

Q Okay. And all of those books always have been available because you all had that, right?

A Yes, sir.

Q And so all -- we know exactly for every single calendar day, every single workday of the year for -- from 2004 up through 2008, the exact number of patients seen in the clinic, correct?

A Yes, sir.

Q And at -- and you've heard testimony and witnesses brought in here talking about 80 patients in a day, correct?

A The range numbers from 60 to 90, I think I've heard.

Q Okay. And you know that's false information, correct?

A I don't know that to be entirely false. I know that they ran probably 60 maybe 70, even sometimes upwards from 70.

Q Okay. I think in your police report I think the range -- the highest ever was 76 in a day?

A Okay.

Q And so the -- I mean, you've stated you're -- on my examination a while back when I was asking you about examination of Linda Hubbard, you know, you were stating that you don't mislead anyone or allow anyone to give any

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inaccurate information, correct?

A No, sir. We don't.

Q Okay. Well, you've heard witnesses that can come in here and testify to facts that you know aren't accurate, correct?

A I can't prevent what they're going to say. We don't encourage them to mislead, lie, or give any false statements. I can't encourage what they say.

Q But if they --

A Or I can't stop them.

Q -- say something that helps your case, you'll just let it ride, correct?

A No, we take the statement as is. That's why --

Q What is --

A -- we record them.

Q -- pardon?

A That's why we record them.

Q Did you record that interview -- that debriefing on March 3, 2005? I keep asking for it.

A No, sir. We didn't.

Q Okay. So when Brian Labus came in and laid all this out, his whole theory for you all, the District Attorney was there, all the detectives, F.B.I., that one we forgot to record, correct?

A No. We recorded Brian later on, but we don't

generally record those meetings.

Q Why didn't you record what he had to say?

A Because we don't -- I did record them later on in an interview. Yes, sir. And he said exactly what he said in the meeting. Maybe with a few differences, but mostly the same information.

Q Well, in that later interview -- are you talking about in April?

A Yes, sir.

Q Okay. Well, in April he told you all that the clinic denied -- denied -- reuse of propofol on a Wednesday afternoon?

A I don't recall specifics of that. I don't remember that.

Q He said, Linda Hubbard denied -- Linda Hubbard, during -- Linda Hubbard, wrong name. I got her on my brain. Who am I starting to say? Who --

MS. WECKERLY: Tonya Rushing.

THE COURT: It's a --

MR. WRIGHT: Tonya Rushing.

BY MR. WRIGHT:

Q Tonya Rushing denied reuse of propofol. Do you recall that?

A That sounds familiar. Yes, sir.

Q Okay. He even contended that she said, no,

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you'll go -- go look in the Sharps containers, you'll find we just used 20s and there's a bunch of half-full ones in there, remember?

A Yes, sir.

Q Okay. Did anyone else? You've read Dorothy Sims, BLC, CDC, you've read the actual -- the incident report of Brian Labus, and there is nothing to substantiate what he said about them denying use of propofol, correct?

A I'm not sure where you're going. There's nothing that says that he denied the use of propofol?

Q There's nothing to substantiate that story he was giving you that the clinic denied multiuse of propofol?

A Well, I guess not. No, sir. I mean, it was a conversation he had with somebody else, so I can't --

Q Okay.

A -- I'm going off of what he says.

Q But you -- you knew -- you knew on March 5th that they had admitted it. It's in the BLC's report, correct?

A As far as him admitting reusing propofol? I mean, I know that there was -- yeah, there --

Q Right.

A -- there's multiple facets to that. I mean, there's the CRNAs they interviewed, there was --

Q I'm talking about the --

A -- this --

Q -- first moment they walked in. They walked in the door on Wednesday. We're here, there's an outbreak, tell us how you do this. And they gave them an hour and forty-five minutes explanation of the entire practice. And they said they used lidocaine and they used propofol and they multidosed both, correct?

A You're saying that's what they said the first time they met with Mr. Labus?

Q Yes.

A I don't know. I'd have to pull the recording and see what he said, or pull the transcript and see what he said.

Q Well, I know what he said. He told you all that they lied about it.

A Okay.

Q You had BLC and CDC and Brian Labus's own report shows that they admitted it, correct?

A Okay. Yes, sir.

Q Brian Labus incident-command form, January 9, 2008. 1515, what's that in police time?

A That's 3:15 in the afternoon. I'm sorry, that's kind of hard to see.

Q You got that right. Propofol with lidocaine is the primary anesthesia used and comes from multidose vials, correct?

A Who wrote this? Brian Labus?

Q Brian Labus.

A Can I see this real quick?

Q Yes.

(Pause in the proceedings.)

THE WITNESS: I'm not seeing where he attributes this specifically to Tonya Rushing. I'm seeing that he talks about contacted Tonya Rushing, and then he said, Met with staff from Endoscopy Center and Southern Nevada Gastrology Center of Nevada, and then he goes down to the bullet points of what I -- from what I'm taking is that he learned --

BY MR. WRIGHT:

Q Right.

A -- collected basic information about the clinic of general process used with patients and scope reprocessing; and then he goes down bullets, and one of them was propofol with lidocaine is the primary anesthesia used and comes from multidose vials. All medications are provided by the clinics to the CRNAs.

Q Correct. That's what's -- that's his report of what was learned on the first afternoon when he was there, okay?

A Okay.

Q And what did he tell you all when you interviewed him in April?

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A Well, from what you're saying, he told us that Tonya Rushing said that --

Q Denied.

A -- denied it. But this doesn't say that Tonya Rushing either admitted or denied it. This just says this is from the -- the staff or Tonya Rushing.

Q Oh, I see. Your interpretation was other people readily admitted it, but Tonya in the same meeting denied it?

A No. My interpretation is what's on here, which is, you know, he talked to several different people, not just Tonya Rushing.

Q Okay. What did he -- let's look at CDC's report. 1/9/08 in the afternoon at --

A Okay. (Witness complying.)

Q -- the entrance. Who was -- do you remember who was present at the meeting? It was Cliff Carrol, Tonya Rushing, Jeff Krueger. Two CDC's, three BLC's, and Brian Labus, right?

A I'm sorry. What -- say that again.

Q I was just saying who was present at the meeting --

A Which --

Q -- the entry meeting. You had -- you had three BLC's?

A Okay. The BLC's did the investigation at the

Burnham clinic, if I remember correctly. And as far as the initial meeting --

Q Right.

A -- I'm not 100 percent sure if they were there or not.

Q They were there.

A Okay.

Q Let me show you the incident commanders. Let me show you the incident commander.

A Okay.

Q Do you know who the incident commander is?

A I'm sure it's Brian Labus.

Q You got that right. He is a little short with himself at the top.

A Where do I fit on here?

Q A footnote.

A That's the way I like to stay.

Q Who is the investigation unit under the commander?

A The investigation unit is listed as Gayle Fischer, Nadine Howard, Melissa Schaefer, and Dorothy Sims.

Q Okay. And you understand Dorothy Sims and Nadine Howard are with BLC?

A Yes, sir.

Q Okay. And Schaefer and Fischer are with CDC?

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A Yes, sir.

Q And this BLC report -- I mean, because they were there that day.

A Okay. This part right here?

Q Yeah, what's it show they learned at that entry meeting?

A It says, Interview, at the top here, and it says, On 1/9/08, in the afternoon the charge nurse indicated the propofol was utilized as a multidose vial to induce sedation during a -- the endoscopic procedure. The propofol would be discarded at the end of the day.

Q Okay. And so that appears to you and appears to me that was readily admitted when they walked in the door, correct?

A Yeah, that would have been the charge nurse, so I'm thinking that's either Katie Maley or Jeff Krueger, whichever would have been considered the charge nurse at the time.

Q Jeff Krueger was the charge nurse.

(Pause in the proceedings.)

BY MR. WRIGHT:

Q Now, I don't want to forget this. Where is Vinnie? January 8, how do we tell?

A All right. We -- these are the endoscopy registers that were located -- well, this one would have been

located at -- there was two sets of books. One were taken from the search warrant at the Endoscopy Center of Southern Nevada or -- yeah, the Endoscopy Center on Shadow Lane, and then the second set of books were later received as part of the subpoena from the attorneys of the -- so if these were from the Shadow Lane one, these would be -- and each one of these were done by day, so every procedure that was done is listed in here by day, and then they write out each procedure, what was done and who was there.

Q All right. So if -- and we can do it for every single day. So, like, when we heard all this testimony in the courtroom about when in the fall of 2007 Dr. Desai -- after he had his stroke and then Dr. Carrol reduced the patient load and the numbers go down and all those different things about the date, we could look at every single day in there and just see exactly what was happening as to patient load and who was there, correct?

A Yes, sir.

Q Okay.

A And it's --

Q Look --

A -- for January 8, '08, it was Sagendorf that was there.

Q Okay. And it was January 11, would have been the interviews -- they went in on the 9th, that was Wednesday,

January 9, 2008. January 10, they did short reviews. January 11, they did their observations and talked to people. And so was Vinnie Mione there?

A I've got Mathahs, Hubbard, and then in the afternoon I have Sagendorf.

Q Okay. So theoretically Brian Labus talked to Abinde [phonetic] on that day --

A And then Sagendorf.

Q -- or even Sagendorf?

A Yes, sir.

Q And of course, Mr. Sagendorf denied any such conversation, correct?

A Yes, sir.

Q Even though that ends up -- in the report of Brian Labus that it was Vinnie Mione that told him that, right?

A Well, again, that would have been my fault. I thought it was Vinnie Mione, at the time and I was the one that said it.

Q When did you figure it out?

A That it was Vinnie Mione or...

Q That it was an error where you had --

A I don't know. A while back.

Q How far?

A Sometime during these last two months.

Q Okay. During the trial?

A Right.

Q Okay. Because before that do you remember Mr. Mione getting grilled during the interviews, and being told that he -- you're just not being honest with us?

A Yes, sir.

Q Okay. And of course, he's getting grilled and being told, you're not being honest with us, Mr. Mione. All upon a bogus story from Mr. Labus, correct?

MS. WECKERLY: I'm going to object to that mischaracterization.

BY MR. WRIGHT:

Q Okay. And --

A Well, again --

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

BY MR. WRIGHT:

Q All based upon an inaccurate statement attributed to him, correct?

A That would have been my fault. Yes, sir.

Q Who's Detective Ford?

A Detective Ford was a -- I worked with him in intel back in 2005, 2006, and 2007.

Q Okay. Do you remember that Detective Ford -- well, was firmly convinced it was the scopes?

A That was one of the theories that was put out

there. Yes, sir.

Q Okay. And do you recall that that's the theory he believes?

A As to this day, I don't know what he believes, but back then he mentioned that's what he thought, yes. So we looked into that.

Q Okay. And do you recall stating that we'll never be able to resolve it and prove it one way or the other?

A I don't recall saying that, but, you know, if -- do we want to get into the --

Q Well, when --

A -- proof and what, you know --

Q -- what I'm thinking of is when you were interviewing Melvin Howard -- Melvin -- what's his last name?

MS. STANISH: Hawkins.

MR. WRIGHT: Hawkins.

BY MR. WRIGHT:

Q Melvin Hawkins.

A I think you're talking about two different situations, okay? I mean, proving that --

Q I'm talking about --

A -- being --

THE COURT: Well, wait.

BY MR. WRIGHT:

Q -- the interview --

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THE COURT: We have to answer the question --

BY MR. WRIGHT:

Q -- of Melvin Hawkins.

THE COURT: -- and you already know that -- that --

THE WITNESS: I was going to --

THE COURT: -- Ms. Weckerly, I forget, it's been -- I forget whose witness you were, but whichever one is going to be able to come back and, you know, ask you to clarify and expound on conversations that you may testify about on cross-examination, so...

THE WITNESS: Yes, ma'am.

BY MR. WRIGHT:

Q I'll let you expound once I get to where I'm going.

A Okay.

Q Okay. Melvin Hawkins?

A Yes, sir.

Q In her -- his interview -- first interview, which would have been in April 2008, by then Southern Nevada Health District interim report had been released at the end of March 2008, I think. Three -- March 28, 2008. Do you recall the interim report of the Southern Nevada Health District?

A (Witness reading report.)

Q I'm not going to question you on the whole thing.

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A I'm just trying to --

Q That's a long report.

A -- refresh my memory. It's, you know --

Q Okay.

A -- there's a ton of stuff --

Q Well, you recall --

A -- in here.

Q -- that that came out, an interim report of the Health District?

A I don't recall specifically ever seeing this.

Q Okay. Do you recall Brian Labus stating that they had difficulty sending out letters to patients because they couldn't get a good list of the patients from the clinic?

A That sounds familiar but I -- we wouldn't have been involved in that at all, but yes, that sounds familiar.

Q Okay. And so that -- the letters went out on the 27th of February, and by March 10th you all had these books, correct?

A Yes, sir.

Q And you had every -- you had all their computers, correct?

A Yes, sir.

Q And so that all Brian Labus needed to do was contact you all, and he would get all of the information that the clinic had about every patient going back four years,

correct?

A Yes, sir.

Q Now, do you recall on the interview of Melvin Hawkins, Detective Ford saying that it's just got to be the scopes?

A I was there, right? Because there was -- I thought there was two interviews with him.

Q Detective Whiteley --

A Yes.

Q -- Detective M. Ford, and Melvin Hawkins?

A Yes.

Q And do you recall saying, Well, it's -- the thing is, like I said, it's not -- it's not -- I don't know if we're ever going to really find out the true -- I mean, we'd have to test the vials and test the syringes, and that would be impossible now.

A Well, I'd have to see what that's in reference to front and back.

Q 44 and 45.

A (Witness complying.) Okay.

Q Did I read it accurately?

A Kind of.

Q Kind of? Am I taking it out of context? Am I being unfair?

A A little bit.

Q Okay. Straighten me out.

A Well, it's like they said, nobody -- nobody was there, I wasn't there. I mean, there's two kind -- two kinds of cases you can do, a historical or a realtime. And so when you do, like, a historical case you're talking about homicide, robbery investigations, stuff like that. When you do a realtime case, that means you're actually there watching the crime as it occurs.

So what I'm referencing to here is we would never be able to prove which vial was used, we would never be able to test the syringes to test for hepatitis C. But I continue on to say that there was unsafe injection practices and that is the likely mode of transmission.

Q Because Brian Labus had already come out three weeks earlier with his serial-contamination theory, correct?

A I don't remember hearing serial --

Q Okay.

A -- contamination theory, but --

Q I don't want to misquote the incident commander either.

A Right.

Q But it says, The continuation of this practice over the course of the day could have serially contaminated the vials.

A Right.

Q Have you seen Brian Labus put on his presentation on the serial-contamination theory?

A No, sir. I'm not that into it.

Q You all did not do a legal analysis of purchases?

A We've got that information and they're counted out. I mean, you -- absolutely, but we didn't include that in our analysis because of the fact that they used venting spikes along the way and it would have been inconclusive because we didn't know conclusively which CRNA's absolutely used venting spikes all the time as opposed to needles. So we couldn't put that in as a factor.

Q Okay. But if I've -- if I follow it correctly -- if we're talking about that device on that 50cc propofol vial --

A The venting spike. Yes, sir.

Q -- which I use for needle -- needleless filling --

A Right.

Q -- I still use a needle every single time on the injection?

A No, I think there's a system where you can put the -- hook the syringe up to the venting spike and it's actually a needleless system, and then you put it in and you hook it up directly to the IV line, the heplock.

Q Okay. So you -- you are under the opinion that they use -- there's a method being utilized at Shadow Lane that was needle -- needleless on the draw, as well as needleless on the injection?

A I don't know that for sure, but that's what I thought some of them did.

Q Okay. And so that -- that would throw off an entire needle calculation because there could be injections without needles?

A Right.

Q Yeah. In your investigation you were aware that Dr. Desai's medical license no longer exists as of, like, January 2010; is that correct?

A I don't remember the exact date, but I know at some point it was surrendered.

Q Okay. And you've followed the federal bankruptcy proceedings?

A I know there was a federal bankruptcy. Yes, sir.

Q Okay. And you know he went through bankruptcy and has nothing?

MS. WECKERLY: Objection. Assumes a fact not in evidence.

THE COURT: Well --

MR. WRIGHT: Well, that's --

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THE COURT: -- if that --

MR. WRIGHT: -- I'm trying to get them into evidence.

MS. WECKERLY: Well, if he doesn't know, then --

THE COURT: Wait a minute. Then --

MR. WRIGHT: Well, I don't know --

THE COURT: -- then --

MR. WRIGHT: -- that he doesn't know.

THE COURT: Well, the question -- you can ask him if
he --

MR. STAUDAHER: Your Honor, could we approach on
this, please?

THE COURT: Well, there's actually two questions
there. Go -- you can approach.

(Off-record bench conference.)

THE COURT: All right. Mr. Wright, rephrase your
question.

BY MR. WRIGHT:

Q Are you aware he went through a bankruptcy
proceeding?

A Yes, sir.

Q Thank you. That's it.

A Thanks.

THE COURT: That's all the --

BY MR. WRIGHT:

Q Painless.

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A Yeah.

MS. STANISH: Your Honor, I was going to do part 2.

THE COURT: Oh, that's right.

MR. WRIGHT: Oh, right. Right.

MS. STANISH: Do you want to take a --

THE COURT: We got all happy --

MS. STANISH: -- break or --

THE COURT: -- here. Okay.

MS. STANISH: -- yeah, sorry.

MR. WRIGHT: Totally different topic.

THE COURT: Okay.

MR. WRIGHT: I don't understand it.

THE COURT: All right. The Court will give you leave to -- both of you conduct the cross-examination, although normally, as we know it's one lawyer, but I will allow you to do it this way.

So, Ms. Stanish, you may proceed on your part of the cross-examination.

MS. STANISH: It will be less painful, I hope.

THE WITNESS: I've got to go through both of them?

MS. STANISH: Right.

THE COURT: But I did say that Ms. Weckerly and Mr. Staudaher can now both do redirect, if that makes you feel any better.

THE WITNESS: No.

MR. WRIGHT: Yeah, more lawyers talking to you.

MS. STANISH: Yeah, great.

THE WITNESS: Right.

CROSS-EXAMINATION

BY MS. STANISH:

Q All right. Got a lot of paper I need to organize, so bear with me. All right.

Detective, I want to review some points in the supply analysis. You have mentioned that you worked hand in hand with Ms. Sampson in that regard. And we had her testimony already about a comment made by you in a report that at the time of the infection the price of the 50-milliliter and 20-milliliter vials were the same?

A There's two parts to that report, and in one section, you're right, it did -- what do you mean the same?

Q Well, your -- as I understood your report, and correct me if I'm wrong, when you commented at the time of the infection, the price of a 50-milliliter vial was the same as the price as a 20-milliliter vial?

THE COURT: Per milliliter; is that what you mean?

MS. STANISH: Correct. Yeah, good point.

THE WITNESS: I don't specifically recall that. I know there's two spots in the report that I -- that I put the prices down. There was one towards the beginning, and I think I put a price range from, like, \$2 to 13, and then for the

50-milliliter I put a price range from, like, 5 to 17 or something like that --

BY MS. STANISH:

Q And --

A -- and then towards the back I quoted another price again. One was, like, 3 and then one was, like, 7 or something like that. But I think -- from what I understand, and I got those figures from Nancy's report, was that there was a variation in prices for each one.

Q Do you need to see the report or --

A If --

Q -- on whether or not the prices were the same per milliliter at the time of the infection, or do you agree --

A Yeah, if you've --

Q -- with that?

A -- got that, I'd like to --

Q I'm sorry?

A Yeah, I'd like to see it --

Q Sure.

A -- if I could.

Q And I'll just point out a few --

A Okay.

Q -- things for you to save us all time, okay?

A Okay.

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Q There's a price tag there. And then I also have what [inaudible] --

A Okay.

Q So why don't you just -- and maybe I'll go back there.

A (Witness complied.) And what -- I'm sorry, where's the part that it says the same?

Q Well, where is it? Oh, maybe we have to do math. Oh, no.

A Don't tell me we got to do math.

Q No, I know. I don't either.

A Let me see, right here. Hold on.

MR. WRIGHT: No whispering up there.

MS. STANISH: Okay. I'm reading to myself. We both have to read out loud through our head.

BY MS. STANISH:

Q Well, if you read the whole thing there to yourself.

A Okay. (Witness complied.) Okay. It's -- that's --

Q What do you think?

A That's attributed to what Krueger said.

Q Okay. I'm afraid we're going to have to do the math.

A Okay.

Q So I've already tested it. Why don't you tell the jury at the time of the infection what was the price of a 20-milliliter vial per vial?

A Okay. As far as what I've got here, it's 2.28 per vial for the 20 milliliter and 5.70 per vial for the 50 milliliter.

Q Okay. Watch this. So there's 2.28 -- \$2.28, divide that by 20 milliliters, what do you get?

A 0.114.

Q And let's -- what's the price of the 50-milliliter vial? Over here. The price of the 50-milliliter is what?

A Oh, it's 5.70. 0.114.

Q It's the same --

A Well --

Q -- per milliliter?

A -- right. According to that little section, but again, up-front here I discuss that there is a price range between them, so...

Q Okay. Hang onto that calculator.

A And I think probably the best place to look would be the actual files itself.

Q You know, you're right about that. Now, State Exhibit 175 is Ms. Sampson's summary of the propofol based on subpoenaed invoices, correct?

A Yes.

Q All right. And you're aware in a -- you were in court when Ms. Sampson testified, correct?

A Yes, ma'am.

Q And -- you don't have to call me, ma'am. I've known you too long to be called ma'am by you. You recall that we -- we discussed Agent Ramirez's report that utilized the same information that Ms. Sampson had compiled with respect to the propofol orders?

A Yes, ma'am.

Q Except they're --

THE COURT: There you go again.

THE WITNESS: I'm sorry.

MS. STANISH: I know, he --

THE WITNESS: It's habit.

MS. STANISH: -- he can't help it.

THE WITNESS: Sorry.

MS. STANISH: That's his gumshoe days, he called me ma'am. And I'll call you --

THE COURT: You use terms like "gumshoe", Ms. Stanish, you deserve to be called "ma'am."

MS. STANISH: I know. You don't know how -- well, I won't go there.

BY MS. STANISH:

Q The difference between the two reports, however,

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is that Agent Ramirez included the price per unit in her report derived from the invoices, correct?

A I don't remember that part, but yes.

Q Well, let me provide you a copy. I'll give the State a copy too.

MS. STANISH: I'd like to have this marked, Your Honor.

THE COURT: Okay.

MS. STANISH: It's -- it's --

THE COURT: Okay.

MS. STANISH: -- propofol with price --

THE COURT: It's just a --

MS. STANISH: -- spreadsheet.

THE COURT: -- okay, charts.

MS. STANISH: A summary chart. Propofol with --

THE COURT: Next in order --

MS. STANISH: -- price.

THE COURT: -- I think would be V1; is that correct? That's Proposed V1.

BY MS. STANISH:

Q Here you go.

A Okay. Thanks.

Q Now, if you need to look at invoices, I have the invoices that match all that. But if you're comfortable with it after reviewing it, let me know.

A (Witness complying.)

Q And if you like, I can give you Ms. Sampson's report, and you can even do a spot check comparing them.

A Sure.

Q You got it? All right.

MS. STANISH: And, Your Honor, what I might suggest if you want to take a break, he can use the break time to review this a bit closer so we can go through it quicker.

THE COURT: All right. We can take our afternoon break now. We'll take about 15 minutes for the break.

And, ladies and gentlemen, during the break you are reminded that you're not to discuss the case or anything relating to the case with each other or with anyone else. You're not to read, watch, listen to any reports of or commentaries on the case, person or subject matter relating to the case. Don't do any independent research, and please don't form or express an opinion on the trial.

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

(Jury recessed at 2:08 p.m.)

THE COURT: I'm thinking the State won't be resting today?

MR. STAUDAHER: No, and I wanted to -- I've just gotten an update --

THE COURT: Okay.

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MR. STAUDAHER: -- while we were there. Ms. Hubbard is on her way down here. She expects to be here at 3:00.

THE COURT: Okay.

MR. STAUDAHER: I know we're still involved in this witness --

THE COURT: Okay.

MR. STAUDAHER: -- it's my --

THE COURT: Do we want to -- are you suggesting maybe calling her out of order, or...

MR. STAUDAHER: We were just going to call her, and then I think that with the 3:45 time that probably -- I don't know what it's going to take, but I was going to call our corner off and have her come back --

THE COURT: Yeah, I don't see --

MR. STAUDAHER: -- Monday and finish with her.

THE COURT: -- I mean, I don't know how much more you have, Ms. Stanish, and I don't know what you guys intend. I mean, it doesn't seem like Ms. Hubbard is going to be too long.

MS. STANISH: What I would propose doing -- well --

MR. WRIGHT: I -- after my examination of him, I'm not going to call her.

THE COURT: You're not going to -- you don't want to recross her now?

MR. WRIGHT: Correct.

THE COURT: Okay. Well, then let's just talk about timing.

MR. WRIGHT: Well, I didn't know.

MS. WECKERLY: Okay. Well, that's --

THE COURT: Okay. Well, then --

MR. WRIGHT: I don't think that will change anything.

MS. WECKERLY: Okay. Well, then would we have time to do Dr. Olson today?

MS. STANISH: Well, here's what I'd like to do to streamline -- no, really, to streamline this. This is why I wanted to take --

THE COURT: You want him to --

MS. STANISH: -- a break --

THE COURT: -- look at that. Look at that.

MS. STANISH: Yeah, and I want to -- if you guys --

MR. STAUDAHER: Do I need to call her off, first of all?

MS. STANISH: Yeah, call her.

MR. STAUDAHER: I mean --

THE COURT: Well, I don't know. I want to go right until 3:45. Now, if -- I don't know how much Mr. Santacroce has; I don't know how much more. So you guys work amongst yourselves --

MS. STANISH: Sure.

THE COURT: -- and figure it out, but I do want the

record to be clearly reflected that the State immediately took action at the Court's direction, at Mr. Wright's request, to get Ms. --

MS. WECKERLY: Hubbard.

THE COURT: -- Hubbard back. They sent their investigator out and they have her coming this afternoon. So I want it very clear on the record that the State took the action that the Court asked them to take, and the witness is here and available. And then it's your choice, Mr. Wright, whether or not you want to call her.

MR. WRIGHT: Correct.

THE COURT: Okay. Well, I just want that to be clear

--

MR. STAUDAHER: So do we still want --

THE COURT: -- so there's nothing --

MR. STAUDAHER: -- her to come, is what I want to know?

MR. WRIGHT: No.

THE COURT: No. Okay.

MR. STAUDAHER: Okay.

THE COURT: So you are directing Mr. Staudaher to call her off?

MR. WRIGHT: Correct. I don't want --

THE COURT: Okay. Well, I just --

MR. WRIGHT: -- Mother Hubbard back on the stand.

THE COURT: Okay. Well, I want it clear on the record because otherwise it's all not, you know, not on the record, and somebody down the road can say, oh, well, she wasn't available for cross and then that's the record we have. So the record needs to be she is available. All right.

MS. WECKERLY: So, Margaret, what do you --

MS. STANISH: I wanted to --

MS. WECKERLY: -- what's your thought?

MS. STANISH: -- come -- come hither. Because I want to streamline this. I was up very late last night.

(Court recessed at 2:11 p.m. to 2:32 p.m.)

THE COURT: Kenny, I think they're ready. The jury is coming in a minute. Mr. Wright, I don't know if you --

I can only do what I can do.

MR. STAUDAHER: And, Your Honor, as far as Ms. Stanish, she's shown us some documents. We don't have any -- any problem with them.

THE COURT: Okay.

MR. STAUDAHER: As well as her analysis on the --

THE COURT: Her chart?

MR. STAUDAHER: Yeah.

MS. STANISH: The other chart with the price.

MR. STAUDAHER: Although, I guess, it's your witness. I'm sorry.

THE COURT: So who is left?

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MS. WECKERLY: Olson.

THE COURT: That's it?

MR. STAUDAHER: Olson. Yeah, and we could not --

THE COURT: Who was the Asian guy in the vestibule all day?

MS. WECKERLY: I don't know.

MR. STAUDAHER: Ms. Hubbard may actually show up. We could not get ahold of her.

THE COURT: There was an Asian guy who kept looking in the window there, and I asked -- I said -- told Kenny go find out who that is, and he said he was a witness.

MR. STAUDAHER: And, Your Honor, we're going -- we've taken --

MS. WECKERLY: Not that I know of.

MR. STAUDAHER: -- we've taken one of the --

THE COURT: Your Dr. Jurani showed up.

MS. WECKERLY: I know.

MR. STAUDAHER: Yes. He was called off. We --

MS. WECKERLY: He was called off but he didn't get -- I guess his message service didn't tell him.

THE COURT: Okay.

MR. STAUDAHER: Also, we took back -- although we've provided them today, we've taken back 155, which is one of the charts. Now we're going to fix it to conform with what's about to come in which we have agreed to. So we'll change

this chart and then we'll bring the other one back tomorrow.

THE COURT: Okay.

MR. STAUDAHER: Well, I guess not tomorrow, but --

THE COURT: Bring them in.

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

(Jury entering at 2:34 p.m.)

THE MARSHAL: Thank you, everybody. You may be seated.

THE COURT: All right. Court is now back in session.

And, Ms. Stanish, you may resume your cross-examination.

MS. STANISH: Your Honor, during the break the parties agreed to stipulate to the admission of certain documents to save the jury a lot of pain.

THE COURT: Okay.

MS. STANISH: And that would be this first document, V, as in Victor, 1, which is the spreadsheet prepared by Agent Ramirez that contains the sale price per package of propofol.

MS. WECKERLY: That's correct.

THE COURT: All right. That will be admitted, then.

(Defendant's Exhibit V1 admitted.)

MS. STANISH: And then the next document is a -- a summary chart, Your Honor, which we -- which is marked as --

THE COURT: Probably W1.

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MS. STANISH: -- W1.

THE COURT: Right.

MS. STANISH: And this is a summary chart that we'll probably start off discussing; that is basically a -- involved a lot of math, and it is the price per milliliter in the -- comparing the 20-milliliter vial with the 50-milliliter vial.

THE COURT: Okay.

MS. STANISH: So if we could start from there.

THE COURT: All right. No objection? State?

MS. WECKERLY: No objection.

THE COURT: All right. That will be admitted as W1.

(Defendant's Exhibit W1 admitted.)

THE COURT: And go ahead, Ms. Stanish.

BY MS. STANISH:

Q So, Detective Whiteley, sir, we talked about how Agent Ramirez in Defense Exhibit V1 used the information from Nancy Sampson's chart to plug in the -- the price per unit onto the chart. And when we look at our summary chart of this information, we see that the -- if we -- help me out here. If we look at the -- looking at -- I'm going to try to fit this on the screen here. I'm going to start with Baxter. This is the summary chart, like the spreadsheet is divided between the two companies, Baxter and McKesson.

And just -- let's just quickly go through an example so that the jury gets an understanding of how these documents

work together, and then we'll move on. At the top of the summary chart for the -- with a price it shows that from January 5th of 2006, to February 1st, 2006, 20-milliliter vials cost how much per unit?

A We're looking at January 6, right here?

Q Oh, yeah, you don't have the whole chart. Now you can't see it. That's the -- that's the --

A I thought you were trying to trick me.

Q -- dilemma with this. I am always trying to trick you, just like you do. And so we -- we have the sale price -- can you see it now?

A Yes.

Q -- for the 20th?

A Sale price, it looks like it says 132.5.

Q So 50 cents, right?

A Yep.

Q And that's -- if we go to our summary chart, it's -- it's that first line there \$132.50 per pack. We go back here, there are 25 vials in each pack, correct?

A Yes.

Q And then if we do the math which we've done in advance, we try to come up with the price per vial, and the way we do that is by division -- this is so Sesame Street, like, I know -- and we divide 25 vials into 132.50 and we come up with the per-vial price of \$5.30, correct?

A Yes.

Q And then we divide the volume of the 20-milliliter vial to come up with the -- what is the price per milliliter and so we divide 20-milliliters into \$5.30 and we get -- what figure is that?

A 0.265 per millimeter.

Q So that's, like, 26.5 cents per milliliter. And to continue now to the comparison of the 50-milliliter vials, the spreadsheet here. Using the same dates of January 2006 to February of 2006 shows that the price of the 50-milliliter vials is how much per unit?

A I think you got to scoot it --

Q Can you --

A -- over.

Q -- see it?

A Is this it right here?

Q Yeah, I'm trying to keep you involved so I'm not talking.

A January 5, 2006, would be 2.65.

Q And then it was the same price in February, correct?

A Yes.

Q And so if we go back to the summary chart here, we can do the same math to come up with the price per vial, and there's 20 vials in each package when we're talking about

the 50 milliliter propofol vials, correct?

A Yes.

Q And so when we divide that all out, it comes to \$13.25 per vial, and how much does that cost per milliliter? We divide 50 into \$13.25 and we come up with what figure?

A 0.265.

Q So 26.5 cents. The exact same price as the 20-milliliter vials, correct?

A Yes.

Q And were we to continue this discussion for the next half-hour, we would -- just to summarize -- go through the summary chart, when we look at the month of September 2006, comparing the 20-milliliter vials to the 50-milliliter vials, what is the price per milliliter of the 20-milliliters?

A In September 2006 they both were 0.15, 15 cents.

Q And is that the same price for the same time period for the 50-milliliter vial?

A Yes.

Q And then we move to the month of October of '06. The -- what is the per-milliliter price for the 20-milliliter vials?

A October of '06 for the 20-milliliter is 0.1475, so 14 and three-quarters.

Q And then how does that compare with the 50-milliliter vials?

A The 50-milliliter vials is 0.1476.

Q Wow, we have a price difference there, don't we?

A Mm-hmm.

Q The price of the 50-milliliter vial is one ten-thousandth of a penny more --

A Right.

Q -- than the 20-milliliter vial, correct?

A Yes.

Q Now, we move to the next time frame of November '06 to April '07. The price didn't change for several months for the 20-milliliter vials, and the per milliliter vial -- price per milliliter of the 20-milliliter vials were how much?

A 20-milliliters were 0.133.

Q So 13.3 cents per milliliter. Same price for the same time frame of -- for the 50-milliliters, correct?

A Yes.

Q For the month of May, what is the price per milliliter for the 20 -- I'm sorry. May of 2007, what is the per-milliliter price for the 20-milliliter vials?

A 12 cents.

Q And is that the same price for the 50-milliliter vials for the month of May 2007?

A Yes.

Q And moving to June of 2007, what is the price per milliliter of the 20-milliliter vials?

A 0.1185.

Q And what is the price for the same time frame for the 50-milliliter vials?

A 0.1186.

Q Once again a one ten-thousandth difference, with the 50-milliliter being more, correct?

A Yes.

Q And then moving down to September of '07 -- the month of the infection through February 2008, what was the per-milliliter price for 20-milliliter vials?

A It's 0.114.

Q And that's the same price for the 50-milliliter vials for the same time period, correct?

A Yes.

Q Fair statement --

A Fair statement.

Q -- to say that the price of the 50-milliliter vials corresponds to the 20-milliliter vials?

A Yes.

Q Were you in court on the day that the State presented -- during Mr. Krueger's testimony, Government's Exhibit 172? This was -- do you recognize State Exhibit 172, or do you want me to walk it up there?

A Yes, that looks familiar.

Q This was presented, was it not, to show the

price between the 20-milliliter vial and the 50-milliliter vial?

A Can I see the second page?

Q Sure. Government Exhibit 172, and let's just -- maybe you can explain this to us. This document was seized off a computer, correct?

A Yes.

Q And this handwriting that's on top of State Exhibit 172, that is how Metro cataloged this document that it extracted from a computer, correct?

A Yes, ma'am.

Q And am I right to assume that this was taken off a computer used by Jeff Krueger, since his name is on there?

A I don't want to say that for sure, but I could say that he was involved in that document in some fashion.

Q All right. And this date of November 5, 2007, reflects what?

A The date that the document was made.

Q Is that a -- is that your answer, or are you guessing?

A I'm guessing at that. I'd have to look at the whole document.

Q I'll give you Government Exhibit 173 also.

A Okay.

(Pause in the proceedings.)

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THE WITNESS: I'm trying to look for a date on here.

BY MS. STANISH:

Q Go back to the first page.

A I don't see one.

Q I believe Mr. Krueger testified he somehow deciphered this document to at least come up with the month. So my question, though, is when you put -- when -- this is your computer tech guy, or gal, who put the date of November 5, 2007, to reflect the date of this document?

A Right. That's what I would imagine it would be. There would be -- in the computer disc itself there would be a date stamp on there, and that's probably what was written on the front there.

Q I mean, that's according to procedure. When you're extracting evidence from a computer, you have to document the date the document was created, right?

A Right. I'm not a computer guy, but I would -- right. Okay.

Q Okay. So this document -- tell the jury what it says about the propofol that was ordered on that date of what looks to be November 5th of 2007.

A All right. The propofol was -- it says, SDV 10 milligram -- milliliter, 50 milliliter.

Q So they're 50-milliliter vials?

A Yes.

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Q And what is the quantity -- how many packages were purchased?

A 12.

Q And the 50-milliliter vials come 20 vials to a pack, correct?

A It says 20cf, so I'm assuming that's the count.

Q Okay. And if we were to multiply 12 by 20, we're talking about 240 vials that were ordered on that particular day, correct?

A Right.

Q Can you look on -- do you still have Ms. Sampson's summary in Exhibit 175?

A Yes.

Q Do you see that particular order in the spreadsheet?

A Nope.

Q No?

A No.

Q Do you see anything anywhere around -- this might be the order date, correct?

A Right. I mean --

Q But do you see anything that reflects -- what was the price on the order form, by the way?

A 200 and -- or actually, the total was \$3,257.16.

Q Well, that's because they ordered many other

items from -- is it McKesson?

A Well, I think the price was -- it says \$271.43, but I think that's per flat, and they ordered 12 flats.

Q Okay. So \$271.43 for -- per flat, that's the unit price, correct?

A Right.

Q And they ordered 12? The quantity was 12?

A Right.

Q And you don't see on Nancy Sampson's spreadsheet anything that would be -- what is --

A No, she didn't put the price on the spreadsheet.

Q Okay. But do you see 240 vials of 50 milliliter propofol being received on or about November 5, 2007?

A No.

Q Is it possible she missed that -- or that, rather, McKesson didn't provide her the information pursuant to a subpoena?

A Well, we know there was dates that McKesson didn't provide, so...

Q Well, we'll get to that in a moment.

A Right.

Q But this information was available on the company's computers that you seized, correct?

A Right.

Q Let's -- let's move now to State Exhibit 173.

If you would turn to page 2 of that. This is the 20-milliliter vial, and can you tell us what the date on Government Exhibit 173 is?

A Oh, the date? 12/13/06.

Q For 20 milliliter, right?

A Oh, I'm sorry.

Q Is that the 20 milliliter order?

A Okay. There was a -- yes, 20 milliliter.

Q How many flats did they purchase?

A Like, four in a box of 25 count.

Q So 100 vials of 20 milliliter propofol ordered on December 13, 2006, correct?

A 100 vials?

Q Vials. Didn't I get that right? You said there were 4 flats with 25 vials in each?

A Yes. I guess you're right, sorry.

Q My math is correct?

A Yes, your math is correct.

Q Thank you, sir. And the -- what was the unit price that's listed there?

A 379.64.

Q Okay. Now, I want to -- I do have to -- bear with me as we do a little bit of math because this is what the State presented through Mr. Krueger's testimony, correct?

A Yes.

Q Do you remember that? And if we look at the -- I want to figure out the price per milliliter between what the State used as a comparison between the price of the 50 and the 20-milliliter vials. All right?

A Yep.

Q So if we start with the 50, we have the price of \$271.43, right?

A Yes.

Q And we divide that by the number of vials -- let's see if I do that right. Oh, the vial per pack. That's the per-pack amount \$271.43. So we divide that by the number of vials in each pack, 20, and we get \$13.57. And if we want to know the price per milliliter, we divide that figure further by 50 and we come up with -- up 27 cents, right?

A Yes, ma'am.

Q For the 50. Do the same exercise for the propofol, the 20 milliliter that was purchased over a year before the 50 milliliter, divide that by the number of vials, which was 25, we get \$15.18 per vial, and the per-milliliter amount, divide that by 20 is a whopping 75 cents. So amazingly, even though we have this document that shows in Defense Exhibit W1 per-milliliter prices being almost identical except for the two occasions where the 50-milliliter vial is one ten-thousandths of a cent more, what the State presented to this jury is this comparison between November 5th

of '07 for the 50 milliliter to prove, somehow suggest, I should say, that the price per propofol for the 50 was much cheaper than the price for the 20, correct?

A Yes, they're two different dates.

Q Yeah. And can you tell me whose decision it was to select the highest price that the 20 milliliter sold for? I mean, take a look at the Ramirez spreadsheet with the price.

A Which one?

Q Do you got that up there?

A No, I don't have that, sorry.

THE COURT: I think it's the V1.

BY MS. STANISH:

Q I think you might have it up there. I just have rough draft. Well, I do have it. By the way, do you have -- let me give this to you because I want to see if you can find it. But can you even find that order for December 13, 2006, for the 100 vials with that flat rate that was \$379.65 and -- and I -- is that -- I believe that's McKesson.

A Which date are you talking about?

Q I'm talking about, you know, you couldn't find the 50 milliliter order on Nancy Sampson's spreadsheet, I'm wondering if you can also see if you can locate the order for December 13th of 2006?

A (Witness complying.) There's not one for December 13, but there's one on December 14.

Q Okay. So that's possibly the -- does it match up?

A Let me see. No, they're two different prices.

Q So we're missing another invoice, do you think?

A Yeah, this one on the 14th is \$301.99.

Q You don't --

A So I don't know -- these came off the computer so I don't know if they were ever executed or if they were actually purchased. So we --

Q Well, I mean --

A -- we went off of what we got from the companies, what we subpoenaed from the companies.

Q So let's talk about, then, the decision to use that exhibit -- Exhibit 272 and Exhibit 273. Let's talk about the decision to present that to the jury.

A It wasn't my decision and I couldn't tell you who made that decision to present this.

Q Who handed that exhibit to Mr. Krueger to testify about it?

MS. WECKERLY: Objection.

BY MS. STANISH:

Q Were you here in the court?

A I think so for Mr. Krueger.

Q It's the State's Exhibit; is it not?

THE COURT: Well, I mean, the jury will remember

which attorney questioned Mr. Krueger.

MS. WECKERLY: Well, yeah, but my -- it's still --
what's the relevance --

MS. STANISH: Oh.

MS. WECKERLY: -- of which attorney?

MS. STANISH: All right. You're right.

BY MS. STANISH:

Q This is a State exhibit not a Defense exhibit,
correct?

A Yes, ma'am.

Q The State exhibit shows a price difference that
is nearly three times difference between the 50 milliliter and
the 20-milliliter vial, correct?

A Yes, ma'am.

Q That's the State exhibit, correct?

A Yes, ma'am.

Q And the Defense exhibit shows, instead of taking
a comparison over a year apart, matches them month by month to
show that they're the same price; am I correct?

A Yes.

Q My question to you is, when we're looking for
the truth, which exhibit should we rely on?

A All of them.

Q All right. That's your answer? Your final
answer?

A Well, I mean, in my report I wrote that Jeff Krueger said they're the same price, I put the prices down, he did the math, and it shows in my report that that's what turned out, so...

Q True. Your report was objective. Was the evidence presented in court, was that objective?

MS. WECKERLY: Objection. That's the --

THE COURT: Yeah, that's sustained.

MS. WECKERLY: -- for the jury to determine.

BY MS. STANISH:

Q Do you think this is a fair comparison of prices between the two vials when they're a year and one month apart?

A It's an inaccurate comparison.

Q It is an inaccurate comparison?

A Yes. Yes.

Q Now --

MS. STANISH: Judge, during the break we also, for the sake of expediency, as much as we can, we stipulated to Defense Exhibit X1.

THE COURT: All right. And that's a bunch of invoices -- or several invoices, anyway?

MS. STANISH: Invoices and shipping documents of propofol to the Burnham address.

THE COURT: State, is that correct, X1 is stipulated to?

THE CLERK: X and Y1.

THE COURT: Okay. Apparently there are two exhibits that have been marked.

MS. STANISH: X1?

THE COURT: One is one -- X1 -- one has been marked as X1; is that --

MS. STANISH: Oh, I see what you did.

THE COURT: And the second is marked as Y1.

MS. STANISH: No, that was clever. Okay.

THE COURT: So those will both be admitted as --

MS. STANISH: Okay.

THE COURT: -- X1 and Y1.

MS. STANISH: Great.

(Defendant's Exhibit X1 and Y1 admitted.)

BY MS. STANISH:

Q Now, during the break you had an opportunity to review these documents, correct?

A Yes.

Q And you had -- I understand that Ms. Sampson relied in large part on the responses of the companies to subpoena?

A Yes, ma'am.

Q But you had also seized, as you discussed earlier, voluminous documents, correct?

A Right. She relied on the subpoenaed documents,

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and then she also relied on documents when she went through the boxes of evidence that we had seized, and she relied on some of those to find the names of the companies to identify the companies to subpoena.

Q And in your warehouse there are folders that contain invoices and shipping documents for propofol, correct?

A There are thousands and thousands of documents everywhere.

Q And included in those thousands and thousands of documents are Defense Exhibits Y1 and X1, correct?

A Yes, ma'am.

Q And what are these documents?

A Those ones you showed me appear to be Baxter order forms.

Q And these propofol orders are not contained on Ms. Sampson's spreadsheet, correct?

A They don't appear to be. No, ma'am.

Q So the -- let's review these and I'll just have you explain to the jury what was missed. Let's start with the year 2006. And these just for -- these are all propofol vials that were shipped to Burnham, correct?

A Yes, ma'am.

Q Tell us how many propofol vials and the sizes were shipped on the first date.

A Let's see. The first date would have been order

date 4/12/06, transmitted date 4/13/06. There was a 8, looks like, flats of 20, and then another 8 flats of 25. The first one, the 8 flats of 20, were for 50-milliliter vials, and the second 8 flats of 25 were 20 milliliter.

Q And how many hundreds of vials would that be?
Or would it be that much?

A You're asking me to do math.

Q Sorry.

A Whatever 8 times 20 is --

MR. STAUDAHER: 160.

THE WITNESS: -- 140?

MS. WECKERLY: It's 360.

THE WITNESS: 360?

MS. WECKERLY: Total.

MS. STANISH: Ms. Weckerly is really good at math.

THE COURT: What is it? 38 times 20?

THE WITNESS: No, 8 --

BY MS. WECKERLY:

Q Here you go. And maybe to expedite this, can we just -- can -- do you concur, Detective, that these invoices show over 2,700 vials were not included in Ms. Sampson's spreadsheet?

A Yes.

Q And the -- some of those -- most of those are from the year 2006, correct?

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A Yes.

Q And let's just focus on the year 2007 for now.

A And they're all at the Burnham too.

Q Correct. But am I right to recall that the clinic shifted supplies primarily from Burnham to Shadow Lane when necessary?

A The -- well, I don't know who you talked to, but yes, primarily -- according to some of the witnesses, it went from Burnham to Shadow, but it wasn't on a daily event, it wasn't in large quantities.

Q Okay. Let's look at the August 2007 invoice that was missed.

A The August 28, '06 or 27, okay.

Q '07.

A Sorry. This was dated August 7, 2007, and the order date was August 6, 2007.

Q And what was the quantities on that thing?

A The quantity was 20 units of 50-milliliter vials. And the total on that is -- let me do the math -- \$1,541.80. And then 25 units, 20-milliliter vials, 25 flats. So --

Q So we're talking about approximately how many vials that were shipped on that day that were missed?

A I got 1,025.

Q You got the calculator and the jury can eyeball

it later on.

A Right.

Q Detective?

A Yes.

Q It appears that Ms. Sampson's spreadsheet is not accurate; do you agree?

A I would agree for the facts she has, the facts she had at the time it was accurate, but with this, then it's now -- this needs to be added to it.

Q And even if you add that, even if you redo the charts, can we really be confident that the information is accurate, that something else has not been missed?

A The information she put in is accurate. The information that you have would add more to it.

Q Well, you're the one that has that information. That came from your warehouse, correct?

A Right. Yes, ma'am.

Q And --

A But again, we could have missed it. I mean, there's thousands of documents that we --

Q Exactly. I agree. You guys took on --

A And generally, when you subpoena a major pharmaceutical company, you expect them to be truthful and honest when they --

Q And I expect the State to be truthful and honest

too when we're in trial --

A Well, we are.

Q -- don't you?

A Yes, we are.

Q Okay. And if a mistake happened, we get that. We know it's a big job. But it's not accurate. The -- relying on the subpoenas from McKesson and Baxter has proven not to be accurate, correct?

A As that chart sits there, it's not accurate, no.

Q And even if you add these new things that were located, it's still not 100 percent accurate, is it?

A Well, it depends on what we're talking about. I mean, if you -- if you talk about the charts for the yearly analysis of propofol vials, then yes, that is not accurate without these figures in it. If you're talking about the charts with the propofol sign-out per day on both days, September 21, and July 25, then those charts would be accurate because we have the propofol sign-out sheets.

Q I was talking about Nancy Sampson's charts that show the propofol spreadsheet.

A Yes, this --

Q That is --

A -- this would make it inaccurate. Yes, ma'am.

Q All right.

MS. STANISH: I'm just going to mark this. How late

according to Linda Hubbard.

MR. WRIGHT: I'm going to -- I want in the record where it was -- I want to know -- I want to hear her testimony on direct. I dispute that -- the way this is happening here. I don't agree.

On the question of coercion by Metro, Weckerly asked if she felt coerced during her Metro interview.

THE COURT: Do you have -- do you have a transcript?

MR. WRIGHT: No. I have my summary.

THE COURT: Your notes? Okay. Well, I saw you reading from something --

MR. WRIGHT: Okay. Well, it's my summary of the witness.

THE COURT: -- no, that's -- that's fine. I just -- I know we've had some transcripts prepared throughout, so if we had a transcript, that would make this discussion much simpler. That's why I asked you the question. You don't have to, you know --

MR. WRIGHT: Okay. I get it.

THE COURT: -- throw your fists up in the air like you did before, and, you know, have a tantrum. I'm just trying to do this in the most expedient way possible.

MR. WRIGHT: Okay. Ms. Weckerly asked if she felt coerced during her Metro interview; she said the detectives kept challenging her and she felt they did not believe what

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she was saying. When Weckerly asked if she was denied bathroom breaks or the ability to talk to her attorney, Hubbard said she didn't recall.

I mean, that was the entire exchange on the coercion. On the other thing, I don't -- I don't recall that which she admitted and then denied. Her position was at one point, I'm drawing a blank on the interviews -- the grand jury and the interviews, you know, which was said where. That's when I was examining her.

Because I couldn't get the favorable out of her either, which is what I was trying to do. But then she would admit things, saying they are true, but not know if she told the police or the grand jury that. And so that -- that's the issue I am straddling. I want to know that she was asked something, said it isn't true, and denied telling the police that.

Then you can -- do you follow me?

THE COURT: Well, except if she didn't remember the interview and repeatedly said she didn't remember the interview, then, I mean, to me she's never going to remember any of the statements to the police. It should have gone, first in direct, you know, get her in direct examination before we even talk about the interview to say what -- whatever it is that they're trying to now bring in, you know, relating to the reuse and what have you.

Ms. Weckerly?

MS. WECKERLY: Well, the -- she doesn't have -- she just has to say I don't remember. And don't remember in Nevada is the same as disavowing a statement. So she's --

THE COURT: No. No, what I'm saying is you covered all this --

MS. WECKERLY: Yes.

THE COURT: -- initially --

MS. WECKERLY: Yes.

THE COURT: -- before you even got to the statement. I mean, if she says -- testified differently or can't remember if that happened, then you go to the statement. And then if she says she doesn't remember the statement --

MS. WECKERLY: We did that.

THE COURT: -- then you're done. I mean, you start off, you know, did this happen. I don't remember if it happened. Okay. Well, do you remember your statement to the police that it happened? I don't remember my statement. I don't remember telling them that it happened.

Okay. You know, you ask her first, did this happen? I don't remember it happened, or I don't remember if it happened. Did you tell the police it happened? I don't remember telling the police it happened. You're done. I mean, what else --

MR. WRIGHT: I agree.

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THE COURT: -- do you have to ask her?

MR. WRIGHT: I agree. And that's what I'd dispute having occurred because there were things they asked her that she --

THE COURT: All right. We may be able to simplify this whole thing. Ms. Weckerly is going to get with Detective Whiteley and point out what statements she wants to ask -- he -- she wants to ask him about. Then, Mr. Wright, you can look at those statements. And if they're particular statements that you think weren't covered on direct, meaning, like I said, first questions, you know, did this happen? I don't know if it happened, I don't remember. Did you tell the police it happened? I don't remember telling the police it happened.

As far as I'm concerned, we're done then. They don't have to say, well, is it true it happened, if you just -- the first question was, I don't remember if it happened. Did it happen? I don't remember. Did you tell the police it happened? That's two questions. In my view that's all Ms. Weckerly needed to ask, and if she asked those two questions, I'm good with the statements, okay?

MR. WRIGHT: Yes, Your Honor.

THE COURT: So we'll just have a brief break. You can go over that, you know, show Mr. Wright. Mr. Santacroce, obviously, too.

(Court recessed at 10:19 a.m. to 10:31 a.m.)

(Outside the presence of the jury.)

MR. SANTACROCE: The problem is that the --

THE COURT: Well, no, let me say it again. Here's the thing also, just so both sides are aware. If on cross-examination there's questions challenging that, you know, suggesting that Mr. -- Detective Whiteley was coercive in some way or badgering or manipulative or something like that, then I think the State has a right to play portions of the tape to show his tone and demeanor and Ms. Hubbard's tone and demeanor, limited to the areas that are coming in substantively. Obviously, they can't play, then, other areas that would have been excluded.

But, you know, they have a right then, I think, to play the tape just to show, you know, he's being polite or, you know, whatever the case may be.

MR. SANTACROCE: The other problem is that Detective Whiteley didn't conduct the interview, Levi Hancock did.

THE COURT: Well, was Detective Whiteley present?

MS. WECKERLY: Yes.

MR. SANTACROCE: He was --

THE COURT: Then it doesn't matter.

MR. WRIGHT: Well, it's --

MR. SANTACROCE: What do you mean? He's testifying to hearsay.

THE COURT: No, he's not. Not if he sat there and heard her make the statements. If he's in the room and he's -- hearsay is an out-of-court statement offered for the truth of the matter asserted. It doesn't matter who heard it. I mean, if it's coming in, anybody that sat in the room can testify to it as long as he was there sitting next to Detective Hancock and --

MR. SANTACROCE: Exactly. It's an out-of-court statement used -- offered --

THE COURT: Right.

MR. SANTACROCE: -- for the truth --

THE COURT: Which is admissible --

MR. SANTACROCE: -- of the matter.

THE COURT: -- as impeachment evidence because -- I don't remember the number, but it's admissible substantively now because she disavowed the statement.

MR. WRIGHT: I disagree. I don't remember her disavowing these portions. I don't remember her being asked this precisely on -- during direct, did this event occur and then her saying no. And then I don't remember Ms. Weckerly saying, Isn't it true you told Detective -- you told Roselle -- or whoever is -- Levi Hancock, blah, blah, blah, on these issues.

THE COURT: Ms. Weckerly?

MS. WECKERLY: I -- my recollection is when she was

on the stand I went through -- I started going through the statement with her. The defense objected to me going line by line through the statement. So I asked her numerous times if she remembered --

THE COURT: Did she remember --

MS. WECKERLY: -- any portions of --

THE COURT: -- anything --

MS. WECKERLY: -- of this statement.

THE COURT: -- and she remembered nothing and she --

MS. WECKERLY: She --

THE COURT: -- right.

MS. WECKERLY: -- disavowed the whole thing. Every statement that was made. And that is the predicate for a prior inconsistent statement.

THE COURT: Right. She disavowed -- I mean, Ms. Weckerly was going through each statement. She kept saying, I don't remember, then she, you know, she didn't remember anything and expounded on that a little bit. I don't remember exactly what she said, and, you know, she didn't remember.

You know, I don't know why they don't want to call Detective Hancock. It could be, you know, Detective Whiteley puts a better face on this thing, I don't know. I don't know Detective Hancock. But it doesn't matter. They can call whomever they want, so long as that person personally witnessed the entire statement. My understanding is Detective

Whiteley was in the room, personally witnessed the entire statement, correct, Ms. Weckerly?

MS. WECKERLY: That is correct.

THE COURT: So it doesn't mean that --

MS. WECKERLY: On --

THE COURT: -- they can -- it's their case, they can choose to call whichever detective they want to call as long as he was there.

MR. WRIGHT: I'm not quarreling --

THE COURT: No, that's Mr. Santacrose. I mean, there's -- you know.

MS. STANISH: I think the issue is, you know, regardless of the memory issue, is did she ultimately provide the information that the government was seeking through further questioning, and that's where we have --

MR. WRIGHT: Or was she even --

MS. STANISH: -- some doubt.

MR. WRIGHT: -- asked it. I don't remember her being asked about the 5cc that -- syringes, and denying it. I don't remember it.

THE COURT: Ms. Weckerly?

MS. WECKERLY: This is what I keep saying. I did this.

THE COURT: No. No. We're --

MS. WECKERLY: I went through it.

THE COURT: -- no. No. Before you can even get into her statement, you have to ask her, you know, do you remember anything about the --

MS. WECKERLY: Do you remember talking about --

THE COURT: -- 5cc syringes? And then if she says I don't remember that, then, Well, do you remember your statement to Detective Hancock where you tell -- telling him about it? No, I don't remember that. So I guess what they're saying is, they don't remember you even asking about it on the front end before we even get into the statement.

MS. WECKERLY: I started asking her about it, the specific lines in this --

THE COURT: No. No, we're not talking about the statement. Before you get into the statement she's here as a witness. You have to ask her, you know, Do you remember the 5cc syringes? If she doesn't remember, then you go to the statement. But she's -- you have to give her an opportunity just to testify about that before you even get to the statement.

And I think they're saying you didn't get -- is that what you're saying? You didn't give her --

MR. WRIGHT: Yes.

THE COURT: -- the opportunity to testify about that.

MS. WECKERLY: But that -- I mean, the --

THE COURT: You don't impeach her with a statement

until it's clear she's not going to testify that way, or until she's --

MS. WECKERLY: Okay. Well --

THE COURT: -- been given an opportunity to testify that way.

MS. WECKERLY: -- there was no -- I mean, there was no objection. I can't remember the predicate of what I asked before I asked her about her statement, but the -- the hearsay exception is triggered when she denies making the statement to the police.

THE COURT: No, the --

MS. WECKERLY: And then she can --

THE COURT: -- no --

MS. WECKERLY: -- be confronted with it, and then that's --

THE COURT: -- well, if --

MS. WECKERLY: -- it.

THE COURT: -- if she didn't -- if she doesn't testify that way on the -- on the stand.

MS. WECKERLY: Okay.

THE COURT: If she -- right? I mean, she's here as a witness. You don't get into her statement if she remembers as a witness, blah, blah, blah, this is what happened.

MS. WECKERLY: She didn't avow anything she said in this statement. She said she didn't remember any of it. So

if she had said, Yes, I said that, or Yes, I told the police that --

THE COURT: Or yes this happened.

MS. WECKERLY: -- then -- yes --

THE COURT: I mean --

MS. WECKERLY: -- then I'm --

THE COURT: -- does --

MS. WECKERLY: -- I'm stuck with her answer.

THE COURT: Mr. Wright, have you had an opportunity to review the statement?

MR. WRIGHT: Be forced into the --

THE COURT: I mean, you don't impeach someone with a prior inconsistent statement until you show it's inconsistent with their testimony. I think the issue is whether she had an opportunity to testify to that. I think it's fairly clear whether you asked the specific questions that she wouldn't have because she didn't seem to remember anything, and then she didn't remember the statement to the police and she expounded upon that, the stress and, you know -- my word, maybe not hers -- and the assertive that they wanted her to say a certain thing; and she didn't say "badgered" but that was the implication I felt.

So -- is that what -- what -- Mr. Wright, is that what you're having a problem with, that she was never just as a witness --

MR. WRIGHT: Correct.

THE COURT: -- given the opportunity to testify to these things before Ms. Weckerly delved into the statement?

MR. WRIGHT: Correct. I --

THE COURT: Is that --

MR. WRIGHT: -- yes.

THE COURT: Well, I mean, Ms. Weckerly?

MS. WECKERLY: I think I laid the foundation for it. It certainly was no mystery when we went up to the bench and I said I was going to be calling the detective for the statement. So I think we've met the conditions based on her testimony on direct to elicit this as a prior inconsistent statement. And based on the Court's ruling, I'm not going to play the recording. I'm going to ask the detective about her responses that I've highlighted, that I've given to Counsel.

THE COURT: All right. I think that -- it was my recollection -- I don't -- okay. I don't recollect every specific question, and candidly, I'm not taking notes for cross-examination or for oral argument at closings the way you are.

So I do remember a general reluctance on her part to remember anything. Whether that was in response to an initial question or whether it was in response to a question about statements she made to the police, you know, she generally didn't avow the statements. She didn't remember, you know,

saying them. She wouldn't now say, Oh, yes, that's true. That is true. I don't remember saying it, but that is true.

And so, you know, I think that they can ask the detective about that. Again, the tape doesn't come in for the various reasons we were just discussing, unless the door is somehow opened in cross-examination relating to Detective Hancock? Is that it? You know, tone, demeanor, or something like that, then it can be played just for that limited purpose of showing the atmosphere in the room, his tone, that he's not yelling at her, that kind of thing.

All right. Bring them in.

MR. WRIGHT: Just for the record, I -- those questions, I dispute those -- her having been asked and denied that information. She did not deny the interview with the FBI or the police. She said she was interviewed over a period with the FBI and the police over the course of two days. She received a transcript for her review from Metro and a summary of her interview from the FBI, and she -- she simply didn't remember all that she had said during the interview.

And so I -- to now just take out these select portions of the interview when I am disputing that she denied -- was even asked these questions.

THE COURT: May I see, then, the transcript? And, Mr. Wright, certainly under a doctrine of completeness, if you think that is misleading as to anything that she said, then

you can ask the detective about other things that she may have said.

MR. WRIGHT: I want her back to cross-examine her on it. We're asking her --

THE COURT: Well, call her --

MR. WRIGHT: -- things I haven't --

THE COURT: -- call her back.

MR. WRIGHT: -- they haven't examined -- I don't have to call her back. I don't have a burden in this courtroom.

THE COURT: Well, that's true.

MR. WRIGHT: They're asking her things I didn't cross-examine her on because -- I can't help it. I got out what I needed out of the grand jury because I would show it to her and then she'd say, well, I don't remember telling them that, and then I'd take the next step and say, Whether you told the grand jury that or not, is that true or false. And if she had said it's true, which she did on some of them, I then had no problem. If she said it's false, I can then impeach her with the grand jury transcript.

THE COURT: Well, let me just say this: You know, if -- if she -- and I testify as generally why I don't remember what I -- what Ron Lakeman was doing, then I don't think that they need to say, And you don't remember he took the needle off? You don't remember it was a 50cc vial? You know, one -- one second. You don't remember this or that. If she says,

generally I don't remember what Ron Lakeman did, I don't think they have to say, And you don't remember this that he did and you don't remember that that he did and you don't remember this other thing that he did.

MR. WRIGHT: But the problem is she did remember and she did testify about what she saw at the end of the day with Ron Lakeman, and that doesn't -- I mean, that's my problem. They're going into things that are different than what she was examined about.

MR. SANTACROCE: I join in that.

THE COURT: All right. If you'd like your transcript back?

Bring them in.

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

(Jury entering at 10:44 a.m.)

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

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

MS. WECKERLY: And the State calls Detective Whiteley.

THE COURT: Detective, come on up here by me, please. And then just please remain standing, facing that lady right there.

ROBERT WHITELEY, STATE'S WITNESS, SWORN

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

THE WITNESS: Robert, first name, R-O-B-E-R-T, Whiteley is the last name, W-H-I-T-E-L-E-Y.

DIRECT EXAMINATION

BY MS. WECKERLY:

Q And you're a gastroenterologist?

A No.

THE COURT: On the weekends.

THE WITNESS: I feel like it now, but no.

BY MS. WECKERLY:

Q How are you employed, sir?

A I'm with the Las Vegas Metropolitan Police Department. I'm a detective.

Q And how long have you worked for Metro?

A I've worked there approximately 18 years now.

Q And how are you assigned?

A I am assigned with the criminal intelligence unit inside the Las Vegas Metropolitan Police Department.

Q And how long have you been assigned to intel?

A I'm going to say since 2005.

Q Okay. Where were you assigned before that?

A Before that I worked in robbery, and I spent a year in robbery, and then before that I spent four years in

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firearms investigations --

Q Now --

A -- and then I did five years in patrol.

Q So as a -- you were in patrol, and then as a detective you worked in a firearms kind of unit, and then in robbery?

A Yes, ma'am.

Q And now in intel?

A Yes, ma'am.

Q You were in intel in 2007 and '8?

A Yes, ma'am.

Q How old -- well, actually, when was it that you got assigned this particular investigation?

A It was the beginning of March of 2008 is when we were briefed on i,t, and I was subsequently assigned to it; I was Voluntold.

Q Voluntold?

A Yes.

Q When you were assigned the case at that time, had you had any kind of medical training?

A I was an EMT in the Army, but that was at -- very limited.

Q Okay. And did you even know what hepatitis C was when you got the case?

A I knew -- I've heard of hepatitis C, but I had

no idea, you know, how it affected people, you know, what it's -- what it was about.

Q So was it kind of a, I guess, a steep climb getting up to speed on all the medical terms for you?

A Yes, it was a huge learning curve. A lot of Wikipedia searches.

Q When you got the case, what was your approach to the investigation in terms of establishing what happened on July the 25th and September the 21st?

A Well, there was several approaches. First, like I said, is we had to learn the investigation. I had to figure out what it is I was dealing with and learning exactly what hepatitis C was. I had to figure out what the -- what those, you know -- and this came later on -- what the genotyping is. We had to figure out what a gastroenterologist does. We had to figure out about the procedure itself, how the procedure is done. We had to learn about the various different items that are used to do the procedure.

So we had to put a little bit into it in the beginning, and then the first thing we did was, once we got the information, we got a search warrant for the endoscopic clinic itself.

Q And do you remember the day that the search warrant was served on?

A March 10th --

Q Okay.

A -- of 2008.

Q And at that time was the clinic -- had it been closed?

A Yes, I believe at that time it was closed.

Q Can you describe the general condition of the clinic, how it appeared when you served the search warrant?

A The clinic -- it was early in the morning when we served it. The clinic, you know, appeared to be -- it was semi put together, but, you know, there were some things that appeared to be out of place; but for the most part it looked like as if we were going -- as if it was open because it was shortly after the time that it was closed down that we went in.

Q It just looked like after hours at a medical --

A Right.

Q -- facility?

A There was some stuff missing, I think in one of the procedure rooms, but for the most part everything looked to be in place and everything was there.

Q Now, did you -- when you served the warrant, did you actually find any propofol at the clinic?

A No, we did not.

Q Did you find the patient files for -- for our relevant days, July the 2th and June -- and September the

21st?

A Yes. Among the, I think, 100,000 patient files that we found, the -- the procedure files for those two days we found -- inside what we called was a green room, and we self-labeled it the green room because there was green procedure files all along the wall. And on the floor the two procedure days that we were looking into were -- they were pulled out and they were on the floor for us to get.

THE COURT: And, Detective, keep your voice up.

THE WITNESS: Oh, I'm sorry. I'm trying to get close to the microphone here.

BY MS. WECKERLY:

Q Yeah, and you've heard witnesses.

THE COURT: You're too tall, that's probably...

BY MS. WECKERLY:

Q So you collect the patient files, and did you collect any medical equipment?

A We collected limited medical equipment. We didn't get the scopes or anything like that. We got -- we got samples of syringes, biopsy forceps, the radio jaws, just equipment like that.

Q Now, when you -- after you served the warrant, I assume you moved on to interviewing potential witnesses?

A Yes. The next phase is once we serve the warrant it's -- again, we literally took, you know, hundreds

of boxes of patient files. So between trying to -- we had to get those organized and everything else. We started the investigative-type phase where we actually started interviewing potential witnesses, people that were involved in the case.

Q Did you have -- I mean, did you have a witness with a specific recollection of those two days? Like, oh, I remember July the 25th?

A You know, I'd say if anybody remembered the two days it would have been the victims, but I think that's because it's -- you know, it's one of those things where if you get a colonoscopy, I'm pretty sure that's a scary thing so you would remember those. But as far as the witnesses that work there, no, we really didn't have anybody that specifically remembered the two days that we -- that were in question.

Q Okay. So you conducted several, to put it mildly, interviews in this case; is that fair?

A Yes, we probably did over 100 interviews in this investigation.

Q Now, there was also a component with, I guess, supply ordering that was part of the investigation as well?

A Yes, ma'am. That was Nancy Sampson's -- she kind of took that ball, which was figuring out the supplies that were ordered, and she did the charts that were shown to

you and used that stuff to analyze that type of data.

Q So there was an analysis of the medical records, the supplies, and then you have the interviews as well?

A Yes, ma'am.

Q Ultimately you get scientific results from the CDC. That wasn't done by Metro; is that fair?

A No, I don't think we have the capability to do RNA sequencing at our Metro lab. It's not like CSI, like they can do everything, you know.

Q So, I mean, that really kind of narrowed scientific, I guess, expertise they had was obviously done only by the CDC?

A Right. I think they specialized in those type of epidemiological, I guess would be the term, scientific analysis.

Q Now, we heard -- well, we've heard throughout the trial about the -- the computer glitch on September the 21st. Explain how you came to that knowledge that there was an issue with the computers.

A That was -- that was explained to me through -- through, it would have been -- it would have been Doug Cooper through the -- he was doing a separate investigation up in Reno, and he's the head of the state board --

MS. WECKERLY: I'm going to object to what he said.

THE COURT: Yeah.

BY MS. WECKERLY:

Q Well, okay. At some point you learn about that, correct?

A At some point I get information that on the 21st there was a glitch in the computers, and the glitch was a date stamp that was wrong that was able -- that allowed Nancy Sampson to go ahead and create that chart that we've seen that orders the patients in both rooms.

Q And was there the same kind of glitch or same issue on July the 25th?

A No, there was not that glitch or issue.

Q Okay. So the -- the charts on the 21st are sorted by room based on the computer discrepancy?

A Yes, ma'am.

Q And the chart that she made for the 25th, is that divided just solely by CRNA?

A Yes, ma'am.

MR. SANTACROCE: I'm going to object to his testimony as to what she put on the chart.

THE COURT: Overruled.

BY MS. WECKERLY:

Q Is that divided just by CRNA name?

A Yes, ma'am.

Q Okay. So when we look at the chart for the 25th, it's possible that there's a room switch or -- it's just

solely divided by name; is that right?

MR. SANTACROCE: I'm going to object to that comment.
No foundation. No testimony has been in to --

THE COURT: All right. The -- that's sustained. The proper question is it's only divided by name.

BY MS. WECKERLY:

Q Is it only divided by name?

A It's only divided by name, yes, ma'am.

Q Okay. When -- as part of your investigation I think you said that Nancy took over kind of the supply side or looking at purchase orders; is that fair?

A Yes, ma'am.

Q Did she report intermittently her findings to you as she went along with her part of the investigation?

A Yes, it was a team effort. I mean, we would, you know, we would do our things, we'd do the interviews and, you know, we'd go through -- I mean, Nancy is, you know, invaluable to the investigation because everybody should have a Nancy when they do a case like this because she --

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

THE COURT: Yeah, that's sustained as to --

MS. STANISH: Vouching.

THE COURT: -- vouching.

THE WITNESS: Sorry.

BY MS. WECKERLY:

Q She did a lot of counting?

A Yes, she did a lot --

THE COURT: In other words, she does the stuff you don't want to do?

THE WITNESS: Right. She -- she organized the documents, she analyzed the data, she -- yeah, she did a -- she did a lot of stuff.

BY MS. WECKERLY:

Q Now, you're aware that there were propofol log books that were collected from the clinic?

A Yes.

Q Did those same type of log books, did you find that for saline?

A No, we did not find any logs that covered saline.

Q Okay. So there was no log book showing the check in or check out of saline?

A No, ma'am.

Q What about needles? Did you do any investigation in terms of needles?

A Well, the needles came, I believe, in the supplies that were ordered that we requested, and we didn't do an analysis on the needles because of the situation that some of the CRNAs used venting spikes and used needleless systems. So we couldn't tell 100 percent, or accurately, you know, what

the needles would account for.

Q Now, in the course of your investigation, did you interview all of the victims in this case?

A Yes.

Q Okay. And when was it that you interviewed Mr. Michael Washington? What year would that have been?

A That would have been spring of 2008. It was like March or April, I think April -- beginning of April.

Q Oh, April 2008?

A Yes, ma'am.

Q Were you present when he testified at this trial?

A Yes, ma'am.

Q And can you describe any differences that you observe in him?

A Yes, ma'am. From the first time I interviewed him, you know, he was able to answer the questions, he appeared very coherent, you know, he understood what I was asking him, he was able to answer them. And then when we did the -- when we met with him prior to his testimony, as well as him testifying on the stand, he appeared to be a little confused. He appeared to not understand fully everything that was asked of him.

Q Did you interview --

MR. SANTACROCE: I'm going to object and move to

strike what he appeared to be able to understand. That calls for speculation on his part.

THE COURT: Well, overruled. I mean, don't -- it's partially sustained. You can, you know -- the witness is free to comment on the differences like --

MR. SANTACROCE: But he can't --

THE COURT: -- I understand. So it's partially sustained. Rephrase the question. You know, if you -- what you observed about his demeanor and his tone of voice and speed, that kind of stuff you can testify about.

BY MS. WECKERLY:

Q Okay. What did you observe about how Mr. Washington communicated between 2008 and this year?

A His speech seemed to be slower. Again, he -- he was more confused. He was -- his face looked different. His face seemed more droopy to me. He didn't seem to stand as straight up as he did back then. He appeared to be different.

Q Okay. How about Carole Grueskin? Did you interview her in 2008?

A Yes, ma'am.

Q When was -- and when was the last time you've seen Ms. Grueskin?

A We saw her in February of 2012. It was -- we met with --

Q I just want you to just -- I don't need to know

where you saw her.

A Okay.

Q When you saw her in 2012, how was her speech different? How was her communication different from 2008?

A Okay. She was completely different. When we first interviewed her, she was able to answer the questions. She was able to understand what I was saying. The second time I saw her, which was last year, she -- she appeared -- she didn't know where she was at. She was confused about who we were. She didn't know -- she couldn't recall any of -- of what had happened to her about the procedure, or pretty much she couldn't recall anything. She was very hostile about where she was and why we were there. I mean, she was completely changed, completely different person.

Q And did you interview Mr. Meana back in 2008?

A Yes, ma'am.

Q And was the last time you saw Mr. Meana the video that we saw?

A Yes, ma'am, the last time was at the deposition.

Q Okay. Now, the -- the other -- the other victims, Ms. Hutchinson, Ms. Martin, I mean, how did they seem to you?

A They seemed normal.

Q They seemed --

A I mean, they seemed the same as they were when I

first interviewed them.

Q Now, when -- we saw the -- I think it was yesterday, it might have been the day before, the videotaped deposition of Mr. Meana. After that deposition took place, were you the person who was sort of coordinating how his -- how Metro would have a presence at his autopsy in the Philippines?

A Yes. It was early spring last year, I think, is when we'd gotten word that Mr. Meana was becoming ill and going in and out of the hospital, so we had talked to the family and I guess it was their wish that Mr. Meana go to the Philippines and spend the rest of his life in the Philippines. So, you know, we had to set up to where with anticipation of, you know, the fact that, I guess he was diagnosed to be terminally ill, we had to set up -- and the fact that he wanted to go to the Philippines -- it was not like another state where we could, you know, go do -- if -- when he passed we could go do an autopsy. So we had to actually take steps to set up an autopsy in the Philippines which was not an easy task.

I mean, the hardest part about it was, you know, talking to the family and telling them, you know, what we wanted to do and getting their permission up-front before he actually passed. I mean, that was probably one of the hardest things I've done.

Q Now, but you didn't actually accompany the family --- that was the other detective we heard from -- to the Philippines?

A No, what happened is, you know, I arranged for a group to fly out there, one of which was Detective Bagang. And the reason why we -- you know, the reason why we talked with Bagang and had him involved in it because Detective Bagang spoke Tagalog and he was able to speak the language, and so he would have been able to help.

I think the original plan was for me to actually go out there and help out, but it was my 20th anniversary and I promised my wife I can take her to Europe, and the day that we left town is the day that he passed, as Murphy Law would always happen. So I had to go to Europe or I'd be divorced right now.

So anyways, it was actually Detective Bagang and Dr. Olson from the coroner's office that flew out and actually did the autopsy in the Philippines.

Q On the front end, though, did you -- you're the one that coordinated with Marjorie and -- and got the permission?

A Yes, I had to talk with the family. I had to tell them what we intended to do. Like I said, it was very difficult. And then I had to coordinate through -- literally through Homeland Security and talk with various Phillipino

officials through my various contacts; and we had to get permission, we had to, you know -- basically it wasn't an easy task. We had to get permission all the way up the chain of command in the Philippines to be able to do something like this.

And so once we were able to clear the way, then it was just a matter of, you know, I mean, it was a matter of waiting until it occurred and then, you know, having the pieces in place to go ahead and do -- facilitate something like that.

Q Really switching gears here. In the course of your investigation -- during -- well, let me ask it this way: Did you interview or participate in an interview with Linda Hubbard?

A Yes, ma'am.

Q Were you the only law enforcement official at that interview?

A No, ma'am. Detective Hancock was with me.

Q And is Detective Hancock a Metro detective?

A Yes, ma'am.

Q Where did that interview take place, if you recall?

A That -- it took place at, I believe -- her attorney was Mr. Pariente, and it took place at his office.

Q Okay. And do you remember the date

approximately?

A October 15th.

Q Oh, okay. What year?

A 2008.

Q Okay. Good.

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

THE COURT: Sure.

MS. WECKERLY: And with the Court's permission. I'll -- I was just going to stay up here while we do the questions on this first --

THE COURT: Okay.

MS. WECKERLY: Okay?

THE COURT: I mean --

BY MS. WECKERLY:

Q Detective, can you first describe what -- who was present during the interview?

A Present was Linda Hubbard, is the person we were interviewing, and then also there, like I said, was her attorney Michael Pariente, and he was her lawyer; Detective Hancock, who worked with me at the time; and then myself.

Q And was the interview in the daytime or morning or do you recall?

A It was in the afternoon.

Q Okay. And when you and Detective Hancock were

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present at that interview, were you in -- in a uniform or were you dressed like this or --

A No, I normally don't wear suits and I can't wait until I don't have to wear another suit. But no, normally we dress in jeans and, you know, a collared shirt. So that's what we would have had on. No badges, no vest, or anything like that. We work in a covert unit, so we don't, you know, we don't try to appear to be police-like.

Q And how big was the room?

A I believe it was a conference room, but it wasn't huge or anything like that, I mean --

Q Okay. Now, during the --

A -- it might have been his office, actually.

THE COURT: I'm sorry?

THE WITNESS: It might have been his office. I don't recall.

THE COURT: Okay. So you don't recall exactly, but it was at the Metro headquarters or...

THE WITNESS: No. No, it was in the lawyer's office.

THE COURT: Oh, the lawyer's office.

THE WITNESS: Yes, ma'am.

THE COURT: I'm sorry.

BY MS. WECKERLY:

Q Okay. Now, going to that interview, did Detective Hancock bring up the question about reusing

syringes?

A Yes, ma'am. The way we do our interviews is, you know, usually one does the interview and talks and so this way it's not repetitive. That's the way Metro does the interviews. So Detective Hancock was the one that did most of the questioning. I think I asked one question on here.

Q Okay. But you were present during the whole interview?

A I was present the entire time.

Q Okay. So when the topic came up about reusing syringes, can you read, literally, what she's -- what Linda Hubbard said?

A Okay. I'm a horrible reader, but --

Q And just tell -- could you -- we're on page 23.

A It's page 23. At the very top Linda Hubbard's response was, Yes. Is that --

THE COURT: What was -- I'm sorry. Go on. Go on.

THE WITNESS: She says, Is that okay? And I know that there were times when people did reuse the syringes and change needles and the only -- we don't usually work together, and the only time I really saw this was when I first started working and Ron Lakeman was the nurse anesthetist that was breaking me into the job, into how to do the paperwork and how to position the paperwork and do things on a rapid basis the way that -- the way -- the way we did in the gastro unit; and

I questioned him about changing the needle, and he said that that's the way it was done.

And that's not my practice. And it never had been my practice and I talked to Jeff Krueger about it because I wanted him -- I didn't -- I didn't feel right wasting 10cc syringes every time I drew up 5cc of propofol.

BY MS. WECKERLY:

Q And did she continue with her answer?

A Yes, she said, So I asked him about getting 5cc syringes, and he said that he looked into it and the price was not that big a difference between the 10cc's and the 5cc's so for me to go ahead and use the 10cc's, only put 5cc's in them --

MR. SANTACROCE: I'm going to object as hearsay.

THE COURT: That would be hearsay as to what Mr. Krueger --

MR. SANTACROCE: Because it's from Jeff Krueger, not from --

THE COURT: -- had -- I said, yes, I agree.

MR. SANTACROCE: -- okay. Okay.

MS. WECKERLY: Okay.

MR. WRIGHT: Move to strike.

THE COURT: That's sustained as to what Mr. Krueger told her.

MS. WECKERLY: Okay.

BY MS. WECKERLY:

Q And then did Detective Hancock ask Ms. Hubbard, Talk to me about this practice that Ron Lakeman told you about, and can you read her answer -- and this is, for counsel, starting at the bottom of page 23.

A Ms. Hubbard's response was, It was from the 50cc vial.

Q And does she continue?

A Then she continues on to say, And he will take the syringe, screw it into the dispensing top, draw it up.

Q And does Detective Hancock clarify that?

A Detective Hancock says, Let me just clear it up. The spike?

And Ms. Hubbard responds, The spike, right. And then she continues on to say, And then put another needle on the reinject -- or, I'm sorry. And then put another needle on and reinject the patient, and then after that was done if he needed more he would take the same syringe, put it back on the spike, draw up more, and get a clean needle.

Q Okay. And Detective Hancock's response was what?

A And this you said -- this was instructed to you around the time that you started?

And her response was, It was. It was seeing -- it really wasn't -- I saw the way he did it.

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Q Okay. And later in the interview did Detective Hancock ask her whether she was approached by any of the doctors and said that, This method -- That this is the way we're going to do it? Can you read the --

A Yes. Detective Hancock said, Okay. Were you approached by any of the doctors and said that this is the way we're going to do it?

And then Ms. Hubbard replies, Dr. Desai wanted me to use, you know, to do it the way that Ron did it, and I said --

And then Detective Hancock interjects, Okay. When was that -- when was that that he told you that?

And Ms. Hubbard's response was, Right at the very start of when I started working there.

Detective Hancock responds, Okay.

And Ms. Hubbard responds back, It would be August 2005.

Detective Hancock says, Okay. And he instructed you that's the way he wanted it done? Any other doctors approach you about that?

And she responded, I don't think so.

Q Okay. And was she asked whether or not Dr. Desai observed her following that practice?

A Yes. Detective Hancock asked her, Okay. Did Dr. Desai ever observe you not doing that practice?

And Linda Hubbard responded, Not changing needles?

Yes.

And Detective Hancock stated, And what was his --
I'm sorry -- not reusing syringes.

And Detective Hubbard's response was --

Q Linda.

A -- I'm sorry, Linda Hubbard. Excuse me. Linda
Hubbard response was, Doing it the way I prefer to do it.

And then Detective Hancock says, Yes.

Linda Hubbard says, Yes.

Detective Hancock says, The correct way?

And Linda Hubbard says, Yes. Detective Hancock
says, Okay. And what was his response to that since he had
instructed you otherwise?

And Linda Hubbard response was, He just kind of
shrugged and he really didn't say anything, okay, but I know
he noticed.

Detective Hancock says, So he never said anything to
you at all about what you are not doing it the way I told you
to do it?

And she said, No.

Q And that was -- I think we said this, but that
was her interview in October 2008?

A Yes, ma'am.

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

THE COURT: Sure.

BY MS. WECKERLY:

Q Sir, I'm showing you what's been marked as State's Proposed 243, and it -- what is it?

A This is a Muskogee -- it's a document that was printed out. It's a Muskogee County, Board of Assessors -- basically, it's a document that lists out the assessor's deeds and partials of a certain address.

Q And what's that address?

A It's 3 Mallard Court.

Q And who is listed as the owner?

A Okay. Real quick. The -- it's 3 Mallard Court. It's in Middling, Georgia, and it's a residence. And the assessor's site -- you can go on -- anybody can go on, do an open search on the web to pretty much any assessor's site in the United States and find information on addresses. This one particularly happens to be -- what appears to be on this site an old address of Ronald Lakeman.

MS. WECKERLY: State moves to admit 243.

THE COURT: Any objection?

MR. SANTACROCE: No.

THE COURT: All right. 243 is admitted.

(State's Exhibit 243 admitted.)

MS. WECKERLY: Court's indulgence. I'll pass the witness, Your Honor.

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

MR. WRIGHT: Approach the bench?

THE COURT: Sure.

(Off-record bench conference.)

THE COURT: All right. Is the Defense ready to get started with their cross-examination?

MR. WRIGHT: Yes.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. WRIGHT:

Q First, Detective Whiteley, starting with Linda Hubbard --

A Yes, sir.

Q -- okay? She had immunity when you were interviewing her?

A I don't believe it was full immunity. I believe it was immunity for her testimony.

Q Okay. She had a proffer agreement in place --

A Yes, sir.

Q -- by which if she said the right things -- and I think the way it reads, if you all like what she has to say, then she'll be a witness?

A Well, it -- no, if she tells us the truth. And that's what we look for is the truth.

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Q Okay. Well, did you read it? I mean, actually, if you read her proffer letter, it says once she gives a proffer you can go after her if she says anything that's not the truth or if she says anything differently than what you already told her [sic]?

A And I don't recall the exact language, but I think the standard proffer language is that if somebody does lie, then, yes, they can be charged with false testimony.

Q Or if they say something different than what they already told you? I understand it's not the standard proffer agreement, and I'm -- and that this one was custom made --

A It's splitting hairs between lying and different.

MR. WRIGHT: Let me have my stack for [inaudible.]

THE COURT: And, Mr. Wright, be mindful to keep your voice up and be --

MR. WRIGHT: Let me have my stack of exhibits.

THE COURT: Well, not to that part. They don't care about that part. The part where you're asking the questions.

MR. WRIGHT: Okay.

(Pause in the proceedings.)

MR. WRIGHT: I can't find hers.

Would you agree that it's the same letters as the other letters?

MS. WECKERLY: You know, I think so, so I'll kind of agree.

MR. WRIGHT: Okay. I mean, because I have a number of them.

THE COURT: All right. So for the record, it's the same --

MS. WECKERLY: I mean, it is what it --

THE COURT: -- it's the same --

MS. WECKERLY: -- I mean --

THE COURT: -- letter, and so if you can use another exhibit and then, of course, when the exhibits go back, it will have all the exhibits.

MS. WECKERLY: -- I'm sure -- I even believe it's the same one. Certainly they can look at the one that's in evidence --

THE COURT: Right.

MS. WECKERLY: -- but I don't mind substituting another one right now.

THE COURT: Right. That's what I meant.

MS. WECKERLY: Yeah.

THE COURT: That's what I meant for purposes of moving --

MS. WECKERLY: Sure.

THE COURT: -- this along.

MR. WRIGHT: I'm using Annamarie Lobiondo's grand

jury -- pardon me, Defense Exhibit 01.

THE COURT: Oh, right. Oh, it's letter 01.

MR. WRIGHT: Oh, 01.

BY MR. WRIGHT:

Q I'm looking at this third paragraph. This is where the State promises, will not use any statement made by you or your client -- this actually goes to the lawyer, correct?

A Right. The -- these are drafted between the district attorney's office and the lawyer of --

Q Right. So it's essentially --

A -- in this case Annamarie Lobiondo, but what you're talking about would be Ms. Hubbard.

Q Right. So the State will not use any statement made by your client or other information provided by your client during the proffer against your client in any criminal case except for cross-examination or impeachment purposes should your client ever testify contrary to the information she provides during the proffer. Do you see that?

A Yes, sir.

Q That's called a lock-in clause. You're familiar with that?

A I'm not a lawyer, so I don't know the legal definition behind it, but from experience I know that, yes, it does --

Q Okay. It locks her in to what she says during her proffer. Or in the prosecution for perjury where any information may use -- be used to prove that your client testified untruthfully or contrary to the information provided by the proffer, correct?

A Yes, sir.

Q And then people give their statements and it says after -- After the State discovers what your client has to say and what she's willing to do for the State, a unilateral evaluation of her position will be undertaken in good faith, correct?

A Yes, sir.

Q Okay. And the -- that's what you refer to as a limited immunity during the State --

A Yes.

Q -- correct? And she had already been at -- been to the grand jury, correct?

A When we interviewed her?

Q Yes. She was one of those in that investigative grand jury?

A Yes, sir.

Q You were present, if I remember correctly?

A Yes, sir. I just don't remember which came first.

Q Right. I better verify it. Grand jury, July

17, 2008?

A Yes, sir.

Q Okay.

A And then I --

Q And then --

A -- I'm sorry.

Q -- F.B.I. interview October 26, 2008?

A Yes, sir.

Q And then you all interviewed her third in the line, correct?

A Yes.

Q And she had a proffer -- same proffer agreement was in place for the F.B.I.; do you recall that?

A It would have been a federal proffer, yes, sir.

Q And she had already testified before you-all interviewed her at the grand jury that she did not reuse needles and syringes, I'll call it, and no one had told her to reuse needles and syringes, and she denied telling the CDC that someone told her to reuse needles and syringes; do you recall that?

A I don't recall that specifically, but if you have it I'd...

Q I'm looking at the Grand Jury 172, 173, 174 -- start with those.

A Okay. (Witness complied.)

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Q And 157.

A Okay. It's the same answer. I don't know what the answer was before that.

Q Did she testify at the grand jury -- did she testify at the grand jury that she didn't reuse syringes?

A Should I just read it, or...

Q Well, I'm just going to shorten it up.

A Okay.

Q Do you disagree?

A Well, she said, Did you ever tell them that you're instructed to, though, and she said, I don't think so, Could you have, and she said, No.

Q Okay.

A And that's what she said.

Q Okay. Correct. And did -- she didn't reuse syringes?

A Yeah, she always maintained that she never reused syringes.

Q Okay. And -- and she testified at the grand jury no one told her to reuse syringes, correct?

A That's what -- she said no to the question.

Q Okay. And then she was interviewed by the F.B.I. with a proffer agreement, and she once again said she didn't reuse syringes and she denied anyone telling her to reuse syringes?

A She's always maintained that, yes, sir.

Q Okay.

A Oh, the -- the reuse syringes except for when she interviewed with us, and then she said that she watched Mr. Lakeman reuse syringes --

Q I'm going to get to that.

A -- okay.

Q I'm with -- I'm at the F.B.I. now, second interview --

A Sorry.

Q -- okay?

A Yes, sir.

Q Do you recall -- F.B.I. interviewed her; let's see who was there. This is on August 14, 2008. Linda Rosel, who's that?

A She would be the -- she worked for the AG's office; she was an investigator for them.

Q Okay. Laura Hughes?

A She's also an investigator for the AG's office, except I don't think she's there anymore.

Q Levi Hancock?

A Levi would be the detective that worked with me at that time.

Q Do you recall that Hubbard --

A I don't think I was there. Was -- am I listed

on that interview? I don't believe I was there.

Q No, you're not listed on it, but you've read it, correct?

A Yes, I've read everything.

THE COURT: Oh, the -- they can't -- still can't hear you.

THE WITNESS: I'm sorry. Yes.

BY MR. WRIGHT:

Q You've read it?

A Yes.

Q You were -- I don't see you there. Must have been in Europe again.

A I wish.

Q Let's see. Do you recall that Linda Hubbard stated at ESCN -- endoscopic clinic --

A Yes, sir.

Q -- always used clean needles and syringes. She would sometimes reuse a syringe. If there was a small amount of propofol left in a bottle, she would only do this if the syringe was being used on the same patient?

A If that's what that says, yes, sir.

Q That's what it says.

A All right.

Q You're -- and that she did not tell the CDC that she was instructed to reuse syringes?

A Yes, sir.

Q Now, then you all interview her a third time, correct?

A Yes.

Q And she'd been to the grand jury, she'd been interviewed by the F.B.I. and then you all interview her again because --

A We interviewed again because she would do a proffer with us. She agreed to talk to us.

Q Okay. And you -- she'd already been to the grand jury and testified, and she'd been interviewed by the F.B.I.?

A Yes, sir.

Q And so you just keep going back to the same witnesses because...

A No, I believe that -- that interview was coordinated through her attorney, and her attorney was there the whole entire time. So, you know, I would think that --

Q But he --

A -- not being a lawyer, I think there would be discussions on whether or not she's going to lie to us or not. I mean, I would hope that either her --

THE COURT: Well, don't speculate as to what may have happened.

BY MR. WRIGHT:

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Q Okay. As you --

THE COURT: Only tell us what actually did happen.

BY MR. WRIGHT:

Q -- as you understood it, her lawyer called up and wanted her to be interviewed again?

A I don't remember specifically how it went down and how we got back there, but I know that we wanted to talk to her again.

THE COURT: Who is -- I'm sorry. Mr. Wright, keep your -- just be mindful to keep your --

MR. WRIGHT: Okay.

THE COURT: -- voice up. You start good and then you keep drifting --

MR. WRIGHT: I know.

THE COURT: -- away.

MR. WRIGHT: All right.

BY MR. WRIGHT:

Q You know -- you --

A I mean, I'll talk to 100 people, as long as they're willing to talk to me 100 different times.

Q Well, do you -- you keep interviewing them until you hear what you want to hear --

MS. WECKERLY: Objection.

BY MR. WRIGHT:

Q -- is that fair?

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A No, that's not the case.

THE COURT: Well, overruled.

BY MR. WRIGHT:

Q Okay.

A We don't --

Q So --

A -- I would never encourage anybody to lie or tell me what I want to hear. The only thing I'd ever want to hear is the truth. Now, whether or not that changes from the grand jury to when she talked to us --

Q Okay.

A -- the second time, I can't tell you why she did it --

Q Well, you --

A -- or how she did it, but that's the statement she made to us.

Q -- okay. But you all -- you all knew what the truth was, and you just needed the witnesses to say it, correct?

A No, again, I don't encourage --

Q Is that correct?

A -- anybody to --

Q I didn't ask if you would encourage them. I said, in May 2008 didn't you all declare what the truth was, and now you just need the witnesses to say it?

A No, sir.

Q Do you remember the District Attorney David
Roger getting on television --

MS. WECKERLY: Objection.

BY MR. WRIGHT:

Q -- and saying that?

THE COURT: Well, overruled.

THE WITNESS: I do not recall his statements on
television. No, sir.

BY MR. WRIGHT:

Q You don't recall that?

A No, sir.

Q Let me see if I can refresh your recollection.
Do you recall David Roger stating --

THE COURT: Well, wait a minute.

MR. WRIGHT: Well, wait a minute, what?

THE COURT: Well, wait a minute. You have to see if
it refreshes his recollection.

MR. WRIGHT: Okay.

THE COURT: You can't just read the statement into
the record and --

MR. WRIGHT: Well, I'm not --

THE COURT: -- make that part of the --

MR. WRIGHT: -- what I'm asking was specificity and

--

THE COURT: Well, Mr. Wright, you know how -- I mean, if he doesn't remember, then you need to move on and bring it in another way. You can't just read it in the record before we know if he's even aware of the statement or he remembers the statement or anything else.

So let him read that and lay a foundation. And, you know, if you're going to try to get it in some other way. But you can't just, you know, refresh his recollection by reading the statement.

MR. WRIGHT: Okay.

THE COURT: So, Detective, read whatever it is Mr. Wright gave you to yourself, and then Mr. Wright will ask you some questions about it.

THE WITNESS: (Witness complying.)

MR. WRIGHT: Let me mark this -- I'll put it as a business record, my letter to the District Attorney.

THE COURT: All right.

MR. WRIGHT: I'll do a clean copy of that; I've got it marked up.

THE WITNESS: Okay. This -- do you want me to -- this -- this appears to be an interview that Mr. Roger did on the Ralston Show, is what I'm taking it. It's a transcript from that?

BY MR. WRIGHT:

Q Yes.

A Okay. I don't remember watching this. I'm not saying I didn't, but I do not remember watching this. And, you know, it doesn't really sound familiar to what was said or anything like that, but --

Q So it -- it doesn't refresh your recollection?

A Well, I don't remember watching that. I didn't watch all the news programs at the time to see who was on them and stuff.

Q Okay. Well, this -- well, this was -- they recall David Roger stating the --

MS. WECKERLY: Objection. Relevance.

THE COURT: Well, I think it's relevant, but -- it's sustained for other reasons.

BY MR. WRIGHT:

Q Do you recall the district attorney's office stating --

MS. WECKERLY: Objection. This is an improper question of this witness.

THE COURT: May I see Counsel up here.

(Off-record bench conference.)

THE COURT: Resume your cross-examination.

BY MR. WRIGHT:

Q On May 27, 2008, were you already firmly convinced that criminal acts were committed, and the only remaining question was whether there will be three or four

doctors charged?

A No, I don't think by then I was firmly committed to anything at that point. I mean --

Q Okay.

A -- no.

Q Were you of the opinion that the subjects of the investigation were engaging in mob-style Tony Spilotro code of silence -- code of silence behavior with witnesses in fear of physical retribution if they talked?

A I'm not aware of that, physical retribution, but I know that people were afraid to talk. There was various reasons for it.

Q People were afraid to talk?

A Yes.

Q And the subjects of the investigation were engaging in this mob-style techniques?

A Again, I'm not sure what that comes from.

Q If the District Attorney were saying that --

MS. WECKERLY: Objection, Your Honor.

BY MR. WRIGHT:

Q -- you did not know about it; is that correct?

A Say that again, sir.

Q If the district attorney's office was saying that, you did not know about it?

A I don't recall it. It doesn't sound familiar,

but to say 100 percent I didn't know about it, I don't know.

Q Okay. People -- at the time of the investigation you were interviewing doctors --

A Yes, sir.

Q -- lawyers -- pardon me. Maybe lawyers, too, what do --

A We met with a bunch of lawyers, but --

Q -- I know?

A -- we didn't interview any of them.

THE COURT: There were lawyers, but you didn't interview them?

BY MR. WRIGHT:

Q Right. Doctors, nurses, CRNAs, people that hold licenses, correct?

A Yes, sir.

Q And there were complaints filed that put people's licenses in jeopardy -- nurses, CRNAs?

A Yes, sir.

Q And they were seeking legal advice, correct?

A Yes, sir.

Q And so is -- is that some of the reasons you're talking about why people didn't want to talk?

A Yes, sir. I mean, they had their license in jeopardy. They were afraid of being sued. There was a criminal investigation. So there were several reasons why

the -- why people wouldn't talk to us.

Q Okay. But you -- you have no knowledge of Tony Spilotro mob-style tactics with witnesses in fear of physical retribution if they talked, correct?

A That doesn't sound familiar to me. I mean, somebody might have said that at some point, but that doesn't sound familiar to me. That's not a theory that we were going on in our case.

Q Okay. Now, back to Linda Hubbard. I got sidetracked. Back to Linda Hubbard.

A Yes, sir.

Q She told the F.B.I. with a proffer agreement, no one told her to reuse syringes. And then we come up to your -- your interview. And of course, with -- who did the interview? Was that --

A Detective Hancock was the --

Q Hancock. I couldn't remember.

A -- primary interviewer.

Q Okay. And in that interview -- I've got too much junk behind --

You continued to -- you, I'm -- I don't mean you personally.

A We're a team, so, yes.

Q During the interview you continued to push her right to the end to say that Dr. Desai had requested that she

reuse needles and syringes; do you recall that?

A I wouldn't describe it as pushing. I'd say we asked her several times in several different ways if that was the case. And I think she denied it each time.

Q Okay.

A And then once she denied it, we stopped the interview.

Q Page 29. And you never heard Dr. Desai saying anything to anybody about reusing syringes or getting after anyone if they didn't reuse a syringe?

I don't remember. I really don't.

Question: So Dr. Desai, who's -- it's pretty obvious he's into cutting corners and saving money?

Linda: Okay.

We probably agree upon that, correct? That's the questioner.

Linda: He's a very frugal person.

Levi Hancock: Yes, to say the least.

Linda: Yes.

I mean, to the point that we're cutting pads in half.

Linda: I was going to say cutting chux in half.

Right.

Linda: The 50cc syringes they would use to flushes, he would chase the patient out of the room and grab it off the

stretcher.

Questioner: That's the flush that's used in the scope?

Linda: The flush for the scopes.

Okay.

But as far as you know -- but as far as anybody, you know, as far as my side of the bed --

Mm-hmm.

-- I really don't know if he said anything.

Levi Hancock: I just want you to think about that because this is a guy we know reiterated 31 minutes, 31 minutes, and people are telling us, Hey, he would be in the room.

Linda: To cut the chux in half.

Levi: Right. Cut the chux. We're reusing this. We're reusing that. In my mind this is so frugal it's hard for me to believe that there wasn't any point in time where he would say, Hey, why are you not reusing syringes. Do you see where I'm coming from?

Linda: I know. I know where you're coming from, but I just -- I just -- I just -- there is no way I could do that.

Levi: No. No, I'm not saying you.

Linda: And I don't remember him.

Levi: Right. And I'm not saying you. What I'm

saying is I mean at some point in time, through what, three years of employment?

Linda: Almost.

Levi: Yeah.

Linda: Two and a half years.

And believe me you're not the only one that's telling us these same things. So I just find it hard to believe this guy is so frugal he's cutting pads in half and other people -- he's cutting pads in half, but yet if he sees other people not using -- reusing syringes, then I find it hard to believe that he's not maybe saying something about that.

Linda: I really don't remember a whole lot of the conversation because it was -- I told him about New York, New Jersey.

It goes on. That is how she ended up, correct?

A Yes.

Q Did you interview her again after that?

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

MR. WRIGHT: I'm changing topics. We're --

THE COURT: Do you want to take our lunch break?

MR. WRIGHT: If that's --

THE COURT: Okay. Well, ladies and gentlemen, we'll take our lunch break now. We'll be in recess for the lunch break until 1:00.

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

Notepads in your chairs and follow the Bailiff through the rear door.

(Jury recessed at 11:59 a.m.)

THE COURT: All right. Obviously don't discuss your testimony during the break. You know that already. Just to let you know, Mr. Wright, according to the court clerk, because I wanted to tell the jury the correct exhibit number for Ms. Hubbard's proffer letter, there is no proffer letter for Ms. Hubbard that's been admitted.

MR. WRIGHT: Well, I -- that's why --

THE COURT: So according to the --

MR. WRIGHT: -- I figured --

THE COURT: -- court clerk. I'm just help --

MR. WRIGHT: Oh, okay.

THE COURT: -- you know --

MR. WRIGHT: Thank you.

THE COURT: -- trying to help keep a clean record

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here and let you know that. So you might want to --

MR. WRIGHT: I'll find it.

THE COURT: -- take care of that. According to the clerk -- I don't know if you had it marked -- it's not marked or admitted according to our court clerk, so --

MR. WRIGHT: Thank you.

THE COURT: -- to make that clear.

Secondly, on the issue of Linda Hubbard, Mr. Staudaher, did you reach her? Where are we on that?

MR. STAUDAHER: The last message I had back was that they had left -- they had tried to contact her, they left her a voicemail message, and then our investigators went out to pay her a visit. So --

THE COURT: Okay. Very good.

MR. STAUDAHER: -- I don't know where that is, but I will follow up certainly.

THE COURT: Okay. Just so you know, Ms. Mayo, who is the one that has the insurance -- health insurance issue, had a doctor's appointment today. We made her cancel another one. So we're going to have to conclude by 3:50 today. So I guess the State won't be resting today, or --

MR. STAUDAHER: Sounds like it.

THE COURT: -- judging by the length of --

MR. STAUDAHER: No.

THE COURT: -- the cross. I've told the bailiff that

anybody else with doctor's appointments to tell them the trial isn't going to be much longer, so they're not going to be able to do that, you know. We're just going to go through until we finish.

MR. STAUDAHER: And, Your Honor, one last thing. While we were here -- you know, during the time we've been in court, that custodian of records, the actual original was FedEx'd, it arrived. I would like to introduce that and move it into evidence.

THE COURT: From the last witness?

MR. STAUDAHER: Not the very last witness, the one

--

THE COURT: The one before that, or?

MR. STAUDAHER: -- Ms. Kalka [phonetic] who was from Minnesota --

THE COURT: Oh, okay.

MR. STAUDAHER: -- with the issue there, so --

THE COURT: So you're going to substitute out the original exhibit for --

MR. STAUDAHER: I never produced it -- well, actually, I guess there is part of this on your desk. We'll substitute --

THE COURT: Okay. And you showed the defense that and they're fine with all that? Okay. All right. Then go to lunch and --

(Court recessed from 12:02 to 12:59 p.m.)

(Pause in proceedings)

THE COURT: Do we have an update on Ms. Hubbard?

MR. STAUDAHER: Apparently the investigators went to her house, and this was at 12:36 they were there; she was not at home, they left their contact information. She has not called --

THE COURT: Okay.

MR. STAUDAHER: -- back either or responded to the calls that we have. Everybody knows it's important and --

THE COURT: No, I mean, that's not --

MR. STAUDAHER: And I'm keeping my phone --

THE COURT: -- that's not surprising --

MR. STAUDAHER: -- here, not out of disrespect but just --

THE COURT: -- because, you know --

MR. STAUDAHER: -- to keep in contact.

THE COURT: -- she could be -- I mean, she's -- it's daytime; she could be anywhere in the middle of the day. So, you know, at some point when she gets home tonight or, you know, whatever, she should see the message.

MR. WRIGHT: I made a clean T1, the next in order -- because they --

THE COURT: Well, the State isn't stipulating --

MR. WRIGHT: -- no --

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THE COURT: -- to it.

MR. WRIGHT: -- I didn't say they did.

THE COURT: Okay. We're just marking that --

MR. WRIGHT: No, next in order is --

THE COURT: -- T1.

MR. WRIGHT: -- the proffer letter for Linda Hubbard.

THE COURT: I knew that's what -- oh, okay.

MR. WRIGHT: I -- I move its admission.

THE COURT: Any objection to the proffer letter from
Linda Hubbard?

MR. STAUDAHER: No, Your Honor.

THE COURT: So T -- that will be admitted as T1.

(Defendant's Exhibit U1 admitted.)

THE CLERK: So, Judge, U --

THE COURT: What?

THE CLERK: -- U1.

THE COURT: Oh, it's U1.

MR. WRIGHT: U1.

MS. WECKERLY: I think I have the objection to T1.

THE COURT: T1, right. That's the one that is the
letter --

MR. STAUDAHER: Mr. Wright --

THE COURT: -- from Mr. Wright, and that's what I --

MR. STAUDAHER: -- can we get a copy of --

THE COURT: -- was talking about --

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MR. STAUDAHER: -- that too? We don't --

THE COURT: -- that they're not --

MR. STAUDAHER: -- have --

THE COURT: -- stipulating to it, and I don't think
he --

MR. WRIGHT: What do you want?

THE COURT: -- can get it in --

MR. STAUDAHER: Yeah, a copy of that.

THE COURT: -- through this witness, but
notwithstanding anything I may say, I know Mr. Wright is going
to keep trying. So just be forewarned, Mr. Wright, I don't
see that coming in through this particular witness.

MR. WRIGHT: I'm done with this --

THE COURT: Okay.

MR. WRIGHT: -- witness with this exhibit.

THE COURT: Okay. This is your letter?

MR. WRIGHT: Yeah.

THE WITNESS: I got excited there.

THE COURT: What's that?

THE WITNESS: I said, I got excited there when he
said he was done.

MR. WRIGHT: Did you give me the marked-up one?

THE CLERK: Oh, could I give it to you?

MR. WRIGHT: Yeah.

THE CLERK: Sure.

MR. WRIGHT: Okay.

THE CLERK: Mr. Wright, I don't think you gave -- you gave us something different than what you were going to.

MR. WRIGHT: Let me unscramble this, make sure I'm getting the right stuff.

THE CLERK: Yeah, this is the proffer that you gave me back. Did you want this?

MR. WRIGHT: No, that's -- Ul. That's a -- it was stipulated in.

THE CLERK: And you have the one that's crossed out, that's highlighted. That's what you wanted, right?

MR. WRIGHT: Right.

THE CLERK: Okay. Just wanted to --

MR. WRIGHT: And you've got the -- the clean.

THE CLERK: Mm-hmm.

MR. WRIGHT: Good. That's what works here. Thanks.

THE CLERK: Do you want this proffer letter?

MR. WRIGHT: No.

THE CLERK: No, it's all over?

(Pause in the proceedings.)

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

(Jury entering at 1:09 p.m.)

THE MARSHAL: Thank you, everybody. Be seated.

THE COURT: All right. Court is now back in session.

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And, Mr. Wright, you may resume your cross-examination of the witness.

MR. WRIGHT: Thank you.

BY MR. WRIGHT:

Q At the start of the investigation, your initial involvement began when?

A I believe that was March 3rd was when we were first briefed on the case.

Q Okay. And who was in the meeting?

A I think --

Q As best as you can recall.

A -- yeah. Yes, sir. It was myself; I think there was a Detective Gray there; Detective Joe Kelley, who I worked with; there was an F.B.I. agent, Robin McIlroy; I believe David Roger was there; Brian Labus was the one briefing us on the -- what -- what -- he was the one doing the briefing --

THE COURT: Voice up.

THE WITNESS: Oh, sorry, ma'am.

Brian Labus; and maybe somebody from the AG's office.

BY MR. WRIGHT:

Q Okay. And so it was the Metropolitan Police Department, F.B.I. representative, District -- David Roger was the District Attorney at the time?

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A Yes, sir.

Q Chris Laurent [phonetic] there?

A He might have been there. Yes, sir.

Q He's a deputy district --

A He was a -- at the time I think he was a chief
at the time, but I don't --

THE COURT: Chief deputy district attorney?

THE WITNESS: Yes, ma'am.

BY MR. WRIGHT:

Q Okay. And Brian Labus briefed you all on March
3 --

A Yes, sir.

Q -- and were the clinics still -- still open or
not open at that time?

A I think they were still open at that time.

Q Okay. The -- as we know the public information,
the press conference and the letters out, 63,000 patients that
had occurred on February 27?

A Yes, sir.

Q And shortly thereafter, licenses were revoked
for the clinics and the gastro center -- the doctor's side --
by Clark County, and/or the City of Las Vegas and/or
Henderson, whatever municipalities had jurisdiction; is that
correct?

A I thought one of them didn't revoke them. I

thought, like, two out of the three and maybe -- I want to say either North Las Vegas or Henderson did not revoke it, but yes, Clark County and Las Vegas, I believe, did revoke those license.

Q Okay. And so the clinics were no longer in operation, and -- basically meaning the Burnham clinic and Shadow Lane clinic and the Gastro Center at Shadow Lane by the time you all executed a search warrant?

A If I remember correctly, that's the case. Yes, sir.

Q Okay. And were you aware that arrangements had been made to produce patient records, computers, whatever was needed pursuant to subpoena?

A I don't know if I was aware at that time if that was the arrangement. I couldn't tell you. I just don't know if we were aware of that at that time.

Q Okay.

A I know subsequently we became aware of it through here, but --

Q Okay. But at -- in any event, the search warrants were executed and all patient records and files were seized, correct?

A Yes, sir.

Q Okay. And I think you said over 100,000 patient --

A A lot.

Q -- right. Thousands of boxes?

A Well, I wouldn't describe thousands of boxes, but yes, hundreds of boxes.

Q Okay. I thought by the time -- even those at the warehouse, the storage facilities?

A They were stacked up high. Yes, sir.

Q Okay. And of course, those were -- and then that created a logistical nightmare for getting patients their records, correct?

A Yes, sir.

Q And you promptly -- even before the search warrant, you interviewed the three BLC investigators?

A They were interviewed. I don't think I was there at their interview, but they were interviewed. Yes, sir.

Q Okay. I get -- were you there -- oh, you're right. Detective Gray and Detective Hahn?

A Yes, sir.

Q And those are two of your fellow detectives?

A Yes, sir.

Q Okay. And did -- were you aware of the results of this interview?

A I've read it. Yes, sir.

Q Okay. And so this was on March 5, 2008, so this

was two days after the initial briefing, correct?

A Yes, sir.

Q Okay. And at that time the three BLC investigators -- Leslee Kosloy, Dorothy Sims, and Nadine Howard -- informed Detectives Gray and Hahn that the clinic readily admitted to the investigators, meaning CDC, BLC, and Southern Nevada Health District, on Wednesday afternoon at the first meeting that they were using propofol as a multidose vial, correct?

A If that's in there. Yes, sir.

Q Okay. And it's also -- and what had Brian Labus told you about that; do you recall?

A He said pretty much the same thing, that they were using multidose vials on multiple patients, and that could have been potentially one of the sources of infection.

Q Okay. So this was known and admitted, correct?

A This was known that first briefing. Yes, sir.

Q Okay. Now, the -- thereafter, as the investigation progresses you conduct multiple interviews, correct?

A A lot of interviews. Yes, sir.

Q Okay. And one of the things you're also told by Brian Labus is that CRNA Vincent Mione had told Brian Labus that he had been instructed to reuse syringes, correct?

A Not entirely. Can I explain?

Q Sure.

A The -- the way I think it went down was he -- when we interviewed him, he said that he had talked to a Vince, and he said in his interview that it was the new Vince, and then I think I said it was Vince Mione and then he agreed with me, and that's how we got the name Vince Mione. But I think the new Vince would have been Vince Sagendorf.

Q Okay. So that -- and you know that Brian Labus contended whichever Vince he was with --

A Right.

Q -- I mean, whichever Vince he's talking about -- well, let me put it this way: Are you aware that Brian Labus was deposed, like, five more times in civil litigation, and insisted it was Vincent Mione?

A I don't -- I don't recall how many times he was deposed, but I don't remember that part of the depositions. There was tons of them.

Q Okay. And so the -- Brian Labus told you that he interviewed -- talked with a Vinnie -- Vince, CRNA?

A Yes, sir.

Q And that CRNA said he had been told to reuse syringes and this was in the presence of Melissa Fischer --

A Fischer --

Q -- Gayle Fischer --

A -- Langley.

Q -- Melissa Langley? I get them mixed up. The CDC investigator Melissa, correct?

A Melissa Schaefer and then it's Gayle Langley Fischer.

Q Okay. Melissa Schaefer --

A Yes.

Q -- right? And you've -- you've read Melissa Schaeffer's statements?

A Yes, sir.

Q She was interviewed by Metro?

A Yes, sir.

Q She testified --

A Yes, sir.

Q -- that she has no knowledge of such an interview of either Vinnie in such a statement, correct?

A I guess. Yes, sir. I don't remember her saying yes or no, but you're probably right.

Q Okay. And you've been here in the courtroom, you've heard -- you've been in and out, so if I say something, say, I wasn't here then, okay?

A Yes, sir.

Q The -- you know, Mr. Sagendorf and Mr. Mione both testified --

A Yes, sir.

Q -- and both deny having any such conversation

and making any such statement to Brian Labus, correct?

A Yes, sir.

Q And you know it couldn't be Vincent Mione, right?

A I don't know which one it was. I mean, I assumed it was Mione, but in the nature of the conversation he said it was the new one. So that would describe Sagendorf. So the mystery continues.

Q Okay. Well, you've got all the records and it's easy to solve --

A Right.

Q -- correct?

A Yes, sir.

Q I mean, this is no mystery on any of this. You all seized every record, every computer in that business, correct?

A Yes, sir.

Q You know every single patient that's been there since the time it opened, correct?

A We could find it out. Yes, sir.

Q Okay. And so you know -- you can look on January 11, 2008, and there's an absolute record of who the CRNAs were working there on that day, correct?

A I think we could do it right with those books right over there. Yes, sir.

1 Q Good afternoon.

2 A Hi.

3 Q Just a few clarifying points, and I mean just
4 a few because you're really an expert. You know how this
5 works. And I did have this nice chart prepared, and I think
6 that given what you've already testified you can click right
7 through this. This column right here, as I understand your
8 testimony, a total of nine units were paid and do you multiple
9 that by 34?

10 A Yes.

11 Q Did that work?

12 A It's exactly how you have it, plus, plus, and
13 then times.

14 Q So I got it right?

15 A [Nods head yes]

16 Q Okay. And so if we wanted to, all we had to
17 do is subtract \$34 from this and it'll be the amount that
18 would be \$34. I won't even go through the math, even though I
19 have my calculator. But from 16 to 30, all we have to do is
20 subtract 34 from -- well, I guess I will do it. What the
21 heck. 306 minus 34, you say? Oh, what did I do?

22 MS. WECKERLY: You had an error message. I saw it
23 on your -- you did.

24 MS. STANISH: Yeah, it's hard to use a calculator
25 often, I know, but you can see why I have this problem.

1 MS. WECKERLY: That's all right.

2 BY MS. STANISH:

3 Q So 306 minus 34 equals 272. So if the
4 anesthesia services was between 16 minutes and 30 minutes, the
5 insurance company would have paid 272 and the patient would
6 not have to pay anything?

7 A Correct.

8 Q And then minus another -- by the way, if it's
9 zero to 15, if there's -- if I'm at zero, I still get -- do I
10 still get the one unit?

11 A Yes.

12 Q So if there was no time --

13 A Well, if there was no time the claim wouldn't
14 have been submitted.

15 Q Well, no, I mean, you get the base; right?

16 A Right.

17 Q You automatically get --

18 A Right.

19 Q -- the base.

20 A Right.

21 Q And so -- and by the way, your competitors are
22 only giving five units. But just to clarify, it's automatic
23 that they get six for having the colonoscopy procedure. I
24 guess my question is, as I understand the timing permits, if
25 it's zero to 15 you're going to get one point?

1 A Correct.

2 Q So just meaning if there was -- if they just
3 didn't report any time, left the time unit blank, they would
4 get seven?

5 A Right.

6 Q All right.

7 A If they left time blank, we would always send
8 for the medical records to see actually what time was used.

9 Q Sure. And so to -- so if we minus 34 from --
10 if we were at the zero to 15, the amount paid would be \$238;
11 correct?

12 A [Nods head yes].

13 Q All right. That's all I have.

14 THE COURT: All right. Thank you, Ms. Stanish.
15 Mr. Santacroce.

16 CROSS-EXAMINATION

17 BY MR. SANTACROCE:

18 Q Good afternoon. Can you tell from the
19 documents you have who the provider is that you pay?

20 A Yes.

21 Q Who is that?

22 A Do you want to bring it back up?

23 MS. WECKERLY: It's -- it's right there.

24 MR. SANTACROCE: Why don't you just hand her those,
25 Margaret?

1 MS. STANISH: Anything for you.

2 THE WITNESS: Oh. Thank you. Based on the
3 explanation of benefits, the provider was Keith H. Mathahs.

4 BY MR. SANTACROCE:

5 Q And who was the patient?

6 A The patient is Sonia E. Alfaro Orellana.

7 Q And who did you make the check out payable to?

8 A Check payable to -- there's no copy of the
9 check in here, but based on the provider that's on the
10 explanation of benefits it would have been made to Keith
11 Mathahs.

12 Q Are you sure about that?

13 A No, I'm not 100 percent sure without the copy
14 of the check.

15 Q Okay. So you're not sure. It might have been
16 made to Gastroenterology Center of Nevada?

17 A I don't -- it probably would have -- it should
18 have been made to Keith Mathahs based on Box, probably, 31 of
19 the HCFA.

20 Q But as you sit here today you can't testify as
21 to who the check went to?

22 A Let me look at the image in here to see what
23 was billed in Box 31. The check was made to Keith Mathahs
24 based on the information on 209B.

25 Q Okay. So we're starting -- the check wasn't

1 made out to Ronald Lakeman; correct?

2 A Correct.

3 Q Now, you -- you testified that the allowable
4 amount was \$306?

5 A Correct.

6 Q Do you administer a lot of these claims for
7 anesthesia?

8 A We process --

9 Q For your company.

10 A We process a lot of anesthesia claims, yes.

11 Q Okay. And other than the Gastro Center of
12 Nevada or Endoscopy Center of Nevada, other -- other
13 providers?

14 A Yes.

15 Q And is this amount a customary amount in the
16 industry about, roughly?

17 A Yes. I mean, the base units are always the
18 same for that procedure for CPT Code 00810.

19 Q And what is that code for?

20 A That is for anesthesia for gastrointestinal
21 issues.

22 Q Okay. So --

23 A So the base units for that on our plan, no
24 matter who the provider is, is always six units. So that
25 stays the same. The only thing that would change is how the

1 provider bills the time that the patient was under anesthesia.

2 Q Okay.

3 A So it all depends on how we receive the claim.

4 Q So no matter what they're getting six base
5 units.

6 A Correct.

7 Q And the only thing that varies is the minutes?

8 A Correct, depending on what the patient was
9 under.

10 Q And I want to know from your experience is a
11 \$306 payment for that provider code customary in your business
12 for that type of procedure?

13 A It depends on what -- how we get the claim. I
14 -- the examiners don't look at a claim and be like, oh, this
15 seems -- these minutes don't seem appropriate. We process the
16 claim based on good faith. I mean, it could have said five --
17 it could have said five units and we would have paid it
18 because we process based on good faith that the claim we're
19 getting is correct with the information. And we have the
20 screen that shows the to and from time.

21 Q Okay. And from -- from the provider code, if
22 I had billed \$1,000 for a procedure that was for this provider
23 code, would your machine kick it out?

24 A No, it would not kick it out.

25 Q You would pay \$1,000?

1 A We would not pay \$1,000. The system is set up
2 according to that base plus time, times the RVU. So depending
3 on how many units were in there, then we would have -- we pay
4 according to that.

5 Q Okay. So there was nothing out of the
6 ordinary about paying \$306 for that procedure code?

7 A Not to -- to a normal processing claims
8 examiner, no.

9 Q Okay.

10 MR. SANTACROCE: Nothing further.

11 THE COURT: Redirect.

12 MS. WECKERLY: Nothing else. Thank you.

13 THE COURT: Any juror questions for this witness? I
14 see no juror questions.

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

18 THE WITNESS: Okay. Thank you.

19 THE COURT: Thank you.

20 THE WITNESS: Do I just leave these up here?

21 THE COURT: You can just hand them to me.

22 THE WITNESS: Okay.

23 THE COURT: All right. I believe that's the last
24 witness for today; is that correct?

25 MS. WECKERLY: That's correct.

1 THE COURT: May I see counsel at the bench, please?

2 (Off-record bench conference.)

3 THE COURT: Ladies and gentlemen, we're going to
4 take our evening recess. We will reconvene tomorrow morning
5 at 9:15.

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

14 Notepads in your chairs and follow the bailiff
15 through the rear door.

16 (Jury recessed at 5:08 p.m.)

17 THE COURT: We got -- while I think of it, we got --
18 I got from Ms. Killebrew the disclosure on the Meana, and the
19 global net settlement amount was two million -- anybody
20 writing this down?

21 MR. WRIGHT: Yep.

22 MS. WECKERLY: No.

23 THE COURT: Okay. Well, Ms. Stanish has such a head
24 for numbers. It's \$2,349,268.18.

25 MS. STANISH: I would never remember that.

1 THE COURT: I know you wouldn't, but I'm telling you
2 so in case I forget to tell you tomorrow you now know that I
3 have this amount.

4 MR. WRIGHT: Say it again.

5 THE COURT: Well, you can ask me tomorrow. I just
6 didn't want to forget that I had this envelope sitting up here
7 and not say anything. It's \$2,349,268.18.

8 MR. WRIGHT: Thank you.

9 (Court recessed for the evening at 5:09 p.m.)
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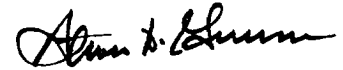
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TRAN



CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

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

BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE

JURY TRIAL - DAY 41

FRIDAY, JUNE 21, 2013

APPEARANCES:

FOR THE STATE:	MICHAEL V. STAUDAHER, ESQ. PAMELA WECKERLY, ESQ. Chief Deputy District Attorneys
FOR DEFENDANT DESAI:	RICHARD A. WRIGHT, ESQ.
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LAS VEGAS, NEVADA, FRIDAY, JUNE 21, 2013, 9:28 A.M.

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(Outside the presence of the jury.)

THE COURT: All right.

MR. STAUDAHER: Oh, and --

THE COURT: Kenny --

MR. STAUDAHER: -- actually, let me just make sure because I've done a couple of things with the documents and so forth before we start.

We have provided to counsel and told them to disregard the previous ones -- the charts, the four charts as the Court requested conforming with the testimony --

THE COURT: Okay.

MR. STAUDAHER: -- conforming with the Court's orders, they are now getting exchanged out --

THE COURT: Okay.

MR. STAUDAHER: -- with the Court.

MS. STANISH: They've been exchanged.

MR. STAUDAHER: Yeah, and I'm -- we're going to get rid of the other ones so there's no --

THE COURT: Okay.

MR. STAUDAHER: -- possibility --

THE COURT: So there's no confusion. Good.

MR. STAUDAHER: -- correct. Also, we have provided today to counsel the documents for Patty Shibona --

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THE COURT: Okay.

MR. STAUDAHER: -- as well as, I think -- there aren't any other ones that need to be produced for anybody else. Those are the only outstanding ones, and we understand that that affidavit that I told the Court would be coming is still -- it should be here today, we should still have it. I'm talking about the COR production from the other company.

THE COURT: Oh, okay. And, Ms. Stanish, you got all the documents from Ms. Shibona that you were -- that you were requesting?

MS. STANISH: Yes, Your Honor.

THE COURT: Okay. The fee schedule and --

MS. STANISH: Correct.

THE COURT: -- everything?

MS. STANISH: So hopefully I'm going to clip along.

THE COURT: Okay. Well, yesterday that -- once everybody had everything, it was -- we were organized -- that went what, 10 minutes?

MS. STANISH: Yeah, well, it's my witness, Your Honor.

MS. WECKERLY: I agree.

THE COURT: I feel like you just --

MS. WECKERLY: I'm just kidding.

THE COURT: -- like Mr. Staudaher has been beaten down enough.

MS. STANISH: Well, I told him that after court.

THE COURT: I wasn't going to say anything.

MS. WECKERLY: I feel smiley.

MR. STAUDAHER: So anyway, I just wanted to make sure the Court was aware that we had done that with the documents and that those had been provided so far, so...

THE COURT: Right. Okay. Well --

MR. STAUDAHER: As a matter of fact, do you have those other ones?

MS. STANISH: Oh, she gave them -- the charts?

THE CLERK: No, I gave them to --

MS. STANISH: I have them. I have them.

MR. STAUDAHER: Okay.

THE CLERK: -- and I crossed them out.

MR. STAUDAHER: Okay.

THE COURT: And who is our first witness for today?

MS. WECKERLY: Shibona.

MR. STAUDAHER: We're going to finish with the --

MS. WECKERLY: The insurance people.

THE COURT: Okay. We'll finish with her?

MR. STAUDAHER: Right.

MS. WECKERLY: There's one more insurance person --

THE COURT: Okay.

MS. WECKERLY: -- after her and then --

MS. STANISH: Is she going to be the one -- she's

just going to continue as a COR, and then the other one is going to be the one that does the calculations?

MS. WECKERLY: The calculation one --

MR. STAUDAHER: Which one?

MS. WECKERLY: -- is first?

MS. STANISH: Oh, okay.

MR. STAUDAHER: Yes.

MS. STANISH: Good.

MS. WECKERLY: For that, but she knows how.

MR. STAUDAHER: Same -- she knows how to -- she -- she was the one who did it on the stand and she --

MS. STANISH: Okay.

MR. STAUDAHER: -- has the documents to --

MS. STANISH: And then --

MR. STAUDAHER: -- speak to that.

MS. STANISH: -- so the other -- the additional one --

MS. WECKERLY: The additional one is with HPN.

MS. STANISH: Oh, who is it? What's her name?

MS. WECKERLY: The one that testified at grand jury -- Spaeth.

MS. STANISH: Oh, okay.

MS. WECKERLY: So she did the claims, but there's no calculating on that one --

MS. STANISH: All right.

MS. WECKERLY: -- because it's flat.

MS. STANISH: Well, it's a flat fee.

THE COURT: That's fine as long as --

MS. STANISH: All right.

THE COURT: -- that's what she --

MS. STANISH: That's fine.

THE COURT: -- testifies about.

MS. STANISH: All righty.

MS. WECKERLY: And you -- you have the agreement that says it's --

MS. STANISH: Correct.

MS. WECKERLY: -- flat?

MS. STANISH: Okay. Good. Good. Let's get it over with.

MS. WECKERLY: So you don't have to have your calculator.

MS. STANISH: I do have it.

MS. WECKERLY: I know, but you don't need it for the second one.

MS. STANISH: You don't think so?

MS. WECKERLY: I can't think of how.

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

(Jury entering at 9:31 a.m.)

THE MARSHAL: Thank you, everybody. You may be

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seated.

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

And, ladies and gentlemen, you'll recall that we interrupted the testimony of Ms. Shibona prior to the cross-examination. She is now here so you can retrieve the witness.

Ma'am, come on back up here to the witness stand, please. And then just remain standing, facing our court clerk.

PATRICIA SHIBONA, STATE'S WITNESS, SWORN

THE CLERK: Thank you. Please be seated. Ma'am, would you please state and spell your name?

THE WITNESS: Patricia Shibona, P-A-T-R-I-C-I-A, S-H-I-B-O-N-A.

THE COURT: All right. Thank you.

Mr. Staudaher?

MR. STAUDAHER: Yes.

DIRECT EXAMINATION

BY MR. STAUDAHER:

Q And before we turn to you -- we were about ready to turn you over to cross-examination, but there were a couple

of documents that were requested that we wanted to ask you about.

MR. STAUDAHER: So may I approach her?

THE COURT: You may.

BY MR. STAUDAHER:

Q Showing you what has been marked as Proposed State's -- let's break them down here -- 244, and I think they all go together, 244A, 244B, and 244C. Can you look at these documents and tell us what we're looking at?

A (Witness complied.) The first document shows the Medicare pricing in the system -- the claim's processing system back on the -- this claim, which was for, I believe, Rodolfo.

Q Rodolfo Meana?

A Yes.

Q Okay.

A The second --

Q And when --

A -- I'm sorry.

Q -- when you say -- before I get there, when you say the -- this system -- is this your computer system?

A Yes, it is.

Q And I'm talking about -- when I say -- not your personal one but the company's?

A The company's computer system that was used to

process claims.

Q So you were able to access that record to see what was actually processed for his specific claim package in 2007?

A Correct.

Q And is -- then you did what? How was it -- how did -- was this document produced?

A We did a screen shot of it -- we did a screen print of it.

Q Okay.

A And then --

Q Produced it --

A Produced it --

Q -- is that right?

A -- yeah.

Q Okay. Go on to the next one.

A Okay. The next one shows -- it's the same computer system showing the commercial rate of \$38. That was for Ms. Martin.

Q Okay. Same kind of thing off your system, you get a screen shot, printed it, brought it to court?

A Correct.

Q Okay. Go to the next one.

A The next one is an amendment to a contract, and it shows that the contract is between gastroenterology center.

And it shows that according to this amendment, the rates are \$38 for commercial products.

Q Okay. And also does it talk about rate versus schedules for Medicare?

A Yes, it shows 100 percent for the senior health products.

Q And is the senior horizons product -- is that what we're talking about there?

A Yes.

Q Okay. And is this -- does this relate to something that was attached back in 2007, even though the date of this amendment is 2000 -- what does it say?

A The date of the amendment is -- it looks like it was signed in 2000.

Q Okay. But is that the one that was in effect at the time?

A Yes.

Q Okay. Now --

A Based on the pricing that's on our system, I would say yes.

Q Okay. And as far as the last item, what is that?

A This -- this was requested me the last time to be able to show what the Medicare pricing was that I had said I had notated, and this shows that this is the anesthesia, and

for Nevada -- this shows the website that I went to -- and back here it shows you that Nevada is \$16.40 per unit.

Q So that matches with the information that was on the first screen shot of that as well?

A Correct.

Q For what actually was used for that -- for Rodolfo Meana?

A Correct.

MR. STAUDAHER: Your Honor, at this time I'd move for admission of State's Proposed 244 through 244 -- 244, 244A, B, and C.

THE COURT: Any objection?

MS. STANISH: No, Your Honor.

THE COURT: All right. Those will all be admitted.

(State's Exhibit 244, 244A, 244B, and 244C admitted.)

BY MR. STAUDAHER:

Q Just so we're clear on this, you did some calculations and I think Ms. Stanish might actually have you go through it again, but when you did those on the stand, if I understood correctly it was based on eight units of anesthesia, just a simple multiplication of eight times whatever this rate is --

A Correct.

Q -- to determine how much was charged?

A Correct.

Q And before I show these, if the actual amount had been less, meaning less units, would you have reimbursed less?

A Yes.

Q Do you -- when people process claims, do you basically use good faith in processing the claims?

A Yes.

Q If there are faults, do you -- do you process the claims?

A No.

Q Now, showing you State's 244. I know that this is kind of blacked out here, but I want to make sure we get to the portion that has --

A Unfortunately our screens were gray, so they don't copy well.

Q But you've actually seen this?

A Yes.

Q And this one is for Rodolfo Meana; is that correct?

A Yes.

Q Okay. So I'm going to zoom in on the portion that I think you delineated up at the bench was -- excuse me, up at -- up at your stand there that it was the actual rate that was used for him; is that correct?

A Correct.

Q Anesthesia base --

A Correct.

Q -- and then it has a dollar amount here of
16.40?

A Correct.

Q Does that coincide with the records on the EOB
that we saw earlier?

A Yes.

Q With regard to the next one, which I think you
said was for --

A I think it's Ms. Martin.

Q -- Ms. Martin, and I note that -- I can bring it
back up to you if you need to see it, but that's also the same
thing, anesthesia basin; this time it says \$38?

A Correct.

Q Okay. Does that also correspond to the EOB for
Ms. Martin?

A Yes.

Q And the last one the -- oh, the -- Exhibit No.
244B, which you said was the amendment between the gastro
center and PacifiCare; is that correct?

A I believe the way it's -- it has a different
name on it.

Q Oh, gastro -- well, let's see.

A A Physician's IPA Group. That was the contract

that we utilized --

Q Okay. But this --

A -- in payment.

Q -- is the contract?

A Yes, it is.

Q Okay. Sorry. Whatever it means. So I know I'm zooming around here, but I want to get up to this part here. So the part here that says \$38, ASA for commercial health products is that the one that relates to the commercial product for Gwendolyn Martin?

A Yes.

Q And if we go just above that where it says 100 percent RBRBS for senior products --

A Right.

Q -- for senior health products?

A Mm-hmm.

Q Is that the one for Rodolfo Meana?

A It corresponds with the pricing we have for the senior product, yes.

Q And what does RBRBS mean?

A I don't know.

Q The next document was 244C, which you said also was a screen shot telling you what the actual Medicare reimbursement rate -- that 100 percent --

A Right.

Q -- for Nevada?

A Correct.

Q Back in 2007?

A Correct.

Q If we go to that page. Just the last page of the document. Nevada \$6.40?

A \$16.40.

Q \$16.40, I'm sorry.

A That's correct.

MR. STAUDAHER: Your Honor, I pass the witness.

THE COURT: All right. Thank you.

Ms. Stanish?

CROSS-EXAMINATION

BY MS. STANISH:

Q Welcome back --

A Thank you.

Q -- to fabulous Las Vegas. Of course, I want to start with a chart. I understand that now that you have the necessary documents, you can help us figure out the value of anesthesia service. And I have a -- I have a calculator if you need it, so...

A You remember me saying I'm not very good at math.

Q Well, you and I, I think we both have that issue. All right. Do you need a calculator?

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A I definitely need a calculator. Thank you.

Q Let's start with Ms. Martin. As I understand it, she had a commercial policy and therefore she had a different rate than Mr. Meana, who had a senior product, correct?

A That is correct.

Q And Ms. Martin had two procedures, correct?

A Yes.

Q And -- and let me know if you need the document that relates to this, but on September 20th Ms. Martin had a colonoscopy by Dr. Weisz, correct?

A I know she had a procedure on the 20th; I don't know what the procedure was.

Q Oh, okay. Do you need to refer -- if you looked at the Form 1500 would that help?

A It would help.

Q All right. Let's see if I can --

MR. STAUDAHER: It's down below, Margaret.

MS. STANISH: Pardon me?

MR. STAUDAHER: It's down below you.

MS. STANISH: Oh, yeah. Great. Thank you.

BY MS. STANISH:

Q I'm going to give both of these to you and you can figure out where it is in there.

A (Witness complied.) So on 9/20 she had a

procedure done. Okay.

Q Okay. And do you see -- does -- I can't remember if you are the insurance company that actually requires a time. Do you?

A Yes, we do.

Q Okay. What is the time that's reflected for Ms. Martin's colonoscopy on September 20th?

A 12:20 to 12:51.

Q So 31 minutes, correct?

A Correct.

Q And if the procedure was 37 minutes --

A Yes.

Q -- instead of 31 minutes --

A Yes.

Q -- would it still be payable with this -- within this time parameter of 31 to 45 minutes for a total of 8 units?

A Yes, it would have.

Q And if the -- going back to Ms. Martin's endoscopy, I think it was the next day, that was also billed between the 31 and 45 minutes. If that procedure had been between 60 and 30 minutes, what would the amount paid to the clinic be?

A It would be a total of 7 units times \$38, and that shows \$266.

Q And if the procedure had been between 0 and 15 minutes what would the amount paid to the clinic be?

A It would still be the 5 base units plus 1 timed unit, for 6 units times 38, which is \$238.

Q And then moving down to -- oh, by the way, if the -- the procedure was done without any time being reported, would the total units still be 6 because it would be 0?

A If there was no time units, it would have been returned for the time.

Q Okay. And if there are discrepancies in claims, you either don't pay them and return them for resubmittal?

A Correct.

Q And the claim for Mr. Meana, if we could do the same numbers with that. You had paid based on the 31- to 45-minute time frame, a total of \$131.20 being paid. What if that procedure had been between 16 and 30 minutes?

A It would be 7 units times 16.40, which is \$114.80.

Q And if it were between 0 and 15 minutes?

A It would be 6 units times 16.40, 98.40.

MS. STANISH: I have nothing further.

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

Mr. Santacroce?

MR. SANTACROCE: I have no questions.

THE COURT: Mr. Staudaher?

MR. STAUDAHER: No redirect, Your Honor.

THE COURT: Do we have any wit -- I'm sorry -- do we have any juror questions for the witness? No juror questions?

All right. Ma'am, thank you for your testimony.

THE WITNESS: Thank you.

THE COURT: Please don't discuss your testimony with anyone else who might be a witness.

THE WITNESS: Okay.

THE COURT: Thank you. And you are excused

The State may call its next witness.

MS. WECKERLY: Corrine Spaeth.

THE COURT: Ma'am, just right up here, please, next to me. And then please remain standing, facing this lady right there, if you would.

CORRINE SPAETH, STATE'S WITNESS, SWORN

THE CLERK: Thank you. Please be seated. And please state and spell your name.

THE WITNESS: Corrine Spaeth. First name is spelled C-O-R-R-I-N-E, last name is spelled S-P-A-E-T-H.

THE COURT: All right. Thank you.

Ms. Weckerly?

DIRECT EXAMINATION

BY MS. WECKERLY:

Q How are you employed?

A I'm employed with Sierra Health Plan of Nevada.

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Q And what do you do for Sierra Health Plan of Nevada?

A I am the director of the claims department.

Q Director of claims?

A Yes.

Q How long have you worked for that entity, I guess?

A For 33 years.

Q And have you been the director the whole time or...

A No, not the entire time.

Q For --

A Probably for about the last 12 years.

Q Last 12 years you're the director. I'm --

MS. WECKERLY: May I approach, Your Honor?

THE COURT: Mm-hmm.

BY MS. WECKERLY:

Q Now, I'm showing you what's been marked as State's Proposed 213 and 214. Can you just look through 213 to yourself and just let me know when you're done, and then I'll have you look at 214.

A (Witness complied.) Okay.

Q Do you recognize these documents in 213?

A Yes, I do.

Q Are they associated with your -- with your

business and insurance claim regarding Carole Grueskin?

A Yes.

MS. WECKERLY: Your Honor, the State moves to admit
213.

THE COURT: Any objection?

MS. STANISH: No, Your Honor.

THE COURT: All right. 213 is admitted.

(State's Exhibit 213 admitted.)

BY MS. WECKERLY:

Q And can you look through the series of documents
on 214?

A (Witness complied.) This looks to be a
duplicate. Okay.

Q Do you recognize those documents in that they
relate to a claim that your company processed for Stacy
Hutchinson?

A I do.

MS. WECKERLY: State moves to admit 214.

THE COURT: Any objection?

MS. STANISH: No, Judge.

MS. WECKERLY: I'm going to --

THE COURT: No objection?

MS. WECKERLY: -- okay.

THE COURT: All right. 214 is admitted.

MS. WECKERLY: Sorry.

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THE COURT: You may publish.

(State's Exhibit 214 admitted.)

BY MS. WECKERLY:

Q I'm going to start with 213. That looks really small.

A That's fine.

Q Oh, you have better eyes than me. Let me just get this straight. Okay. This -- what form is this?

A It's a -- at the time, I believe, it was a HCFA 1500 Form. The name has changed to CMS 1500 Form now.

Q Okay. Back in 2007 it was the HCFA 1500 that was used?

A Yes.

Q And up here at the top is that the person who -- the person who has the insurance?

A Yes.

Q Okay. And that's Carole Grueskin?

A It is.

Q And moving sort of down to the -- down the document. Do you see where I'm pointing here on the left side?

A I do.

Q What does that represent?

A The date of service for the procedure.

Q Okay. And that's 9/21/07?

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A Correct.

Q Do you know what this -- this code represents?

A It's an anesthesia code.

Q Okay. And what does this 560 represent?

A That's the bill charges.

Q Okay. And that would have been the amount that was submitted by the provider to Sierra Health Services?

A Correct.

Q I'm going to flip to the -- the second page of 213. And is this an explanation of benefits?

A It is.

Q And it's for Carole Grueskin again?

A Yes.

Q Okay. Let's move across. Is this again the -- the date of the procedure 9/21?

A Yes, it is.

Q And it looks like the -- it reflects the amount that we saw in the prior forum?

A Yes --

Q For the --

A -- the bill charge.

Q -- anesthesia. And it also has another number, 470?

A Yes.

Q What does -- what does that number represent?

A That's the difference between the bill charge and the contract rate.

Q Okay. And what was the contract rate for Sierra Health Services in 2007 for -- for this type of procedure?

A It was \$90 --

Q Okay. And --

A -- the allowed amount.

Q -- and was that, like, a flat rate?

A Yes, it was a global.

Q Okay.

A Global/flat rate, same thing.

Q And what does the \$20 reflect on here?

A That's the member's cost share or co-payment for the procedure, for anesthesia.

Q And so am I reading it -- this right, that you paid 70 of the 90, and then Ms. Grueskin would have been the one paying the 20?

A Correct.

Q Now, I'm moving to the claim form for Ms. Hutchinson, and for the record, this is State's 214. Same type of form -- the HCFA 1500?

A Correct.

Q And up here it has Ms. Hutchinson's name; is that fair?

A Yes.

Q And moving down the document, is this, you know, laid out in the same way where this is the date of the procedure?

A That is correct.

Q And the same dollar amount was charged by the facility; is that fair?

A Yes.

Q And the -- I guess this is the -- the time?

A Yes, the number of minutes.

Q The number of minutes. And the provider on this one, at the bottom here, was who?

A Ron Lakeman.

Q Hold on. I just dropped part of my document. Now, I'm showing you the first page. Is this an explanation of benefits for that claim?

A It is.

Q And do we read this one the same way we read the one for Ms. Grueskin where this is the date of the procedure?

A Correct.

Q And that's 9/21/07?

A Correct.

Q \$560 was submitted?

A Correct.

Q And is it the same situation where under the agreement with Sierra Health Services the amount of payment

was going to be \$90?

A Correct. It is again a global or a flat rate.

Q Okay. But in Ms. Hutchinson's case she didn't have a co-pay; is that --

A She had no cost share.

Q Okay. So it was Sierra Health Services that paid the \$90?

A Yes, we did.

Q Now, if there -- if there's incorrect information on a HCFA 1500, as claims director do you know what happens to those kind of claims?

A We would return those to the provider.

Q If there's false information on a HCFA 1500, what happens to those?

A We would also return those to the provider.

Q With no payment?

A No payment.

Q Thank you.

MS. WECKERLY: I'll pass the witness.

THE COURT: All right. Cross?

CROSS-EXAMINATION

BY MS. STANISH:

Q The amount charged by the providers doesn't come into play at all in your reimbursements?

A Not in the reimbursement, no. We follow the

contract.

Q Okay. And in this case it's a flat rate?

A Yes, it was.

Q So time is not really relevant at all to the payment?

A Not in regard to the payment, no.

Q I'm curious, do you -- do you know on the average, if you even calculate these kind of things, on the average how many minutes a colonoscopy anesthesia normally takes?

A I'm sorry, I -- I'm not a medical person, so I really wouldn't know --

Q Oh, no, I just meant --

A -- normal.

Q -- from billing. I don't know if you guys track that. That's what I was asking.

A We do not track it.

Q Okay. I guess that's it. Time is relative, right. All right. Thank you.

THE COURT: All right. Mr. Santacroce, any cross?

CROSS-EXAMINATION

BY MR. SANTACROCE:

Q Of that amount paid, would that be -- would that be a normal amount for the procedure that was done according to your plan?

A A normal amount? Every -- they can vary based on the contract terms.

Q Okay. But pursuant to this -- what do you mean by global amount paid?

A Regardless of the -- the amount of time or the modifiers billed or we -- it's a flat rate, \$90 per service --

Q That's --

A -- that's it.

Q -- that's it?

A That's all.

MR. SANTACROCE: That's all I have, Your Honor.

THE COURT: Ms. Weckerly?

MS. WECKERLY: No redirect, Your Honor.

THE COURT: Do we have any jury -- jury -- I can't speak today. Do we have any juror questions for this witness? No juror questions?

Ma'am, thank you for your testimony. Please don't discuss your testimony with anyone else who may be a witness in this matter. And you are excused.

THE WITNESS: Thank you.

THE COURT: All right. Thank you.

MS. WECKERLY: Can we approach?

THE COURT: Sure.

(Off-record bench conference.)

THE COURT: Ladies and gentlemen, we're going to take

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a real quick recess. Let's go until 10:15.

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

Notepads in your chairs. Follow the bailiff through the rear door, please.

(Jury recessed at 10:00 a.m.)

(Outside the presence of the jury.)

THE COURT: All right. On the record, out of the presence of the jury. Ms. Weckerly had approached the bench and indicated that pre the testimony of Detective Whiteley she had hoped to play the statement of Linda Hubbard as a prior inconsistent statement to her testimony, which was essentially she didn't remember these things.

Is that a --

MS. WECKERLY: Well --

THE COURT: -- fair summation of --

MS. WECKERLY: -- that -- that's --

THE COURT: -- what you said?

MS. WECKERLY: -- yes. I mean, when Linda Hubbard was testifying, I attempted to impeach her with her statement going line by line while she was on the witness stand. The

defense objected, we approached the bench, and the Court asked me, Are you going to have the detective come in. And at that time I said, yes, I'm going to have the detective come in.

And Ms. Hubbard --

THE COURT: Meaning if she didn't avow the statement, that Ms. Weckerly could use the detective to then testify to the statement. Now, obviously if she said, oh, yes, I did do it, now I remember I did say, blah, blah, blah, then she's -- she's accepted the statements and there's nothing to impeach her with, but that's not my recollection of what happened.

Ms. Weckerly, go on.

MS. WECKERLY: And, I mean, she was asked about the statement that she made to Detective Whiteley, and she not only said I don't remember it, but she said it was a coercive setting. And I'd just reference the Court to 120 Nevada 30, which is Crowley v. State. And the Court -- in that case the defendant's wife testified about a conversation she had with an investigator from Department of Child and Family Services. She denied telling the investigator that her husband acted inappropriately when intoxicated.

Specifically she stated she did not remember ever saying anything like that. The State then calls the investigator as a witness over the defendant's objection. In this case the Nevada Supreme Court stated, We conclude that when a trial witness fails, for whatever reason, to remember a

previous statement made by that witness, the failure of recollection constitutes a denial of the prior statement that makes it a prior inconsistent statement -- that makes it a prior inconsistent statement pursuant to NRS 51.0352A; the previous statement is not hearsay and may be admitted both substantively and for impeachment.

And I think the -- the foundation was laid, and not only that there was notice that I was going to be bringing in the detective. I did tell them yesterday that this was my plan with Detective Whiteley so we could get a ruling ahead of time because I don't want to just launch into it, but it seems textbook to me that I am allowed to play that statement.

THE COURT: It seemed clear to me that that was Ms. Weckerly's intent, and I asked her at the bench, is that your intent. The only thing I would say is she has to, you know, have covered the statements adequately, you know, giving her an opportunity in her direct examination. Let's just say the testimony was, you know, Tonya Rushing told us, we can only use five syringes a day or whatever. Or Dr. Desai said we can only use five syringes a day.

And then, you know, Ms. Weckerly, question on direct, was there a limit to the number of syringes a day? No, they're -- I don't -- no. Well, do you remember talking -- telling Detective Whiteley about a limit? No, I --

MS. WECKERLY: She --

THE COURT: -- don't remember. Then she can introduce substantively the statement, We were limited to five syringes a day. Now, I know that's not the statement. I'm using that, obviously, hypothetically. So as long as Ms. Weckerly tried to listen to the testimony on direct and failed, and then tried to get her to agree that she told Detective Whiteley on direct and she wouldn't say -- she said, I don't remember. I didn't do it. I was coerced. Whatever. Then the statement comes in.

MS. WECKERLY: Well, and when I tried to go through it line by line the defense objected and that's why we went -- we went up to the bench. And so then I asked her, Did you remember anything in this interview, and she said no. And so they objected to the line-by-line examination, and I don't think I should be precluded now because on their objection, which the Court asked me, well, are you going to bring in the detective anyway -- I mean, obviously it was laying the foundation for the --

THE COURT: Right.

MS. WECKERLY: -- inconsistent statement.

THE COURT: Yeah, I mean, I don't know that my intent was to preclude you from doing that as opposed to saying you're going to bring in the detective so you're going to -- you're going to bring this -- prove this up collaterally.

MS. WECKERLY: Right.

THE COURT: But --

MS. WECKERLY: But too --

THE COURT: -- that was the point of my question.

MR. SANTACROCE: What pages are you going to --

MS. WECKERLY: 22 on.

MR. SANTACROCE: To the end?

MR. WRIGHT: Can we object?

THE COURT: Sure, you can object.

MR. WRIGHT: Okay.

THE COURT: I mean, she's --

MR. WRIGHT: The -- it isn't proper if you have to go through question by question. They have to establish which they asked, and then they can ask Detective Whiteley. Where the ones I remember because there were very few of them, and it so happens I did the same thing with her grand jury testimony. She would not recall it.

She did not -- she testified -- I would ask her, grand jury statement July 2008,

Do you recall testifying that your procedure and method of practice at ECSN was the same way she had practiced before she came to Las Vegas?

No, I don't remember telling the grand jury that.

Is that the truth, I would ask her?

And she would say, Yes, that is the truth.

And -- and I went through seven different questions

that way. And if she had denied any of them, I would then offer to the prior inconsistent statement. But it made no difference to me when she admitted what I --

THE COURT: Right.

MR. WRIGHT: -- what you say I told the grand jury is true.

THE COURT: Right.

MR. WRIGHT: Now --

THE COURT: As long as they admit it's true, then the -- you don't get to impeach them, as long as on direct or cross or whatever they say that the -- that that statement is true.

MR. WRIGHT: Correct.

THE COURT: That's what I mean. If they, you know, adopt the statement or avow the statement or accept the statement, however you want to say it, then there's nothing to impeach. If they don't, if they keep saying, I don't remember. No, I didn't do it. He made me do it. He made me say it, and refuse to adopt the statement or accept the truth or veracity of the statement, then we have a situation where they get to impeach them. I mean, I think it's pretty -- pretty basic.

MR. WRIGHT: Right.

THE COURT: We're all on the same page.

MR. WRIGHT: Okay. But --

THE COURT: What we're disputing here seems to be whether or not Ms. Weckerly covered all the statements that she wants to now introduce.

MR. WRIGHT: Correct, because she wants to just play the interview.

THE COURT: Well, she doesn't get to play the whole interview. She gets to ask Detective Whiteley about the -- first of all, she said it was coercive. So Ms. Weckerly certainly can cover with Detective Whiteley whether or not it was coercive.

MR. WRIGHT: He -- she --

THE COURT: She can play the first part to show he's not coercing her. What?

MR. WRIGHT: She didn't --

THE COURT: You don't act like a toddler.

MR. WRIGHT: -- she didn't say it was coercive. She never asked --

THE COURT: Yes, she did.

MR. WRIGHT: -- she asked -- she brought it up. You can't do this. She's the one who brought up and asked the witness on redirect, are you saying you were coerced? And she didn't say, Yes, I was coerced. Hubbard did not testify that she was coerced.

MS. WECKERLY: I think she said she was pressured on --

MR. WRIGHT: Well, now the words are changing. I want it played back because she never said she was coerced. She said, I felt like the answers I was giving isn't what they wanted to hear.

THE COURT: She did say that.

MR. WRIGHT: Then Weckerly said, did they deprive you -- your lawyer was there, did they deprive you of bathroom breaks or this and that, and she said no. She didn't say, I was coerced. I want a playback of Hubbard's testimony on each of these if they're going to be allowed to impeach her because I don't have them in my record of it.

I dispute the contradictions they want to impeach her on with prior inconsistent statements. If they want to list them, go through it, maybe I'll agree on some of them, but my problem was she told me I'm going to play pages 22 to 33 or something of the interview. And there are things in there that she wasn't even asked about.

THE COURT: All right. I agree with you, Mr. Wright, that doesn't open the door to them playing the entire statement. They certainly can ask about individual statements. They can certainly ask Detective Whiteley what was the atmosphere. What was -- did you, you know, attempt to put answers in her mouth, you know, to get that out. Because my -- the gist -- now, I -- you know, I'm not taking the same notes that you folks are taking because I'm not preparing

cross-examination. I'm listening for other things.

And so I don't remember exactly, but the gist of her testimony, I felt, was that she felt some kind of pressure that she had to say a certain thing in the interview; and that if she didn't say the right thing, they kept at her trying to get her to say what they wanted her to say. That was the gist of her testimony.

Now, whether the word "coercive" was used or not used that I don't recall; but again, the tone or the feeling -- excuse me -- I was left with was that she felt that she had to say certain things or she felt prompted or she felt the police were expecting certain answers from her. That's the -- that was the gist I felt of it.

So, Mr. Santacroce?

MR. SANTACROCE: Yeah, I want to join in the objection. I also want to object to it because there's -- it's loaded with hearsay. For example, on page 24 she says, I told Ron I couldn't do it, then he talked to Jeff and Jeff said thus and such. So, I mean, the whole interview is full of hearsay. I think we need to redact the hearsay.

MR. STAUDAHER: Well, here's the way we're going to do it. They're not going to play the interview. They can ask detective -- because there's apparently too many things in there that can't come out. We're not going to take a break at 10:15 to redact the interview. They can play the little part

to show the tone of the interview, that it's not, you know, he's not yelling, and if they want to do that. And then beyond that they can ask him the questions.

Because, you know, to me she disavowed knowledge of, you know, I mean, she didn't remember anything from the interview. Ms. Weckerly, you know, struggled through each thing and she didn't remember. And then, like I said, you know, I don't remember her exact words and I don't know how difficult it would be for Janie to find it. We'd probably have to get someone -- right, Janie? -- from JAVS to come up and help us and blah, blah, blah.

But my recollection is that, you know, she pretty much said, well, whatever I said, you know, Detective Whiteley and the others in the room, I don't remember who it was, you know, kind of -- kind of are making her say these things, and they keep prompting her until they get the answer that they want.

That's the -- that's the recollection I had of her testimony.

Ms. Weckerly, does -- I mean, I don't know --

MS. WECKERLY: She --

THE COURT: -- if that comports with the State's recollection, but --

MS. WECKERLY: -- she disavowed the entire interview.

THE COURT: Right.

MS. WECKERLY: And the reason why I started going line by line -- and they objected to that, saying you can't go through line by line. And so it doesn't matter anyway. Once you reject -- like, I don't remember any of the interview, it all comes in substantively --

THE COURT: Right. I mean --

MS. WECKERLY: -- because it's the same --

THE COURT: -- she doesn't --

MS. WECKERLY: -- treatment.

THE COURT: -- remember it.

MS. WECKERLY: But if I could just have a minute, I'll highlight for the detective so it goes quicker on what I'm --

THE COURT: Right.

MS. WECKERLY: -- going to be asking him.

THE COURT: I mean, do you agree with Mr. Santacrose that there are some statements in there that are hearsay statements, such as what Jeff Krueger may have said, that shouldn't come in substantively?

MS. WECKERLY: They're -- I mean, they shouldn't come in substantively. I think the Court could issue a curative instruction on hearing the recording, but if you're not going to do that, I just want to highlight the parts that --

THE COURT: That's fine.

MS. WECKERLY: -- where it's Lakeman or Desai talking

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Clerk of Supreme Court

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

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1 THE COURT: I -- and --

2 THE WITNESS: I won't even -- okay. I won't go
3 there.

4 THE COURT: No, I was just going to say this --
5 you're not the first witness in this trial that I've told this
6 to, but you don't get --

7 THE WITNESS: It's okay.

8 THE COURT: -- you don't get to ask questions.

9 THE WITNESS: Okay. My purpose is looking at the --
10 not only that information, but the epidemiological stuff.

11 BY MR. SANTACROCE:

12 Q No, I didn't ask you a question.

13 A Yes, of course you didn't.

14 THE COURT: And Mr. -- I know this is your first
15 time testifying. Mr. Staudaher has an opportunity after Mr.
16 Santacroce is done to come back on redirect examination. And
17 at that point he can -- you know, if he thinks you need to
18 clarify something, expound on an answer you've given to either
19 Mr. Wright or Mr. Santacroce, Mr. Staudaher will, you know --

20 THE WITNESS: Okay.

21 THE COURT: -- ask you to do that at that time.

22 THE WITNESS: Thank you.

23 BY MR. SANTACROCE:

24 Q Now, when Dr. Fischer and Langley testified,
25 after reviewing all of the evidence that's been -- well, I'm

1 not going to say she reviewed all of the evidence, but she
2 reviewed Exhibit 156. And after reviewing this chart, her
3 conclusion was that in order for their theory that the
4 infection was transmitted through unsafe injection practices
5 that the propofol bottle, the infected one, had to be moved
6 from room to room to room. Now, what I'm going to show you,
7 do you know what this chart represents?

8 A Yes, I think so.

9 Q Okay. Well, tell me what your understanding
10 of this chart is.

11 A The line listing of the patient procedures for
12 that day.

13 Q Okay. Do you know what the orange color is?

14 A There's a key at the top of the page.

15 Q I didn't notice that before.

16 A A legend.

17 Q Thank you.

18 A Yeah, well, it's usually helpful when reading
19 a chart.

20 Q It is. Okay. What is it?

21 A They're known hepatitis -- they were known to
22 be infected with hepatitis C virus before they were a patient
23 in this procedure.

24 Q Okay. So -- and you testified earlier you
25 didn't know how many rooms -- procedure rooms were at the

1 clinic at the time you reached your conclusion. I'll
2 represent to you there were two. Okay? So the orange colored
3 guy is the source patient; correct?

4 A He is known to be HI -- he is known to be HCD
5 positive --

6 Q Okay.

7 A -- prior to his -- he's a potential source
8 patient, yes.

9 Q Okay. And he is in Room 1. Okay?

10 A Uh-huh.

11 Q And then we go down to Room 2, it's divided by
12 this line here, and we some more infected patients. Okay?
13 Are you with me so far?

14 A Uh-huh.

15 Q Now, what I want to ask you is -- and we'll
16 have to go by the color of the lines here because this machine
17 isn't big enough to get it all in. But can you tell me,
18 according to the nurse's log, what time the procedure started
19 for the guy in orange?

20 A Well, I didn't generate this chart, and the
21 times are, in my understanding, is inaccurate. If I could
22 read it, I would tell you. But I also know the times overlap
23 and they couldn't possibly be accurate because all of those
24 times together make up more than 24 hours.

25 Q Okay. Can you just --

1 A That's the only thing --

2 Q -- tell me --

3 A -- I can answer.

4 Q -- the answer to the question I asked you?

5 What time, according to the nurse's log, did the guy in orange
6 start the procedure? Can you see it?

7 A I can -- I can see the screen, I just --

8 THE COURT: Can you read it? Is it big enough for
9 you to read?

10 THE WITNESS: It's big enough for me to read. I
11 have not focused on this chart because it wasn't --

12 THE COURT: I have a question. Was this chart given
13 to you ahead of time for you to look at?

14 THE WITNESS: A few weeks ago.

15 THE COURT: A few weeks ago.

16 THE WITNESS: Yes, it was.

17 THE COURT: Okay.

18 THE WITNESS: It was given to me in early May.

19 THE COURT: Okay.

20 THE WITNESS: But I really didn't look at it because
21 my expertise was really based on what had -- this is just
22 revisiting it in a visual form.

23 THE COURT: In a different format.

24 THE WITNESS: That's right.

25 THE COURT: Okay.

1 THE WITNESS: And it was already based on the
2 epidemiological studies that have been done. Now, the issue
3 is, let's see, the earliest time seems to be --

4 BY MR. SANTACROCE:

5 Q The nurse's log --

6 A --- nurse ---

7 Q -- what time --

8 A -- 9:49.

9 Q -- does that say.

10 A Is that what you're talking about?

11 Q And what time did the procedure end?

12 A 10:00.

13 Q And drop down to Ms. Hutchinson. What time
14 did her procedure start?

15 A Is that 9:55.

16 Q And what time did it end?

17 A 10:04.

18 Q So at least according to the nurse's log, the
19 source patient was undergoing a procedure in a different time
20 in a different room at the same time an infected patient was
21 infected in a different room by a different CRNA.

22 A If I -- according to that, yes.

23 Q Okay. Now, I want to talk about the
24 preoperative procedures that you reviewed in coming to your
25 conclusion. What was the preoperative procedures at the

1 clinic regarding the starting of heplocks?

2 A They usually were started by nurses in the
3 pre-op room before the patient went to the patient bay for
4 movement into the procedure room --

5 Q And were that --

6 A --- and --

7 Q I'm sorry. If you weren't done, I apologize.

8 A And my understanding from the report, the
9 report stated that after they inserted the heplock, the
10 nurses, these are not the CRNAs, but the nurses who usually
11 put in the heplocks would flush the heplock to make sure it
12 was clear with saline from a multi-dose vial.

13 Q Okay. And were you aware -- you obviously
14 were aware because you said it was a multi-dose vial; correct?

15 A Yes.

16 Q So you were aware that they were reusing that
17 saline on multiple patients?

18 A Yes.

19 Q Which is a practice you've already testified
20 to is a no-no.

21 A We -- yes, that is correct. However, not in
22 that vacuum.

23 Q Okay.

24 A You're doing it --

25 Q What's the --

1 A -- in a vacuum.

2 Q -- vacuum?

3 A The vacuum is they didn't reuse their needles
4 or syringes. They only did one flush.

5 Q How do you know that?

6 A They said so and they were observed to do so.
7 And unless you don't believe that's accurate --

8 Q Was Lynette Campbell observed?

9 A I don't know the names of anyone.

10 Q Well, let's show you Exhibit 166. This is the
11 chart -- this is the Endoscopy Center of Southern Nevada
12 hepatitis C transmission, September 21, 2007. These are the
13 -- this is the source patient, infected patients in Room 1,
14 and infected patients in Room 2. And this is the person that
15 started the heplock on source patient, and Mr. Meana,
16 Orellana, Martin, and Huynh. She also started the heplocks on
17 Aspinwall and Grueskin. She shared the pre-opinion room on
18 that day with Nurse Jeff Krueger who testified that they used
19 multi-dose vials of saline in the same room. Okay?

20 A Uh-huh.

21 Q Were you aware of this information when you
22 reached your conclusion?

23 A Yes, I was aware they were using multi-dose
24 vials of saline, which is not the --

25 Q Are you aware of any studies that link

1 contaminated saline to hepatitis C outbreaks?

2 A Yes.

3 Q Can you tell me about those?

4 A In one case the individual responsible for
5 administering the saline would draw blood for collection for
6 laboratory testing from the -- from the person's IV or
7 hepllock, and then using the same syringe, maybe change the
8 needle, I can't remember, would go into a 500 cc in this case,
9 it was a large bag of saline, and withdraw saline to flush the
10 hepllock, and then went on. So the bag of saline was
11 contaminated by the blood in the syringe from use on that
12 person's hepllock. So that's one instance.

13 Q And you --

14 A There's another one. I'd have to think.

15 Q You already testified that you don't need to
16 actually see the blood for it to be contaminated; correct?

17 A That's correct.

18 Q Are you -- are you familiar with the CDC's
19 report of hepatitis B and C outbreaks in 2008?

20 A Have I seen this particular chart?

21 Q No, I said are you aware of the outbreaks that
22 they --

23 A Yeah. Yes.

24 Q Let's look at the bottom one here.

25 A Okay.

1 Q Are you aware of this study in North Carolina,
2 or this outbreak in North Carolina?

3 A I'm aware that it occurred

4 Q 1200 people notified, 5 people contaminated,
5 and what the CDC declared or determined was the mechanism of
6 transmission was reuse of syringes which contaminated 30 cc
7 saline vials -- whoops -- saline vials for IV catheter
8 flushes.

9 A Uh-huh.

10 Q Are you aware of that study?

11 A It's occurred on other occasions.

12 Q So contaminated saline is certainly a possible
13 mechanism for transmission?

14 A It certainly is. Any vial containing -- how
15 did they infusate? Is that the word that was used in the
16 report, infusate?

17 Q I'll have --

18 A I know it's --

19 Q -- to defer to --

20 A -- a funny word.

21 Q -- Mr. Wright --

22 A But it's liquid.

23 Q -- because he uses --

24 A Liquid in a --

25 Q -- those big words. I don't.

1 A -- vial. Liquid in a vial. That becomes
2 contaminated, can serve as a source for transmission. It
3 doesn't have to be propofol. It can be anything.

4 Q Anything.

5 A That's right. That's why you have to do a
6 very good epidemiological investigation. And the problem is
7 that when you only -- if you only have one or two infections,
8 determining how that might have occurred can be very difficult
9 to link a specific source because you don't have the numbers
10 to analyze. So you have to look at all the possible ways.
11 And the issue here is the protection of public health and not
12 your trial.

13 Q Thank you.

14 A You're welcome.

15 Q When Mr. Wright asked you about the two
16 infection dates and don't they stand alone, and I don't know
17 what his exact question -- I don't remember the exact
18 question, but do you remember that line of questioning where
19 he talked about July 25th being separate and how do you link
20 the two dates or something of that nature? Do you remember
21 that testimony?

22 A That's not quite how I remember it, but I do
23 remember the general area of questioning.

24 Q Okay.

25 A Like there were 362 other days.

1 Q Okay. So I believe you testified that because
2 the clinic was using unsafe practices on the 21st of
3 September, 2007, it can be inferred that that was the
4 mechanism of transmission for July 25th. Is that accurate?

5 A Yes.

6 Q Finally we agree. Then you said something,
7 and I wrote down in quotes, you can't prove it. What did you
8 mean by that?

9 A I can't show you that the virus was in the
10 vial and transmitted to the infected patient, newly infected
11 patient because you only have the source and the patient, the
12 one infected patient. However, we've seen that on multiple
13 occasions. And --

14 Q I'm done with that. Let's move on. Let's
15 talk about the effect that hepatitis C has on -- on the liver
16 itself, okay. And I didn't get an answer to this question.
17 Mr. Wright asked you -- talked to you about Mr. Perrillo. I
18 don't think he was a medical doctor, but I think he was a
19 neuropsychologist. And then he did 19 cases and said that
20 there was hepatitis C caused dementia in -- in people. And I
21 think Mr. Wright asked you do you agree with that theory, and
22 I didn't actually get an answer to that. Can you tell me if
23 dementia is caused --

24 A Well, I don't agree with it based on the
25 information that was provided to me, and I'm unaware of any

1 other literature, you know, looking -- evaluating that
2 relationship.

3 Q So it's your opinion that hep C doesn't
4 cause --

5 A I have no data to show. I know of no data to
6 show that hepatitis C causes dementia.

7 Q Does hep B cause cirrhosis of the liver?

8 A It can, but -- it can.

9 Q And I believe you testified as to the range of
10 time the onset of cirrhosis can occur; right? I think you
11 said the average was 20 years.

12 A Yes.

13 Q And I believe you made probably the most
14 profound statement of the day. Bad data in, bad data out. Is
15 that accurate?

16 A That is very accurate.

17 Q That's all I have, ma'am. Thank you.

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

19 REDIRECT EXAMINATION

20 BY MR. STAUDAHER:

21 Q Based on your review of everything, does it
22 look like bad data in?

23 A No.

24 Q Based on all of those questions that were
25 provided to you, the reports you've looked at, have you

1 changed your opinion at all?

2 A No.

3 Q Now, I want to show you the article that
4 counsel referenced, and this is the one that you talked about
5 the New England Journal of Medicine article. And this is back
6 in '97; correct?

7 A Yes.

8 Q So 20 years ago?

9 A Yes.

10 Q Okay. Go ahead and look at that section that
11 you were talking about. And this is, if I understood you
12 correctly, a sample size of two patients.

13 A And one source.

14 Q And one source.

15 A Uh-huh. The possibility that HCV was
16 transmitted because of inadequate procedures and the use of
17 anesthesia should also be considered. To be fair, they go on
18 to say we believe this route of transmission is less likely.
19 Because the intravenous tubing and all the syringes containing
20 the anesthetic drugs were changed after the first procedure.
21 But they did not -- they don't refer to the vial of
22 medication, only the tubing and the syringe and needles, which
23 in most -- all of the outbreaks that were investigated, all of
24 them -- well, not all of the outbreaks. Some were reused
25 between patients. But in most instances the needle and

1 syringes are discarded, but the contamination of the vial has
2 already occurred.

3 But then they go on to say, however, inadequate
4 procedures were followed during -- inadequate procedures were
5 followed during the other two procedures. Only the
6 intravenous tubing and the needles were changed between the
7 endoscopies of Patients 2 and 1. They -- so they go on for an
8 entire paragraph about the potential of unsafe injection
9 practices as a -- as a potential reason for this to have
10 occurred, even though they focus and feel it's less likely,
11 these authors, they focus on the scope as the mechanism, a
12 poorly disinfected scope.

13 Q Now --

14 A But if you read the discussion, to me, they
15 were unable to evaluate either of them. Both of them were
16 bad. They had problems. There were deficiencies in both
17 procedures, the intravenous administration of anesthetic, and
18 the high level disinfection of the scopes.

19 Q Now, with regard to the article that Mr.
20 Wright asked you about, and that was the injection practices
21 among clinicians in the United States, that one.

22 A Yes.

23 MR. STAUDAHER: And I'm going to move for admission
24 of this document based on doctrine of completeness at this
25 point. Sections -- whole sections were read out of the

1 document.

2 MR. WRIGHT: Objection.

3 THE COURT: That's -- the document is not admitted.
4 You certainly, Mr. Staudaher, are free to ask questions from
5 that document as the defense did.

6 BY MR. STAUDAHER:

7 Q The sample size in this was much larger than
8 that other study; correct?

9 A Well, this isn't an outbreak. This is a
10 survey.

11 Q Oh.

12 A I didn't get the number -- isn't it? It's a
13 survey of practices?

14 Q Well, let me bring it up to you.

15 A Sorry. I'm sorry.

16 Q It's okay.

17 A Maybe I misunderstood --

18 Q I want to make sure.

19 A -- what you were talking about.

20 Q It's the first time I've seen it, too.

21 A Oh, yeah. It's a survey, and there are
22 several of them that have been done now, one by CMS. Those
23 are the -- you know, it's the old -- CMS, Center for Medicare
24 and Medicaid.

25 Q Services.

1 A Yeah, services. What did it used to be
2 called? I can't remember. So this was a survey of -- oh,
3 they had 8,000 respondents. That's pretty good, actually. A
4 fairly high response rate. That's what I wasn't sure of. And
5 they asked them, you know, the questions about how they --
6 about their injection practices.

7 Q Now, specifically on the other side here where
8 it breaks down who responded, do you see that?

9 A Uh-huh. Yes.

10 Q How many CRNAs responded out of all those
11 8,000?

12 A 49.

13 Q Okay. So there -- where the sample size of
14 CRNAs out of this was -- it says 1 percent --

15 A Uh-huh.

16 Q -- roughly.

17 A Yes.

18 Q I'm not sure how they -- they quite get that
19 when it's only an 8,000 sample size.

20 A Because not 8,000 people responded.

21 Q Oh, okay.

22 A The survey they -- oh, well, no. It says
23 8,000 respondents. Oh, they had to have answered yes to the
24 first item in the survey in order to be considered for the
25 rest of the survey.

1 Q Okay. What was the first item?

2 A The first item. I knew you were going to --
3 that was coming next. Okay. Actually, they don't know how
4 many people -- I don't know the denominator. So they don't
5 know the number. It was published on the web, and individuals
6 were -- professionals were asked to respond to the survey. It
7 was anonymous, and so they don't know how many. It was the
8 combined membership of ten collaborating organizations and
9 they had a total of 8,000 responses. All respondents were
10 asked three general questions. In your current practice do
11 you prepare or administer parenteral medications, injectable
12 medications. You had to answer yes to that in order to then
13 be analyzed for the other.

14 Q So if I understand correctly, at least from
15 that large --

16 A That's right.

17 Q -- 8,000, we drop it down almost in half just
18 by that -- answer to that question; is that correct?

19 A I guess that's what --

20 Q Is it 49 out of --

21 A I'm surprised they don't have the n in the
22 title.

23 Q If 49 nurse anesthetists responded and that's
24 1 percent, that means the total of respondents that actually
25 fall in this category would be 4,900, would it not?

1 A Oh, don't you just love scientific articles?
2 They have very long footnotes. Total frequencies vary. Some
3 respondents did not answer all questions, etcetera, etcetera,
4 etcetera. So the actual number, the total number who answered
5 the question, like the 49 out of the number of people who
6 answered the question and were considered eligible and
7 answered the question.

8 Q And the section where Mr. Wright asked you
9 under this -- under -- under the title for this heading in
10 this --

11 A Uh-huh.

12 MR. STAUDAHER: And this is, for counsel, page 791.

13 BY MR. STAUDAHER:

14 Q Question, basically, did you enter a single
15 vial more than once for the same patient? And they're talking
16 about how many respondents reported that that had been done.
17 In this case it was a total of 30.2 percent of 1599
18 respondents. When asked why they did that, they gave some
19 examples in italics as to why they did that. Can you see
20 that?

21 A Yes.

22 Q Okay.

23 A Uh-huh.

24 Q And was the -- what was the -- what was the
25 reason why they responded to even just doing that?

1 A Cost, using multiple dose vials supplied by
2 the healthcare entity to use up what was in there as long as
3 the vial was only kept for a certain period of time. My
4 understanding about heparin is it is a multi-dose. It has a
5 bacteriostatic agent in it.

6 Q Now, with regard to the heading, which was
7 entitled use of multi-dose vial for more than one patient, the
8 very last comment on that section, what did it say, one of the
9 respondents as an example?

10 A I use a new syringe for each entry and we date
11 the vials after opening.

12 Q Now, does that sound like a practice that
13 would be -- I mean, I know that it may not be optimal.

14 A That would be the practice. That would be the
15 appropriate practice.

16 Q Okay. So somebody who answered to that in
17 that category, that was even a quoted response by one of the
18 people, is that correct, in this article?

19 A That's what they're trying -- that's the
20 example of one of the responses.

21 Q Where it says practice is not considered
22 appropriate consistent with current guidelines, one of the --
23 the heading there on the same page is use of single-dose vial
24 for more than one patient. Do you see the reasoning why on
25 that particular one was used by some of the respondents?

1 A As a cost saving measure.

2 Q Okay. So two costs involved there. Let's see
3 if there was any others that I could see. Okay. So it
4 varies, at least the information that was provided; correct?
5 I mean, by these different respondents, who they responded to,
6 which questions and the like?

7 A Yes.

8 MR. STAUDAHER: Court's indulgence, Your Honor.

9 BY MR. STAUDAHER:

10 Q Since that -- that article written 20 years
11 ago with a subset -- a sample population in the sample -- or
12 in the study of two people, 20 years, are you aware of a
13 single article that's connected scopes to infection?

14 A No.

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

16 THE COURT: All right. Recross, Mr. Wright.

17 MR. WRIGHT: Nothing.

18 THE COURT: Mr. Santacroce.

19 RE CROSS-EXAMINATION

20 BY MR. SANTACROCE:

21 Q In the New England Journal of Medicine article
22 that we were referring to, are you aware of a study that was
23 done as to the degree of adherence to guidelines for cleaning
24 and disinfection of gastrointestinal endoscopes?

25 A Can I see what you're referring to?

1 Q Absolutely.

2 A Thank you. Well, it was performed in 1988,
3 and I can't say I'm surprised. I don't know what the
4 percentage was, but there's been a lot of progress made. I'm
5 not saying that people do it right all the time and it's
6 ideal, and I'm not suggesting it's perfect. But I haven't
7 seen an example -- an instance of transmission that could be
8 attributed epidemiologically or otherwise to reprocessed
9 scopes.

10 Q According to this survey 30 to 100 percent
11 were inadequately using disinfectant procedures to clean
12 gastrointestinal equipment. 30 to 100 percent were not
13 following guidelines.

14 A Do you know where the survey was done?

15 Q Well, there's a footnote.

16 A I -- no, there's a reference.

17 Q Would you like to see the reference now?

18 A I saw the reference, but I still don't know
19 where the survey was performed, in what countries.

20 Q Well, I can show you. Do you want to see the
21 reference?

22 A Certainly. Again, that survey was done in
23 1988, 11 years prior to the publication of these -- of this --

24 Q Then why did you print it out and bring it to
25 court?

1 A Excuse me?

2 Q Why did you print this out and bring it to --
3 provide it?

4 A I said the --

5 MR. STAUDAHER: Objection. She didn't bring it to
6 Court, Your Honor. Mr. Santacroce did.

7 THE COURT: Well, he changed his phrasing, provide
8 it.

9 BY MR. SANTACROCE:

10 Q If it was so old, outdated, had no relevance
11 to transmission of disease, why did you download it three days
12 ago, provide it to the district attorney who then, in turn,
13 provided it to us?

14 A My comment about it being interpreted as being
15 out of date was the 1988 survey of disinfection procedures,
16 not this particular episode that was published in 1999.

17 Q So the conclusion about the cleaning methods
18 of the endoscopic equipment is still relevant?

19 A It's relevant to the fact that they -- that
20 they found deficiencies, yes. But it does not show -- they
21 found other deficiencies that in my -- that they could not
22 distinguish one from the other as causing infection.

23 Q After they --

24 A Or contributing to the transmission of
25 infection.

1 Q After they cite those statistics, the 30 to
2 100 percent, they say failure to follow the recommended
3 procedures can have an important role in the endoscopic
4 transmission of microorganisms.

5 A That's very true, all microorganisms. This is
6 true.

7 MR. SANTACROCE: Nothing further. Thank you.

8 THE COURT: Mr. Staudaher.

9 MR. STAUDAHER: No redirect, Your Honor.

10 THE COURT: Counsel approach.

11 (Off-record bench conference.)

12 THE COURT: Ma'am, I have a couple of juror
13 questions up here.

14 THE WITNESS: Okay.

15 THE COURT: The juror would like to know would best
16 practice be to use 20 cc syringes with 20 cc vials so that the
17 entire contents of the vial are pulled up all at once?

18 THE WITNESS: Only if that syringe was used on a
19 single patient. Otherwise, it would have the same -- there
20 wouldn't be any difference in your ability to contaminate a
21 vial by using the syringe.

22 THE COURT: Okay. Another juror would like to know
23 if in this case the injection practices were bad and the
24 cleaning of the scopes was equally bad, would that lessen your
25 belief that the cause was the injection practices only?

1 THE WITNESS: No. And the reason is because the
2 analysis of -- as I -- one of the -- the epidemiological study
3 compares the frequency of exposures, like through the scope or
4 a procedure or an injection in those who got infected or even
5 a staff member, for example, those who got infected compared
6 with those who didn't. And for these procedures, what type of
7 procedure, when they occurred, whether or not they had
8 biopsies, were all -- were not different between -- this is --
9 this is how you look at it, this is how you study it. We're
10 not different between those who became infected and those who
11 did not. And if you have selected your patient population to
12 be representative of those at risk, which they did, every one
13 they could possibly get to get tested, and they had a fairly
14 good -- they had a high percentage of the patients tested on
15 the days in question, then that is what speaks to be most
16 strongly.

17 Also, knowing that their practices were so --
18 their injection practices were so deficient, faulty, and is --
19 is also very telling that they continue to do those even in
20 front of the CDC investigators. So you've got two different
21 -- you know, you've got multiple ways in which people could
22 have been infected. But the epidemiological analysis did not
23 show that there were no differences between infected patients
24 and uninfected patients in those who -- in the type of
25 procedure they had. And that, when a good study is done, is

1 the conclusion that they're not associated. That's how we
2 make that conclusion. That's how you decide a drug is
3 effective or not effective --

4 THE COURT: Mr. --

5 THE WITNESS: -- for example.

6 THE COURT: I'm sorry.

7 Mr. Wright, any follow up?

8 MR. WRIGHT: Yes.

9 RECROSS-EXAMINATION

10 BY MR. WRIGHT:

11 Q It's very -- you said it's very telling that
12 like Mr. Mathahs --

13 THE COURT: Keep your voice up.

14 BY MR. WRIGHT:

15 Q Very telling -- I think you said it's very
16 telling they continued to do this even right in front of the
17 inspector; right?

18 A Yes.

19 Q Okay. Like -- like Mr. Mathahs knows the
20 inspector is there watching what he is doing, he knows the
21 purpose of the inspection, and he goes ahead and performs a --
22 does his thing in a manner which is not best practices;
23 correct?

24 A Correct.

25 Q And the person who was actually there and

1 observed him interviewed him right at the moment and stated
2 that she believed he was sincere in that he did not understand
3 the risks of the procedure. So why is that telling? All that
4 shows is that he didn't understand that he couldn't do what he
5 was doing when he sat there and proudly put on a new needle.

6 A I'm not -- I know I'm not allowed to ask a
7 question and I'm not really asking a question, it's --

8 Q Go ahead and try one.

9 A -- rhetorical. If you break the law, like
10 driving while intoxicated or going over the speed limit and
11 you say, oh, I didn't know I wasn't supposed to do that, isn't
12 there some kind of --

13 Q No. You can ask the question. We don't have
14 strict liability.

15 A -- ignorance is no excuse?

16 Q No, we have -- this is a criminal case, as you
17 pointed out. This isn't --

18 A I'm using science.

19 Q Right.

20 A Okay.

21 Q I understand that.

22 A Right. So then --

23 Q But here, in order to commit an offense it
24 must be a --

25 MR. STAUDAHNER: Objection. Calls for a legal

1 conclusion.

2 THE WITNESS: I'm not --

3 MR. STAUDAHER: That's what we're doing now, so --

4 THE WITNESS: I'm not going there. It's so routine,
5 whether or not this person -- this person should know, number
6 one.

7 BY MR. WRIGHT:

8 Q Just a minute, you're going to bait me into
9 responding.

10 A Oops.

11 Q You're not the only one who gets to preach.

12 A Sorry.

13 THE COURT: Is what you're saying it's telling
14 because it's -- you know, that suggests to you that it's a
15 practice, at least with respect to that person, Mr. Mathahs,
16 that he routinely engaged in; is that what you mean?

17 THE WITNESS: Yes.

18 THE COURT: So he --

19 THE WITNESS: That's what I mean.

20 THE COURT: -- wouldn't think, oh, they're here, I'm
21 doing something wrong and dangerous, I better not do it.

22 THE WITNESS: Right. And, in fact, there is --

23 THE COURT: Okay. Is that what you meant?

24 THE WITNESS: That's what I meant.

25 THE COURT: Mr. Wright.

1 BY MR. WRIGHT:

2 Q But normally if someone like knows they're
3 doing something wrong and the highway patrolman is sitting
4 there, they don't do it; correct?

5 A I don't know.

6 Q You don't?

7 A I don't know.

8 Q If you see --

9 A Do they step --

10 Q --- the highway patrolman --

11 A -- on their brakes and hope the radar gun
12 didn't get them? I don't know what people do --

13 Q Okay.

14 A -- actually. I can't --

15 Q Well, wouldn't --

16 A -- attest to that, but --

17 Q -- you presume, as an investigator who looks
18 at these things, that normally when a person being watched,
19 observed, and knows it is an investigation to see how
20 hepatitis may have transmitted --

21 A Did you know there's a scientific --

22 Q -- that --

23 A -- term for that?

24 Q -- that --

25 A Sorry.

1 Q -- that he is going to, if he knows something
2 he is doing is wrong, he is going to change his behavior?

3 A Is some instances you're correct.

4 Q Okay.

5 A But --

6 Q And in the --

7 A -- not all --

8 Q -- in the study --

9 MR. STAUDAHER: Objection. If he could at least --
10 she could at least be allowed to finish her answer.

11 BY MR. WRIGHT:

12 Q Okay. Finish your answer.

13 A You're so -- you're so right in some ways that
14 they have a name for it. It's called the Hawthorne Effect.

15 Q Okay.

16 A It's the very act of observing, someone
17 changes their behavior because they know they're being
18 observed. Actually, people who routinely perform a procedure,
19 tend to routinely do it even when observed. It can be an
20 issue in some research, but in my -- in much of -- in my
21 experience, in healthcare related outbreaks, the procedures
22 are not changed when the investigators come in to investigate.

23 Q In the studies I've read there was some type
24 of -- it says in there bear in mind, we weren't there six
25 months ago, and all we are doing is observing people right now

1 who know they are watching us, so there was an obvious bias.

2 There is some word or --

3 A Well, there could be a limitation. One of the
4 -- usually what the article says -- sorry, I interrupted. I
5 apologize.

6 Q You're good at that.

7 A I know. I am not good at this. I apologize.
8 Should I wait? Finish, please.

9 Q What is -- that is a bias that takes place
10 because if a person normally knows they are doing something
11 wrong, they don't do it in front of the constable; correct?

12 A No.

13 Q They do it?

14 A They can still -- they will still do it in
15 some instances. I cannot tell you how often someone might
16 change their behavior in this situation. In science it's very
17 important to point out what limitations might exist in your
18 study, no matter how fabulous you think it might be, or how
19 flawed, you want to point out what the limitations could be,
20 and that's a limitation on any study that -- particularly one
21 that occurs well after the event.

22 Q Okay. But I take it you would put a great
23 deal of credence in the testimony and observation of Dr.
24 Fischer who actually interviewed Mr. Mathahs --

25 A You mean that he --

1 Q -- and -- and gave her opinion about whether
2 he was genuinely surprised and had believed he was engaging in
3 safe practices.

4 A She may -- she -- I'm not saying I disbelieve
5 her. It's just not relevant to me or to my conclusions from
6 this -- the cause of this --

7 Q It's not relevant --

8 A No.

9 Q -- whether -- well, see --

10 A To you it might --

11 Q -- in a criminal case -- see, we're in a
12 criminal case.

13 MR. STAUDAHER: Objection, Your Honor. This is not
14 an instruction on law.

15 THE COURT: Okay. So is what you're saying it's not
16 relevant to you from an epidemiological --

17 MR. STAUDAHER: From the source of the cause of the
18 outbreak.

19 THE COURT: Because you're not concerned with
20 liability, civil or other -- criminal or otherwise; is that
21 correct?

22 THE WITNESS: Yes, not in a hardhearted sense,
23 but --

24 THE COURT: Okay.

25 THE WITNESS: -- from a scientific point of view.

1 THE COURT: You're just concerned scientifically
2 with understanding --

3 THE WITNESS: That's what I've been asked to do.

4 THE COURT: -- the -- the genesis, if you will, of
5 the infection and determining how to prevent future infection,
6 is that fair?

7 THE WITNESS: That's right. That's right.

8 THE COURT: Not with respect to placing blame or
9 anything like that in terms of civilly or criminally, is that
10 fair?

11 THE WITNESS: Yes.

12 THE COURT: Okay.

13 MR. WRIGHT: The end.

14 THE COURT: I thought that was a preface for a
15 question.

16 MR. WRIGHT: No.

17 THE COURT: Mr. Santacroce, do you have any follow
18 up.

19 MR. SANTACROCE: Just a couple.

20 FURTHER RECROSS-EXAMINATION

21 BY MR. SANTACROCE:

22 Q When the juror asked you if the injection
23 practices were bad and cleaning practices were equally as bad
24 would it change your opinion, you said no. What I need to ask
25 you is you read the MMWR report from the CDC regarding this

1 case?

2 A Yes.

3 Q They use words in that report like the likely
4 transmission, possible, likely, words like that. Okay? Why
5 do scientists use words like likely and probable and possible?

6 A Because we cannot directly show that that
7 event caused that infection. We can do a -- that's why.

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

9 THE COURT: Mr. Staudaher?

10 MR. STAUDAHER: Nothing further, Your Honor.

11 THE COURT: Any additional juror questions for this
12 witness?

13 All right. Ma'am, I see no additional questions.
14 Thank you for your testimony.

15 THE WITNESS: Thank you.

16 THE COURT: You are excused at this time.

17 And the State may call its next witness.

18 MR. STAUDAHER: State calls Dr. Lewis, Your Honor.

19 THE COURT: I'm sorry?

20 MR. STAUDAHER: Dr. Lewis.

21 THE COURT: All right. Dr. Lewis.

22 Is everybody okay without a break?

23 Doctor, just right up here, please, by me. No, this
24 one. And it's just right up those couple of stairs, and then
25 just remain standing facing that lady right there and she'll

1 administer the oath to you.

2 DANIEL LEWIS, STATE'S WITNESS, SWORN

3 THE CLERK: Thank you. Please be seated. And
4 please state and spell your name.

5 THE WITNESS: Daniel Lewis; D-A-N-I-E-L L-E-W-I-S.

6 THE COURT: All right. Thank you.

7 Mr. Staudaher.

8 DIRECT EXAMINATION

9 BY MR. STAUDAHER:

10 Q Doctor, what do you do for a living?

11 A I'm an internist.

12 Q And how long have you had that position or
13 done that work?

14 A Since 2001.

15 Q Where did you go to school?

16 A University of Nevada Medical School.

17 Q Did you do a fellowship or training after your
18 medical degree?

19 A I did my residency through the University of
20 Nevada.

21 Q So all your -- all your training has been here
22 locally?

23 A Up in Reno, Nevada.

24 Q I want to ask you about a specific patient. I
25 mean, you know why you're here exactly; correct?

1 A Yes.

2 Q Can you tell us if you were involved with a
3 patient by the name of Carole Grueskin at some point?

4 A Yes.

5 Q What relation did you have with her?

6 A I was her primary care provider.

7 Q Now, as far as that's concerned, I mean, go
8 back in time. When was the first time that you came in
9 contact with her as a patient provider sort of situation?

10 A February 2007.

11 Q What was the reason for her coming to see you
12 at that time?

13 A The first visit was to establish care, but she
14 was also complaining of kind of bronchitis symptoms.

15 Q Was -- was she establishing care in the sense
16 that you were going to be her primary doctor?

17 A Correct.

18 Q So after that happens, I mean, when she comes
19 to you for that particular problem, do you do the whole sort
20 of first evaluation physical and lab work and the like?

21 A Sometimes, yes. On the first -- that -- on
22 that visit, no, because she was sick and we just addressed the
23 immediate problem of her being -- having bronchitis.

24 Q Did she return to you at a later time?

25 A She did.

1 Q Have you seen her multiple times?

2 A Yes.

3 Q Now, during the times that you saw her, were
4 one of those at least an evaluative type of physical with lab
5 work and the like?

6 A Yes, in July of 2007.

7 Q When you did that in July of 2007, was there
8 any indication that she had any kind of a liver problem or
9 liver condition based on her labs and your assessment of her?

10 A No.

11 Q Did she exhibit any symptoms of cognitive
12 impairment, dementia, anything like that at those times?

13 A No.

14 Q Moving forward, did you continue to see her
15 for other problems during the time?

16 A Yes, I did.

17 Q At some point down the road did you refer her
18 for a colonoscopy?

19 A Yes, I did.

20 Q What was the reason you did that?

21 A She had blood in her stool. In her -- on the
22 physical exam -- or on the -- her annual physical, she had
23 microscopic blood on the stool test that we did on that test.

24 Q Okay. So what -- that was the reason to send
25 her?

1 A Yes.

2 Q Now, what kind of a procedure or procedures
3 did you send her for?

4 A I really sent her to be evaluated by the
5 gastroenterologist for what could be causing the source of
6 bleeding from the stool test.

7 Q And where did you send her?

8 A The referral went through Southwest Medical
9 Gastroenterology Department, and then I think they then sent
10 her to Gastroenterology's -- Dr. Desai's GI practice.

11 Q So she eventually ends up at Dr. Desai's
12 practice?

13 A Yes.

14 Q Does she undergo procedures there?

15 A Yes.

16 Q Now, I want to back up from that point. When
17 did that all happen?

18 A She thought she had a colonoscopy on September
19 21, 2007.

20 Q So prior to September 21st, I think you said
21 the first time you came in contact with her was in February.

22 A Correct.

23 Q So you had seen her how many times between
24 February and September of that year?

25 A I saw her once in February, twice in July of

1 2007.

2 Q So a total of three times?

3 A At that point, yes.

4 Q Now, during any of those times, any indication
5 that she came in with -- with jaundice or any kind of overt
6 liver function problem?

7 A No.

8 Q Any of the lab work you had done during any of
9 those times came back with any problem related to her having
10 hepatitis, anything like that?

11 A No.

12 Q Now, from a cognitive impairment, you've seen
13 her a few times, any indications in the records you had or
14 your direct observations that she had any kind of a mental
15 condition or problem?

16 A No.

17 Q And when I say that, I'm talking about
18 something like dementia, you know, Alzheimer's, anything like
19 that.

20 A No, she did not.

21 Q Now, when she goes to the clinic, tell us what
22 happens after that from your perspective.

23 A I -- at that point she saw me in November of
24 2007. She presented with jaundice. Her skin was yellow and
25 she had no pain, abdominal pain. We did stat labs that day,

1 which then we got the results of the following day.

2 Q And what did they show?

3 A They showed her liver enzymes were extremely
4 high. The cutoff is -- the lab values are usually around 30
5 or 40. Hers were in the 3,000 to 4,000 range.

6 Q So this is in November. Roughly, when in
7 November?

8 A The -- I think the first part of November.

9 Q So at least at that time, was that the first
10 time you had seen her since she had her colonoscopy procedure?

11 A Yes.

12 Q Did she have just a colonoscopy, or did she
13 have something else also?

14 A As far as --

15 Q Endoscopic procedures at the clinic?

16 A An upper GI, as well.

17 Q So she had both?

18 A She had both.

19 Q When she gets actually to you on -- before the
20 November date, and the window of time I'm talking about, I
21 just want to make sure you're clear on this, is after the
22 colonoscopy and upper endoscopy in September --

23 A Uh-huh.

24 Q -- to the November date when you see her at
25 the beginning of November --

1 A Uh-huh.

2 Q -- were there any calls to you, any further
3 visits, any time that you interacted with her other than time
4 when she follows back up?

5 A Not that I know of.

6 Q When you see her at that time, is she
7 noticeably jaundiced at the point when you see her?

8 A Yes, extremely.

9 Q Once you get that information from her and you
10 order the lab work, I mean, do you assess her in any other
11 way? Do you try to look her?

12 A I examined her.

13 Q Were there any other problems that you noted
14 at that time?

15 A No.

16 Q Was she having any cognitive impairment at
17 that point?

18 A No.

19 Q So let's move forward from the November date.
20 You send her for the lab work. I assume you get this back?

21 A Uh-huh.

22 Q What happens next?

23 A I immediately sent her -- well, called her. I
24 truly don't know if I spoke to her or if one of our staff
25 members spoke to her and told her to go to the hospital.

1 Q Okay. So does that happen?

2 A Yes.

3 Q Do you follow up with her after that?

4 A Yes.

5 Q Did you see her in the hospital?

6 A No, I did not.

7 Q When was it that you saw her again after --
8 after the hospitalization?

9 A A week after she was discharged from the
10 hospital.

11 Q When was that, if you know?

12 A I don't know the exact dates. She was in the
13 hospital for approximately three days. It was towards -- it
14 was in the month of November.

15 Q Still?

16 A Yes.

17 Q So all of this, the jaundice to the
18 hospitalization to you seeing her afterward, the month of
19 November?

20 A Right. It spanned approximately three to ten
21 days.

22 Q When you saw her in follow up after that, had
23 her mental status changed at all?

24 A No.

25 Q What do you with her or for her at that stage?

1 A At that point it was still unclear what caused
2 her to have hepatitis, and so we repeated some lab work that
3 had been done in the hospital, which included a hepatitis
4 panel.

5 Q Did it come back?

6 A It came back positive for the antibodies for
7 hepatitis C.

8 Q Now, at this point what do you do?

9 A At this point I told her that she needed to
10 follow up with the gastroenterologist that saw her in the
11 hospital.

12 Q To your knowledge -- I mean, do you get a
13 report back at some point? Do you know if she did that or
14 didn't do that?

15 A I did get a report back that she did.

16 Q So when is the next time that you actually see
17 her?

18 A The next time I saw her was in December and
19 she had seen -- she had seen the gastroenterologist who said
20 -- well, in his reports said that he was unclear of what --
21 how she had hepatitis C.

22 Q And who was this?

23 A Dr. Weisz.

24 Q Okay. And --

25 A So I -- I was frustrated because the lab work

1 showed that she had hepatitis C, you know, that her antibody
2 came back positive for hepatitis C. And so I told her that
3 she, you know, she probably has hepatitis C and she needs to
4 follow back up with the gastroenterologist.

5 Q Now, did you do any kind of treatment of her
6 for her hepatitis C?

7 A No, that's out of the realm of internal
8 medicine.

9 Q Do you know if she underwent any treatment,
10 like interferon therapy, Ribavirin, anything like that?

11 A Not at that time. Not at that initial visit,
12 no.

13 Q Okay. So let's -- let's move forward. What's
14 -- and, again, at this point, what month, where are we talking
15 about?

16 A We're talking about December of 2007, now
17 probably in January of 2008.

18 Q Any issue with cognitive impairment at that
19 time?

20 A No. No.

21 Q So still we don't have an issue there?

22 A No.

23 Q Move forward in time to the -- to the next
24 visit or the next time you've interacted with her.

25 A I got a -- well, okay, I got a call from the

1 Health District stating that she had hepatitis C and that they
2 were going to contact her. And at that point -- at that point
3 we -- she came back in. At this point hepatitis C outbreak
4 was, you know, on the news every day and she came back in
5 extremely, extremely upset, distraught, angry, anxious to the
6 point where she just was having a hard time functioning.

7 Q So that's after she gets the news about her
8 condition and the news is --

9 A Right.

10 Q -- in the media.

11 A So she had a -- she had a test in February
12 2008, which did confirm that she had the virus for hepatitis C
13 and the genotype of that virus.

14 Q Did you continue to see her after that?

15 A Yes.

16 Q During the times that you see her in follow
17 up, when was the next time, if you can --

18 A March of 2008.

19 Q So now we're well in -- we're into the next
20 year.

21 A Yeah, I pretty much saw her once a month
22 throughout the entire year of 2008.

23 Q Do you know if she did ever undergo any kind
24 of treatment, therapy, interferon, specifically.

25 A She did eventually.

1 Q And when was that?

2 A November of 2008.

3 Q So at least the anxiousness or at least the
4 condition you talked about, when -- and let's talk about that
5 initially. You say she comes back in after the results are
6 given to her. The way that you described her just in court a
7 moment ago, is that what we're talking about as far as
8 anxiousness, or something else?

9 A She was extremely anxious and she was
10 extremely depressed, and she -- at that point in March one of
11 her complaints was that she was forgetting things, that she
12 was forgetting her keys, she was forgetting to do things, meet
13 appointments, certain things, that type of stuff.

14 Q Had she disclosed to you during any of the
15 evaluations you had done as her primary, any kind of family
16 history of dementia, Alzheimer's, anything like that?

17 A No, she did not.

18 Q Had you seen any signs or symptoms in
19 retrospect, now that you're dealing with her later on, of
20 those kinds of signs or symptoms?

21 A I saw signs of memory loss, yes. And what was
22 confusing about it is depression can cause memory loss. You
23 know, you can become so depressed or so anxious that you
24 forget things. So -- so at that point that's what I felt was
25 going on. I felt that it was due to her overall emotional

1 state that was causing her to forget things.

2 Q Related to the hepatitis infection?

3 A Related to having -- acquiring hepatitis C.

4 Q Okay. So those symptoms don't occur until
5 after that -- that event?

6 A Yes.

7 Q Now, moving forward, you said you still saw
8 her every month.

9 A Uh-huh.

10 Q Does -- does that cognitive issue, the
11 depression, the things you mentioned, does it change over
12 time?

13 A It -- it actually -- it -- it got worse. In
14 March she was reluctant to go on any type of medication for
15 depression. She refused to go see a psychiatrist or a
16 psychologist. It was in June that we were -- that I pretty
17 much convinced her to try an anti-depressant. We then
18 increased the dose of that anti-depressant in August of 2008.
19 Again, there was a lot of stress in Spring of 2008 because at
20 that point we were trying to find another gastroenterologist
21 to treat her, which was extremely difficult because all of the
22 sudden no gastroenterologists were taking patients, you know,
23 and so it became a -- it just became an ongoing thing that
24 just wasn't moving forward as far as to get treatment.

25 Q Did she eventually start interferon therapy at

1 some point?

2 A She did. She started interferon therapy in
3 November of 2008.

4 Q And how did she respond to that?

5 A She had some complications from that. The
6 interferon caused her to -- her white blood cell count to go
7 very low and her red blood cells to go very low.

8 Q Did you notice any difference in her cognitive
9 situation once she started the interferon therapy?

10 A She became more confused.

11 Q Was it a correlation between that, I mean,
12 before versus after?

13 A I don't know if it -- I mean, I don't know if
14 it was related to the treatment. I'm not sure.

15 Q But after she started the interferon she got
16 worse?

17 A Yes.

18 Q Would you classify that as mildly worse,
19 medium, markedly?

20 A I would say mildly worse.

21 Q Now, how far did you continue with her?

22 A Last time I saw her was in January 2009.

23 Q So at that time what was her situation?

24 A She was -- I think they had stopped the
25 treatment and that's about -- that's all I remember.

1 Q Do you know why the treatment was stopped?

2 A Because of the complications of her becoming
3 so anemic from the treatment.

4 MR. SANTACROCE: I'm going to object as to
5 foundation.

6 MR. STAUDAHER: Well, he's the -- you're the
7 physician, you have the --

8 THE COURT: That's overruled.

9 BY MR. STAUDAHER:

10 Q So it was because of complications what?

11 A It was because of complications of -- of her
12 unable to -- to handle or be treated by that medication
13 because it caused her to become anemic.

14 Q And you mentioned red and white blood cell
15 counts?

16 A Right. It required blood transfusions and --
17 and she still wasn't able to tolerate it.

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

19 THE COURT: All right. Ms. Stanish.

20 CROSS-EXAMINATION

21 BY MS. STANISH:

22 Q Good afternoon, Dr. Lewis.

23 A Hi there.

24 Q Let me start with Ms. Grueskin's medical
25 history. I assume when you met with her first you collected

1 her medical history?

2 A Yes.

3 Q And is it the case that she was a heavy
4 smoker, smoking one to two packs a day?

5 A That's correct.

6 Q Do you know for what duration she had done
7 that?

8 A I don't know.

9 Q Okay. Do you recall that it was for over 20
10 years?

11 A Yes.

12 Q And by the way, how old was she when you first
13 visited with her?

14 A She was born in 1939, so 2007 I would say
15 that's 69, 68.

16 Q How old is she now since you're good at math?

17 A Let's see here, 39 --

18 THE COURT: Not to put you on the spot or anything.

19 MS. STANISH: No, I know he's going to get it right.

20 THE WITNESS: 74 -- or 72. No, 74. Sorry.

21 BY MS. STANISH:

22 Q See, that's what I thought. All right. And
23 did she also have issues with breast cancer?

24 A Yes, she did.

25 Q And did she receive radiation for that?

1 A Yes, she did.

2 Q Were -- did she also have to have an operation
3 in connection with that?

4 A I don't recall.

5 Q All right. Do you -- did she also suffer from
6 diabetes?

7 A No, she did not.

8 Q Okay. Do you recall any other health issues
9 that she was dealing with when you first visited with her?

10 A No, other than she was having back problems.

11 Q And as far as her GI issues, ultimately what
12 was determined to be her problem with GI issues when you
13 referred her in 2007 for the colonoscopy?

14 A She had -- she had black positive stools on
15 her stool test.

16 Q Meaning what?

17 A Microscopic blood within the stool, meaning
18 that there is possibly some sort of bleeding going on
19 internally.

20 Q And as I under -- as I understand it, you had,
21 prior to her going to the -- for the colonoscopy, you had done
22 the -- the normal labs that you would give to a patient who is
23 getting their annual or physical?

24 A That's correct.

25 Q And those blood tests, they test for liver

1 enzyme levels; is that correct?

2 A That's correct.

3 Q I assume you did not give any specific blood
4 tests relating to the hepatitis?

5 A No, I did not. Not at that time.

6 Q And let's jump now when, as I understand it,
7 she became symptomatic in November of 2008 and you referred
8 her to the hospital.

9 A Uh-huh.

10 Q And the --

11 MR. STAUDAHER: Your Honor, to correct that, just
12 for counsel. 2007, I think, was the year.

13 MS. STANISH: Oh, did I say '08?

14 MR. STAUDAHER: Yes.

15 THE COURT: Okay. 2007.

16 MS. STANISH: I bet you're a good proofreader.

17 MS. WECKERLY: I heard it, Margaret.

18 MR. STAUDAHER: Actually, it was my co-counsel.

19 BY MS. STANISH:

20 Q What year did -- November 2007 she becomes
21 symptomatic and you refer her to the hospital?

22 A That's correct.

23 Q And at some point you refer her to Dr. Sood?

24 A Yes.

25 Q And do you know when that was?

1 A That was in 2008, March of 2008.

2 Q And, you know, I read your deposition, so I
3 understood that there was an issue with whether it was
4 yourself or Dr. Sood trying to determine if she had autoimmune
5 hepatitis.

6 A Right.

7 Q First what was -- put that on a timeline for
8 me relative to her becoming symptomatic in November of 2007.

9 A Uh-huh.

10 Q When were -- when were her providers
11 struggling with this issue?

12 A During -- because -- Dr. Sood was. Dr. Sood
13 ordered the test to determine whether or not she had anything
14 that would contraindicate being on interferon therapy. If she
15 had autoimmune hepatitis, that -- which would then probably be
16 treated with steroids, that would make the hepatitis C worse.
17 If the hepatitis -- if she had -- or likewise. But basically
18 the reason why is so she -- they did a blood test. It was
19 positive for ANA. Her ANA was positive, which kind of could
20 point in that possible direction that she had autoimmune
21 hepatitis.

22 Q So the next question is what the heck is
23 autoimmune hepatitis?

24 A From what I know is it's the -- like any type
25 of autoimmune disease it's when your body produces antibodies

1 that attack against itself. And in this case, your body
2 produces antibodies that are attacking certain proteins within
3 the liver causing inflammation of the liver.

4 Q It sounded like you had expressed some
5 frustration that she wasn't getting the -- the treatment for
6 hepatitis C, the drug regimen.

7 A I don't recall exactly. I mean, that was
8 three or four years ago. But I think in general I think I was
9 frustrated that all the hoops that we had to go through to get
10 her treated, yes.

11 Q And she wasn't -- she actually didn't get the
12 treatment until September 2008, almost a year after the
13 colonoscopy?

14 A That's probably correct.

15 Q And can you explain -- well, you're not the
16 one making the decision. That's Dr. Sood making the decision.

17 A Uh-huh.

18 Q Or -- or was Dr. Sood working with some other
19 specialist that you're aware of?

20 A Not that I'm aware of.

21 Q Okay. So Dr. Sood was the one who was dealing
22 with the hepatitis issue?

23 A Dr. Sood is a gastroenterologist specialist.
24 That's what he would -- yeah, he would be the one that would
25 do any type of treatment for hepatitis C.

1 Q And can you tell from your review of the
2 medical records why there was such a long delay getting her
3 that treatment?

4 A I think a couple things. One, again, there
5 was the question of autoimmune hepatitis, and two was her
6 mental state at the time.

7 THE COURT: Ms. Stanish --

8 I'm sorry. Were you done with your answer?

9 THE WITNESS: Yeah. Yes.

10 THE COURT: I didn't mean -- I have a bad habit of
11 interrupting people.

12 Ms. Stanish, we're going to take a quick break.

13 MS. STANISH: Okay.

14 THE COURT: So I am going to interrupt you.

15 MS. STANISH: All right.

16 THE COURT: Ladies and gentlemen, during the quick
17 break you're reminded you're not to discuss the case or
18 anything relating to the case with each other or anyone else.
19 You're not to read, watch, or listen to any reports of or
20 commentaries on this case, any person or subject matter
21 relating to the case, or do any independent research. Please
22 don't form or express an opinion on the trial.

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

25 And, Doctor, during the break, please don't discuss

1 your testimony with anyone.

2 THE WITNESS: No problem.

3 THE COURT: All right. Thanks. And you're free to
4 sit there, or if you want to take a break you can exit through
5 the double doors.

6 THE WITNESS: Thanks a lot.

7 (Court recessed at 4:26 p.m., until 4:34 p.m.)

8 (In the presence of the jury.)

9 THE COURT: All right. Court is now back in
10 session.

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

13 MS. STANISH: Thank you, Judge.

14 BY MS. STANISH:

15 Q Going back to the autoimmune deficiency, you
16 noticed that at one time period?

17 A At what time period what?

18 Q On the timeline.

19 A In the summer of 2008.

20 Q And is that suggestive of the beginning stages
21 of lupus? Did she --

22 A I truly don't know if -- the reason why she --
23 I was involved with the whole scenario of possible autoimmune
24 hepatitis is because of the way her insurance was set up she
25 had to go back to her primary doctor for referrals. And it

1 was recommended by the gastroenterologist that she be referred
2 to the rheumatologist. And so she came back and saw me for a
3 referral to go see the rheumatologist.

4 Q And what exactly is a rheumatologist?

5 A A rheumatologist is a specialist in conditions
6 like rheumatoid arthritis, lupus, autoimmune diseases of that
7 nature.

8 Q Do you know if memory problems are associated
9 with lupus or other autoimmune diseases?

10 A Not that I -- I don't know.

11 Q You don't know. And your -- from the time you
12 -- you're seeing her, November of 2007 when she's diagnosed
13 with hepatitis C to mid-September 2008 when she's not getting
14 the hepatitis treatment, the drug regiment, during that time
15 frame are -- are her -- are her viral loads stable or what's
16 going on there?

17 A I do not know.

18 Q You don't know. Do you even know as -- today
19 if -- if the -- if the hepatitis C has cleared her system?

20 A The last time I was in contact with her was in
21 January of 2009.

22 Q Okay. So you don't know. All right.

23 A I know nothing after that visit.

24 Q Well, then I guess I can't ask you much more,
25 so thank you.

1 THE COURT: All right. Mr. Santacroce, any cross?

2 MR. SANTACROCE: Yes, thank you.

3 CROSS-EXAMINATION

4 BY MR. SANTACROCE:

5 Q Doctor, you said that you noticed some
6 cognitive impairment after the procedure or after the
7 diagnosis of hepatitis C?

8 A She came in with the initial complaint of
9 having memory loss in March of 2008.

10 Q Okay. And is that when you noticed some
11 cognitive impairment?

12 A Yes. I ordered an MRI of the brain at that
13 time and it was normal. And I thought that it was probably
14 due to the amount of anxiety, depression that she was
15 undergoing at that -- having at that point.

16 Q Do you have an opinion as to whether or not
17 hep C causes dementia or Alzheimer's?

18 A I don't have an opinion. I leave that up to
19 the gastroenterologist.

20 Q Okay. So you can't say to a reasonable degree
21 of medical certainty what, if anything, caused dementia or
22 Alzheimer's?

23 A What causes Alzheimer's dementia?

24 Q In her.

25 A No, I do not know.

1 Q Did she have a -- is there a formal diagnosis
2 for dementia? I mean, who do you go see to be diagnosed with
3 dementia?

4 A A neurologist.

5 Q Do you know if she saw a neurologist?

6 A I do not know if she saw a neurologist.

7 Q Could memory loss or dementia be caused by
8 treatment, chemotherapy, radiation, things of that nature?

9 A Yes, it can.

10 Q And your testimony was that she had undergone
11 radiation prior to her procedure at the clinic?

12 A That is correct. She did have radiation
13 treatment for breast cancer, yes.

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

15 THE COURT: Redirect?

16 MR. STAUDAHER: No, Your Honor.

17 THE COURT: Any juror questions for this witness?

18 No juror questions?

19 Doctor, thank you for your testimony. Please don't
20 discuss your testimony with any other witnesses, and you are
21 excused at this time.

22 And the State may call its next witness.

23 MS. WECKERLY: Yereny Duenas.

24 THE COURT: Ma'am, just right up here, please, next
25 to me. And then face this lady right there and she will

1 administer the oath to you.

2 YERENY DUENAS, STATE'S WITNESS, SWORN

3 THE CLERK: Thank you. Please be seated. And
4 please state and spell your name.

5 THE WITNESS: My name is Yereny, Y-E-R-E-N-Y, last
6 name Duenas, D-U-E-N-A-S.

7 THE COURT: All right. Thank you.

8 Ms. Weckerly.

9 DIRECT EXAMINATION

10 BY MS. WECKERLY:

11 Q Ms. Duenas, how are you employed?

12 A I'm employed.

13 Q How?

14 A Through my employer. No. I'm employed
15 through Zenith American Solutions. I'm a participant service
16 coordinator.

17 Q And what does that mean you do?

18 A We are the third party administrator for a
19 bunch of the unions in town. For example, Culinary, we pay
20 their claims, we handle their eligibility, we handle self-pays
21 and things like that.

22 Q And how --

23 A On the insurance side, medical insurance side.

24 Q How long have you done that type of work.

25 A 18 and a half years.

1 Q And was the company that you work for always
2 known as Zenith American?

3 A No, we've had different name changes through
4 the years. It was previously ABPA, and then we had a merger
5 with Zenith, so we're now Zenith American Solutions.

6 Q Okay. And were you someone who was
7 specifically involved in handling claims for under Culinary
8 insurance back in 2007?

9 A Yes, I was a claims team leader.

10 Q And as a team leader do you handle claims
11 personally and do you supervise or how does that work?

12 A I distribute the work, if there's any
13 questions, I help the examiners, any provider calls, customer
14 -- escalated customer calls, I handle all those type of
15 issues, go to contract meetings, and so on.

16 MS. WECKERLY: Your Honor, may I approach the
17 witness?

18 THE COURT: You may.

19 MS. WECKERLY: And I've shown these to counsel.

20 BY MS. WECKERLY:

21 Q Ms. Duenas, I'm showing you what's been marked
22 as State's 209, and there's actually several documents. And
23 there's 209A, B, and C. And if you could just look through
24 all those --

25 A Okay.

1 Q -- and then let me know when you're done.
2 A Okay. Okay.
3 Q Are all of those documents related or all they
4 all business documents related to an insurance claim that was
5 processed by your company, I guess, based on Culinary
6 insurance back in 2007?
7 A Yes, but it looks like there's statements in
8 there that the patient received from the actual doctor's
9 office.
10 Q Okay.
11 A Like the explanation of benefits, that has our
12 name on it as ours, but like these invoices --
13 Q Uh-huh.
14 A -- they look like they are from the doctor's
15 office. Those are not from our office.
16 Q Okay. You didn't generate these --
17 A No, we did not --
18 Q --- at the insurance company --
19 A --- generate those.
20 Q --- but you're familiar with this type of --
21 A Yes.
22 Q -- document being submitted?
23 A Yes.
24 Q Is that fair?
25 A Yes.

1 Q Okay. Are all of the documents in here
2 something that you would be familiar with from working --

3 A Yes.

4 Q -- for 17 years?

5 A Yes.

6 Q Okay.

7 MS. WECKERLY: Your Honor, the State moves to admit
8 209, and then 209A, B, and C.

9 THE COURT: Any objection?

10 MS. STANISH: No, Your Honor.

11 THE COURT: All right. Those are all admitted.

12 (State's Exhibit 209, 209A, 209B and 209C admitted.)

13 BY MS. WECKERLY:

14 Q Okay. Can you -- is your screen on up there?

15 A Yes, it is.

16 Q Okay. Perfect. I am showing you -- this is
17 209C, and it looks like -- well, you tell me. What are we
18 looking at here?

19 A Okay. These are our internal processing
20 guidelines based as how the claim was processed in 2007.

21 Q Okay.

22 A It's just an internal document that we have
23 that we provide for the examiners so they know when they
24 receive their certain claim type how -- kind of like what is
25 loaded in the system and what the background information is.

1 Q Okay. And in 2007 through Culinary insurance
2 for a -- for a claim for the anesthesia associated with the
3 colonoscopy, how is that measured or how is it determined?

4 A Our anesthesia claims are based on base units
5 plus time, times the RVU units.

6 Q Okay. And it looks like on here there's an
7 RVU unit price.

8 A Correct.

9 Q And was that the price in 2007?

10 A Yes, for a CRNA. Yes, it was.

11 Q Okay. So this is the price. Sorry. This \$34
12 is the price that you pay per unit for the procedure?

13 A Correct.

14 Q And you said the price is determined by
15 calculating the number of units associated with the procedure?

16 A Yes.

17 Q And then just timing it by this 34?

18 A Yes.

19 Q Okay. And the other kind of information on
20 this document, I guess, defines the -- sort of the conditions
21 of what can be billed or what counts or what doesn't?

22 A That is correct.

23 Q I'm going to flip to -- well, it's the second
24 to the last page. Okay. And this -- this box right here,
25 which is the -- the second box on the page, can you explain to

1 us what information is contained in that box?

2 A Okay. In this box it's basically how the
3 system calculates anesthesia time. For example, if the
4 anesthesia time billed is, for example, 45 minutes, the system
5 looks at that. The system is programmed to look at it every
6 15 -- every -- every unit, every 15 minutes equals one unit.

7 Q Okay.

8 A So anything over 15 minutes gets rounded up to
9 the next unit. So, for example, if 16 units were billed, that
10 rounds up to two units.

11 Q Okay. And if it's 12 minutes, how many is
12 that?

13 A That's one unit.

14 Q And if it's 32 minutes, how many units is
15 that?

16 A That's -- 32 units is three units.

17 Q I'm sorry. 32 minutes.

18 A Oh. 32 minutes is three units.

19 Q Okay. So if you go at all into --

20 A Round up. Anything above 15 increments is --
21 rounds up to two units.

22 Q Okay. And I think you said that you have a
23 base number of units associated with a procedure and then you
24 add on those 15 minutes depending on how long the procedure
25 is?

1 A Correct.

2 Q And in 2007, what was the base unit assignment
3 to a colonoscopy?

4 A It was six units.

5 Q Six units. So it would be six plus whatever
6 15 minute increments?

7 A Correct.

8 Q Times the 34?

9 A Correct.

10 Q Okay. So let's look at her claim detail. And
11 maybe I'll zoom in just a little. Can you see that?

12 A Yes.

13 Q Okay. So this -- this page of the document
14 shows the claim is for anesthesia; correct?

15 A Correct.

16 Q And this would be -- this 560, would that be
17 the charges --

18 A Submitted. Those are the bill charges.

19 Q By the provider?

20 A Yes.

21 Q Okay. And it looks like there was -- is that
22 like a discounted rate?

23 A That's considered a PPO discount where we
24 don't pay for it and the patient is not liable for it.

25 Q Okay. So that's because of the agreement that

1 you had, you discount the 560 by 254?

2 A Correct.

3 Q Just off the top?

4 A And that would be the allowable.

5 Q Okay. And then it looks like this was the
6 eligible amount on the claim, which is 306?

7 A Correct.

8 Q And was there -- can you tell on this document
9 whether the patient had to pay a copay or whether you paid the
10 whole thing?

11 A We pay the -- we paid the whole thing. Over
12 here where it has a percentage co-insurance.

13 Q You can actually write on the screen with your
14 fingernail.

15 A Oh.

16 Q Yeah.

17 A Okay.

18 Q If you want to just show us where that is.
19 Okay.

20 A Right there, that is -- shows that the
21 allowable, what's considered at 100 percent, so the patient
22 had no out of pocket.

23 Q Okay. And so this is how much Culinary and
24 the insurance company paid for her procedure?

25 A Correct.

1 Q And so this was \$306

2 A Yes.

3 Q Now, are you able to tell -- I'm showing now
4 the last page of -- can you tap the bottom right of that with
5 your finger there. Thank you. This is the last page of 209,
6 and it looks like there is time entered on this document; is
7 that fair?

8 A Yes.

9 Q And what -- what is the time that's entered?

10 A This is the time that the -- that the provider
11 submitted that the patient was under anesthesia, and it's
12 11:45 to 12:18.

13 Q And how many units would that be?

14 A That would be three units.

15 Q Okay. And so with a base unit of six that's
16 associated with the procedure, and then you add three more
17 units, so it was nine.

18 A Uh-huh. Times the 34 -- \$34 per RVU.

19 Q Okay. And then we times that by this 34 RVU?

20 A Is a 306.

21 Q And that's the 306 that was paid on the claim?

22 A That's correct.

23 Q So let me ask you. If this time were lower,
24 like one less unit, would less have been paid on this claim?

25 A Yes.

1 Q How much less?

2 A \$37 less.

3 Q Or 34?

4 A 34. I'm sorry. 34.

5 Q 34.

6 A Yes.

7 Q And if it was one -- if it was a procedure
8 that lasted under 15 minutes, how many units could have been
9 billed?

10 A Just the one.

11 Q Okay. So it would have been seven times the
12 34?

13 A Correct.

14 Q So each unit that was added on in terms of
15 anesthesia time increased how much was paid by the insurance
16 company by \$34, is that fair?

17 A That is correct.

18 Q And in this particular claim, \$306 was paid,
19 meaning nine units were billed?

20 A Yes.

21 MS. WECKERLY: I think that's all I have.

22 THE COURT: Thank you.

23 Cross.

24 CROSS-EXAMINATION

25 BY MS. STANISH: