

1 country. He humbly aspired to be a safe nurse anesthetist. He worked long hours.
2 His work ethic was lauded by his superiors and peers, and I hope you will consider
3 the information shared in this letter when deciding Mr. Lakeman's fate. I
4 acknowledge the injustice to the citizens of Las Vegas, Nevada and will pray for
5 their families as well as Mr. Lakeman.

6 Your Honor, a famous baseball player, Jackie Robinson when he broke
7 the color barrier said, A life is not important except in the impact it has on others,
8 and the State will argue that Mr. Lakeman's action had a negative impact on those
9 two days in 2007. But I can assure that when Mr. Lakeman went to work on those
10 two days in 2007 he never set about to injure or hurt anybody. He performed over
11 40,000 anesthesia practices without incident, without a complaint, 30 years of
12 service.

13 He served the military as a captain in the United States Air Force, and
14 his life will not be defined by the impact it had on the citizens of Nevada albeit
15 negative and were very -- Mr. Lakeman lives with that every day, and I can assure
16 that when I visit him it torments him because it is his instinct and practice to save
17 lives not to hurt lives.

18 And just by way of example, when we left court one time during the trial,
19 he was driving home on Sahara Avenue, and when he got to Cimarron, he was
20 following a pickup truck with two individuals in it. Those two individuals jumped out
21 of the car, stole an iPhone from a young boy at a bus stop. The young boy then
22 tried to retrieve the iPhone and the car ran over the young boy. Mr. Lakeman as
23 fate would have it was behind that car. He jumped out and his instincts took over,
24 and he rendered aid to that young boy until the police and medical providers got
25 there. That young boy eventually died, but it highlights and illustrates that this

1 individual is not the monster that was portrayed in this court.

2 He takes responsibility and accepts the responsibility for what's
3 happened. He truly regrets that, and I would encourage the Court to consider the
4 impact that he had on lives, the life that he has led.

5 If you look at the PSI under the criminal section, all zeros, nothing, not a
6 misdemeanor, nothing prior to this incident. And Nancy Easton who wrote the PSI
7 report acknowledged that, but for, and these are my words not hers, but the tenor of
8 the report, but for the nature of this case, he would be a perfect candidate for
9 probation because he's had nothing. He was gainfully employed. He served his
10 country, and I would encourage the Court to give probation a consideration.

11 But if the Court believes that a period of incarceration is necessary,
12 then I would ask that the Court sentence him to 12 to 30 months on one count and
13 run the rest concurrent. If the Court's not inclined to do that, I would ask the Court
14 to follow the PSI report.

15 THE COURT: All right. Thank you, Mr. Santacroce.

16 I do believe having heard the testimony throughout the trial, listening to
17 the arguments, I don't believe that Mr. Lakeman set out to intentionally harm
18 anyone. I don't believe that, and I believe that Mr. Lakeman has done some positive
19 things in his life such as serving his country in the military. However, the evidence
20 presented during the trial was quite clear that Mr. Lakeman was aware of the risks,
21 and he took steps being aware of the risks to minimize the risks. And frankly I don't
22 find that very compelling.

23 I don't find it very compelling because A, it demonstrates that you knew
24 the risks, and you used the practice anyway. And, B, sadly, tragically, the steps you
25 took did not work. They were not effective, and the virus was transmitted anyway.

1 You know, unlike Dr. Desai where we can say the motivation was greed
2 and I think in some ways sort of a disdain even for his patients, with Mr. Lakeman I
3 don't think the motivation is quite clear. But I don't think that Mr. Lakeman's
4 behavior is excused by saying, well, he was trying to get along, or he was following
5 orders, or he didn't want to lose his job because he knew what he was doing was
6 wrong, and there were many options Mr. Lakeman could have taken.

7 He could have quit his job. He could have informed state authorities.
8 He could have been, you know, an anonymous whistleblower of some type. He
9 could have spoken even to the other doctors who, you know, whether they knew or
10 didn't know are still practicing medicine in this community, but he could have
11 reported it to someone else. He could have reached out in a way that he didn't do.

12 And so I really don't find any kind of an excuse that, well, he was just,
13 you know, one of other nurse anesthetists, and he wasn't directly benefiting
14 financially from this other than the fact that he, you know, retained his job because
15 there were things that Mr. Lakeman could have done, and had Mr. Lakeman or Mr.
16 Mathahs or someone else taken those steps, then, you know, maybe this tragedy
17 could have been averted or certainly, you know, maybe fewer people would have
18 been infected. So I just don't find that compelling quite frankly.

19 Again, I think that Mr. Lakeman's direct role in all of this has to be
20 recognized, and the fact that there are several victims has to be recognized and that
21 they shouldn't be lumped together as different days, different victims, different
22 impacts, different lives that have been altered or even ruined.

23 So, Mr. Lakeman, based upon the jury's verdict in this case, you are
24 hereby adjudged guilty of Counts 1, 8, 14, 15, 21 and 24, Insurance fraud, Counts 2,
25 6, 12, 19 Performance of an act in reckless disregard of persons or property

1 resulting in substantial bodily harm, and Counts 3, 7, 13, and 20 Criminal neglect of
2 patients resulting in substantial bodily harm.

3 In addition to the \$25 administrative assessment, the \$150 DNA
4 analysis fee and the fact that you must submit to a test for genetic markers, I am
5 going to essentially follow the State's recommendation on this.

6 Count No. 1, Insurance fraud, you're sentenced to a minimum term of
7 12 months, Nevada Department of Corrections and a maximum term of 30 months
8 in the Nevada Department of Corrections.

9 On Count No. 2, Performance of an act in reckless disregard of persons
10 or property resulting in substantial bodily harm, you're sentence to a minimum term
11 of 12 months in the Nevada Department of Corrections and a maximum term of 30
12 months in the Nevada Department of Corrections; that is imposed concurrently with
13 the time I gave you on Count No. 1.

14 On Count No. 3, Criminal neglect of patients resulting in substantial
15 bodily harm, you're sentenced to a minimum term of 24 months in the Nevada
16 Department of Corrections and a maximum term of 72 months in the Nevada
17 Department of Corrections. That is imposed concurrently with the time you were
18 given on Count No. 2.

19 On Count No. 6, Performance of an act in reckless disregard of persons
20 or property resulting in substantial bodily harm, you're sentenced to a minimum term
21 of 12 months in the Nevada Department of Corrections and a maximum term of 30
22 months in the Nevada Department of Corrections. That is imposed concurrently to
23 the time you received in Count No. 3.

24 On Count No. 7, Criminal neglect of patients resulting in substantial
25 bodily harm, you are sentenced to a minimum term of 24 months in the Nevada

1 Department of Corrections and a maximum term of 60 months in the Nevada
2 Department of Corrections. That is imposed consecutively with the time I gave you
3 on Count No. 6.

4 On Count No. 8, Insurance fraud, you're sentenced to a minimum term
5 of 12 months in the Nevada Department of Corrections and a maximum term of 30
6 months in the Nevada Department of Corrections. That is imposed concurrently
7 with the time you received on Count No. 7.

8 On Count No. 12, Performance of an act in reckless disregard of
9 persons or property resulting in substantial bodily harm, you are sentenced to a
10 minimum term of 12 months in the Nevada Department of Corrections and a
11 maximum term of 30 months in the Nevada Department of Corrections. That is
12 imposed concurrently with the time you received on Count No. 8.

13 On Count No. 13, Criminal neglect of patients resulting in substantial
14 bodily harm, you are sentenced to a minimum term of 24 months in the Nevada
15 Department of Corrections and a maximum term of 60 months in the Nevada
16 Department of Corrections. That is imposed consecutively with the time you
17 received in Count 12.

18 On Count No. 14, Insurance fraud, you're sentenced to a minimum term
19 of 12 months in the Nevada Department of Corrections and a maximum term of 30
20 months in the Nevada Department of Corrections. That is imposed concurrently
21 with the time you received on Count No. 13.

22 On Count No. 15, Insurance fraud, you're sentenced to a minimum term
23 of 12 months in the Nevada Department of Corrections and a maximum term of 30
24 months in the Nevada Department of Corrections. That is imposed concurrently
25 with the time you received on Count No. 14.

1 On Count No. 19, Performance of an act in reckless disregard of
2 persons or property resulting in substantial bodily harm, you are sentenced to a
3 minimum term of 12 months in the Nevada Department of Corrections and a
4 maximum term of 30 months in the Nevada Department of Corrections. That is
5 imposed concurrently with the time you received in Count No. 15.

6 Count 20, Criminal neglect of patients resulting in substantial bodily
7 harm, you are sentenced to a minimum term of 24 months in the Nevada
8 Department of Corrections and a maximum term of 60 months in the Nevada
9 Department of Corrections. That is imposed consecutively with the time you
10 received on Count 19.

11 Count 21, Insurance fraud, you're sentenced to a minimum term of 12
12 months in the Nevada Department of Corrections and a maximum term of 30
13 months in the Nevada Department of Corrections. That is imposed concurrently
14 with the time you received on Count 20.

15 Count 24, Insurance fraud, you're sentenced to a minimum term of 12
16 months in the Nevada Department of Corrections and a maximum term of 30
17 months in the Nevada Department of Corrections. That is imposed concurrently
18 with the time you received on Count No. 21.

19 I also must impose an extradition fee in the amount of \$1,861.73, and
20 you are entitled to 117 days of credit for time served in this matter.

21 MR. SANTACROCE: Your Honor, can you address the misdemeanors too as
22 well for the record?

23 THE COURT: I'm sorry. Yes.

24 MR. STAUDAHER: And I can provide the Court with the information on that.
25 Count 25 is the theft count. He was found guilty by the jury on that one, and Count

1 26 which was the obtaining money under false pretenses, misdemeanor, he was
2 found guilty on that one as well. I think we would both agree that you can sit as a
3 magistrate for adjudication and sentencing on those counts.

4 MR. SANTACROCE: Correct.

5 THE COURT: All right. On the misdemeanor theft, he's adjudged guilty of the
6 misdemeanor theft and sentenced to six months in the Clark County Detention
7 Center imposed concurrently.

8 And on Count 26, I believe, the misdemeanor obtaining money under
9 false pretenses, he's also adjudged guilty of the misdemeanor, sentenced to six
10 months at Clark County Detention Center, imposed concurrently with the other
11 counts.

12 All right. Thank you.

13 MR. STAUDAHER: Thank you, Your Honor.

14 MR. SANTACROCE: Thank you, Your Honor.

15 -oOo-

16 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video
17 proceedings in the above-entitled case.

18 
19 JANIE L. OLSEN
Recorder/Transcriber

Wright 3 & W

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CLERK OF THE COURT

JOC

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DIPAK KANTILAL DESAI
#1240942

Defendant.

CASE NO. C265107-1

DEPT. NO. XXI

JUDGMENT OF CONVICTION

(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNTS 1, 4, 5, 8, 11, 14, 15, 18, 21, and 24 – INSURANCE FRAUD (Category D Felony), in violation of NRS 686A.2815; COUNTS 2, 6, 9, 12, 16, 19, and 22 – PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS OR PROPERTY RESULTING IN SUBSTANTIAL BODILY HARM (Category C Felony), in violation of NRS 0.060, 202.595; COUNTS 3, 7, 10, 13, 17, 20, and 23 – CRIMINAL NEGLIGENCE OF PATIENTS RESULTING IN SUBSTANTIAL BODILY HARM (Category B Felony), in violation of NRS 0.060, 200.495; COUNT 25 – THEFT (Category B Felony), in violation of NRS 205.0832, 205.0835; COUNTS 26 and 27 – OBTAINING MONEY UNDER FALSE PRETENSES (Category B Felony), in violation of NRS 205.265, 205.380; and COUNT

009584

1 28 – MURDER (SECOND DEGREE) (Category A Felony), in violation of NRS 200.010,
2 200.020, 200.030, 200.070, 202.595, 200.495; and the matter having been tried before
3 a jury and the Defendant having been found guilty of the crimes of COUNTS 1, 5, 8,
4 11, 14, 15, 18, 21, and 24 – INSURANCE FRAUD (Category D Felony), in violation of
5 NRS 686A.2815; COUNTS 2, 6, 9, 12, 16, 19, and 22 – PERFORMANCE OF ACT IN
6 RECKLESS DISREGARD OF PERSONS OR PROPERTY RESULTING IN
7 SUBSTANTIAL BODILY HARM (Category C Felony), in violation of NRS 0.060,
8 202.595; COUNTS 3, 7, 10, 13, 17, 20, and 23 – CRIMINAL NEGLECT OF PATIENTS
9 RESULTING IN SUBSTANTIAL BODILY HARM (Category B Felony), in violation of
10 NRS 0.060, 200.495; COUNT 25 – THEFT UNDER \$250.00 (Misdemeanor); COUNTS
11 26 and 27 – OBTAINING MONEY UNDER FALSE PRETENSES UNDER \$250.00
12 (Misdemeanor); and COUNT 28 – MURDER (SECOND DEGREE) (Category A
13 Felony), in violation of NRS 200.010, 200.020, 200.030, 200.070, 202.595, 200.495;
14 thereafter, on the 24TH day of October, 2013, the Defendant was present in court for
15 sentencing with his counsels, RICHARD WRIGHT, ESQ., and MARGARET STANISH,
16 ESQ., and good cause appearing,

17
18 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense(s) and, in
19 addition to the \$25.00 Administrative Assessment Fee, and \$150.00 DNA Analysis Fee
20 including testing to determine genetic markers, the Defendant is SENTENCED as
21 follows: AS TO COUNT 1 - TO A MAXIMUM of THIRTY-FOUR (34) MONTHS with a
22 MINIMUM Parole Eligibility of TWELVE (12) MONTHS in the Nevada Department of
23 Corrections (NDC); AS TO COUNT 2 - TO A MAXIMUM of FORTY-EIGHT (48)
24 MONTHS with a MINIMUM Parole Eligibility of TWELVE (12) MONTHS in the Nevada
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1 Department of Corrections (NDC), COUNT 2 to run CONCURRENT with COUNT 1; AS
2 TO COUNT 3 - TO A MAXIMUM of SIXTY (60) MONTHS with a MINIMUM Parole
3 Eligibility of TWENTY-FOUR (24) MONTHS in the Nevada Department of Corrections
4 (NDC), COUNT 3 to run CONCURRENT with COUNT 2; AS TO COUNT 5 - TO A
5 MAXIMUM of THIRTY-FOUR (34) MONTHS with a MINIMUM Parole Eligibility of
6 TWELVE (12) MONTHS in the Nevada Department of Corrections (NDC), COUNT 5 to
7 run CONCURRENT with COUNT 3; AS TO COUNT 6 - TO A MAXIMUM of FORTY-
8 EIGHT (48) MONTHS with a MINIMUM Parole Eligibility of TWELVE (12) MONTHS in
9 the Nevada Department of Corrections (NDC), COUNT 6 to run CONCURRENT with
10 COUNT 5; AS TO COUNT 7 - TO A MAXIMUM of SIXTY (60) MONTHS with a
11 MINIMUM Parole Eligibility of TWENTY-FOUR (24) MONTHS in the Nevada
12 Department of Corrections (NDC), COUNT 7 to run CONSECUTIVE to COUNT 6; AS
13 TO COUNT 8 - TO A MAXIMUM of THIRTY-FOUR (34) MONTHS with a MINIMUM
14 Parole Eligibility of TWELVE (12) MONTHS in the Nevada Department of Corrections
15 (NDC), COUNT 8 to run CONCURRENT with COUNT 7; AS TO COUNT 9 - TO A
16 MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM Parole Eligibility of
17 TWELVE (12) MONTHS in the Nevada Department of Corrections (NDC), COUNT 9 to
18 run CONCURRENT with COUNT 8; AS TO COUNT 10 - TO A MAXIMUM of SIXTY
19 (60) MONTHS with a MINIMUM Parole Eligibility of TWENTY-FOUR (24) MONTHS in
20 the Nevada Department of Corrections (NDC), COUNT 10 to run CONSECUTIVE to
21 COUNT 9; AS TO COUNT 11 - TO A MAXIMUM of THIRTY-FOUR (34) MONTHS with
22 a MINIMUM Parole Eligibility of TWELVE (12) MONTHS in the Nevada Department of
23 Corrections (NDC), COUNT 11 to run CONCURRENT with COUNT 10; AS TO
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1 COUNT 12 - TO A MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM
2 Parole Eligibility of TWELVE (12) MONTHS in the Nevada Department of Corrections
3 (NDC), COUNT 12 to run CONCURRENT with COUNT 11; AS TO COUNT 13 - TO A
4 MAXIMUM of SIXTY (60) MONTHS with a MINIMUM Parole Eligibility of TWENTY-
5 FOUR (24) MONTHS in the Nevada Department of Corrections (NDC), COUNT 13 to
6 run CONCURRENT with COUNT 12; AS TO COUNT 14 - TO A MAXIMUM of THIRTY-
7 FOUR (34) MONTHS with a MINIMUM Parole Eligibility of TWELVE (12) MONTHS in
8 the Nevada Department of Corrections (NDC), COUNT 14 to run CONCURRENT with
9 COUNT 13; AS TO COUNT 15 - TO A MAXIMUM of THIRTY-FOUR (34) MONTHS
10 with a MINIMUM Parole Eligibility of TWELVE (12) MONTHS in the Nevada
11 Department of Corrections (NDC), COUNT 15 to run CONCURRENT with COUNT 14;
12 AS TO COUNT 16 - TO A MAXIMUM of FORTY-EIGHT (48) MONTHS with a
13 MINIMUM Parole Eligibility of TWELVE (12) MONTHS in the Nevada Department of
14 Corrections (NDC), COUNT 16 to run CONCURRENT with COUNT 15; AS TO COUNT
15 17 - TO A MAXIMUM of SIXTY (60) MONTHS with a MINIMUM Parole Eligibility of
16 TWENTY-FOUR (24) MONTHS in the Nevada Department of Corrections (NDC),
17 COUNT 17 to run CONCURRENT with COUNT 16; AS TO COUNT 18 - TO A
18 MAXIMUM of THIRTY-FOUR (34) MONTHS with a MINIMUM Parole Eligibility of
19 TWELVE (12) MONTHS in the Nevada Department of Corrections (NDC), COUNT 18
20 to run CONCURRENT with COUNT 17; AS TO COUNT 19 - TO A MAXIMUM of
21 FORTY-EIGHT (48) MONTHS with a MINIMUM Parole Eligibility of TWELVE (12)
22 MONTHS in the Nevada Department of Corrections (NDC), COUNT 19 to run
23 CONCURRENT with COUNT 17; AS TO COUNT 20 - TO A MAXIMUM of SIXTY (60)

1 MONTHS with a MINIMUM Parole Eligibility of TWENTY-FOUR (24) MONTHS in the
2 Nevada Department of Corrections (NDC), COUNT 20 to run CONCURRENT with
3 COUNT 18; AS TO COUNT 21 - TO A MAXIMUM of THIRTY-FOUR (34) MONTHS
4 with a MINIMUM Parole Eligibility of TWELVE (12) MONTHS in the Nevada
5 Department of Corrections (NDC), COUNT 21 to run CONCURRENT with COUNT 21;
6 AS TO COUNT 22 - TO A MAXIMUM of FORTY-EIGHT (48) MONTHS with a
7 MINIMUM Parole Eligibility of TWELVE (12) MONTHS in the Nevada Department of
8 Corrections (NDC), COUNT 22 to run CONCURRENT with COUNT 20; AS TO COUNT
9 23 - TO A MAXIMUM of SIXTY (60) MONTHS with a MINIMUM Parole Eligibility of
10 TWENTY-FOUR (24) MONTHS in the Nevada Department of Corrections (NDC),
11 COUNT 23 to run CONSECUTIVE to COUNT 21; AS TO COUNT 24 - TO A
12 MAXIMUM of THIRTY-FOUR (34) MONTHS with a MINIMUM Parole Eligibility of
13 TWELVE (12) MONTHS in the Nevada Department of Corrections (NDC), COUNT 24
14 to run CONCURRENT with COUNT 23; AS TO COUNT 25 – SIX (6) MONTHS in the
15 Clark County Detention Center (CCDC), COUNT 25 to run CONCURRENT with other
16 Counts; and AS TO COUNT 26 – SIX (6) MONTHS in the Clark County Detention
17 Center (CCDC); COUNT 26 to run CONCURRENT with other Counts; AS TO COUNT
18 27 - SIX (6) MONTHS in the Clark County Detention Center (CCDC); COUNT 27 to run
19 CONCURRENT with other Counts; and AS TO COUNT 28 – LIFE with a MINIMUM
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1 Parole Eligibility of ONE HUNDRED TWENTY (120) MONTHS in the Nevada
2 Department of Corrections (NDC), COUNT 28 to run CONSECUTIVE to COUNT 24;
3 with THREE HUNDRED NINETEEN (319) DAYS Credit for Time Served.
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5 FURTHER, COUNT 4 is OMITTED.
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7 DATED this 8 day of November, 2013
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10 VALERIE ADAIR
11 DISTRICT JUDGE
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CLERK OF THE COURT

AJOC

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DIPAK KANTILAL DESAI
#1240942

Defendant.

CASE NO. C265107-1

DEPT. NO. XXI

AMENDED JUDGMENT OF CONVICTION

(JURY TRIAL)

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009590

1 28 – MURDER (SECOND DEGREE) (Category A Felony), in violation of NRS 200.010,
2 200.020, 200.030, 200.070, 202.595, 200.495; and the matter having been tried before
3 a jury and the Defendant having been found guilty of the crimes of COUNTS 1, 5, 8,
4 11, 14, 15, 18, 21, and 24 – INSURANCE FRAUD (Category D Felony), in violation of
5 NRS 686A.2815; COUNTS 2, 6, 9, 12, 16, 19, and 22 – PERFORMANCE OF ACT IN
6 RECKLESS DISREGARD OF PERSONS OR PROPERTY RESULTING IN
7 SUBSTANTIAL BODILY HARM (Category C Felony), in violation of NRS 0.060,
8 202.595; COUNTS 3, 7, 10, 13, 17, 20, and 23 – CRIMINAL NEGLECT OF PATIENTS
9 RESULTING IN SUBSTANTIAL BODILY HARM (Category B Felony), in violation of
10 NRS 0.060, 200.495; COUNT 25 – THEFT UNDER \$250.00 (Misdemeanor); COUNTS
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14 thereafter, on the 24TH day of October, 2013, the Defendant was present in court for
15 sentencing with his counsels, RICHARD WRIGHT, ESQ., and MARGARET STANISH,
16 ESQ., and good cause appearing,
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20 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense(s) and, in
21 addition to the \$25.00 Administrative Assessment Fee, and \$150.00 DNA Analysis Fee
22 including testing to determine genetic markers, the Defendant is SENTENCED as
23 follows: AS TO COUNT 1 - TO A MAXIMUM of THIRTY-FOUR (34) MONTHS with a
24 MINIMUM Parole Eligibility of TWELVE (12) MONTHS in the Nevada Department of
25 Corrections (NDC); AS TO COUNT 2 - TO A MAXIMUM of FORTY-EIGHT (48)
26 MONTHS with a MINIMUM Parole Eligibility of TWELVE (12) MONTHS in the Nevada
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1 Department of Corrections (NDC), COUNT 2 to run CONCURRENT with COUNT 1; AS
2 TO COUNT 3 - TO A MAXIMUM of SIXTY (60) MONTHS with a MINIMUM Parole
3 Eligibility of TWENTY-FOUR (24) MONTHS in the Nevada Department of Corrections
4 (NDC), COUNT 3 to run CONCURRENT with COUNT 2; AS TO COUNT 5 - TO A
5 MAXIMUM of THIRTY-FOUR (34) MONTHS with a MINIMUM Parole Eligibility of
6 TWELVE (12) MONTHS in the Nevada Department of Corrections (NDC), COUNT 5 to
7 run CONCURRENT with COUNT 3; AS TO COUNT 6 - TO A MAXIMUM of FORTY-
8 EIGHT (48) MONTHS with a MINIMUM Parole Eligibility of TWELVE (12) MONTHS in
9 the Nevada Department of Corrections (NDC), COUNT 6 to run CONCURRENT with
10 COUNT 5; AS TO COUNT 7 - TO A MAXIMUM of SIXTY (60) MONTHS with a
11 MINIMUM Parole Eligibility of TWENTY-FOUR (24) MONTHS in the Nevada
12 Department of Corrections (NDC), COUNT 7 to run CONSECUTIVE to COUNT 6; AS
13 TO COUNT 8 - TO A MAXIMUM of THIRTY-FOUR (34) MONTHS with a MINIMUM
14 Parole Eligibility of TWELVE (12) MONTHS in the Nevada Department of Corrections
15 (NDC), COUNT 8 to run CONCURRENT with COUNT 7; AS TO COUNT 9 - TO A
16 MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM Parole Eligibility of
17 TWELVE (12) MONTHS in the Nevada Department of Corrections (NDC), COUNT 9 to
18 run CONCURRENT with COUNT 8; AS TO COUNT 10 - TO A MAXIMUM of SIXTY
19 (60) MONTHS with a MINIMUM Parole Eligibility of TWENTY-FOUR (24) MONTHS in
20 the Nevada Department of Corrections (NDC), COUNT 10 to run CONSECUTIVE to
21 COUNT 9; AS TO COUNT 11 - TO A MAXIMUM of THIRTY-FOUR (34) MONTHS with
22 a MINIMUM Parole Eligibility of TWELVE (12) MONTHS in the Nevada Department of
23 Corrections (NDC), COUNT 11 to run CONCURRENT with COUNT 10; AS TO
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1 COUNT 12 - TO A MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM
2 Parole Eligibility of TWELVE (12) MONTHS in the Nevada Department of Corrections
3 (NDC), COUNT 12 to run CONCURRENT with COUNT 11; AS TO COUNT 13 - TO A
4 MAXIMUM of SIXTY (60) MONTHS with a MINIMUM Parole Eligibility of TWENTY-
5 FOUR (24) MONTHS in the Nevada Department of Corrections (NDC), COUNT 13 to
6 run CONCURRENT with COUNT 12; AS TO COUNT 14 - TO A MAXIMUM of THIRTY-
7 FOUR (34) MONTHS with a MINIMUM Parole Eligibility of TWELVE (12) MONTHS in
8 the Nevada Department of Corrections (NDC), COUNT 14 to run CONCURRENT with
9 COUNT 13; AS TO COUNT 15 - TO A MAXIMUM of THIRTY-FOUR (34) MONTHS
10 with a MINIMUM Parole Eligibility of TWELVE (12) MONTHS in the Nevada
11 Department of Corrections (NDC), COUNT 15 to run CONCURRENT with COUNT 14;
12 AS TO COUNT 16 - TO A MAXIMUM of FORTY-EIGHT (48) MONTHS with a
13 MINIMUM Parole Eligibility of TWELVE (12) MONTHS in the Nevada Department of
14 Corrections (NDC), COUNT 16 to run CONCURRENT with COUNT 15; AS TO COUNT
15 17 - TO A MAXIMUM of SIXTY (60) MONTHS with a MINIMUM Parole Eligibility of
16 TWENTY-FOUR (24) MONTHS in the Nevada Department of Corrections (NDC),
17 COUNT 17 to run CONCURRENT with COUNT 16; AS TO COUNT 18 - TO A
18 MAXIMUM of THIRTY-FOUR (34) MONTHS with a MINIMUM Parole Eligibility of
19 TWELVE (12) MONTHS in the Nevada Department of Corrections (NDC), COUNT 18
20 to run CONCURRENT with COUNT 17; AS TO COUNT 19 - TO A MAXIMUM of
21 FORTY-EIGHT (48) MONTHS with a MINIMUM Parole Eligibility of TWELVE (12)
22 MONTHS in the Nevada Department of Corrections (NDC), COUNT 19 to run
23 CONCURRENT with COUNT 17; AS TO COUNT 20 - TO A MAXIMUM of SIXTY (60)
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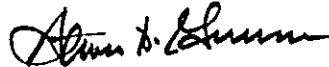
1 MONTHS with a MINIMUM Parole Eligibility of TWENTY-FOUR (24) MONTHS in the
2 Nevada Department of Corrections (NDC), COUNT 20 to run CONCURRENT with
3 COUNT 18; AS TO COUNT 21 - TO A MAXIMUM of THIRTY-FOUR (34) MONTHS
4 with a MINIMUM Parole Eligibility of TWELVE (12) MONTHS in the Nevada
5 Department of Corrections (NDC), COUNT 21 to run CONCURRENT with COUNT 21;
6 AS TO COUNT 22 - TO A MAXIMUM of FORTY-EIGHT (48) MONTHS with a
7 MINIMUM Parole Eligibility of TWELVE (12) MONTHS in the Nevada Department of
8 Corrections (NDC), COUNT 22 to run CONCURRENT with COUNT 20; AS TO COUNT
9 23 - TO A MAXIMUM of SIXTY (60) MONTHS with a MINIMUM Parole Eligibility of
10 TWENTY-FOUR (24) MONTHS in the Nevada Department of Corrections (NDC),
11 COUNT 23 to run CONSECUTIVE to COUNT 21; AS TO COUNT 24 - TO A
12 MAXIMUM of THIRTY-FOUR (34) MONTHS with a MINIMUM Parole Eligibility of
13 TWELVE (12) MONTHS in the Nevada Department of Corrections (NDC), COUNT 24
14 to run CONCURRENT with COUNT 23; AS TO COUNT 25 – SIX (6) MONTHS in the
15 Clark County Detention Center (CCDC), COUNT 25 to run CONCURRENT with other
16 Counts; and AS TO COUNT 26 – SIX (6) MONTHS in the Clark County Detention
17 Center (CCDC); COUNT 26 to run CONCURRENT with other Counts; AS TO COUNT
18 27 - SIX (6) MONTHS in the Clark County Detention Center (CCDC); COUNT 27 to run
19 CONCURRENT with other Counts; and AS TO COUNT 28 – LIFE with a MINIMUM
20 Parole Eligibility of ONE HUNDRED TWENTY (120) MONTHS in the Nevada
21 Department of Corrections (NDC), COUNT 28 to run CONSECUTIVE to COUNT 24;
22 with THREE HUNDRED NINETEEN (319) DAYS Credit for Time Served.
23
24
25
26

27 FURTHER, COUNT 4 is OMITTED.
28

THEREAFTER, on the 18th day of November, 2013, pursuant to COURTS REVIEW, sentence is amended as follows: COUNT 21 to run CONCURRENT with Count 20.

DATED this 18th day of November, 2013

Valerie Adair
VALERIE ADAIR
DISTRICT JUDGE



CLERK OF THE COURT

1 NOTC
Richard A. Wright, Esq.
2 Nevada Bar No.: 0886
Margaret M. Stanish, Esq.,
3 Nevada Bar No. 4056
WRIGHT STANISH & WINCKLER
4 300 S. Fourth Street
Suite 701
5 Las Vegas, NV 89101
(702) 382-4004
6 Attorneys for Defendant

7
8 EIGHTH JUDICIAL DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 STATE OF NEVADA,

11 Plaintiff,

12 vs.

13 DIPAK KANTILAL DESAI,

14 Defendant.
15

CASE NO.: C265107-1
DEPT. XXI

16 NOTICE OF APPEAL

17 TO: THE STATE OF NEVADA

18 STEVEN B. WOLFSON, DISTRICT ATTORNEY, CLARK COUNTY,
NEVADA and DEPARTMENT NO. XXI OF THE EIGHTH JUDICIAL
19 DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE
COUNTY OF CLARK.

20 NOTICE is hereby given that DIPAK KANTILAL DESAI, defendant above
21 named, presently in custody, appeals to the Supreme Court of the State of Nevada
22 from the Judgment of Conviction entered against him on the 13th day of November,
23 2013, as amended on November 21, 2013 whereby he was convicted of AS TO
24 COUNT 1 - TO A MAXIMUM of THIRTY-FOUR (34) MONTHS with a
25 MINIMUM Parole Eligibility of TWELVE (12) MONTHS in the Nevada Department
26 of Corrections (NDC); AS TO COUNT 2 - TO A MAXIMUM of FORTY-EIGHT
27 (48) MONTHS with a MINIMUM Parole Eligibility of TWELVE (12) MONTHS in
28 the Nevada Department of Corrections (NDC), COUNT 2 to run CONCURRENT

1 with COUNT 1; AS TO COUNT 3 - TO A MAXIMUM of SIXTY (60) MONTHS
2 with a MINIMUM Parole Eligibility of TWENTY-FOUR (24) MONTHS in the
3 Nevada Department of Corrections (NDC), COUNT 3 to run CONCURRENT with
4 COUNT 2; AS TO COUNT 5 - TO A MAXIMUM of THIRTY-FOUR (34)
5 MONTHS with a MINIMUM Parole Eligibility of TWELVE (12) MONTHS in the
6 Nevada Department of Corrections (NDC), COUNT 5 to run CONCURRENT with
7 COUNT 3; AS TO COUNT 6 - TO A MAXIMUM of FORTY-EIGHT (48)
8 MONTHS with a MINIMUM Parole Eligibility of TWELVE (12) MONTHS in the
9 Nevada Department of Corrections (NDC), COUNT 6 to run CONCURRENT with
10 COUNT 5; AS TO COUNT 7 - TO A MAXIMUM of SIXTY (60) MONTHS with
11 a MINIMUM Parole Eligibility of TWENTY-FOUR (24) MONTHS in the Nevada
12 Department of Corrections (NDC), COUNT 7 to run CONSECUTIVE to COUNT 6;
13 AS TO COUNT 8 - TO A MAXIMUM of THIRTY-FOUR (34) MONTHS with a
14 MINIMUM Parole Eligibility of TWELVE (12) MONTHS in the Nevada Department
15 of Corrections (NDC), COUNT 8 to run CONCURRENT with COUNT 7; AS TO
16 COUNT 9 - TO A MAXIMUM of FORTY-EIGHT (48) MONTHS with a
17 MINIMUM Parole Eligibility of TWELVE (12) MONTHS in the Nevada Department
18 of Corrections (NDC), COUNT 9 to run CONCURRENT with COUNT 8; AS TO
19 COUNT 10 - TO A MAXIMUM of SIXTY (60) MONTHS with a MINIMUM Parole
20 Eligibility of TWENTY-FOUR (24) MONTHS in the Nevada Department of
21 Corrections (NDC), COUNT 10 to run CONSECUTIVE to COUNT 9; AS TO
22 COUNT 11 - TO A MAXIMUM of THIRTY-FOUR (34) MONTHS with a
23 MINIMUM Parole Eligibility of TWELVE (12) MONTHS in the Nevada Department
24 of Corrections (NDC), COUNT 11 to run CONCURRENT with COUNT 10; AS TO
25 COUNT 12 - TO A MAXIMUM of FORTY-EIGHT (48) MONTHS with a
26 MINIMUM Parole Eligibility of TWELVE (12) MONTHS in the Nevada Department
27 of Corrections (NDC), COUNT 12 to run CONCURRENT with COUNT 11; AS TO
28 COUNT 13 - TO A MAXIMUM of SIXTY (60) MONTHS with a MINIMUM Parole


1 Eligibility of TWENTY-FOUR (24) MONTHS in the Nevada Department of
2 Corrections (NDC), COUNT 13 to run CONCURRENT with COUNT 12; AS TO
3 COUNT 14 - TO A MAXIMUM of THIRTY-FOUR (34) MONTHS with a
4 MINIMUM Parole Eligibility of TWELVE (12) MONTHS in the Nevada Department
5 of Corrections (NDC), COUNT 14 to run CONCURRENT with COUNT 13; AS TO
6 COUNT 15 - TO A MAXIMUM of THIRTY-FOUR (34) MONTHS with a
7 MINIMUM Parole Eligibility of TWELVE (12) MONTHS in the Nevada Department
8 of Corrections (NDC), COUNT 15 to run CONCURRENT with COUNT 14; AS TO
9 COUNT 16 - TO A MAXIMUM of FORTY-EIGHT (48) MONTHS with a
10 MINIMUM Parole Eligibility of TWELVE (12) MONTHS in the Nevada Department
11 of Corrections (NDC), COUNT 16 to run CONCURRENT with COUNT 15; AS TO
12 COUNT 17 - TO A MAXIMUM of SIXTY (60) MONTHS with a MINIMUM Parole
13 Eligibility of TWENTY-FOUR (24) MONTHS in the Nevada Department of
14 Corrections (NDC), COUNT 17 to run CONCURRENT with COUNT 16; AS TO
15 COUNT 18 - TO A MAXIMUM of THIRTY-FOUR (34) MONTHS with a
16 MINIMUM Parole Eligibility of TWELVE (12) MONTHS in the Nevada Department
17 of Corrections (NDC), COUNT 18 to run CONCURRENT with COUNT 17; AS TO
18 COUNT 19 - TO A MAXIMUM of FORTY-EIGHT (48) MONTHS with a
19 MINIMUM Parole Eligibility of TWELVE (12) MONTHS in the Nevada Department
20 of Corrections (NDC), COUNT 19 to run CONCURRENT with COUNT 17; AS TO
21 COUNT 20 - TO A MAXIMUM of SIXTY (60) MONTHS with a MINIMUM Parole
22 Eligibility of TWENTY-FOUR (24) MONTHS in the Nevada Department of
23 Corrections (NDC), COUNT 20 to run CONCURRENT with COUNT 18; AS TO
24 COUNT 21 - TO A MAXIMUM of THIRTY-FOUR (34) MONTHS with a
25 MINIMUM Parole Eligibility of TWELVE (12) MONTHS in the Nevada e
26 Department of Corrections (NDC), COUNT 21 to run CONCURRENT with COUNT
27 20; AS TO COUNT 22 - TO A MAXIMUM of FORTY-EIGHT (48) MONTHS with
28 a MINIMUM Parole Eligibility of TWELVE (12) MONTHS in the Nevada

1 Department of Corrections (NDC), COUNT 22 to run CONCURRENT with COUNT
2 20; AS TO COUNT 23 - TO A MAXIMUM of SIXTY (60) MONTHS with a
3 MINIMUM Parole Eligibility of TWENTY-FOUR (24) MONTHS in the Nevada
4 Department of Corrections (NDC), COUNT 23 to run CONSECUTIVE to COUNT
5 21; AS TO COUNT 24 - TO A MAXIMUM of THIRTY-FOUR (34) MONTHS with
6 a MINIMUM Parole Eligibility of TWELVE (12) MONTHS in the Nevada
7 Department of Corrections (NDC), COUNT 24 to run CONCURRENT with COUNT
8 23; AS TO COUNT 25 - SIX (6) MONTHS in the Clark County Detention Center
9 (CCDC), COUNT 25 to run CONCURRENT with other Counts; and AS TO COUNT
10 26 - SIX (6) MONTHS in the Clark County Detention Center (CCDC); COUNT 26
11 to run CONCURRENT with other Counts; AS TO COUNT 27 - SIX (6) MONTHS
12 in the Clark County Detention Center (CCDC); COUNT 27 to run CONCURRENT
13 with other Counts; and AS TO COUNT 28 - LIFE with a MINIMUM Parole
14 Eligibility of ONE HUNDRED TWENTY (120) MONTHS in the Nevada
15 Department of Corrections (NDC), COUNT 28 to run CONSECUTIVE to COUNT
16 24; with THREE HUNDRED NINETEEN (319) DAYS Credit for Time Served.

17 Dated this 6th day of December, 2013.

18 WRIGHT STANISH & WINCKLER

19
20 BY


Richard A. Wright, Esq.

Nevada Bar No.: 0886

Margaret M. Stanish, Esq.

Nevada Bar No.: 4056

Attorneys for Dipak Kantilal Desai

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INSTRUCTION NO. 47

Although you are to consider only the evidence in the case in reaching a verdict, you must bring to the consideration of the evidence your everyday common sense and judgment as reasonable men and women. Thus, you are not limited solely to what you see and hear as the witnesses testify. You may draw reasonable inferences from the evidence which you feel are justified in the light of common experience, keeping in mind that such inferences should not be based on speculation or guess.

A verdict may never be influenced by sympathy, prejudice or public opinion. Your decision should be the product of sincere judgment and sound discretion in accordance with these rules of law.

INSTRUCTION NO. 42

In your deliberation you may not discuss or consider the subject of punishment, as that is a matter which lies solely with the court. Your duty is confined to the determination of whether each Defendant is guilty or not guilty of the crimes charged.

INSTRUCTION NO. 43

When you retire to consider your verdict, you must select one of your number to act as foreperson who will preside over your deliberation and will be your spokesperson here in court.

During your deliberation, you will have all the exhibits which were admitted into evidence, these written instructions and forms of verdict which have been prepared for your convenience.

Your verdict must be unanimous. As soon as you have agreed upon a verdict, have it signed and dated by your foreperson and then return with it to this room.

INSTRUCTION NO. 44

If, during your deliberation, you should desire to be further informed on any point of law or hear again portions of the testimony, you must reduce your request to writing signed by the foreperson. The officer will then return you to court where the information sought will be given you in the presence of, and after notice to, the district attorney and the Defendant and his/her counsel.

Playbacks of testimony are time-consuming and are not encouraged unless you deem it a necessity. Should you require a playback, you must carefully describe the testimony to be played back so that the court recorder can arrange his/her notes. Remember, the court is not at liberty to supplement the evidence.

INSTRUCTION NO. 45

Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberation by the evidence as you understand it and remember it to be and by the law as given to you in these instructions, with the sole, fixed and steadfast purpose of doing equal and exact justice between the Defendant and the State of Nevada.

GIVEN: Melanie Adami

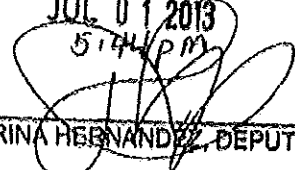
DISTRICT JUDGE

1 VER

2 ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

3
4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

JUL 01 2013
5:44 PM
BY, 
KATRINA HERNANDEZ, DEPUTY

7 THE STATE OF NEVADA,
8 Plaintiff,
9 -vs-
10 DIPAK KANTILAL DESAI,
11 Defendant.

CASE NO: 10-C-265107-1
DEPT NO: XXI

12
13 VERDICT

14 We, the jury in the above entitled case, find the Defendant DIPAK KANTILAL
15 DESAI, as follows:

16 COUNT 1 - INSURANCE FRAUD (Anthem Blue Cross-Blue Shield/Sharrieff Ziyad)

17 *(please check the appropriate box, select only one)*

18 ☒ Guilty of Insurance Fraud

19 ☐ Not Guilty

20
21 COUNT 2 - PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS
22 OR PROPERTY RESULTING IN SUBSTANTIAL BODILY HARM
(Michael Washington)

23 *(please check the appropriate box, select only one)*

24 ☒ Guilty of Performance of Act in Reckless Disregard of Persons or Property
25 Resulting in Substantial Bodily Harm

26 ☐ Not Guilty
27
28

009552

1 COUNT 3 - CRIMINAL NEGLECT OF PATIENTS RESULTING IN SUBSTANTIAL
2 BODILY HARM (Michael Washington)

3 (please check the appropriate box, select only one)

4 ☒ Guilty of Criminal Neglect of Patients Resulting in Substantial Bodily
5 Harm

6 ☐ Not Guilty

7 COUNT 4 - OMITTED

8
9 COUNT 5 - INSURANCE FRAUD (Anthem Blue Cross/Blue Shield/Kenneth Rubino)

10 (please check the appropriate box, select only one)

11 ☒ Guilty of Insurance Fraud

12 ☐ Not Guilty

13
14 COUNT 6 - PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS
15 OR PROPERTY RESULTING IN SUBSTANTIAL BODILY HARM (Stacy
16 Hutchinson)

17 (please check the appropriate box, select only one)

18 ☒ Guilty of Performance of Act in Reckless Disregard of Persons or Property
19 Resulting in Substantial Bodily Harm

20 ☐ Not Guilty

21 COUNT 7 - CRIMINAL NEGLECT OF PATIENTS RESULTING IN SUBSTANTIAL
22 BODILY HARM (Stacy Hutchinson)

23 (please check the appropriate box, select only one)

24 ☒ Guilty of Criminal Neglect of Patients Resulting in Substantial Bodily
25 Harm

26 ☐ Not Guilty

27 ///

28 ///

1 COUNT 8 - INSURANCE FRAUD (Health Plan of Nevada/Stacy Hutchinson)

2 *(please check the appropriate box, select only one)*

3 ☒ Guilty of Insurance Fraud

4 ☐ Not Guilty

5
6 COUNT 9 - PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS
7 OR PROPERTY RESULTING IN SUBSTANTIAL BODILY HARM
8 (Rodolfo Meana)

9 *(please check the appropriate box, select only one)*

10 ☒ Guilty of Performance of Act in Reckless Disregard of Persons or Property
11 Resulting in Substantial Bodily Harm

12 ☐ Not Guilty

13 COUNT 10 - CRIMINAL NEGLECT OF PATIENTS RESULTING IN SUBSTANTIAL
14 BODILY HARM (Rodolfo Meana)

15 *(please check the appropriate box, select only one)*

16 ☒ Guilty of Criminal Neglect of Patients Resulting in Death

17 ☐ Not Guilty

18 COUNT 11 - INSURANCE FRAUD (PacificCare/Rodolfo Meana)

19 *(please check the appropriate box, select only one)*

20 ☒ Guilty of Insurance Fraud

21 ☐ Not Guilty

22
23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 COUNT 12 - PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS
2 OR PROPERTY RESULTING IN SUBSTANTIAL BODILY HARM
3 (Patty Aspinwall)

4 *(please check the appropriate box, select only one)*

5 ☒ Guilty of Performance of Act in Reckless Disregard of Persons or Property
6 Resulting in Substantial Bodily Harm

7 ☐ Not Guilty

8 COUNT 13 - CRIMINAL NEGLECT OF PATIENTS RESULTING IN SUBSTANTIAL
9 BODILY HARM (Patty Aspinwall)

10 *(please check the appropriate box, select only one)*

11 ☒ Guilty of Criminal Neglect of Patients Resulting in Substantial Bodily
12 Harm

13 ☐ Not Guilty

14 COUNT 14 - INSURANCE FRAUD (Anthem Blue Cross Blue Shield/Patty Aspinwall)

15 *(please check the appropriate box, select only one)*

16 ☒ Guilty of Insurance Fraud

17 ☐ Not Guilty

18
19 COUNT 15 - INSURANCE FRAUD (United Health Services/Patty Aspinwall)

20 *(please check the appropriate box, select only one)*

21 ☒ Guilty of Insurance Fraud

22 ☐ Not Guilty

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 COUNT 16 - PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS
2 OR PROPERTY RESULTING IN SUBSTANTIAL BODILY HARM
(Sonia Orellana-Rivera)

3 *(please check the appropriate box, select only one)*

- 4 ☒ Guilty of Performance of Act in Reckless Disregard of Persons or Property
5 Resulting in Substantial Bodily Harm
6 ☐ Not Guilty

7
8 COUNT 17 - CRIMINAL NEGLECT OF PATIENTS RESULTING IN SUBSTANTIAL
9 BODILY HARM (Sonia Orellana-Rivera)

10 *(please check the appropriate box, select only one)*

- 11 ☒ Guilty of Criminal Neglect of Patients Resulting in Substantial Bodily
12 Harm
13 ☐ Not Guilty

14 COUNT 18 - INSURANCE FRAUD (Culinary Workers Health Fund/Sonia Orellana
15 Rivera)

16 *(please check the appropriate box, select only one)*

- 17 ☒ Guilty of Insurance Fraud
18 ☐ Not Guilty

19
20 COUNT 19 - PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS
21 OR PROPERTY RESULTING IN SUBSTANTIAL BODILY HARM (Carole
Grueskin)

22 *(please check the appropriate box, select only one)*

- 23 ☒ Guilty of Performance of Act in Reckless Disregard of Persons or Property
24 Resulting in Substantial Bodily Harm
25 ☐ Not Guilty

26 ///

27 ///

28

1 COUNT 20- CRIMINAL NEGLECT OF PATIENTS RESULTING IN SUBSTANTIAL
2 BODILY HARM (Carole Grueskin)

3 *(please check the appropriate box, select only one)*

4 ☒ Guilty of Criminal Neglect of Patients Resulting in Substantial Bodily
5 Harm

6 ☐ Not Guilty

7 COUNT 21 - INSURANCE FRAUD (Health Plan of Nevada/Carole Grueskin)

8 *(please check the appropriate box, select only one)*

9 ☒ Guilty of Insurance Fraud

10 ☐ Not Guilty

11
12 COUNT 22 - PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS
13 OR PROPERTY RESULTING IN SUBSTANTIAL BODILY HARM
(Gwendolyn Martin)

14 *(please check the appropriate box, select only one)*

15 ☒ Guilty of Performance of Act in Reckless Disregard of Persons or Property
16 Resulting in Substantial Bodily Harm

17 ☐ Not Guilty

18
19 COUNT 23 - CRIMINAL NEGLECT OF PATIENTS RESULTING IN SUBSTANTIAL
20 BODILY HARM (Gwendolyn Martin)

21 *(please check the appropriate box, select only one)*

22 ☒ Guilty of Criminal Neglect of Patients Resulting in Substantial Bodily
23 Harm

24 ☐ Not Guilty

25 ///

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28

1 COUNT 24 - INSURANCE FRAUD (PacificCare/Gwendolyn Martin)

2 *(please check the appropriate box, select only one)*

3 ☒ Guilty of Insurance Fraud

4 ☐ Not Guilty

5
6 COUNT 25 - THEFT (Stacy Hutchinson, Kenneth Rubino, Patty Aspinwall, Sharrieff
7 Ziyad, Michael Washington, Carole Grueskin, Rodolfo Meana and/or Anthem Blue Cross
8 and Blue Shield, Healthcare Partners of Nevada, United Health Services, Veterans
9 Administration and Secured Horizons)

10 *(please check the appropriate box, select only one)*

11 ☐ Guilty of Theft \$250.00 or over

12 ☒ Guilty of Theft under \$250

13 ☐ Not Guilty

14
15 COUNT 26 - OBTAINING MONEY UNDER FALSE PRETENSES (Gwendolyn Martin
16 and/or PacificCare)

17 *(please check the appropriate box, select only one)*

18 ☐ Guilty of Obtaining Money Under False Pretenses \$250 or over

19 ☒ Guilty of Obtaining Money Under False Pretenses under \$250

20 ☐ Not Guilty

21 COUNT 27 - OBTAINING MONEY UNDER FALSE PRETENSES (Sonia Orellana-Rivera
22 and/or Culinary Workers Health Fund)

23 *(please check the appropriate box, select only one)*

24 ☐ Guilty of Obtaining Money Under False Pretenses \$250 or over

25 ☒ Obtaining Money Under False Pretenses under \$250

26 ☐ Not Guilty

27
28 ///

1 COUNT 28 - MURDER (SECOND DEGREE) (Rodolfo Meana)

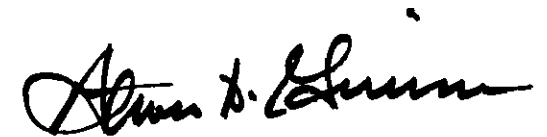
2 *(please check the appropriate box, select only one)*

3 ☒ Guilty of Second Degree Murder

4 ☐ Not Guilty

5
6 DATED this 1st day of JULY, 2013

7
8 
9 FOREPERSON



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

DIPAK KANTILAL DESAI, RONALD E.
LAKEMAN,

Defendants.

CASE NO. C265107-1

CASE NO. C265107-2

DEPT. XXI

BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE

THURSDAY, OCTOBER 24, 2013

TRANSCRIPT OF HEARING RE:
SENTENCING

APPEARANCES:

FOR THE STATE:

MICHAEL V. STAUDAHER, ESQ.

Chief Deputy District Attorney

PAM WECKERLY, ESQ.

Chief Deputy District Attorney

FOR DEFENDANT DESAI:

RICHARD A. WRIGHT, ESQ.

MARGARET STANISH, ESQ.

FOR DEFENDANT LAKEMAN:

FREDERICK A. SANTACROCE, ESQ.

RECORDED BY: JANIE L. OLSEN, COURT RECORDER/TRANSCRIBER

1 LAS VEGAS, CLARK COUNTY, NV., THURS., OCT. 24, 2013

2
3 THE COURT: State versus Dipak Desai and Ronald Lakeman. Both are
4 present in custody. We have Mr. Wright here. And where is Mr. Santacroce?

5 MR. WRIGHT: He's here. Let me get him.

6 MS. WECKERLY: He was here.

7 THE COURT: All right. We also have Ms. Stanish and Mr. Santacroce.

8 This being a jury verdict, obviously the State has the right to argue.
9 What I would suggest is that we proceed first with the sentencing of Dr. Desai, and
10 then we move to the sentencing of Mr. Lakeman.

11 MR. STAUDAHER: Fair enough, Your Honor.

12 THE COURT: Is that acceptable with the State?

13 MR. STAUDAHER: Yes, Your Honor.

14 THE COURT: All right. Mr. Lakeman, you can be seated.

15 And actually, if you're requesting that he be seated?

16 MR. WRIGHT: Yes, please.

17 THE COURT: That's fine. You can sit down.

18 Who will be arguing?

19 MR. STAUDAHER: I will, Your Honor.

20 THE COURT: All right. And we received no notifications of any victim
21 speakers; is that correct?

22 MR. STAUDAHER: That's correct, Your Honor. We did inquire, and the
23 victims do not wish to come in and speak today.

24 THE COURT: All right.

25 MR. STAUDAHER: With regard to the case, I know this was a long, long trial.

1 I know the Court heard from all of the witnesses, so I'm not going to go through all
2 the evidence; obviously it was presented. But suffice it to say that the
3 recommendation that is being brought forth today by the Division of Parole and
4 Probation which is by my count a total of, I believe it's 1, 2, 3, 4, 5, 6, 7, 8 separate
5 consecutive terms to the murder charge.

6 In this particular instance, we believe that that's an appropriate verdict.
7 It deals with all of the victims, specifically the acts that were perpetrated against
8 them that led to the injuries that they sustained or death as the Court's aware in at
9 least one, two instances now. We have situations where all those people are the
10 actual people involved in this particular case, but the case went far beyond this
11 particular instance.

12 This community essentially was -- was put at risk over many years, as
13 the Court's aware, and tens of thousands of people in this community were exposed
14 to what these individuals succumbed to which was direct infection from the practices
15 that were ongoing, which were not only fostered by Dr. Desai but were actually
16 initiated and propagated in a large part by him by just what he did and how he ran
17 his practice.

18 Now, the State's aware of many of the letters that have been
19 provided -- we've read through them -- by members of the community in support of
20 Dr. Desai, but I would tell the Court that from the State's perspective through all the
21 evidence we've gone through in this particular case as well as the vast majority of
22 those individuals who we've dealt with during the -- during the time of this trial that
23 those letters almost paint a completely opposite picture of what we know Desai to be
24 over the many, many years he practiced, that his concern was not for the patients
25 themselves, was not for trying to do right by the patients or by the community or by

1 the practitioners that sent the patients to him but was simply focused on him making
2 the most money he could.

3 His focus more and more as time went on over the years became
4 money, running the patients through. The Court's aware of the complaints that were
5 there before the State Medical Board. They were not unlike what we had in our
6 case specifically. Those show the pattern that he sort of had over the years as well
7 as what transpired during the time period in question when these people were
8 treated.

9 The facts that are inherent in this case are myriad as far as we're
10 concerned that it shows that this isn't just an aberrant event one time or two times or
11 three times or twenty times. This is a practice that was ongoing, that was
12 systematic that put not only his individual patients at risk but the entire community in
13 general at risk, and it affects not just those patients that he dealt with. It affects
14 those patients who have families which virtually all of them do, and the families of
15 those people that may be concerned that they were infected by him.

16 It had rippling effects throughout the community and within the families
17 themselves as to knowing what is going to happen with the individuals who were
18 part of this case. What is going to happen with them down the road.

19 As the Court's aware, Michael Washington who was here and actually
20 testified before the Court in this particular matter has subsequently died. I've seen
21 the death certificate. It's due to the hepatitis C infection. Now, the State feels that
22 the other victims, Carole Grueskin specifically who we know her issues, she was
23 unable to come to court because of her condition.

24 Those people who are healthy so to speak at this point meaning that
25 they can walk around, talk, interact with others of their family and friends and the

1 community we don't know what their situation is going to be because they have an
2 active infection that comes, rears its head from time to time and causes trouble for
3 them.

4 So his -- his actions are not just focused on eight individuals or nine
5 individuals or ten individuals that were specifically involved in this case; they're
6 involved in everybody that he touched over the time period that he was practicing
7 where he was conducting this type of activity, and the State submits to you that the
8 evidence shows that that went on for quite a long time.

9 So because of that we feel the sentence for Dr. Desai is completely
10 appropriate and that no less time should be given to him. As the State sees it, it
11 looks like a total of 18 years on the bottom with life tail on the top end with a number
12 of consecutive sentences as outlined in the PSI, and we would concur that that is
13 the appropriate sentence in this case.

14 THE COURT: All right. Thank you, Mr. Staudaher.

15 Mr. Wright, would you like to speak first, or would you like your client to
16 address the Court first?

17 MR. WRIGHT: He's not going to address the Court.

18 THE COURT: All right. And, Dr. Desai, you have an opportunity to address
19 the Court prior to the Court pronouncing sentence against you. Do you wish to
20 address the Court at this time?

21 THE DEFENDANT DESAI: No.

22 THE COURT: Mr. Wright.

23 MR. WRIGHT: Yes, Your Honor. The -- his condition has deteriorated, I
24 mean, since he's been in custody. He has had no rehabilitation or therapy since mid
25 April until now. That's about six months, and it sort of tracks what was projected by

1 the independent medical evaluation that absent help he wouldn't get restored to his
2 pre-February stroke condition. And in fact, as I have visited him, his condition has
3 deteriorated on the ability to speak and remember and his memory deficits. I would
4 guess he's in -- I know he is in lockdown. So he doesn't use communication skills
5 so I think that's why it's deteriorated. So he is not going to address the Court.

6 I filed a defense memorandum. I had spoken with him about the
7 presentence report, and in the sentencing memorandum we filed in which we
8 express his thoughts to the Court, his regret, remorse for the tragedy and what it did
9 to himself, the victims, the families, the community. So he did address the Court
10 through myself, and I arrived at that from communicating with him best I could.

11 I also submitted to the Court --

12 THE COURT: Numerous letters, which I've read them all, and I'm actually
13 familiar with a couple or personally know a couple of the leaders in the Indian
14 community who wrote letters on behalf of Dr. Desai, and as I said, numerous letters,
15 family members, religious leaders, members of the community. So I have read all of
16 those.

17 MR. WRIGHT: Okay. Thank you, Your Honor. And as Mr. Staudaher points
18 out, the pictures painted by the letters of community members, physicians, religious
19 leaders, those who have known him all the way back to India to his childhood, there
20 is a different portrait painted of the individual than that which played out here in the
21 courtroom through testimony. And I don't personally believe it's a thing or a
22 situation where you have a two-faced person, for lack of a better word.

23 He acted in one way to those who know him best and in a different way
24 in his clinic. I think truly the correct portrait of the individual is in those letters
25 because it shows a caring, religious individual who throughout his lifetime gave to

1 others repeatedly in India and the United States constantly and always caring about
2 others and his patients. I think my own observations is that simply corroborates the
3 fact that this tragedy was not anticipated, not foreseen and Mr. Lakeman, Mr.
4 Mathahs, Dr. Desai, none of the physicians who worked there and practiced would
5 have been engaging knowingly creating risks in the multi dosing of propofol. Had
6 they known it, it wouldn't have happened.

7 To me, Dr. Desai no more foresaw this, anticipated it, thought about it
8 than any of the other physicians who worked there or that like the state health
9 system foresaw it and looked at it or the other physicians in the community who
10 were practicing the same way. The State Examiners, Dorothy Sims who came in
11 and testified that clear into April of 2008, the State was still saying this type of
12 practice was okay and didn't even recognize the dangers that we all now know.

13 So I simply am saying all of this because this is truly a negligence case
14 that has been criminalized, and doing it as a negligence case by the practitioners,
15 then the person depicted in all of those letters is -- is the same person, and it's
16 understandable how something like this happened.

17 In my view, a lenient sentence is warranted. I don't think the
18 consecutive sentences of a life with parole eligibility at 10 years and then stacking
19 on 8, I guess, 8 more 12s to 34 or 48 month sentences is warranted for a negligence
20 case, and so we simply ask for lenience from the Court.

21 As far as the fraudulent portion of the case, most probably to me clearly
22 a more legitimate criminal arena case. Obviously I've been talking to the US
23 Attorney. I've got a trial date set in February or March. He will be federally
24 prosecuted for the fraudulent billing component of the case. So we ask for leniency
25 from the Court.

1 THE COURT: All right. Thank you, Mr. Wright.

2 As I said, I have reviewed the stack of letters here from various people,
3 family members, community leaders, religious leaders, others, and they talk about
4 Dr. Desai's contributions to his religious community, his charitable contributions, his
5 contributions to the medical community as a whole, acts of charity and other things,
6 and actually, some of the letters, particularly from the family members I found quite
7 moving, and it paints one picture of Dr. Desai, and I think Dr. Desai was a complex
8 person and really a multifaceted person. Because while there was a paucity of
9 direct evidence showing that Dr. Desai told someone reuse these syringes, do it this
10 way, I found during the trial that there was an abundance of evidence showing that
11 Dr. Desai consistently demonstrated a callous disregard for the well-being of his
12 patients.

13 And when I think about the various relationships of trust, you know,
14 clergymen, parishioner, student, teacher, police officer, member of the public, what
15 have you, I think that the relationship between a doctor and a patient and when the
16 trust that a patient places in his or her physician is betrayed, I don't think that there
17 is a worse betrayal of trust in any of the trust relationships that we can think about in
18 our society.

19 The real question I think here today is whether or not you just sentence
20 Dr. Desai to the murder and run everything else concurrently, which sort of
21 subsumes the other counts within the murder count. I don't believe that that would
22 be a fair sentence because to do that recognizes only one victim. It only recognizes
23 Mr. Meana and the death of Mr. Meana, and I think a fair sentence has to recognize
24 the fact that there are numerous victims here and that this did not occur on simply
25 one day, and this was simply not an isolated occurrence that led to the death of Mr.

1 Meana, but this was something that occurred numerous times, and as I said, I think
2 the sentence has to recognize the fact that there are a number of victims and the
3 fact that this terrible disease has impacted those people and those people's families.

4 So accordingly, Dr. Desai, by virtue of the jury's verdict, you are hereby
5 adjudged guilty of Counts No. 1, 5, 8, 11, 14, 15, 18, 21, and 24 of insurance fraud,
6 Counts 2, 6, 9, 12, 16, 19, and 22, Performance of an act in reckless disregard of
7 persons or property, Counts 3, 7, 10, 13, 17, 20 and 23, Criminal neglect resulting in
8 substantial bodily harm, and Count 28, Second-degree murder.

9 In addition to the \$25 administrative assessment, the \$150 DNA
10 analysis fee and the fact that you must submit to a test for genetic markers, on
11 Count No. 1, Insurance fraud, you're sentenced to a minimum term of 12 months in
12 the Nevada Department of Corrections and a maximum term of 34 months in the
13 Nevada Department of Corrections.

14 On Count No. 2, Performance of an act in reckless disregard of persons
15 or property resulting in substantial bodily harm, you are sentenced to a minimum
16 term of 12 months in the Nevada Department of Corrections and a maximum term of
17 48 months in the Nevada Department of Corrections.

18 On Count No. 3, Criminal neglect resulting in substantial bodily harm,
19 you are sentenced to a minimum term of 24 months in the Nevada Department of
20 Corrections and a maximum term of 60 months in the Nevada Department of
21 Corrections. That is imposed concurrently with the time I gave you on Count No. 2.

22 On Count No. 5, Insurance fraud, you're sentenced to a minimum term
23 of 12 months in the Nevada Department of Corrections and a maximum term of 34
24 months in the Nevada Department of Corrections. That is imposed concurrently
25 with the time you received in Count No. 3.

1 Count No. 6, Performance of an act in reckless disregard of persons or
2 property resulting in substantial bodily harm, you are sentenced to a minimum term
3 of 12 months in the Nevada Department of Corrections and a maximum term of 48
4 months in the Nevada Department of Corrections. That is imposed concurrently
5 with the time you were given in Count No. 5.

6 On Count No. 7, Criminal neglect resulting in substantial bodily harm,
7 you are sentenced to a minimum term of 24 months in the Nevada Department of
8 Corrections and a maximum term of 60 months in the Nevada Department of
9 Corrections. That is imposed consecutively with the time you received in Count No.
10 6.

11 Count No. 8, Insurance fraud, you're sentenced to a minimum term of
12 12 months in the Nevada Department of Corrections and a maximum term of -- I'm
13 sorry, 34 months in the Nevada Department of Corrections. That is imposed
14 concurrently with the time you received in Count No. 7.

15 On Count No. 9, Performance of an act in reckless disregard of persons
16 or property resulting in substantial bodily harm, you are sentenced to a minimum
17 term of 12 months in the Nevada Department of Corrections and a maximum term of
18 48 months in the Nevada Department of Corrections. That is imposed concurrently
19 with the time you received in Count No. 8.

20 On Count No. 10, Criminal neglect resulting in substantial bodily harm,
21 you are sentenced to a minimum term of 24 months in the Nevada Department of
22 Corrections and a maximum term of 60 months in the Nevada Department of
23 Corrections. That is imposed consecutively with the time you were given in Count
24 No. 9.

25 On Count No. 11, Insurance fraud, you are sentenced to a minimum

1 term of 12 months in the Nevada Department of Corrections and a maximum term of
2 34 months in the Nevada Department of Corrections. That is imposed concurrently
3 with the time you received on Count No. 10.

4 On Count No. 12, Performance of an act in reckless disregard of
5 persons or property resulting in substantial bodily harm, you are sentenced to a
6 minimum term of 12 months in the Nevada Department of Corrections and a
7 maximum term of 48 months in the Nevada Department of Corrections. That is
8 imposed concurrently with the time you received on Count No. 11.

9 On Count No. 13, Criminal neglect resulting in substantial bodily harm,
10 you are sentenced to a minimum term of 24 months in the Nevada Department of
11 Corrections and a maximum term of 60 months in the Nevada Department of
12 Corrections. That is imposed concurrently with the time you received on Count No.
13 12.

14 On Count No. 14, Insurance fraud, you are sentenced to a minimum
15 term of 12 months in the Nevada Department of Corrections and a maximum term of
16 34 months in the Nevada Department of Corrections. That is imposed concurrently
17 with Count No. 13.

18 On Count No. 15, Insurance fraud, you are sentenced to a minimum
19 term of 12 months in the Nevada Department of Corrections and a maximum term of
20 34 months in the Nevada Department of Corrections. That is imposed concurrently
21 with the time you received on Count No. 14.

22 On Count No. 16, Performance of an act in reckless disregard of
23 persons or property resulting in substantial bodily harm, you are sentenced to a
24 minimum term of 12 months in the Nevada Department of Corrections and a
25 maximum term of 48 months in the Nevada Department of Corrections. That is

1 imposed concurrently with the time you received in Count No. 15.

2 Count No. 17, Criminal neglect resulting in substantial bodily harm, you
3 are sentenced to a minimum term of 24 months in the Nevada Department of
4 Corrections and a maximum term of 60 months in the Nevada Department of
5 Corrections. That is imposed concurrently with the time you received on Count No.
6 16.

7 On Insurance fraud, Count No. 18, you are sentenced to a minimum
8 term of 12 months in the Nevada Department of Corrections and a maximum term of
9 34 months. That is imposed concurrently with the time you received on Count No.
10 17.

11 On Count No. 19, Performance of an act in reckless disregard of
12 persons or property resulting in substantial bodily harm, you are sentenced to a
13 minimum term of 12 months in the Nevada Department of Corrections and a
14 maximum term of 48 months in the Nevada Department of Corrections. That is
15 imposed concurrently with the time you received in Count 17.

16 On Count No. 20, Criminal neglect resulting in substantial bodily harm,
17 you are sentenced to a minimum term of 24 months in the Nevada Department of
18 Corrections and a maximum term of 60 months in the Nevada Department of
19 Corrections. That is imposed concurrently with the time you received on Count No.
20 18.

21 On Count No. 21, Insurance fraud, you are sentenced to a minimum
22 term of 12 months in the Nevada Department of Corrections and a maximum term of
23 34 months in the Nevada Department of Corrections. That is imposed concurrently
24 with the time you received on Count 21.

25 On Count No. 22, Performance of an act in reckless disregard of

1 persons or property resulting in substantial bodily harm, you are sentenced to a
2 minimum term of 12 months in the Nevada Department of Corrections and a
3 maximum term of 48 months in the Nevada Department of Corrections. That is
4 imposed concurrently with the time you received in Count No. 20.

5 On Count No. 23, Criminal neglect resulting in substantial bodily harm,
6 you are sentenced to a minimum term of 24 months in the Nevada Department of
7 Corrections and a maximum term of 60 months in the Nevada Department of
8 Corrections. That is imposed consecutively to the time I gave you on Count No. 21.

9 On Count No. 24, Insurance fraud, you're sentenced to a minimum term
10 of 12 months in the Nevada Department of Corrections and a maximum term of 34
11 months in the Nevada Department of Corrections. That is imposed concurrently
12 with the time you received on Count No. 23.

13 On Count No. 28, Second-degree murder, you are sentenced to life
14 with the possibility of parole beginning after you have served a minimum of 120
15 months. That is imposed consecutively with the time I gave you on Count No. 24.

16 And you are entitled to 300 --

17 MR. STAUDAHER: 19 days.

18 THE COURT: -- 19 days of credit for time served, and obviously when I go
19 through the JOC in case I misspoke, I'm going to be very sure that I stated
20 everything the way I intended to state it. This was a little bit confusing. So I will
21 make sure that that reflects my intention.

22 All right. Thank you.

23 Moving on to Mr. Lakeman, and we also received a number of letters in
24 support of Mr. Lakeman from family members, people he served from -- I'm sorry,
25 served with in the military and had worked with. I've had an opportunity of course to

1 review all of those letters.

2 MR. STAUDAHER: And, Your Honor, before we do his sentencing, can we
3 approach with Mr. Wright on one --

4 THE COURT: Sure.

5 MR. STAUDAHER: Actually, Mr. Santacroce as well.

6 (Conference at the bench not recorded.)

7 THE COURT: And for a moment we need to revisit the sentencing of Dr.
8 Desai. It wasn't clear in the PSI, but the Court is reminded that Dr. Desai was also
9 found guilty of two misdemeanor counts of obtaining money under false pretenses
10 and one misdemeanor count of theft. He's adjudged guilty of those misdemeanors.
11 And on each misdemeanor he's sentenced to six months in the Clark County
12 Detention Center concurrently with one another and concurrently with all of the time
13 he has been given.

14 MR. STAUDAHER: Yes, Your Honor, and just for the record it's --

15 THE COURT: And based on the verdict, any defects waived by either side in
16 this Court --

17 MR. STAUDAHER: That's correct.

18 THE COURT: -- sentencing.

19 MR. STAUDAHER: And that's correct. And the Court's agreed with counsels'
20 approval to sit as a magistrate for the sentencing on those particular counts.

21 MR. WRIGHT: That's correct.

22 MR. SANTACROCE: That's correct, Your Honor.

23 THE COURT: All right. And those should be contained within the JOC as
24 well.

25 MR. WRIGHT: Thank you.

1 THE COURT: All right. Thank you.

2 All right. Turning to Mr. Lakeman, and as I said, I also received a
3 number of letters on Mr. Lakeman's behalf which of course I have reviewed.

4 Mr. Staudaher.

5 MR. STAUDAHER: Obviously Mr. Lakeman stands in a different position both
6 in the adjudication of -- or at least the jury verdict that came down regarding the
7 charges pertaining to him. The jury came back and found him essentially guilty of all
8 the conduct of those patients that he actually had direct contact with, and then
9 acquitted him of those individuals that he had not had direct contact with.

10 I think that there's two issues related to that that stand and speak
11 volumes for his particular conduct and why the State is going to ask you to depart
12 from the recommendation of the PSI for this particular individual.

13 Again, as the Court has articulated prior to this sentencing when the
14 comments the Court made in conjunction with Dr. Desai, the conduct of an individual
15 that harms a person, we believe should not be subsumed with those other persons
16 just because they -- he did a bunch of them at the same time or thereabouts. We
17 feel that each one of those individuals needs to have their own voice and own
18 essential punishment because of the direct actions of this individual.

19 The part that this -- this particular nurse imparts as far as a I think a
20 problem with not just this particular case but society in general is those individuals
21 who just go along with or agree to or are ordered by a superior to do certain things
22 that they know, absolutely know are wrong, and in this case not only know are
23 wrong but know would put an individual patient at risk simply because they are
24 either told or pressured by their employer or their superior to do that shows a level of
25 either callousness on the part of their actions but just in -- in deflecting, oh, it's not

1 really my problem; it's really my employer's problem because they told me to do it.
2 I'm just an instrument so to speak.

3 Well, he was the instrument with regard to these patients, the four
4 individuals that he actually was found guilty of. Those individuals suffered
5 dramatically, and as the Court's aware again, one of those individuals was Michael
6 Washington specifically, and the Court saw that and knows what the results of his
7 condition were. The other individuals that he treated also contracted the virus, and
8 his actions and his supervisory role with other providers in that facility fostering and
9 propagating that type of activity that caused the harm in the first place should be
10 looked upon by this Court as something that would impose some additional
11 punishment.

12 In his particular case, the State is going to ask the Court to follow the
13 recommendation of the PSI with respect to Count 1 and the other counts with regard
14 to the actual time period that was to be imposed; however, the State is going to ask
15 the Court to depart from the PSI after Count 1, and find him guilty and adjudicate
16 him a consecutive sentence for Counts 3, Count 7, Counts 13, and Counts 20. And
17 the reason for that again as I've put forth before is that that reflects the criminal
18 neglect actions that he was found by the jury to be guilty of pertaining to the
19 individuals he directly had contact with.

20 THE COURT: All right. Thank you, Mr. Staudaher.

21 Mr. Lakeman, is there anything that you would like to state to the Court
22 today before --

23 THE DEFENDANT LAKEMAN: No, ma'am.

24 THE COURT: All right. Thank you.

25 Mr. Santacroce.

1 MR. SANTACROCE: Yes. Your Honor, for three months we sat in this
2 courtroom and listened to Mr. Lakeman and Dr. Desai be vilified, and you have a
3 different picture of Mr. Lakeman from the letters that you received from family,
4 friends, colleagues and peers, and I think those letters accurately portray what type
5 of an individual and practitioner of medicine Mr. Lakeman actually was.

6 I just wanted to highlight a couple of points from the letters which sort of
7 set the tenor of all of the letters. One was from Major Michael R. Bullis, a United
8 States Air Force retired major. He said that, During my life -- during my time in the
9 air force I was fortunate to work with Ronald for a total of six years at two different
10 hospitals. Ronald was a very knowledgeable CRNA whom I was honored to work
11 with on several high-risk cases. It was his expertise that saved the lives of several
12 mothers and babies throughout our time working together. Ronald was always
13 professional and compassionate with all of his patients.

14 The major goes on to say, We hope that you will take into consideration
15 all the lives he saved and made better simply by being in them.

16 And the second excerpt is from a Major Sharon R. Burns, United States
17 Air Force retired, also a CRNA. She said that the primary reason for her support for
18 Mr. Lakeman is that she believes he would never intentionally hurt another human
19 being, and Mr. Lakeman performed thousands of anesthetics during his tenure as a
20 nurse anesthetist. He prided himself in his skills and his ability is consistent with
21 solid anesthesia planning and intervention. Mr. Lakeman would never intentionally
22 hurt or put a patient in harm's way.

23 She goes on to say, Your Honor, Mr. Lakeman served our government
24 as a nurse anesthetist during the most difficult of times. By example, he
25 demonstrated his dedication to our government. He accepted his duty to our

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3 Any person who presents or causes to be presented any statement as a part of, or in
4 support of, a claim for payment or other benefits under a policy of insurance, if the person
5 who presents or causes the presentation of the statement knows that the statement conceals
6 or omits facts, or contains false or misleading information concerning any fact material to
7 that claim, is guilty of insurance fraud.

8 Any person who assists, abets, solicits or conspires with another person to present or
9 cause to be presented any statement to an insurer, a reinsurer, a producer, a broker or any
10 agent thereof, if the person who assists, abets, solicits or conspires knows that the statement
11 conceals or omits facts, or contains false or misleading information concerning any fact
12 material to an application for the issuance of a policy of insurance pursuant to this title or a
13 claim for payment or other benefits under such a policy, is guilty of insurance fraud.

14 Any person who participates in, aiding, abetting, conspiring to commit, soliciting
15 another person to commit, or permits an employee or agent to present or cause to be
16 presented any statement as part of, or in support of, a claim for payment or other benefits
17 under a policy of insurance issue, if the person who participates in or aids or abets or
18 conspires or solicits the other person or employee to present the statement knows that the
19 statement conceals or omits facts, or contains false or misleading information concerning
20 any fact material to that claim, is guilty of insurance fraud.
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A person who performs any act or neglects any duty imposed by law in willful or wanton disregard of the safety of persons or property is guilty of Performance of an Act in Reckless Disregard of Persons or Property.

Willful means voluntary and intentional, but not malicious. Wanton means unreasonably or maliciously risking harm while being utterly indifferent to the consequences. The defendant must have been aware of the risk of harm and disregarded it.

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You have heard testimony about civil litigation stemming from the facts in this case. As I have stated before, this is a criminal case. A criminal case is different from a civil case in several important respects. A civil case is generally a legal action brought by one private party, or the State, against another party to obtain money damages. A criminal case is a legal action brought by the State to enforce the State's criminal laws and seek punishment.

The rules and procedures that apply to the two kinds of cases are different, and because of the interests involved, the burden and standard of proof are higher in a criminal case. In a criminal case, the defense has no burden of proof at all, and the prosecution must prove its case beyond a reasonable doubt.

A professional caretaker who fails to provide such service, care or supervision as is reasonable and necessary to maintain the health or safety of a patient is guilty of criminal neglect of a patient if:

- (a) The act or omission is aggravated, reckless or gross; the defendant must have been aware of the risk of the substantial harm presented by his act or omission and acted in conscious disregard of it
- (b) The act or omission is such a departure from what would be the conduct of an ordinarily prudent, careful person under the same circumstances that it is contrary to a proper regard for danger to human life or constitutes indifference to the resulting consequences;
- (c) The substantial harm created as a result of the negligent act or omission could have been foreseen by a reasonable person; and
- (d) The danger to human life was not the result of inattention, mistaken judgment or misadventure, but the natural and probable result of an aggravated reckless or grossly negligent act or omission.

"Patient" means a person who resides or receives health care in a medical facility.

"Professional caretaker" means a person who:

- (1) Holds a license, registration or permit issued pursuant to title 54 or chapter 449 of NRS;
- (2) Is employed by, an agent of or under contract to perform services for, a medical facility; and
- (3) Has responsibility to provide care to patients.

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The term does not include a person who is not involved in the day-to-day operation or management of a medical facility unless that person has actual knowledge of the criminal neglect of a patient and takes no action to cure such neglect.

INSTRUCTION NO. Ne

A Certified Registered Nurse Anesthetist is certified by the Board to administer anesthetic agents to a person under the care of a licensed physician, a licensed dentist or a licensed podiatric physician.

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Both the Reckless Endangerment and Criminal neglect of Patient charges consist of a criminal act that is committed with the requisite mental state. In order for the defendant to be found guilty of the Reckless Endangerment or Criminal Neglect of Patient charges, you must find that the Defendant committed the alleged acts beyond a reasonable doubt.

The alleged criminal act is that Ronald Lakeman and/or Keith Mathahs caused the Hepatitis C transmission by using unsafe injection practices in connection with the administration of Propofol.

The indictment alleges that Dipak Desai aided and abetted Ronald Lakeman and/or Keith Mathahs in the commission of unsafe injection practices, or conspired to do so. It also alleges that Ronald Lakeman aided and abetted Dipak Desai and/or Keith Mathahs in the commission of the unsafe injection practices, or conspired to do so.

You have been instructed on the theories of aiding and abetting and conspiracy.

As used in these instructions, "Substantial Bodily Harm" means:

1. Bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ; or
2. Prolonged physical pain.
3. You must determine whether the criminal act was the proximate cause of the substantial bodily harm. If you do not find beyond a reasonable doubt that the criminal act was the proximate cause of the substantial bodily harm, you must find the defendant not guilty of the charge.

Count 25 charges Theft.

Any person who, without lawful authority, knowingly obtains property or services of another, of a value equal to or greater than \$250.00, by a material misrepresentation, with the specific intent to permanently deprive the other of the property or services is guilty of theft.

"Services" includes professional services.

"Value" means the fair market value of the property or service at the time of the theft.

"Material misrepresentation" means any representation or statement of present, past or future fact which is false and which, when made, is instrumental in causing the transfer of property or services. The pretense may be verbal or it may be a physical act.

The amount involved in a theft shall be deemed to be the highest value by any reasonable standard, of the property or services which are obtained. Amounts involved in thefts committed pursuant to a scheme or continuing course of conduct whether from one or more persons, may be aggregated in a single count in determining if the offense has been committed.

Counts 26 and 27 of the indictment charge the crime of Obtaining Money Under False Pretenses.

Every person who knowingly and designedly, by any false pretense, obtains from any other person any money or other valuable thing, with intent to cheat or defraud the other person is guilty of the crime of Obtaining Money Under False Pretenses. To constitute the felony charged, the value of the thing so fraudulently obtained must be \$250 or more.

In order to prove the commission of the crime of Obtaining Money Under False Pretenses, each of the following elements must be proved: (1) intent to defraud; (2) a false representation; (3) reliance on that representation; and (4) that the victim be defrauded.

If you find beyond a reasonable doubt that the defendant committed Theft and/or Obtaining Money Under False Pretenses, then you must make a determination as to the amount taken in the Theft and/or Obtaining Money Under False Pretenses counts.

If you find beyond a reasonable doubt that the Theft and/or Obtaining Money Under False Pretenses amount was \$250.00 or more, then you are instructed that the verdict of Theft and/or Obtaining Money Under False Pretenses, \$250.00 or more is the appropriate verdict.

If, however, you find beyond a reasonable doubt that a Theft and/or Obtaining Money Under False Pretenses occurred, but that the amount was less than \$250.00, then you are instructed that the verdict of Theft and/or Obtaining Money Under False Pretenses less than \$250.00 is the appropriate verdict.

You are instructed that you cannot return a verdict of Theft and/or Obtaining Money Under False Pretenses, \$250.00 or more, and Theft and/or Obtaining Money Under False Pretenses less than \$250.00. You may only return one verdict for each count.

INSTRUCTION NO. 72

The term "intent to defraud" means an intent to deceive another person for the purpose of gaining some material advantage over him or to induce such person to part with property or to alter his position to his injury or risk, and to accomplish that purpose by some false statement, false pretense, false representation of fact, wrongful concealment or suppression of truth or by any other artifice or act designed to deceive.

INSTRUCTION NO. 23

Murder is the unlawful killing of a human being with malice aforethought, either express or implied. The unlawful killing may be effected by any of the various means by which death may be occasioned.

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INSTRUCTION NO. 24

Malice as applied to murder does not necessarily import ill will toward the victim, but signifies general malignant recklessness of others' lives and safety or disregard of social duty.

INSTRUCTION NO. 25

Murder of the Second Degree is:

Where an involuntary killing occurs in the commission of an unlawful act, which in its consequences, naturally tends to take the life of a human being.

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INSTRUCTION NO. 26

Murder in the Second Degree is a general intent crime. As such, Defendant may be may liable under conspiracy theory and/or aiding and abetting for Murder of the Second Degree for acts committed by a co-conspirator if the killing is one of the reasonably foreseeable probable and natural consequences of the object of the conspiracy.

However, for Second Degree Felony Murder, the killing must be a directly foreseeable consequence of the object of the conspiracy, as understood by the defendant.

The Second Degree Felony Murder rule only applies when the following two elements are satisfied:

(1) where the conduct constituting the crime of criminal neglect of patients and/or performance of an unlawful act in reckless disregard of persons or property is inherently dangerous, where death or injury is a directly foreseeable consequence of the illegal act;

and,

(2) where there is an immediate and direct causal relationship-without the intervention of some other source or agency-between the actions of the defendant and the victim's death.

In regard to the crime of Second Degree Felony Murder by criminal neglect of patients and/or performance of an unlawful act in reckless disregard of persons or property, a conviction may be had on either of two theories:

(1) By the State proving each of the following four elements beyond a reasonable doubt:

- a. That the defendant did willfully and unlawfully
- b. Cause Rodolfo Meana to die as a result of criminal neglect of patients
- c. That Rodolfo Meana died as a directly foreseeable consequence of the conduct constituting criminal neglect of patients; and
- d. That there was an immediate and direct causal connection – without the intervention of some other source or agency – between the actions of the defendant and the victim's death.

OR

(2) By the State proving each of the following four elements beyond a reasonable doubt:

- a. That the defendant did willfully and unlawfully
- b. Cause Rodolfo Meana to die as a result of performance of an unlawful act in reckless disregard of persons or property
- c. That Rodolfo Meana died as a directly foreseeable consequence of the conduct constituting performance of an unlawful act in reckless disregard of persons; and
- d. That there was an immediate and direct causal connection – without the intervention of some other source or agency – between the actions of the defendant and the victim's death.

INSTRUCTION NO. 21

As to an offense of Second Degree Murder, although your verdict must be unanimous as to the offense, you do not have to agree on the theory of guilt. Therefore, so long as all of you agree that the evidence establishes Defendant's guilt beyond a reasonable doubt of Murder in the Second Degree, your verdict shall be Murder in the Second Degree.

INSTRUCTION NO. 30

As to the element of the cause of death, it is sufficient if, from the evidence, it is proven beyond a reasonable doubt that Rodolfo Meana's Hepatitis C infection was of such a nature that, in its natural and probable consequence, it produced death, or at least materially contributed and accelerated death.

To constitute the crime charged, there must exist a union or joint operation of an act forbidden by law and an intent to do the act.

The intent with which an act is done is shown by the facts and circumstances surrounding the case.

Do not confuse intent with motive. Motive is what prompts a person to act. Intent refers only to the state of mind with which the act is done.

Motive is not an element of the crime charged and the State is not required to prove a motive on the part of the Defendant in order to convict. However, you may consider evidence of motive or lack of motive as a circumstance in the case.

INSTRUCTION NO. 32

The Defendant is presumed innocent until the contrary is proved. This presumption places upon the State the burden of proving beyond a reasonable doubt every material element of the crime charged and that the Defendant is the person who committed the offense.

A reasonable doubt is one based on reason. It is not mere possible doubt but is such a doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors, after the entire comparison and consideration of all the evidence, are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or speculation.

If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a verdict of not guilty.

INSTRUCTION NO. 33

It is a constitutional right of a defendant in a criminal trial that he may not be compelled to testify. Thus, the decision as to whether he should testify is left to the defendant on the advice and counsel of his attorney. You must not draw any inference of guilt from the fact that he does not testify, nor should this fact be discussed by you or enter into your deliberations in any way.

INSTRUCTION NO. 34

You are here to determine whether each of the defendants is guilty or not guilty from the evidence in the case. You are not called upon to return a verdict as to the guilt or innocence of any other person. So, if the evidence in the case convinces you beyond a reasonable doubt of the guilt of a Defendant, you should so find, even though you may believe one or more persons are also guilty.

The evidence which you are to consider in this case consists of the testimony of the witnesses, the exhibits, and any facts admitted or agreed to by counsel.

There are two types of evidence; direct and circumstantial. Direct evidence is the testimony of a person who claims to have personal knowledge of the commission of the crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof of a chain of facts and circumstances which tend to show whether the Defendant is guilty or not guilty. The law makes no distinction between the weight to be given either direct or circumstantial evidence. Therefore, all of the evidence in the case, including the circumstantial evidence, should be considered by you in arriving at your verdict.

Statements, arguments and opinions of counsel are not evidence in the case. However, if the attorneys stipulate to the existence of a fact, you must accept the stipulation as evidence and regard that fact as proved.

You must not speculate to be true any insinuations suggested by a question asked a witness. A question is not evidence and may be considered only as it supplies meaning to the answer.

You must disregard any evidence to which an objection was sustained by the court and any evidence ordered stricken by the court.

Anything you may have seen or heard outside the courtroom is not evidence and must also be disregarded.

The credibility or believability of a witness should be determined by his manner upon the stand, his relationship to the parties, his fears, motives, interests or feelings, his opportunity to have observed the matter to which he testified, the reasonableness of his statements and the strength or weakness of his recollections.

If you believe that a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness or any portion of his testimony which is not proved by other evidence.

INSTRUCTION NO. 38

You have heard testimony that the defendants made certain statements. It is for you to decide (1) whether the defendant made the statement, and (2) if so, how much weight to give to it. In making those decisions, you should consider all the evidence about the statements, including the circumstances under which the defendants may have made the statements.

1
2 You have heard the testimony of Keith Mathahs who pleaded guilty to offenses
3 arising out of the same events for which the defendants are on trial. This guilty plea is not
4 evidence against the defendants, and you may consider it only in determining Mathah's
5 credibility as a witness.

6 You have also heard testimony that Keith Mathahs received certain benefits in
7 connection with his guilty plea agreement. Additionally, testimony and documents have
8 shown that the following witnesses received promises from the government that they would
9 be immune from prosecution or their testimony would not be used in any case against them.
10 The witnesses receiving this benefit include Clifford Carrol, Eladio Carrera, Vishvinder
11 Sharma, Rod Chaffee, Tonya Rushing, Jeffery Krueger, Vincent Mione, Linda Hubbard, and
12 Annmarie Lobiondo.

13 The fact that a witness was given an inducement in exchange for his cooperation may
14 be considered by you only for the purpose of determining the credibility of that witness. The
15 existence of such an inducement does not necessarily destroy or impair the credibility of the
16 witness. It is one of the circumstances that you may take into consideration in weighing the
17 testimony of such a witness.

Certain charts and summaries have been admitted in evidence into evidence through the testimony of Nancy Sampson. Charts and summaries are only as good as the underlying supporting material. You should, therefore, give them only such weight as you think the underlying material deserves.

Nancy Sampson is not qualified to testify about the proper administration of anesthesia, aseptic technique, or other medical issues. I, therefore, instruct you to disregard any of her testimony on such matters.

INSTRUCTION NO. 40

A witness who has special knowledge, skill, experience, training or education in a particular science, profession or occupation is an expert witness. An expert witness may give his opinion as to any matter in which he is skilled.

You should consider such expert opinion and weigh the reasons, if any, given for it. You are not bound, however, by such an opinion. Give it the weight to which you deem it entitled, whether that be great or slight, and you may reject it, if, in your judgment, the reasons given for it are unsound.

1 Defendants and KEITH MATHAHS did on or between September 21, 2007 and April
2 27, 2012, then and there willfully, feloniously, without authority of law, and with malice
3 aforethought, kill RODOLFO MEANA, a human being, by introducing Hepatitis C virus
4 into the body of RODOLFO MEANA, based upon the following principles of criminal
5 liability, to-wit: (1) by the killing occurring under circumstances showing an abandoned and
6 malignant heart; and/or (2) during the commission of an unlawful act, to-wit: criminal
7 neglect of patients, and/or performance of an unlawful act in reckless disregard of persons or
8 property, which in its consequences, naturally tends to destroy the life of a human being;
9 and/or (3) the killing being committed in the prosecution of a felonious intent, to-wit:
10 criminal neglect of patients, and/or performance of an act in reckless disregard of persons or
11 property, which in its consequences, naturally tends to destroy the life of a human being, by
12 directly or indirectly using and/or introducing contaminated medical instruments, supplies,
13 and/or drugs upon or into the body of RODOLFO MEANA which were contaminated with
14 the Hepatitis C virus; Defendants and KEITH MATHAHS being responsible under one or
15 more of the following principles of criminal liability, to wit: (1) by directly committing said
16 acts; and/or (2) by aiding or abetting each other and/or others including uncharged
17 confederates in the commission of the crime(s) of criminal neglect of patients, and/or
18 performance of an act in reckless disregard of persons or property by directly or indirectly
19 counseling, encouraging, hiring, commanding, inducing, or procuring each other, and/or
20 others to utilize a patient care delivery system which directly or indirectly limited the use of
21 medical instruments, and/or supplies, and/or drugs; scheduled and/or treated an unreasonable
22 number of patients per day, and/or rushed patients or patient procedures all at the expense of
23 patient safety and/or well being, and which resulted in substandard care and/or jeopardized
24 the safety of RODOLFO MEANA, Defendants and KEITH MATHAHS acting with the
25 intent to commit the crime(s) of criminal neglect of patients, and/or performance of an act in
26 reckless disregard of persons or property; and/or (3) pursuant to a conspiracy to commit the
27 crime(s) of criminal neglect of patients, and/or performance of an act in reckless disregard of
28 persons or property, Defendants and KEITH MATHAHS acting in concert throughout.

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It is the duty of the jury to apply the rules of law contained in these instructions to the facts of the case and determine whether or not each Defendant is guilty of one or more of the offenses charged.

INSTRUCTION NO. 4

You are here only to determine whether the defendants are guilty or not guilty of the charges in the indictment. The defendants are not on trial for any other conduct or offenses not charged in the indictment.

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INSTRUCTION NO. 5

A separate crime is charged against each defendant. The charges have been joined for trial. You must consider and decide the case of each defendant separately. Your verdict as to one defendant should not control your verdict as to the other defendant.

009510

A conspiracy is an agreement between two or more persons for an unlawful purpose.

A person who knowingly does any act to further the object of a conspiracy, or otherwise participates therein, is criminally liable as a conspirator. However, mere knowledge or approval of, or acquiescence in, the object and purpose of a conspiracy without an agreement to cooperate in achieving such object or purpose does not make one a party to conspiracy. Conspiracy is seldom susceptible of direct proof and is usually established by inference from the conduct of the parties. In particular, a conspiracy may be supported by a coordinated series of acts, in furtherance of the underlying offense, sufficient to infer the existence of an agreement.

A conspiracy to commit a crime does not end upon the completion of the crime. The conspiracy continues until the co-conspirators have successfully gotten away and concealed the crime.

INSTRUCTION NO. 7

It is not necessary in proving a conspiracy to show a meeting of the alleged conspirators or the making of an express or formal agreement. The formation and existence of a conspiracy may be inferred from all circumstances tending to show the common intent and may be proved in the same way as any other fact may be proved, either by direct testimony of the fact or by circumstantial evidence, or by both direct and circumstantial evidence.

Each member of a criminal conspiracy is liable for each act and bound by each declaration of every other member of the conspiracy if the act or the declaration is in furtherance of the object of the conspiracy.

The act of one conspirator pursuant to or in furtherance of the common design of the conspiracy is the act of all conspirators. For a conspirator to be legally responsible for a specific intent crime of a co-conspirator, both conspirators must have the specific intent to commit the crime. A conspirator is also legally responsible for a general intent crime that follows as one of the probable and natural consequence of the object of the conspiracy even if it was not intended as part of the original plan and even if he was not present at the time of the commission of such act.

INSTRUCTION NO. 9

Evidence that a person was in the company or associated with one or more other persons alleged or proven to have been members of a conspiracy is not, in itself, sufficient to prove that such person was a member of the alleged conspiracy. However, you are instructed that presence, companionship, and conduct before, during and after the offense are circumstances from which one's participation in the conspiracy may be inferred.

INSTRUCTION NO. 112

Where two or more persons are accused of committing a crime together, their guilt may be established without proof that each personally did every act constituting the offense charged.

All persons concerned in the commission of a crime who either directly and actively commit the act constituting the offense or who knowingly and with criminal intent aid and abet in its commission or, whether present or not, who advise and encourage its commission, with the intent that the crime be committed, are regarded by the law as principals in the crime thus committed and are equally guilty thereof.

A person aids and abets the commission of a crime if he knowingly and with criminal intent aids, promotes, encourages or instigates by act or advice, or by act and advice, the commission of such crime with the intention that the crime be committed.

The State is not required to prove precisely which defendant actually committed the crime and which defendant aided and abetted.

Mere presence at the scene of a crime or knowledge that a crime is being committed is not sufficient to establish that a defendant is guilty of an offense, unless you find beyond a reasonable doubt that the defendant was a participant and not a merely a knowing spectator.

However, the presence of a person at the scene of a crime and companionship with another person engaged in the commission of the crime and a course of conduct before and after the offense, are circumstances which may be considered in determining whether such person aided and abetted the commission of that crime.

1 transmitting the Hepatitis C virus to SONIA ORELLANA-RIVERA, said acts or omissions
2 being such a departure from what would be the conduct of an ordinarily prudent, careful
3 person under the same circumstances that it is contrary to a proper regard for danger to
4 human life or constitutes indifference to the resulting consequences, said consequences of
5 the negligent act or omission being reasonably foreseeable; said danger to human life not
6 being the result of inattention, mistaken judgment or misadventure, but the natural and
7 probable result of said aggravated reckless or grossly negligent act or omission, to wit: by
8 directly or indirectly using and/or introducing contaminated medical instruments, supplies,
9 and/or drugs upon or into the body of SONIA ORELLANA-RIVERA which were
10 contaminated with the Hepatitis C virus; Defendants and KEITH MATHAHS being
11 responsible under one or more of the following principles of criminal liability, to wit: (1) by
12 directly committing said acts; and/or (2) aiding or abetting each other in the commission of
13 the crime by directly or indirectly counseling, encouraging, hiring, commanding, inducing,
14 or procuring each other, and/or others to utilize a patient care delivery system which directly
15 or indirectly limited the use of medical instruments, and/or supplies, and/or drugs; scheduled
16 and/or treated an unreasonable number of patients per day, and/or rushed patients or patient
17 procedures, Defendants and KEITH MATHAHS acting with the intent to commit said crime
18 in order to fraudulently increase the insurance billing and/or money reimbursement for the
19 medical procedure performed on the said SONIA ORELLANA-RIVERA; specifically, as to
20 DEFENDANT DESAI, that he directly or indirectly both instructed DEFENDANT
21 LAKEMAN, and KEITH MATHAHS and said others to perform said acts and created a
22 work environment where DEFENDANT LAKEMAN, and KEITH MATHAHS and others
23 were pressured to commit the said acts described above; specifically, as to DEFENDANT
24 LAKEMAN, engaging in conduct against universally accepted standards of medical care,
25 that he obtained the medical supplies, and/or drugs utilized in the treatment of KENNETH
26 RUBINO AND SONIA ORELLANA-RIVERA which were subsequently contaminated with
27 the Hepatitis C virus and thereafter directly or indirectly shared, exchanged or transferred
28 said contaminated medical supplies, and/or drugs between himself and KEITH MATHAHS

1 and/or between treatment rooms before, during or after the endoscopic procedure performed
2 on KENNETH RUBINO which resulted in the transmission of the Hepatitis C virus into the
3 body of SONIA ORELLANA-RIVERA and others and/or (3) pursuant to a conspiracy to
4 commit this crime, Defendants and KEITH MATHAHS acting in concert throughout.

5 COUNT 18 - INSURANCE FRAUD

6 Defendants and KEITH MATHAHS did on or about September 21, 2007, knowingly
7 and willfully present, or cause to be presented a statement as a part of, or in support of, a
8 claim for payment or other benefits under a policy of insurance issued pursuant to Title 57 of
9 the Nevada Revised Statutes, knowing that the statement concealed or omitted facts, or
10 contained false or misleading information concerning a fact material to said claim; and/or
11 did assist, abet, solicit or conspire to present or cause to be presented a statement to an
12 insurer, a reinsurer, a producer, a broker or any agent thereof, knowing that said statement
13 concealed or omitted facts, or did contain false or misleading information concerning a fact
14 material to a claim for payment or other benefits under such policy issued pursuant to Title
15 57 of the Nevada Revised Statutes, by falsely representing to CULINARY WORKERS
16 HEALTH FUND that the billed anesthesia time and/or charges for the endoscopic procedure
17 performed on SONIA ORELLANA-RIVERA were more than the actual anesthetic time
18 and/or charges, said false representation resulting in the payment of money to Defendants
19 and KEITH MATHAHS and/or their medical practice which exceeded that which would
20 have normally been allowed for said procedure; Defendants and KEITH MATHAHS being
21 responsible under one or more of the following principles of criminal liability, to wit: (1) by
22 directly committing said acts; and/or (2) aiding or abetting each other in the commission of
23 the crime by directly or indirectly counseling, encouraging, hiring, commanding, inducing,
24 or procuring each other, and/or others to commit said acts, Defendants and KEITH
25 MATHAHS acting with the intent to commit said crime, and/or (3) pursuant to a conspiracy
26 to commit this crime.

27 COUNT 19 - PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS
28 OR PROPERTY RESULTING IN SUBSTANTIAL BODILY HARM

1 Defendants and KEITH MATHAHS did on or about September 21, 2007, then and
2 there willfully and unlawfully perform acts in willful or wanton disregard of the safety of
3 persons or property resulting in substantial bodily harm to CAROLE GRUESKIN, to wit:
4 transmitting the Hepatitis C virus to CAROLE GRUESKIN, in the following manner, to wit:
5 (1) by directly committing said acts; and/or (2) aiding or abetting each other in the
6 commission of the crime by directly or indirectly counseling, encouraging, hiring,
7 commanding, inducing, or procuring each other, and/or others to utilize a patient care
8 delivery system which directly or indirectly limited the use of medical instruments, and/or
9 supplies, and/or drugs; scheduled and/or treated an unreasonable number of patients per day,
10 and/or rushed patients or patient procedures, Defendants and KEITH MATHAHS acting
11 with the intent to commit said crime in order to fraudulently increase the insurance billing
12 and/or money reimbursement for the medical procedure performed on the said CAROLE
13 GRUESKIN; specifically, as to DEFENDANT DESAI, that he directly or indirectly both
14 instructed DEFENDANT LAKEMAN, and KEITH MATHAHS and said others to perform
15 said acts and created a work environment where DEFENDANT LAKEMAN, and KEITH
16 MATHAHS and others were pressured to commit the said acts described above; specifically,
17 as to DEFENDANT LAKEMAN, engaging in conduct against universally accepted
18 standards of medical care, that he limited the use of medical supplies, and/or drugs and
19 rushed patients, and/or patient procedures which in turn allowed DEFENDANT DESAI to
20 directly or indirectly treat and/or perform an unreasonable number of patient procedures in a
21 single day all at the expense of patient safety and well being, and which resulted in
22 substandard care and jeopardized the safety of CAROLE GRUESKIN and/or (3) pursuant to
23 a conspiracy to commit this crime, Defendants and KEITH MATHAHS acting in concert
24 throughout.

25 COUNT 20- CRIMINAL NEGLECT OF PATIENTS RESULTING IN SUBSTANTIAL
26 BODILY HARM

27 Defendants and KEITH MATHAHS on or about September 21, 2007, being
28 professional caretakers of CAROLE GRUESKIN, did act or omit to act in an aggravated,

1 reckless or gross manner, failing to provide such service, care or supervision as is reasonable
2 and necessary to maintain the health or safety of said CAROLE GRUESKIN, resulting in
3 substantial bodily harm to CAROLE GRUESKIN, to wit: transmitting the Hepatitis C virus
4 to CAROLE GRUESKIN, said acts or omissions being such a departure from what would be
5 the conduct of an ordinarily prudent, careful person under the same circumstances that it is
6 contrary to a proper regard for danger to human life or constitutes indifference to the
7 resulting consequences, said consequences of the negligent act or omission being reasonably
8 foreseeable; said danger to human life not being the result of inattention, mistaken judgment
9 or misadventure, but the natural and probable result of said aggravated reckless or grossly
10 negligent act or omission, to wit: (1) by directly committing said acts; and/or (2) aiding or
11 abetting each other in the commission of the crime by directly or indirectly counseling,
12 encouraging, hiring, commanding, inducing, or procuring each other, and/or others to utilize
13 a patient care delivery system which directly or indirectly limited the use of medical
14 instruments, and/or supplies, and/or drugs; scheduled and/or treated an unreasonable number
15 of patients per day, and/or rushed patients or patient procedures, Defendants and KEITH
16 MATHAHS acting with the intent to commit said crime in order to fraudulently increase the
17 insurance billing and/or money reimbursement for the medical procedure performed on the
18 said CAROLE GRUESKIN; specifically, as to DEFENDANT DESAI, that he directly or
19 indirectly both instructed DEFENDANT LAKEMAN, and KEITH MATHAHS and said
20 others to perform said acts and created a work environment where DEFENDANT
21 LAKEMAN, and KEITH MATHAHS and others were pressured to commit the said acts
22 described above; specifically, as to DEFENDANT LAKEMAN, engaging in conduct against
23 universally accepted standards of medical care, that he limited the use of medical supplies,
24 and/or drugs and rushed patients, and/or patient procedures which in turn allowed
25 DEFENDANT DESAI to directly or indirectly treat and/or perform an unreasonable number
26 of patient procedures in a single day all at the expense of patient safety and well being, and
27 which resulted in substandard care and jeopardized the safety of CAROLE GRUESKIN
28 and/or (3) pursuant to a conspiracy to commit this crime, Defendants and KEITH

1 MATHAHS acting in concert throughout.

2 COUNT 21 - INSURANCE FRAUD

3 Defendants and KEITH MATHAHS did on or about September 21, 2007, knowingly
4 and willfully present, or cause to be presented a statement as a part of, or in support of, a
5 claim for payment or other benefits under a policy of insurance issued pursuant to Title 57 of
6 the Nevada Revised Statutes, knowing that the statement concealed or omitted facts, or
7 contained false or misleading information concerning a fact material to said claim; and/or
8 did assist, abet, solicit or conspire to present or cause to be presented a statement to an
9 insurer, a reinsurer, a producer, a broker or any agent thereof, knowing that said statement
10 concealed or omitted facts, or did contain false or misleading information concerning a fact
11 material to a claim for payment or other benefits under such policy issued pursuant to Title
12 57 of the Nevada Revised Statutes, by falsely representing to HEALTH PLAN OF
13 NEVADA that the billed anesthesia time and/or charges for the endoscopic procedure
14 performed on CAROLE GRUESKIN were more than the actual anesthetic time and/or
15 charges, said false representation resulting in the payment of money to Defendants and
16 KEITH MATHAHS and/or their medical practice which exceeded that which would have
17 normally been allowed for said procedure; Defendants and KEITH MATHAHS being
18 responsible under one or more of the following principles of criminal liability, to wit: (1) by
19 directly committing said acts; and/or (2) aiding or abetting each other in the commission of
20 the crime by directly or indirectly counseling, encouraging, hiring, commanding, inducing,
21 or procuring each other, and/or others to commit said acts, Defendants and KEITH
22 MATHAHS acting with the intent to commit said crime, and/or (3) pursuant to a conspiracy
23 to commit this crime.

24 COUNT 22 - PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS
25 OR PROPERTY RESULTING IN SUBSTANTIAL BODILY HARM

26 Defendants and KEITH MATHAHS did on or about September 21, 2007, then and
27 there willfully and unlawfully perform acts in willful or wanton disregard of the safety of
28 persons or property resulting in substantial bodily harm to GWENDOLYN MARTIN, to wit:

1 transmitting the Hepatitis C virus to GWENDOLYN MARTIN, in the following manner, to
2 wit: (1) by directly committing said acts; and/or (2) aiding or abetting each other in the
3 commission of the crime by directly or indirectly counseling, encouraging, hiring,
4 commanding, inducing, or procuring each other, and/or others to utilize a patient care
5 delivery system which directly or indirectly limited the use of medical instruments, and/or
6 supplies, and/or drugs; scheduled and/or treated an unreasonable number of patients per day,
7 and/or rushed patients or patient procedures, Defendants and KEITH MATHAHS acting
8 with the intent to commit said crime in order to fraudulently increase the insurance billing
9 and/or money reimbursement for the medical procedure performed on the said
10 GWENDOLYN MARTIN; specifically, as to DEFENDANT DESAI, that he directly or
11 indirectly both instructed DEFENDANT LAKEMAN, and KEITH MATHAHS and said
12 others to perform said acts and created a work environment where DEFENDANT
13 LAKEMAN, and KEITH MATHAHS and others were pressured to commit the said acts
14 described above; specifically, as to DEFENDANT LAKEMAN, engaging in conduct against
15 universally accepted standards of medical care, that he obtained the medical supplies, and/or
16 drugs utilized in the treatment of KENNETH RUBINO and GWENDOLYN MARTIN
17 which were subsequently contaminated with the Hepatitis C virus and thereafter directly or
18 indirectly shared, exchanged or transferred said contaminated medical supplies, and/or drugs
19 between himself and KEITH MATHAHS and/or between treatment rooms before, during or
20 after the endoscopic procedure performed on KENNETH RUBINO which resulted in the
21 transmission of the Hepatitis C virus into the body of GWENDOLYN MARTIN and others
22 and/or (3) pursuant to a conspiracy to commit this crime, Defendants and KEITH
23 MATHAHS acting in concert throughout.

24 COUNT 23 - CRIMINAL NEGLECT OF PATIENTS RESULTING IN SUBSTANTIAL
25 BODILY HARM

26 Defendants and KEITH MATHAHS on or about September 21, 2007, being
27 professional caretakers of GWENDOLYN MARTIN, did act or omit to act in an aggravated,
28

1 reckless or gross manner, failing to provide such service, care or supervision as is reasonable
2 and necessary to maintain the health or safety of said GWENDOLYN MARTIN, resulting in
3 substantial bodily harm to GWENDOLYN MARTIN, to wit: transmitting the Hepatitis C
4 virus to GWENDOLYN MARTIN, said acts or omissions being such a departure from what
5 would be the conduct of an ordinarily prudent, careful person under the same circumstances
6 that it is contrary to a proper regard for danger to human life or constitutes indifference to
7 the resulting consequences, said consequences of the negligent act or omission being
8 reasonably foreseeable; said danger to human life not being the result of inattention,
9 mistaken judgment or misadventure, but the natural and probable result of said aggravated
10 reckless or grossly negligent act or omission, to wit: (1) by directly committing said acts;
11 and/or (2) aiding or abetting each other in the commission of the crime by directly or
12 indirectly counseling, encouraging, hiring, commanding, inducing, or procuring each other,
13 and/or others to utilize a patient care delivery system which directly or indirectly limited the
14 use of medical instruments, and/or supplies, and/or drugs; scheduled and/or treated an
15 unreasonable number of patients per day, and/or rushed patients or patient procedures,
16 Defendants and KEITH MATHAHS acting with the intent to commit said crime in order to
17 fraudulently increase the insurance billing and/or money reimbursement for the medical
18 procedure performed on the said GWENDOLYN MARTIN; specifically, as to
19 DEFENDANT DESAI, that he directly or indirectly both instructed DEFENDANT
20 LAKEMAN, and KEITH MATHAHS and said others to perform said acts and created a
21 work environment where DEFENDANT LAKEMAN, and KEITH MATHAHS and others
22 were pressured to commit the said acts described above; specifically, as to DEFENDANT
23 LAKEMAN, engaging in conduct against universally accepted standards of medical care,
24 that he obtained the medical supplies, and/or drugs utilized in the treatment of KENNETH
25 RUBINO and GWENDOLYN MARTIN which were subsequently contaminated with the
26 Hepatitis C virus and thereafter directly or indirectly shared, exchanged or transferred said
27 contaminated medical supplies, and/or drugs between himself and KEITH MATHAHS
28 and/or between treatment rooms before, during or after the endoscopic procedure performed

1 on KENNETH RUBINO which resulted in the transmission of the Hepatitis C virus into the
2 body of GWENDOLYN MARTIN and others and/or (3) pursuant to a conspiracy to commit
3 this crime, Defendants and KEITH MATHAHS acting in concert throughout.

4 COUNT 24 - INSURANCE FRAUD

5 Defendants and KEITH MATHAHS did on or between September 20, 2007 and
6 September 21, 2007, knowingly and willfully present, or cause to be presented a statement
7 as a part of, or in support of, a claim for payment or other benefits under a policy of
8 insurance issued pursuant to Title 57 of the Nevada Revised Statutes, knowing that the
9 statement concealed or omitted facts, or contained false or misleading information
10 concerning a fact material to said claim; and/or did assist, abet, solicit or conspire to present
11 or cause to be presented a statement to an insurer, a reinsurer, a producer, a broker or any
12 agent thereof, knowing that said statement concealed or omitted facts, or did contain false or
13 misleading information concerning a fact material to a claim for payment or other benefits
14 under such policy issued pursuant to Title 57 of the Nevada Revised Statutes, by falsely
15 representing to PACIFIC CARE that the billed anesthesia time and/or charges for the
16 endoscopic procedure performed on GWENDOLYN MARTIN were more than the actual
17 anesthetic time and/or charges, said false representation resulting in the payment of money to
18 Defendants and KEITH MATHAHS and/or their medical practice which exceeded that
19 which would have normally been allowed for said procedure; Defendants and KEITH
20 MATHAHS being responsible under one or more of the following principles of criminal
21 liability, to wit: (1) by directly committing said acts; and/or (2) aiding or abetting each other
22 in the commission of the crime by directly or indirectly counseling, encouraging, hiring,
23 commanding, inducing, or procuring each other, and/or others to commit said acts,
24 Defendants and KEITH MATHAHS acting with the intent to commit said crime, and/or (3)
25 pursuant to a conspiracy to commit this crime.

26 COUNT 25 - THEFT

27 Defendants and KEITH MATHAHS did between July 25, 2007 and December 31,
28 2007, then and there knowingly, feloniously, and without lawful authority, commit theft by

1 obtaining personal property in the amount of \$250.00, or more, lawful money of the United
2 States, from STACY HUTCHINSON, KENNETH RUBINO, PATTY ASPINWALL,
3 SHARRIEFF ZIYAD, MICHAEL WASHINGTON, CAROLE GRUESKIN and RODOLFO
4 MEANA, and/or ANTHEM BLUE CROSS AND BLUE SHIELD, HEALTHCARE
5 PARTNERS OF NEVADA, UNITED HEALTH SERVICES, VETERANS
6 ADMINISTRATION and SECURED HORIZONS, by a material misrepresentation with
7 intent to deprive those persons of the property, in the following manner, to-wit: by falsely
8 representing that the billed anesthesia time and/or charges for the endoscopic procedure
9 performed on STACY HUTCHINSON, KENNETH RUBINO, PATTY ASPINWALL,
10 SHARRIEFF ZIYAD, MICHAEL WASHINGTON, CAROLE GRUESKIN and RODOLFO
11 MEANA, were more than the actual anesthetic time and/or charges, said false representation
12 resulting in the payment of money to Defendants and KEITH MATHAHS and/or their
13 medical practice, which exceeded that which would have normally been allowed for said
14 procedure, thereby obtaining said personal property by a material misrepresentation with
15 intent to deprive them of the property, Defendants and KEITH MATHAHS being
16 responsible under one or more of the following principles of criminal liability, to wit: (1) by
17 directly committing said acts; and/or (2) aiding or abetting each other in the commission of
18 the crime by directly or indirectly counseling, encouraging, hiring, commanding, inducing,
19 or procuring each other, and/or others to commit said acts, Defendants and KEITH
20 MATHAHS acting with the intent to commit said crime, and/or (3) pursuant to a conspiracy
21 to commit this crime.

22 COUNT 26 - OBTAINING MONEY UNDER FALSE PRETENSES

23 Defendants and KEITH MATHAHS did on or between September 20, 2007, and
24 December 31, 2007, with intent to cheat and defraud, wilfully, unlawfully, feloniously,
25 knowingly, designedly, and by use of false pretenses, obtain \$250.00, or more, lawful money
26 of the United States from GWENDOLYN MARTIN and/or PACIFICARE, within Las
27 Vegas, Clark County, Nevada, in the following manner, to-wit: by falsely representing that
28 the billed anesthesia times and/or charges for the endoscopic procedures performed on

1 GWENDOLYN MARTIN were more than the actual anesthetic times and/or charges, said
2 false representation resulting in the payment of money to Defendants and KEITH
3 MATHAHS and/or the medical practice, which exceeded that which would have normally
4 been allowed for said procedures Defendants and KEITH MATHAHS being responsible
5 under one or more of the following principles of criminal liability, to wit: (1) by directly
6 committing said acts; and/or (2) aiding or abetting each other in the commission of the crime
7 by directly or indirectly counseling, encouraging, hiring, commanding, inducing, or
8 procuring each other, and/or others to commit said acts, Defendants and KEITH MATHAHS
9 acting with the intent to commit said crime, and/or (3) pursuant to a conspiracy to commit
10 this crime.

11 COUNT 27 - OBTAINING MONEY UNDER FALSE PRETENSES

12 Defendants and KEITH MATHAHS did on or between September 21, 2007, and
13 December 31, 2007, with intent to cheat and defraud, wilfully, unlawfully, feloniously,
14 knowingly, designedly, and by use of false pretenses, obtain \$250.00, or more, lawful money
15 of the United States from SONIA ORELLANA-RIVERA and/or CULINARY WORKERS
16 HEALTH FUND, within Las Vegas, Clark County, Nevada, in the following manner, to-wit:
17 by falsely representing that the billed anesthesia times and/or charges for the endoscopic
18 procedures performed on SONIA ORELLANA-RIVERA were more than the actual
19 anesthetic times and/or charges, said false representation resulting in the payment of money
20 to Defendants and KEITH MATHAHS and/or the medical practice, which exceeded that
21 which would have normally been allowed for said procedures Defendants and KEITH
22 MATHAHS being responsible under one or more of the following principles of criminal
23 liability, to wit: (1) by directly committing said acts; and/or (2) aiding or abetting each other
24 in the commission of the crime by directly or indirectly counseling, encouraging, hiring,
25 commanding, inducing, or procuring each other, and/or others to commit said acts,
26 Defendants and KEITH MATHAHS acting with the intent to commit said crime, and/or (3)
27 pursuant to a conspiracy to commit this crime.

28 COUNT 28 - MURDER (SECOND DEGREE)

reckless or grossly negligent act or omission, to wit: by directly or indirectly using and/or introducing contaminated medical instruments, supplies, and/or drugs upon or into the body of STACY HUTCHINSON which were contaminated with the Hepatitis C virus; Defendants and KEITH MATHAHS being responsible under one or more of the following principles of criminal liability, to wit: (1) by directly committing said acts; and/or (2) aiding or abetting each other in the commission of the crime by directly or indirectly counseling, encouraging, hiring, commanding, inducing, or procuring each other, and/or others to utilize a patient care delivery system which directly or indirectly limited the use of medical instruments, and/or supplies, and/or drugs; scheduled and/or treated an unreasonable number of patients per day, and/or rushed patients or patient procedures, Defendants and KEITH MATHAHS acting with the intent to commit said crime in order to fraudulently increase the insurance billing and/or money reimbursement for the medical procedure performed on the said STACY HUTCHINSON; specifically, as to DEFENDANT DESAI, that he directly or indirectly both instructed DEFENDANT LAKEMAN, and KEITH MATHAHS and said others to perform said acts and created a work environment where DEFENDANT LAKEMAN, and KEITH MATHAHS and others were pressured to commit the said acts described above; specifically, as to DEFENDANT LAKEMAN, engaging in conduct against universally accepted standards of medical care, that he limited the use of medical supplies, and/or drugs and rushed patients, and/or patient procedures which in turn allowed DEFENDANT DESAI to directly or indirectly treat and/or perform an unreasonable number of patient procedures in a single day all at the expense of patient safety and well being, and which resulted in substandard care and jeopardized the safety of STACY HUTCHINSON and/or (3) pursuant to a conspiracy to commit this crime, Defendants and KEITH MATHAHS acting in concert throughout.

COUNT 8 - INSURANCE FRAUD

Defendants and KEITH MATHAHS did on or about September 21, 2007, knowingly and willfully present, or cause to be presented a statement as a part of, or in support of, a claim for payment or other benefits under a policy of insurance issued pursuant to Title 57 of

1 the Nevada Revised Statutes, knowing that the statement concealed or omitted facts, or
2 contained false or misleading information concerning a fact material to said claim; and/or
3 did assist, abet, solicit or conspire to present or cause to be presented a statement to an
4 insurer, a reinsurer, a producer, a broker or any agent thereof, knowing that said statement
5 concealed or omitted facts, or did contain false or misleading information concerning a fact
6 material to a claim for payment or other benefits under such policy issued pursuant to Title
7 57 of the Nevada Revised Statutes, by falsely representing to HEALTH PLAN OF
8 NEVADA that the billed anesthesia time and/or charges for the endoscopic procedure
9 performed on STACY HUTCHINSON were more than the actual anesthetic time and/or
10 charges, said false representation resulting in the payment of money to Defendants and
11 KEITH MATHAHS and/or their medical practice which exceeded that which would have
12 normally been allowed for said procedure; Defendants and KEITH MATHAHS being
13 responsible under one or more of the following principles of criminal liability, to wit: (1) by
14 directly committing said acts; and/or (2) aiding or abetting each other in the commission of
15 the crime by directly or indirectly counseling, encouraging, hiring, commanding, inducing,
16 or procuring each other, and/or others to commit said acts, Defendants and KEITH
17 MATHAHS acting with the intent to commit said crime, and/or (3) pursuant to a conspiracy
18 to commit this crime.

19 COUNT 9 - PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS
20 OR PROPERTY RESULTING IN SUBSTANTIAL BODILY HARM

21 Defendants and KEITH MATHAHS did on or about September 21, 2007, then and
22 there willfully and unlawfully perform acts in willful or wanton disregard of the safety of
23 persons or property resulting in substantial bodily harm to RODOLFO MEANA, to wit:
24 transmitting the Hepatitis C virus to RODOLFO MEANA, in the following manner, to wit:
25 by directly or indirectly using and/or introducing contaminated medical instruments,
26 supplies, and/or drugs upon or into the body of RODOLFO MEANA which were
27 contaminated with the Hepatitis C virus; Defendants and KEITH MATHAHS being
28 responsible under one or more of the following principles of criminal liability, to wit: (1) by

1 directly committing said acts; and/or (2) aiding or abetting each other in the commission of
2 the crime by directly or indirectly counseling, encouraging, hiring, commanding, inducing,
3 or procuring each other, and/or others to utilize a patient care delivery system which directly
4 or indirectly limited the use of medical instruments, and/or supplies, and/or drugs; scheduled
5 and/or treated an unreasonable number of patients per day, and/or rushed patients or patient
6 procedures, Defendants and KEITH MATHAHS acting with the intent to commit said crime
7 in order to fraudulently increase the insurance billing and/or money reimbursement for the
8 medical procedure performed on the said RODOLFO MEANA; specifically, as to
9 DEFENDANT DESAI, that he directly or indirectly both instructed DEFENDANT
10 LAKEMAN, and KEITH MATHAHS and said others to perform said acts and created a
11 work environment where DEFENDANT LAKEMAN, and KEITH MATHAHS and others
12 were pressured to commit the said acts described above; specifically, as to DEFENDANT
13 LAKEMAN, engaging in conduct against universally accepted standards of medical care,
14 that he obtained the medical supplies, and/or drugs utilized in the treatment of KENNETH
15 RUBINO and RODOLFO MEANA which were subsequently contaminated with the
16 Hepatitis C virus and thereafter directly or indirectly shared, exchanged or transferred said
17 contaminated medical supplies, and/or drugs between himself and KEITH MATHAHS
18 and/or between treatment rooms before, during or after the endoscopic procedure performed
19 on KENNETH RUBINO which resulted in the transmission of the Hepatitis C virus into the
20 body of RODOLFO MEANA and others and/or (3) pursuant to a conspiracy to commit this
21 crime, Defendants and KEITH MATHAHS acting in concert throughout.

22 COUNT 10 - CRIMINAL NEGLIGENCE OF PATIENTS RESULTING IN SUBSTANTIAL
23 BODILY HARM

24 Defendants and KEITH MATHAHS on or about September 21, 2007, being
25 professional caretakers of RODOLFO MEANA, did act or omit to act in an aggravated,
26 reckless or gross manner, failing to provide such service, care or supervision as is reasonable
27 and necessary to maintain the health or safety of said RODOLFO MEANA, resulting in
28 substantial bodily harm to RODOLFO MEANA, to wit: transmitting the Hepatitis C virus to

1 RODOLFO MEANA, said acts or omissions being such a departure from what would be the
2 conduct of an ordinarily prudent, careful person under the same circumstances that it is
3 contrary to a proper regard for danger to human life or constitutes indifference to the
4 resulting consequences, said consequences of the negligent act or omission being reasonably
5 foreseeable; said danger to human life not being the result of inattention, mistaken judgment
6 or misadventure, but the natural and probable result of said aggravated reckless or grossly
7 negligent act or omission, to wit: by directly or indirectly using and/or introducing
8 contaminated medical instruments, supplies, and/or drugs upon or into the body of
9 RODOLFO MEANA which were contaminated with the Hepatitis C virus; Defendants and
10 KEITH MATHAHS being responsible under one or more of the following principles of
11 criminal liability, to wit: (1) by directly committing said acts; and/or (2) aiding or abetting
12 each other in the commission of the crime by directly or indirectly counseling, encouraging,
13 hiring, commanding, inducing, or procuring each other, and/or others to utilize a patient care
14 delivery system which directly or indirectly limited the use of medical instruments, and/or
15 supplies, and/or drugs; scheduled and/or treated an unreasonable number of patients per day,
16 and/or rushed patients or patient procedures, Defendants and KEITH MATHAHS acting
17 with the intent to commit said crime in order to fraudulently increase the insurance billing
18 and/or money reimbursement for the medical procedure performed on the said RODOLFO
19 MEANA; specifically, as to DEFENDANT DESAI, that he directly or indirectly both
20 instructed DEFENDANT LAKEMAN, and KEITH MATHAHS and said others to perform
21 said acts and created a work environment where DEFENDANT LAKEMAN, and KEITH
22 MATHAHS and others were pressured to commit the said acts described above; specifically,
23 as to DEFENDANT LAKEMAN, engaging in conduct against universally accepted
24 standards of medical care, that he obtained the medical supplies, and/or drugs utilized in the
25 treatment of KENNETH RUBINO and RODOLFO MEANA which were subsequently
26 contaminated with the Hepatitis C virus and thereafter directly or indirectly shared,
27 exchanged or transferred said contaminated medical supplies, and/or drugs between himself
28 and KEITH MATHAHS and/or between treatment rooms before, during or after the

1 endoscopic procedure performed on KENNETH RUBINO which resulted in the
2 transmission of the Hepatitis C virus into the body of RODOLFO MEANA and others and/or
3 (3) pursuant to a conspiracy to commit this crime, Defendants and KEITH MATHAHS
4 acting in concert throughout.

5 COUNT 11 - INSURANCE FRAUD

6 Defendants and KEITH MATHAHS did on or about September 21, 2007, knowingly
7 and willfully present, or cause to be presented a statement as a part of, or in support of, a
8 claim for payment or other benefits under a policy of insurance issued pursuant to Title 57 of
9 the Nevada Revised Statutes, knowing that the statement concealed or omitted facts, or
10 contained false or misleading information concerning a fact material to said claim; and/or
11 did assist, abet, solicit or conspire to present or cause to be presented a statement to an
12 insurer, a reinsurer, a producer, a broker or any agent thereof, knowing that said statement
13 concealed or omitted facts, or did contain false or misleading information concerning a fact
14 material to a claim for payment or other benefits under such policy issued pursuant to Title
15 57 of the Nevada Revised Statutes, by falsely representing to SECURE HORIZONS and/or
16 PACIFICARE that the billed anesthesia time and/or charges for the endoscopic procedure
17 performed on RODOLFO MEANA were more than the actual anesthetic time and/or
18 charges, said false representation resulting in the payment of money to Defendants and
19 KEITH MATHAHS and/or their medical practice which exceeded that which would have
20 normally been allowed for said procedure; Defendants and KEITH MATHAHS being
21 responsible under one or more of the following principles of criminal liability, to wit: (1) by
22 directly committing said acts; and/or (2) aiding or abetting each other in the commission of
23 the crime by directly or indirectly counseling, encouraging, hiring, commanding, inducing,
24 or procuring each other, and/or others to commit said acts, Defendants and KEITH
25 MATHAHS acting with the intent to commit said crime, and/or (3) pursuant to a conspiracy
26 to commit this crime.

27 COUNT 12 - PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS
28 OR PROPERTY RESULTING IN SUBSTANTIAL BODILY HARM

1 Defendants and KEITH MATHAHS did on or about September 21, 2007, then and
2 there willfully and unlawfully perform acts in willful or wanton disregard of the safety of
3 persons or property resulting in substantial bodily harm to PATTY ASPINWALL, to wit:
4 transmitting the Hepatitis C virus to PATTY ASPINWALL, in the following manner, to wit:
5 (1) by directly committing said acts; and/or (2) aiding or abetting each other in the
6 commission of the crime by directly or indirectly counseling, encouraging, hiring,
7 commanding, inducing, or procuring each other, and/or others to utilize a patient care
8 delivery system which directly or indirectly limited the use of medical instruments, and/or
9 supplies, and/or drugs; scheduled and/or treated an unreasonable number of patients per day,
10 and/or rushed patients or patient procedures, Defendants and KEITH MATHAHS acting
11 with the intent to commit said crime in order to fraudulently increase the insurance billing
12 and/or money reimbursement for the medical procedure performed on the said PATTY
13 ASPINWALL; specifically, as to DEFENDANT DESAI, that he directly or indirectly both
14 instructed DEFENDANT LAKEMAN, and KEITH MATHAHS and said others to perform
15 said acts and created a work environment where DEFENDANT LAKEMAN, KEITH
16 MATHAHS and others were pressured to commit the said acts described above; specifically,
17 as to DEFENDANT LAKEMAN, engaging in conduct against universally accepted
18 standards of medical care, that he limited the use of medical supplies, and/or drugs and
19 rushed patients, and/or patient procedures which in turn allowed DEFENDANT DESAI to
20 directly or indirectly treat and/or perform an unreasonable number of patient procedures in a
21 single day all at the expense of patient safety and well being, and which resulted in
22 substandard care and jeopardized the safety of PATTY ASPINWALL and/or (3) pursuant to
23 a conspiracy to commit this crime, Defendants and KEITH MATHAHS acting in concert
24 throughout.

25 COUNT 13 - CRIMINAL NEGLECT OF PATIENTS RESULTING IN SUBSTANTIAL
26 BODILY HARM

27 Defendants and KEITH MATHAHS on or about September 21, 2007, being
28 professional caretakers of PATTY ASPINWALL, did act or omit to act in an aggravated,

1 reckless or gross manner, failing to provide such service, care or supervision as is reasonable
2 and necessary to maintain the health or safety of said PATTY ASPINWALL, resulting in
3 substantial bodily harm to PATTY ASPINWALL, to wit: transmitting the Hepatitis C virus
4 to PATTY ASPINWALL, said acts or omissions being such a departure from what would be
5 the conduct of an ordinarily prudent, careful person under the same circumstances that it is
6 contrary to a proper regard for danger to human life or constitutes indifference to the
7 resulting consequences, said consequences of the negligent act or omission being reasonably
8 foreseeable; said danger to human life not being the result of inattention, mistaken judgment
9 or misadventure, but the natural and probable result of said aggravated reckless or grossly
10 negligent act or omission, to wit: (1) by directly committing said acts; and/or (2) aiding or
11 abetting each other in the commission of the crime by directly or indirectly counseling,
12 encouraging, hiring, commanding, inducing, or procuring each other, and/or others to utilize
13 a patient care delivery system which directly or indirectly limited the use of medical
14 instruments, and/or supplies, and/or drugs; scheduled and/or treated an unreasonable number
15 of patients per day, and/or rushed patients or patient procedures, Defendants and KEITH
16 MATHAHS acting with the intent to commit said crime in order to fraudulently increase the
17 insurance billing and/or money reimbursement for the medical procedure performed on the
18 said PATTY ASPINWALL; specifically, as to DEFENDANT DESAI, that he directly or
19 indirectly both instructed DEFENDANT LAKEMAN, and KEITH MATHAHS and said
20 others to perform said acts and created a work environment where DEFENDANT
21 LAKEMAN, and KEITH MATHAHS and others were pressured to commit the said acts
22 described above; specifically, as to DEFENDANT LAKEMAN, engaging in conduct against
23 universally accepted standards of medical care, that he limited the use of medical supplies,
24 and/or drugs and rushed patients, and/or patient procedures which in turn allowed
25 DEFENDANT DESAI to directly or indirectly treat and/or perform an unreasonable number
26 of patient procedures in a single day all at the expense of patient safety and well being, and
27 which resulted in substandard care and jeopardized the safety of PATTY ASPINWALL
28 and/or (3) pursuant to a conspiracy to commit this crime, Defendants and KEITH

1 MATHAHS acting in concert throughout.

2 COUNT 14 - INSURANCE FRAUD

3 Defendants and KEITH MATHAHS did on or about September 21, 2007, knowingly
4 and willfully present, or cause to be presented a statement as a part of, or in support of, a
5 claim for payment or other benefits under a policy of insurance issued pursuant to Title 57 of
6 the Nevada Revised Statutes, knowing that the statement concealed or omitted facts, or
7 contained false or misleading information concerning a fact material to said claim; and/or
8 did assist, abet, solicit or conspire to present or cause to be presented a statement to an
9 insurer, a reinsurer, a producer, a broker or any agent thereof, knowing that said statement
10 concealed or omitted facts, or did contain false or misleading information concerning a fact
11 material to a claim for payment or other benefits under such policy issued pursuant to Title
12 57 of the Nevada Revised Statutes, by falsely representing to ANTHEM BLUE CROSS
13 AND BLUE SHIELD that the billed anesthesia time and/or charges for the endoscopic
14 procedure performed on PATTY ASPINWALL were more than the actual anesthetic time
15 and/or charges, said false representation resulting in the payment of money to Defendants
16 and KEITH MATHAHS and/or their medical practice which exceeded that which would
17 have normally been allowed for said procedure; Defendants and KEITH MATHAHS being
18 responsible under one or more of the following principles of criminal liability, to wit: (1) by
19 directly committing said acts; and/or (2) aiding or abetting each other in the commission of
20 the crime by directly or indirectly counseling, encouraging, hiring, commanding, inducing,
21 or procuring each other, and/or others to commit said acts, Defendants and KEITH
22 MATHAHS acting with the intent to commit said crime, and/or (3) pursuant to a conspiracy
23 to commit this crime.

24 COUNT 15 - INSURANCE FRAUD

25 Defendants and KEITH MATHAHS did on or about September 21, 2007, knowingly
26 and willfully present, or cause to be presented a statement as a part of, or in support of, a
27 claim for payment or other benefits under a policy of insurance issued pursuant to Title 57 of
28 the Nevada Revised Statutes, knowing that the statement concealed or omitted facts, or

1 contained false or misleading information concerning a fact material to said claim; and/or
2 did assist, abet, solicit or conspire to present or cause to be presented a statement to an
3 insurer, a reinsurer, a producer, a broker or any agent thereof, knowing that said statement
4 concealed or omitted facts, or did contain false or misleading information concerning a fact
5 material to a claim for payment or other benefits under such policy issued pursuant to Title
6 57 of the Nevada Revised Statutes, by falsely representing to UNITED HEALTH
7 SERVICES that the billed anesthesia time and/or charges for the endoscopic procedure
8 performed on PATTY ASPINWALL were more than the actual anesthetic time and/or
9 charges, said false representation resulting in the payment of money to Defendants and
10 KEITH MATHAHS and/or their medical practice which exceeded that which would have
11 normally been allowed for said procedure; Defendants and KEITH MATHAHS being
12 responsible under one or more of the following principles of criminal liability, to wit: (1) by
13 directly committing said acts; and/or (2) aiding or abetting each other in the commission of
14 the crime by directly or indirectly counseling, encouraging, hiring, commanding, inducing,
15 or procuring each other, and/or others to commit said acts, Defendants and KEITH
16 MATHAHS acting with the intent to commit said crime, and/or (3) pursuant to a conspiracy
17 to commit this crime.

18 COUNT 16 - PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS
19 OR PROPERTY RESULTING IN SUBSTANTIAL BODILY HARM

20 Defendants and KEITH MATHAHS did on or about September 21, 2007, then and
21 there willfully and unlawfully perform acts in willful or wanton disregard of the safety of
22 persons or property resulting in substantial bodily harm to SONIA ORELLANA-RIVERA,
23 to wit: transmitting the Hepatitis C virus to SONIA ORELLANA-RIVERA, in the following
24 manner, to wit: by directly or indirectly using and/or introducing contaminated medical
25 instruments, supplies, and/or drugs upon or into the body of SONIA ORELLANA-RIVERA
26 which were contaminated with the Hepatitis C virus; Defendants and KEITH MATHAHS
27 being responsible under one or more of the following principles of criminal liability, to wit:
28 (1) by directly committing said acts; and/or (2) aiding or abetting each other in the

1 commission of the crime by directly or indirectly counseling, encouraging, hiring,
2 commanding, inducing, or procuring each other, and/or others to utilize a patient care
3 delivery system which directly or indirectly limited the use of medical instruments, and/or
4 supplies, and/or drugs; scheduled and/or treated an unreasonable number of patients per day,
5 and/or rushed patients or patient procedures, Defendants and KEITH MATHAHS acting
6 with the intent to commit said crime in order to fraudulently increase the insurance billing
7 and/or money reimbursement for the medical procedure performed on the said SONIA
8 ORELLANA-RIVERA; specifically, as to DEFENDANT DESAI, that he directly or
9 indirectly both instructed DEFENDANT LAKEMAN, and KEITH MATHAHS and said
10 others to perform said acts and created a work environment where DEFENDANT
11 LAKEMAN, and KEITH MATHAHS and others were pressured to commit the said acts
12 described above; specifically, as to DEFENDANT LAKEMAN, engaging in conduct against
13 universally accepted standards of medical care, that he obtained the medical supplies, and/or
14 drugs utilized in the treatment of KENNETH RUBINO and SONIA ORELLANA-RIVERA
15 which were subsequently contaminated with the Hepatitis C virus and thereafter directly or
16 indirectly shared, exchanged or transferred said contaminated medical supplies, and/or drugs
17 between himself and KEITH MATHAHS and/or between treatment rooms before, during or
18 after the endoscopic procedure performed on KENNETH RUBINO which resulted in the
19 transmission of the Hepatitis C virus into the body of SONIA ORELLANA-RIVERA and
20 others and/or (3) pursuant to a conspiracy to commit this crime, Defendants and KEITH
21 MATHAHS acting in concert throughout.

22 COUNT 17 - CRIMINAL NEGLECT OF PATIENTS RESULTING IN SUBSTANTIAL
23 BODILY HARM

24 Defendants and KEITH MATHAHS on or about September 21, 2007, being
25 professional caretakers of SONIA ORELLANA-RIVERA, did act or omit to act in an
26 aggravated, reckless or gross manner, failing to provide such service, care or supervision as
27 is reasonable and necessary to maintain the health or safety of said SONIA ORELLANA-
28 RIVERA, resulting in substantial bodily harm to SONIA ORELLANA-RIVERA, to wit:

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
SEP 02 2014 09:20 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

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

APPELLANT'S APPENDIX VOLUME 41

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1 Defendant's Proposed Instruction No. 2

2 **ELEMENTS OF CRIMINAL NEGLECT OF PATIENT**

3 Counts 3, 7, 10, 13, 17, 20, and 23, charge the defendants with criminal neglect of patient
4 resulting in substantial bodily harm. To find the defendants guilty of this offense, you must find
5 each of the following elements beyond a reasonable doubt:

6 First: The defendant was a professional caretaker who committed an act or
7 omission in connection to the medical service, care or supervision of a
8 patient;

9 Second: the defendant's act or omission was an aggravated, reckless or gross
10 deviation from the manner in which a reasonable person would act under
11 similar circumstances;

12 Third: the defendant's act or omission must have presented a substantial risk of
13 harm that is foreseeable to a reasonable person;

14 Fourth: the defendant must have been aware or cognizant of the substantial risk of
15 harm presented by his act or omission;

16 Fifth: the defendant must have acted in conscious disregard to the of the
17 substantial risk of harm, and must not have acted as a result of inattention,
18 mistaken judgment, or misadventure; and

19 Sixth: the act or omission proximately caused substantial bodily harm to another
20 person.

21
22 Authority: NRS 200.495.; *see*, Maryland Crim. Pattern Jury Instr., §4:26A [Copy at Attach. 2].

23 *See generally, Williams v. State*, 100 Md. App. 468, 495, 641 A.2d 990, 1003
24 (1994)(discussing *actus rea* and *mens rea* of reckless endangerment statutes in various
jurisdictions); *Cf., Rocky Mountain Produce Trucking Comp. v. Johnson*, 78 Nev. 44, 51-52, 369
25 P.2d 198, 202 (1962)(discussing civil tort concept of wantonness)

26 NRS 193.190 requires a union of an *actus rea* and *mens rea* of criminal negligence. "In
every crime or public offense there must exist a union, or joint operation of act and intention, or

1 *criminal negligence.*” *Id.* [emphasis added]; *see also*, Robey v. State, 96 Nev. 459, 460-61, 611
2 P.2d 209, 210 (1980)(defining mental element of willfulness). The *actus rea* of a criminal
3 negligence offense is assessed objectively. In other words, the defendant’s conduct significantly
deviates from the manner in which a reasonable person would act under similar circumstances
and the risk of a substantial harm is foreseeable. *See generally*, Williams.

4 With respect to the *mens rea*, the defendant must be subjectively aware of the risk created
5 by his conduct, but proceed to act in conscious disregard of such risk. Although research
disclosed no case law analyzing NRS 202.595, the *mens rea* element in the Maryland reckless
endangerment statute was described as follows:

6 Reckless endangerment is a crime that has not eliminated the requirement of a
7 *mens rea*. It is not a strict liability crime. One is not guilty if he is oblivious to the
8 fact that there is a risk and oblivious to the fact that he is disregarding the risk; it
is not enough that the ordinary prudent person would be thus aware. It is required
9 that the defendant on trial be aware of a risk and then consciously disregard it.
That much is indisputably subjective. In shortest form, the critical *mens rea* would
10 be “the conscious disregard of a substantial risk.” “Conscious disregard” is *ipso*
facto subjective.

11 Williams v. State, 100 Md. App. 468, 503, 641 A.2d 990, 1007 (1994).

12 The above definition of the criminal mental element of “conscious disregard of a
13 substantial risk” is similar to the civil tort definition of wanton misconduct in Nevada. In a
wrongful death suit stemming from a car accident, the Supreme Court stated:

14 Thus we see that wanton misconduct involves an intention to perform an act that
15 the actor knows, or should know, will very probably cause harm. In substance,
this is the same definition approved by this court in Crosman v. Southern Pacific
16 Co., supra, where it was stated, “the party doing the act . . . though having no
17 intent to injure, *must be conscious, from his knowledge of surrounding*
circumstances and existing conditions, that his conduct will naturally and
probably result in injury.”

18 Rocky Mountain Produce Trucking, 78 Nev. at 51-52, 369 P.2d at 202, *quoting*, Crosman v.
19 Southern Pacific Co., 44 Nev. 286, 301, 194 P.2d 839, 843 (1921). [Emphasis added].
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1 Defendant's Proposed Instruction No. 3

2 **ELEMENTS OF RECKLESS ENDANGERMENT OFFENSE**

3 The defendants are charged in Counts 2, 6, 9, 12, 16, 19, and 22, with reckless
4 endangerment of the safety of a person. In order for the defendants to be found guilty of this
5 offense, the State must prove each of the following essential elements beyond a reasonable
6 doubt:

7 First: The defendant performed an act in willful or wanton disregard to
8 the safety of a person;

9 Second: the defendant's act must represent a significant deviation from the manner
10 in which a reasonable person would act under similar circumstances;

11 Third: the defendant's act must have presented a substantial risk of harm that is
12 foreseeable to a reasonable person;

13 Fourth: the defendant must have been aware or conscious of the substantial risk of
14 harm presented by his act;

15 Fifth: the defendant must have acted in conscious disregard of the substantial
16 risk of harm, and must not have acted as a result of inattention, mistaken
17 judgment, or misadventure; and

18 Sixth: the act proximately caused substantial bodily harm to another person.

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20 Authority: NRS 202.595; *see, supra*, authority cited in Defendant's Proposed Jury Instr. No. 2.

1 Defendant's Proposed Instruction No. 4

2 **THE ALLEGED ACT OF CRIMINAL NEGLIGENCE**

3 Both the criminal neglect of patient charges and reckless endangerment charges consist of
4 a criminal act that is committed with the requisite mental state. I will first instruct you on the
5 element of the criminal act as it is alleged in the indictment. In order for the defendant to be
6 found guilty of the criminal neglect of patient charges or reckless endangerment charges, you
7 must find that the defendant committed the alleged act of criminal neglect beyond a reasonable
8 doubt:

9 The alleged criminal act is that the Ronald Lakeman or Keith Mathahs caused the
10 hepatitis transmission by using unsafe injection practices, to wit: first, drawing a dose of
11 Propofol from a vial and administering it to a patient who was infected with Hepatitis C; second,
12 using the same syringe to administer another dose to the same infected patient drawn from the
13 same vial, thereby contaminating the vial with Hepatitis C; and, third, administering Propofol
14 from the same vial on subsequent patients.

15 The indictment alleges that Dipak Desai aided and abetted Ronald Lakeman or Keith
16 Mathahs in the commission of the unsafe injection practice, or conspired to do so. It also alleges
17 that Ronald Lakeman aided and abetted Depak Desai or Keith Mathahs in the commission of the
18 unsafe injection practice, or conspired to do so. I have already instructed you on the theories of
19 aiding and abetting and conspiracy.

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23 Authority: See, 11 Wash. Prac., Pattern Jury Instr. Crim. WPIC 35.33 (3d Ed.)(advising
24 specifying the particular act when necessary to avoid jury confusion in reckless endangerment
25 cases). [Copy at Attach. 3]
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1 Defendant's Proposed Instruction No. 5

2 **MENTAL ELEMENT FOR CRIMINAL NEGLIGENCE – CONSCIOUS DISREGARD OF A**
3 **KNOWN RISK**

4 I will now instruct you on the mental element of criminal neglect. In order for the
5 defendant to be found guilty of the criminal neglect of patient charges or reckless endangerment
6 charges, you must find beyond a reasonable doubt that the defendant acted with the requisite
7 mental state.

8 More particularly, at the time the alleged criminal act was performed, Ronald Lakeman or
9 Keith Mathahs was subjectively aware of the substantial risk created by the unsafe injection
10 practices, but elected to act in conscious disregard of such risk. With respect to Dipak Desai, the
11 State must also prove beyond a reasonable doubt that he had the same awareness of the
12 substantial risk and then acted in conscious disregard of the risk.

13 If you find that the defendant's acts were performed as a result of inattention, mistaken
14 judgment, misadventure, or carelessness, you must return a verdict of not guilty.

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23 Authority: See, 11 Wash. Prac., Pattern Jury Instr. Crim. WPIC 35.33 (3d Ed.)(advising
24 specifying the particular act when necessary to avoid jury confusion). [Copy at Attach. 3]

ORIGINAL

1 INST

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

JUL 01 2013

BY, 
KATRINA HERNANDEZ, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

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8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 DIPAK KANTILAL DESAI,
12 #1240942 and
13 RONALD ERNEST LAKEMAN
14 #2753504

Defendants.

CASE NO: 10C265107-1, 2

DEPT NO: XXI

15 INSTRUCTIONS TO THE JURY (INSTRUCTION NO. I)

16 MEMBERS OF THE JURY:

17 It is now my duty as judge to instruct you in the law that applies to this case. It is
18 your duty as jurors to follow these instructions and to apply the rules of law to the facts as
19 you find them from the evidence.

20 You must not be concerned with the wisdom of any rule of law stated in these
21 instructions. Regardless of any opinion you may have as to what the law ought to be, it
22 would be a violation of your oath to base a verdict upon any other view of the law than that
23 given in the instructions of the Court.
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INSTRUCTION NO. 2

If, in these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

An Indictment is but a formal method of accusing a person of a crime and is not of itself any evidence of his guilt.

In this case, it is charged in a fifth amended indictment that on or between June 3, 2005, and April 27, 2012, the Defendants committed the offenses of **INSURANCE FRAUD (Category D Felony - NRS 686A.2815); PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS OR PROPERTY RESULTING IN SUBSTANTIAL BODILY HARM (Category C Felony - NRS 0.060, 202.595); CRIMINAL NEGLECT OF PATIENTS RESULTING IN SUBSTANTIAL BODILY HARM (Category B Felony - NRS 0.060, 200.495); THEFT (Category B Felony - NRS 205.0832, 205.0835); OBTAINING MONEY UNDER FALSE PRETENSES (Category B Felony - NRS 205.265, 205.380) and MURDER (SECOND DEGREE) (Category A Felony - NRS 200.010, 200.020, 200.030, 200.070, 202.595, 200.495)**, committed at and within the County of Clark, State of Nevada, on or between June 3, 2005, and April 27, 2012, as follows:

COUNT 1 - INSURANCE FRAUD

Defendants and KEITH MATHAHS did on or about July 25, 2007, knowingly and willfully present, or cause to be presented a statement as a part of, or in support of, a claim for payment or other benefits under a policy of insurance issued pursuant to Title 57 of the Nevada Revised Statutes, knowing that the statement concealed or omitted facts, or contained false or misleading information concerning a fact material to said claim; and/or did assist, abet, solicit or conspire to present or cause to be presented a statement to an insurer, a reinsurer, a producer, a broker or any agent thereof, knowing that said statement concealed or omitted facts, or did contain false or misleading information concerning a fact material to a claim for payment or other benefits under such policy issued pursuant to Title 57 of the Nevada Revised Statutes, by falsely representing to ANTHEM BLUE CROSS - BLUE SHIELD that the billed anesthesia time and/or charges for the endoscopic procedure performed on SHARRIEFF ZIYAD were more than the actual anesthetic time and/or charges, said false representation resulting in the payment of money to the Defendants and

1 KEITH MATHAHS and/or their medical practice which exceeded that which would have
2 normally been allowed for said procedure; Defendants and KEITH MATHAHS being
3 responsible under one or more of the following principles of criminal liability, to wit: (1) by
4 directly committing said acts; and/or (2) aiding or abetting each other in the commission of
5 the crime by directly or indirectly counseling, encouraging, hiring, commanding, inducing,
6 or procuring each other, and/or others to commit said acts, Defendants and KEITH
7 MATHAHS acting with the intent to commit said crime, and/or (3) pursuant to a conspiracy
8 to commit this crime.

9 COUNT 2 - PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS
10 OR PROPERTY RESULTING IN SUBSTANTIAL BODILY HARM

11 Defendants and KEITH MATHAHS did on or about July 25, 2007, then and there
12 willfully and unlawfully perform acts in willful or wanton disregard of the safety of persons
13 or property resulting in substantial bodily harm to MICHAEL WASHINGTON, to wit:
14 transmitting the Hepatitis C virus to MICHAEL WASHINGTON, in the following manner,
15 to wit: by directly or indirectly using and/or introducing contaminated medical instruments,
16 supplies, and/or drugs upon or into the body of MICHAEL WASHINGTON which were
17 contaminated with the Hepatitis C virus; Defendants and KEITH MATHAHS being
18 responsible under one or more of the following principles of criminal liability, to wit: (1) by
19 directly committing said acts; and/or (2) aiding or abetting each other in the commission of
20 the crime by directly or indirectly counseling, encouraging, hiring, commanding, inducing,
21 or procuring each other, and/or others to utilize a patient care delivery system which directly
22 or indirectly limited the use of medical instruments, and/or supplies, and/or drugs; scheduled
23 and/or treated an unreasonable number of patients per day, and/or rushed patients or patient
24 procedures, Defendants and KEITH MATHAHS acting with the intent to commit said crime
25 in order to fraudulently increase the insurance billing and/or money reimbursement for the
26 medical procedure performed on the said MICHAEL WASHINGTON; specifically, as to
27 DEFENDANT DESAI, that he directly or indirectly both instructed DEFENDANT
28 LAKEMAN, and KEITH MATHAHS and said others to perform said acts and created a

1 work environment where DEFENDANT LAKEMAN, and KEITH MATHAHS and others
2 were pressured to commit the said acts described above; specifically, as to DEFENDANT
3 LAKEMAN, engaging in conduct against universally accepted standards of medical care,
4 that he limited the use of medical supplies, and/or drugs and rushed patients, and/or patient
5 procedures which in turn allowed DEFENDANT DESAI to directly or indirectly treat and/or
6 perform an unreasonable number of patient procedures in a single day all at the expense of
7 patient safety and well being, and which resulted in substandard care and jeopardized the
8 safety of MICHAEL WASHINGTON and/or (3) pursuant to a conspiracy to commit this
9 crime, Defendants and KEITH MATHAHS acting in concert throughout.

10 COUNT 3 - CRIMINAL NEGLIGENCE OF PATIENTS RESULTING IN SUBSTANTIAL
11 BODILY HARM

12 Defendants and KEITH MATHAHS on or about July 25, 2007, being professional
13 caretakers of MICHAEL WASHINGTON, did act or omit to act in an aggravated, reckless
14 or gross manner, failing to provide such service, care or supervision as is reasonable and
15 necessary to maintain the health or safety of said MICHAEL WASHINGTON, resulting in
16 substantial bodily harm to MICHAEL WASHINGTON, to wit: transmitting the Hepatitis C
17 virus to MICHAEL WASHINGTON, said acts or omissions being such a departure from
18 what would be the conduct of an ordinarily prudent, careful person under the same
19 circumstances that it is contrary to a proper regard for danger to human life or constitutes
20 indifference to the resulting consequences, said consequences of the negligent act or
21 omission being reasonably foreseeable; said danger to human life not being the result of
22 inattention, mistaken judgment or misadventure, but the natural and probable result of said
23 aggravated reckless or grossly negligent act or omission, to wit: by directly or indirectly
24 using and/or introducing contaminated medical instruments, supplies, and/or drugs upon or
25 into the body of MICHAEL WASHINGTON which were contaminated with the Hepatitis C
26 virus; Defendants and KEITH MATHAHS being responsible under one or more of the
27 following principles of criminal liability, to wit: (1) by directly committing said acts; and/or
28 (2) aiding or abetting each other in the commission of the crime by directly or indirectly

1 counseling, encouraging, hiring, commanding, inducing, or procuring each other, and/or
2 others to utilize a patient care delivery system which directly or indirectly limited the use of
3 medical instruments, and/or supplies, and/or drugs; scheduled and/or treated an unreasonable
4 number of patients per day, and/or rushed patients or patient procedures, Defendants and
5 KEITH MATHAHS acting with the intent to commit said crime in order to fraudulently
6 increase the insurance billing and/or money reimbursement for the medical procedure
7 performed on the said MICHAEL WASHINGTON; specifically, as to DEFENDANT
8 DESAI, that he directly or indirectly both instructed DEFENDANT LAKEMAN, and
9 KEITH MATHAHS and said others to perform said acts and created a work environment
10 where DEFENDANT LAKEMAN, and KEITH MATHAHS and others were pressured to
11 commit the said acts described above; specifically, as to DEFENDANT LAKEMAN,
12 engaging in conduct against universally accepted standards of medical care, that he limited
13 the use of medical supplies, and/or drugs and rushed patients, and/or patient procedures
14 which in turn allowed DEFENDANT DESAI to directly or indirectly treat and/or perform an
15 unreasonable number of patient procedures in a single day all at the expense of patient safety
16 and well being, and which resulted in substandard care and jeopardized the safety of
17 MICHAEL WASHINGTON and/or (3) pursuant to a conspiracy to commit this crime,
18 Defendants and KEITH MATHAHS acting in concert throughout.

19 COUNT 4 - OMITTED

20 COUNT 5 - INSURANCE FRAUD

21 Defendants and KEITH MATHAHS did on or about September 21, 2007, knowingly
22 and willfully present, or cause to be presented a statement as a part of, or in support of, a
23 claim for payment or other benefits under a policy of insurance issued pursuant to Title 57 of
24 the Nevada Revised Statutes, knowing that the statement concealed or omitted facts, or
25 contained false or misleading information concerning a fact material to said claim; and/or
26 did assist, abet, solicit or conspire to present or cause to be presented a statement to an
27 insurer, a reinsurer, a producer, a broker or any agent thereof, knowing that said statement
28 concealed or omitted facts, or did contain false or misleading information concerning a fact

1 material to a claim for payment or other benefits under such policy issued pursuant to Title
2 57 of the Nevada Revised Statutes, by falsely representing to ANTHEM BLUE CROSS
3 AND BLUE SHIELD that the billed anesthesia time and/or charges for the endoscopic
4 procedure performed on KENNETH RUBINO were more than the actual anesthetic time
5 and/or charges, said false representation resulting in the payment of money to Defendants
6 and KEITH MATHAHS and/or their medical practice which exceeded that which would
7 have normally been allowed for said procedure; Defendants and KEITH MATHAHS being
8 responsible under one or more of the following principles of criminal liability, to wit: (1) by
9 directly committing said acts; and/or (2) aiding or abetting each other in the commission of
10 the crime by directly or indirectly counseling, encouraging, hiring, commanding, inducing,
11 or procuring each other, and/or others to commit said acts, Defendants and KEITH
12 MATHAHS acting with the intent to commit said crime, and/or (3) pursuant to a conspiracy
13 to commit this crime.

14 COUNT 6 - PERFORMANCE OF ACT IN RECKLESS DISREGARD OF PERSONS
15 OR PROPERTY RESULTING IN SUBSTANTIAL BODILY HARM

16 Defendants and KEITH MATHAHS did on or about September 21, 2007, then and
17 there willfully and unlawfully perform acts in willful or wanton disregard of the safety of
18 persons or property resulting in substantial bodily harm to STACY HUTCHINSON, to wit:
19 transmitting the Hepatitis C virus to STACY HUTCHINSON, in the following manner, to
20 wit: by directly or indirectly using and/or introducing contaminated medical instruments,
21 supplies, and/or drugs upon or into the body of STACY HUTCHINSON which were
22 contaminated with the Hepatitis C virus; Defendants and KEITH MATHAHS being
23 responsible under one or more of the following principles of criminal liability, to wit: (1) by
24 directly committing said acts; and/or (2) aiding or abetting each other in the commission of
25 the crime by directly or indirectly counseling, encouraging, hiring, commanding, inducing,
26 or procuring each other, and/or others to utilize a patient care delivery system which directly
27 or indirectly limited the use of medical instruments, and/or supplies, and/or drugs; scheduled
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1 and/or treated an unreasonable number of patients per day, and/or rushed patients or patient
2 procedures, Defendants and KEITH MATHAHS acting with the intent to commit said crime
3 in order to fraudulently increase the insurance billing and/or money reimbursement for the
4 medical procedure performed on the said STACY HUTCHINSON; specifically, as to
5 DEFENDANT DESAI, that he directly or indirectly both instructed DEFENDANT
6 LAKEMAN, and KEITH MATHAHS and said others to perform said acts and created a
7 work environment where DEFENDANT LAKEMAN, and KEITH MATHAHS and others
8 were pressured to commit the said acts described above; specifically, as to DEFENDANT
9 LAKEMAN, engaging in conduct against universally accepted standards of medical care,
10 that he limited the use of medical supplies, and/or drugs and rushed patients, and/or patient
11 procedures which in turn allowed DEFENDANT DESAI to directly or indirectly treat and/or
12 perform an unreasonable number of patient procedures in a single day all at the expense of
13 patient safety and well being, and which resulted in substandard care and jeopardized the
14 safety of STACY HUTCHINSON and/or (3) pursuant to a conspiracy to commit this crime,
15 Defendants and KEITH MATHAHS acting in concert throughout.

16 COUNT 7 - CRIMINAL NEGLIGENCE OF PATIENTS RESULTING IN SUBSTANTIAL
17 BODILY HARM

18 Defendants and KEITH MATHAHS on or about September 21, 2007, being
19 professional caretakers of STACY HUTCHINSON, did act or omit to act in an aggravated,
20 reckless or gross manner, failing to provide such service, care or supervision as is reasonable
21 and necessary to maintain the health or safety of said STACY HUTCHINSON, resulting in
22 substantial bodily harm to STACY HUTCHINSON, to wit: transmitting the Hepatitis C
23 virus to STACY HUTCHINSON, said acts or omissions being such a departure from what
24 would be the conduct of an ordinarily prudent, careful person under the same circumstances
25 that it is contrary to a proper regard for danger to human life or constitutes indifference to
26 the resulting consequences, said consequences of the negligent act or omission being
27 reasonably foreseeable; said danger to human life not being the result of inattention,
28 mistaken judgment or misadventure, but the natural and probable result of said aggravated