

05 Q. You mentioned earlier in your testimony that
06 you had – we talked about one of your meetings
07 with the Health Plan of Nevada, correct?

08 A. Correct.

09 Q. But, at that time I think you mentioned that
10 you had another meeting with the Health Plan of
11 Nevada?

12 A. Yes.

13 Q. Can you tell me as much as you can what you
14 remember about that, and why don't you start with
15 when that meeting occurred?

16 A. That meeting had occurred sometime in 1990 --
17 either late 1997 or early 1998. It was just prior
18 to the point in time where our exclusive contract
19 with the Health Plan of Nevada was about to expire.
20 Dr. Fayad who had arranged this contract with the
21 Health Plan of Nevada in the first place had asked
22 me to come and present some information to two
23 administrators who were from the Health Plan of
24 Nevada that were present at that meeting.

25 Q. So Dr. Fayad was your partner at the time?

01 A. That's correct.

02 Q. And he was the one who had arranged for this
03 meeting with Health Plan of Nevada?

04 A. That's correct.

07 Q. And there were two representatives from Health
08 Plan of Nevada?

09 A. That's correct.

12 Q. That you both met with , correct?

13 A. Yes, that's correct.

14 Q. And not Dr. Fayad's request you attended this
15 meeting?

16 A. Yes, at Dr. Fayad's request he asked me and -
17 as opposed to the other three partners in our
18 practice to attend this meeting.

19 Q. And did you attend?

20 A. Yes, I did.

21 Q. And did you provide- or did you make a
22 presentation to the representatives from HPN at
23 that meeting?

25 A. Yes, I did.

02 Q. Can you tell me what the substance of that
03 presentation was?

04 A. It was to essentially review all of the false
05 advertising issues that I had documented in the
06 previous years. It was to bring up this 1996
07 missed cancer case that I had documented. It was
08 to also discuss the upper endoscopy procedure that
09 Dr. Desai had performed in 1992 having missed two

10 ulcers and then later falsifying a document
11 suggesting that he in fact had seen both of these
12 ulcers.

13 Q. Did you discuss the issues of improper
14 sedation with those individuals?

16 A. I don't remember-- I don't recall that. I do
17 not recall that specifically, but I do recall
18 mentioning that I had presented two cases of
19 up-coding to the board of medical examiners but
20 also told them that the board, you know, didn't do
21 anything further about that.

23 Q. And what was the reaction, if any, of the
24 people from Health Plan of Nevada?

25 A. They were legitimately surprised and showed
01 some level of concern, but that was the last I ever
02 heard of it

03 Q. And following that meeting, did Health Plan of
04 Nevada renew its contract with your group?

05 A. No, they renewed the contract with Dr. Desai's
06 group.

09 Q. So in spite of what you told them about Dr.
10 Desai they elected to go with his office instead of
11 yours?

12 A. That's correct

09 Q. Is Exhibit 10, does it consist of 31 pages, it
10 looks like a typed document? Is that what you have
11 as Exhibit 10?

12 A. That is correct.

13 Q. Okay. If you could for me, can you explain -
14 well, let me back up for a second.

15 You prepared this document, correct?

17 A. Yes, I did.

19 Q. And did you actually sit down and type this
20 document yourself?

21 A. Yes, I did.

24 Q. All 31 pages of this document?

25 A. All 31 pages.

01 Q. Okay. If I could just have you take a second
02 and flip through the 31 pages you have in front of
03 you that's been marked as Exhibit 10 to this
04 deposition. and tell me if this document is in the
05 same form as it was when you completed it. In
06 other words, has this document been changed or
07 modified in any way since the time you prepared it?

08 A. No. the -- well, I mean, they've-- somebody's
09 gone through and they've blackened out the names of

10 all the patients.

11 Q. Okay. And on the exhibit then that you have
12 in front of you there are black marks throughout
13 the document that you understand to be basically
14 shading out the names of patients that would have
15 appeared in this document?

16 A. Yes, in accordance with HIPAA laws, we cannot
17 reveal these people's names

18 Q. Other than blacking out people's names in this
19 document, have there been any other alterations or
20 modifications made since the time you finalized
21 this document?

22 A. No, there have not.

23 Q. Okay. So it's fair to say this document
24 that's in front of you still is in the same form as
25 it was at the time that you prepared it, is that
01 fair?

03 A There is actually I think about four
04 additional pages that were included in this
05 document at the end. 38 pages, 32, 33, 34, 35, 36,
06 something like that. And they were specific
07 grievances that I had with the behavior of the
08 Nevada Board of Medical Examiners.

10 Q. Okay. So is it fair to say that the first 31
11 pages of this document were a document that you
12 prepared related to the issues that you had with
13 Dr. Desai?

14 A. That is correct.

01 Q. So prior to the outbreak the only entity that
02 you showed this document to was the attorney
03 general's office, is that correct?

04 A. The entire document, that's correct.

05 Q. Okay. Now, you mentioned earlier a discussion
06 that you had with HPN and two individuals at HPN
07 specifically.

08 Did you show them any of these documents?

09 A. Yes, I showed them the false advertising
10 documents. I showed them Or. Desai 's original and,
11 you know, follow-up falsified endoscopy report, and
12 I had sh – and I discussed the other cases like
13 the missed cancer case an I briefly discussed the
14 up-coding issues with the two patients. But I did
15 not show them any of the documents because I didn't
16 actually discuss those patient s' name because it
17 would have been a violation of HIPAA law.

18 Q. So you showed them some of the documents and
19 talked to them about the other information that's
20 contained in this document, is that a fair summary?

21 A I showed them all of the false advertising
22 essentially from 1994 up until 1996. or 1993 to
23 1996.

24 Q. Okay. So you showed all the false advertising
25 documents to the HPN representatives, the two
01 representatives that you met with, correct?

02 A. That's correct.

05 Q. And what was the time frame of that meeting
06 again?

07 A. Again, I'm not positive, I want to say it's
08 late 1997 or early 1998. As I recall historically,
09 the time frame at which point the HPN contract was
10 up in question was around that time frame.

11 Q. Okay. So, in any event , the meeting took
12 place with the HPN representatives before you left
13 Las Vegas, correct?

15 A. That's correct.

17 Q. And when did you leave Las Vegas?

18 A. I left i n April of 1999.

19 Q. Okay. So prior to April of 1999 you believe
20 sometime late '97 or early 1998 you had a meeting
21 with two HPN representatives in which you actually
22 showed them the false advertising documents that
23 arc contained as part of Exhibit 10, and you had a
24 verbal discussion with them about t he other things
25 that we've talked about today, correct?

01 A. That is correct.

04 Q. What was the response from the two individuals
05 at HPN, if you can recall, to you sharing this
06 information with them somewhere prior to 1999?

07 A. You know, they were – again, they appeared
08 legitimately surprised, raised eyebrows. They took
09 the information and the meeting concluded, but that
10 was the last I had heard from them.

11 Q. When you say they took the information, did
12 they take hard copies of any documents?

13 A. No. I did not provide them with any hard
14 copies. I mean, they -you know, they took the
15 knowledge away with them that I had shared with
16 them about false advertising, about falsifying
17 documents.

18 Q. Okay. After that meeting took place did any
19 representative from HPN ever contact you again
20 about the information you shared with them and the
21 documents that you showed them at this meeting in
22 1999 or prior?

23 A. No, they did not.

24 Q. So just so I've got this clear for the record,
25 there was never a follow-up from any HPN
01 representative asking you anything about the

02 information you shared with them in what you
03 believe to be around in 1997, 1998 time frame,
04 correct?
05 A. No. No, there was never--
07 A. There was never any follow-up contact.
09 Q. I think you were asked this earlier but you
10 would have been more than happy to have any
11 follow-up discussions with any HPN representative
12 about this information at any time, correct?
14 A. I would have been more than happy for anybody
15 in Nevada to take responsibility for, you know,
16 dealing with this guy back in the 1990s so that
17 this, you know, crisis didn't happen in the year
18 2000.
20 Q. Including HPN, correct?
22 A. Including every insurance company that was
23 interested.

02 Q. Okay. And you know what the standard of care
03 is for a gastroenterologist in the State of Nevada,
04 correct?
06 A. Yes, I do.
08 Q. And it's your opinion that the conduct that's
09 outlined in Exhibit 1 constitutes medical
10 malpractice, correct?
11 A. Yes.
15 Q. And is that opinion to a reasonable degree of
16 medical probability?
17 A. Yes.
22 Q. Now, let's move to Exhibit 12. Is it also
23 your opinion that the information contained in
24 Exhibit 12 also rises to a level of medical
25 malpractice?
03 A. Yes.
05 Q. And is it your opinion to a reasonable degree
06 of medical probability that this constitutes
07 malpractice?
14 Q. Is it also your opinion that the information
15 contained in Exhibit 12 to a reasonable degree of
16 medical probability constitutes medical
17 malpractice?
20 A. Yes.
22 Q. So it would be fair to say that at the time
23 you discussed this information contained in
24 Exhibits 11 and 12 with HPN representatives, that
25 you had an understanding that this information
01 constituted malpractice. correct?
03 A. Yes.

05 Q. And did you express that to the HPN
06 representatives that you met with?
07 A. I don't know that I necessarily used the words
08 medical malpractice. I was just trying to provide
09 information to make them aware of Dr. Desai's
10 character.
11 Q. Okay. And do you believe that you
12 accomplished that objective?
13 A. No.
14 Q. Why not?
15 A. Because they didn't pay attention to anything
16 I tried to tell them.
17 Q. Okay.
18 A. They still gave the contract to Dr. Desai and
19 his group.
20 Q. Is it your opinion that they ignored what you
21 were trying to tell them?
22 A. Yes.
23 Q. Is it your opinion that they exhibited a
01 conscious disregard for the safety of patients?
02 A. Yes.
03 Q. Turning to the information contained on
04 Exhibit 13, in your opinion, would this also
05 constitute medical malpractice?
06 A. Yes.
07 Q. And that opinion is expressed to a reasonable
08 degree of medical probability?
09 A. Yes.
10 Q. And same questions in regard to Exhibit 14.
11 Does this information constitute medical
12 malpractice to a reasonable degree of medical
13 probability?
14 A. Yes.

18 Q. Do you have an understanding of when your
19 contract with HPN expired?
20 A. Again, just a rough time frame. It's been 13
21 years and I want to say it was 1998.
22 Q. Okay. And is it also your understanding that
23 after your contract with HPN expired, that HPN
24 entered into a contact with Dr. Desai to be a
25 gastroenterologist?
02 A. Yes, that is -- that's exactly what happened.
03 Q. And that was after you had had the meeting
04 with the two HPN representatives and explained the
05 information that's contained in Exhibit 10 to them,
06 correct?
07 A. Yes.
08 A. Yes.
09 Q. You said earlier that you read the entire
10 Southern Nevada Health District report, correct?
11 A. Yes, I did.

15 Q. And you're aware then that that was a joint
16 investigation that was done by the Southern Nevada
17 Health District and the CDC?
18 A. Yes, I'm --
20 A. I'm very much aware of that fact.
22 Q. Were you surprised by the findings in the
23 report?
24 A. No.
25 Q. Why not?
01 A. Because as I would hope that some day someone
02 will look back in retrospect and realize that I
03 pretty much had a thumbnail on Desai's character 13
04 years ago. Had anybody listened to what I was
05 trying to tell them, had any regulatory agency in
06 the State of Nevada or any insurance company
07 listened to me, then this crisis would never have
08 happened in 2007.
09 Q. Is it fair to say that if HPN had listened to
10 what you were trying to tell them prior to leaving
11 Las Vegas in 1999, that you believe that this
12 outbreak maybe wouldn't have happened?
13 A. Weil -
15 A. -- at the very least I would have hoped that
16 they would have awarded that contract perhaps to
17 Dr. Nemecek and his group, or to Dr. Heikle
18 (phonetic) and his group rather than giving it to,
19 you know, a miscreant like Dipak Desai.
21 Q. Okay. Had HPN asked you about Dr. Desai in
22 1999 what would you have told them?
23 A. Everything.
01 Q. Everything that's contained in Exhibit 10?
02 A. Everything.
03 Q. Yeah, but they never asked you; correct?
04 A. No.