 THE COURT: Yes, that's fine.

7 MS. WECKERLY: I don't know, maybe 2.

8 THE COURT: All right. Janie, would you coordinate
9 with Jordan to be up around 2.

10 And then scheduling generally, I see a light at the
11 end of the tunnel.

12 MS. WECKERLY: Yes.

13 MR. STAUDAHNER: We're going to finish this week.

14 MS. WECKERLY: We think we're going to rest Friday.

15 THE COURT: Okay.

16 MS. WECKERLY: The problem is there are witnesses
17 that we have that are only available Friday.

18 THE COURT: Okay.

19 MS. WECKERLY: So either way, kind of regardless we
20 are going until Friday. We have -- if we get our two insurance
21 people on today, on and off, we have two more tomorrow, but
22 that's all we have because then we have an out-of-state
23 witness.

24 I don't know what the Court wants to do. I can see
25 over the lunch break if they could come Thursday, and Friday if

1 the defense thinks we'll get through them all, or I'll have
2 them come first thing in the morning and the day will be really
3 short or whatever the Court prefers.

4 THE COURT: Could we do this --

5 Now, who's coming Friday, your epidemiologist?

6 MS. WECKERLY: She's Thursday. She's Thursday.

7 THE COURT: And then who is Friday?

8 MS. WECKERLY: Dr. Meana's referring --

9 THE COURT: Oh, the coroner, all that stuff?

10 MS. WECKERLY: Also Meana's, you know, referring
11 doctor which is kind of a big deal because of his treatment and
12 all that.

13 THE COURT: Right. And the allegation that he just
14 didn't want to do it, and that's why he died. So that's
15 important.

16 Okay. Let's just --

17 Sorry, I'm being slow or obtuse on this, but so for
18 today what we've got is the two more insurance people and that
19 should be maybe 30 minutes each?

20 MS. WECKERLY: And we can play the Meana depo. It's
21 just that's all we have for today.

22 THE COURT: Okay. So let's get that done. And then
23 Wednesday you've got what?

24 MS. WECKERLY: We've got two other insurance people
25 coming. I don't know if -- it's up to obviously you if you

1 want. I can try and get them on a different day so we don't
2 come in for one hour of testimony if the Court wants a dark
3 day, but if you don't, then I'll have them come in.

4 THE COURT: So we are thinking one to an hour and a
5 half?

6 MS. WECKERLY: Right.

7 THE COURT: Okay. And then Thursday who do you have?

8 MS. WECKERLY: We have Miriam Alter. We have
9 Dr. Lewis who is Grueskin's referring, and we have Whiteley,
10 and then I can have the insurance people come, you know, in the
11 afternoon.

12 THE COURT: Right. So how long do you think for the
13 testimony for Thursday?

14 MS. WECKERLY: I -- I mean I don't think it'll take
15 that long.

16 THE COURT: Well, because we've now kind of seen what
17 kind of cross we are looking at.

18 So Miriam Alter, that's the epidemiologist?

19 MS. WECKERLY: Yeah. I think she'll be, I don't
20 know, two hours.

21 THE COURT: I think she'll be longer.

22 What do you guys think?

23 MR. WRIGHT: I can never tell until the direct. I
24 felt (unintelligible) would be two days.

25 THE COURT: Two days, okay.

1 And then Grueskin's referring?
2 MS. WECKERLY: He's short. He's real short.
3 THE COURT: Okay. And then Detective Whiteley?
4 MS. WECKERLY: Short.
5 THE COURT: You said he was going to be long.
6 MS. WECKERLY: I didn't but --
7 THE COURT: No, I mean, the cross.
8 MR. WRIGHT: I was just needling.
9 MS. WECKERLY: I think he was kidding.
10 THE COURT: Oh, okay.
11 MR. WRIGHT: I was just making him sweat.
12 THE COURT: Yes. He's nervous he's going to be
13 Dr. Friedman.
14 THE COURT: And Friday is who?
15 MS. WECKERLY: Friday is Schibona, the insurance lady
16 kind of part two, you know, that had to go on a trip.
17 THE COURT: Right. Right. Right.
18 MS. WECKERLY: Okay. Dr. Jurani who is Meana's
19 referring --
20 THE COURT: Right.
21 MS. WECKERLY: -- Meana's daughter, very brief on --
22 THE COURT: She's out of state?
23 MS. WECKERLY: No. She's here, but I mean, she is
24 like a five-minute witness. So I kind of don't want to call
25 her out of --

1 THE COURT: Right. Okay.
2 MS. WECKERLY: And Alane Olson, and that's it.
3 THE COURT: And Alane Olson is who?
4 MS. WECKERLY: The coroner.
5 MR. STAUDAHER: The coroner.
6 THE COURT: Okay. And who is the out-of-state on
7 Friday?
8 MS. WECKERLY: It's not out-of-state. It's a doctor.
9 THE COURT: Oh, Dr. Jurani?
10 MS. WECKERLY: Right.
11 THE COURT: And that's the local Dr. Jurani?
12 MS. WECKERLY: He is local but --
13 THE COURT: No. I know doctor --
14 MS. WECKERLY: He's local, but it's effectively
15 out-of-state.
16 THE COURT: Okay.
17 MR. STAUDAHER: So it's what you want to do on --
18 MS. WECKERLY: Tomorrow basically.
19 THE COURT: Now, what does the defense have lined up
20 for us?
21 MR. WRIGHT: For Monday?
22 THE COURT: I mean, can we --
23 Well, it's stupid. I agree. It's stupid to be in
24 session Wednesday for only two people unless we can collect a
25 defense witness out of order and stick them on Wednesday.